IN THE MATTER OF APPLICATION TVG31/50 FOR REGISTRATION OF RASCALS WOOD FIELD AS A TOWN OR VILLAGE GREEN

INSPECTOR'S REPORT

Recommendation: the application should be refused

Introduction

1. By way of an application dated 27 November 2019, received by West Sussex County Council ("WSCC") as registration authority the next day, the Applicant ("Mrs Nash") applied under section 15(2) of the Commons Act 2006 ("the 2006 Act") for the registration of land in Southwater (described as Rascals Wood Field) as a town or village green.

2. The application was supported by a small number of photographs and various Questionnaires, to which I return later in this report.

3. There was an objection from Robert and Samantha Burge, Anthony and Lisa Driscoll plus Catesby Strategic Land Limited ("the Objectors"). This prompted a Response from Mrs Nash.

4. Further written evidence was submitted, for and against the application, in the run-up to the inquiry and in accordance with my directions.

5. The inquiry took place between 19-21 January 2021, in the course of which I undertook a site visit (complementing a site visit I undertook pre-inquiry).

6. The following gave oral evidence during the inquiry in support of the application: Len Cook, Magda Haire, Mrs Nash, Paula Spreadbury[1] and Neil Robins.

7. The following gave oral evidence during the inquiry in objection to the application: Anthony Aspbury, Robert Burge, Joshua Carter, Anthony

[1] aka Paula Negus.

Driscoll, Frederica Driscoll, Lisa Driscoll, Glenda Lamden, Andrew Spearing and Ella Spearing.

8. Helpfully, the parties agreed a Statement of Common Ground. On 21 January 2021, it was corrected and supplemented. Amongst other matters, the parties agree the legal authorities and principles relied upon by each of them.

The Application Site

9. The Application Site comprises a broadly triangular field extending to approximately 0.9 hectares. The line of public footpath 1889 cuts across the Application Site. It is common ground between the parties that the condition and appearance of the Application Site changed over the 20 year period ending with the application, as is clear from the aerial photographs of it. Put shortly, it became more overgrown as the years went by.

10. The original Application Site is shown edged red at page 10 of the inquiry bundle. Subsequently, the parties agreed that an area of dense brambles at the eastern end of the Application Site should be excluded from it. This area of dense brambles is shown coloured blue on an annotated version of the application plan.

11. There is disagreement between the parties as to whether or not an additional area of land, comprising the access track to Rascals Farm, should also be excluded from the application. Given my recommendation, and the reasons for it, this issue is of no consequence.

The main issues

12. Given the way in which the application and the inquiry unfolded, the main issues for my determination are as follows:

Issue 1: Is the neighbourhood relied upon by Mrs Nash a "neighbourhood" for the purposes of section 15(2) of the 2006 Act?

Issue 2: Is the locality relied upon by Mrs Nash a "locality" for the purposes of "neighbourhood within a locality" in section 15(2) of the 2006 Act?

Issue 3: Did a significant number of the inhabitants of the claimed neighbourhood within the claimed locality indulge in lawful sports and pastimes on the land during the 20 years ending 28 November 2019?

13. If I answer Issue 3 in the affirmative, and depending upon my determination of Issues 1-2, a further main issue may arise. Thus:

Issue 4: Did those inhabitants indulge in those lawful sports and pastimes on the land during those 20 years as of right?

Issue 1: Is the neighbourhood relied upon by Mrs Nash a "neighbourhood" for the purposes of section 15(2) of the 2006 Act?

14. The short answer to this question is no.

15. This answer is fatal to the application. It should be refused on this basis alone.

16. I start first with the legal framework, helpfully summarised at paragraphs 19-21 of the Objectors' Legal Authorities and Propositions document. To repeat, this is agreed.

17. A "neighbourhood" for section 15(2) purposes is not a sub-division of a "locality" and need not be a recognised administrative unit. However, it is not any area of land that an applicant chooses to delineate upon a plan. It must have a "sufficient degree of cohesiveness". Indicia may include: whether or not the area has natural or distinct boundaries; the presence or otherwise of expected facilities; differences in housing types and standards; and differences in socio-economic circumstances.

18. I turn next to the facts of the present case, and apply them to the indicia.

19. Mrs Nash's claimed neighbourhood is an irregular Y-shaped area of land, shown hatched black on the plan at inquiry bundle page 37.

20. The genesis of this claimed neighbourhood is as follows. Mrs Nash part-completed a Questionnaire, made several copies and then distributed those part-completed copies to various addresses in and around Southwater said to be occupied by people who use the Application Site predominantly for walking with their dogs. Mr Robins (and possibly others) then circulated the part-completed Questionnaires to further addresses in and around Southwater. Upon completion of the Questionnaires, most recipients returned the Questionnaires to Mrs Nash. Mrs Nash subsequently provided these to WSCC in support of her application. A small number of recipients sent the completed Questionnaires direct to WSCC. Informed by the

location of the homes of those who submitted Questionnaires, Mrs Nash drew the line of her claimed neighbourhood on a plan. However, there are no such homes within large parts of the claimed neighbourhood. The best example is zone 2,[2] which contains no such homes. Moreover, some of the homes of those submitting Questionnaires are outside the claimed neighbourhood. At no point were Questionnaire recipients provided with a plan of the claimed neighbourhood. Mrs Nash did not identify this until much later, on 3 September 2020.

21. It can thus be seen that the boundary of Mrs Nash's claimed neighbourhood is essentially arbitrary. It does not derive from any assessment of natural or distinct boundaries, facilities, housing types or standards or from any assessment of socio-economic circumstances. Rather, it is a product of whomsoever Mrs Nash happened to select to receive a part-completed Questionnaire, the people to whom it happened to be passed on, the people who ultimately happened to complete the Questionnaire and submit it to WSCC (whether via Mrs Nash or direct) and the locations of the homes of those people (whether they have submitted a Questionnaire or otherwise) said by Mrs Nash to walk dogs on the Application Site. That is a very unpromising platform on which to seek to establish a section 15(2) neighbourhood.

22. The claimed neighbourhood falls within two civil parishes. It is part-suburban and part-rural. Mr Aspbury analysed this claimed neighbourhood

[2] Mr Aspbury divided the claimed neighbourhood into four zones: see page 386 of the inquiry bundle.

in detail in his witness statement. Mrs Nash uncharitably describes this analysis as "a long-winded professional document". I prefer to describe it as professional, thorough, relevant and helpful. A large proportion of it is agreed. I reject the assertion[3] that Mr Aspbury "is purely summarising the statutory criteria". On the contrary, he applies a range of relevant criteria to the facts and reaches conclusions.

23. Mr Aspbury provided evidence[4] that there is only one public house within the putative neighbourhood, at its extreme northern tip, self-evidently peripheral to it, close to the village centre and clearly a settlement-wide facility rather than a neighbourhood facility. His witness statement provides evidence of a range of other facilities within Southwater: see his Figure 5 at inquiry bundle page 329 and the key to it on the preceding page. With the exception of the public house referred to, and, it would seem, a village/church hall, none of these is within the area of the claimed neighbourhood. It follows that there is no post office, leisure centre or sports club with fields, supermarket or convenience store, church, solicitors' offices, doctor's surgery, dental surgery, chemist, library or bank anywhere within the claimed neighbourhood. There is no school within it. It is agreed that the nearest shops to the claimed neighbourhood are approximately 850m north of the Application Site.

[3] See paragraph CS5 of Mrs Nash's Closing Statement.
[4] Witness statement, paragraph 3.3.12.

24. Mrs Nash agrees with Mr Aspbury's Figures 1-8 and his Appendices 1-11 inclusive in terms of their factual material.[5] Appendix 11 shows the indicative locations of those people who submitted Questionnaires. As recorded above, there are none in Mr Aspbury's zone 2. There are very few in his zones 1 and 4. Mrs Nash did not take issue with Mr Aspbury's position that her claimed neighbourhood can be divided into these four discrete areas, or his evidence as to their characteristics. I accept his evidence[6] that the four areas are each distinct and internally diverse, and that, with the exception of some parts of two of the sub-areas, all parts of the claimed neighbourhood have better access to other open space areas than to the Application Site. As Mr Aspbury states,[7] and as I accept, there are no historical or current references to a discrete neighbourhood or community corresponding to the area of the claimed neighbourhood and there is no documentary evidence to support the proposition that the Application Site is the physical and recreational focus of any community or neighbourhood let alone the claimed neighbourhood. No ONS Census Output Area coincides with the claimed neighbourhood. It is common ground that the claimed neighbourhood is divided into almost 60 lower-level postcodes. Mrs Nash has not attributed a name to her claimed neighbourhood. Estates agents do not identify this claimed neighbourhood. There is no evidence of any historical or current community group, organisation or body only run by or only for the residents of the claimed

[5] See paragraph CG2.4f-g of the latest Statement of Common Ground.
[6] Witness statement, paragraphs 3.3.21 and 3.3.22.
[7] Witness statement, paragraphs 3.4.1.1 and 3.4.1.2.

neighbourhood, nor is there any historical or current evidence of any community organisations associating themselves only with the claimed neighbourhood. Whilst there are a number of designated public open spaces within the claimed neighbourhood, this is unsurprising given that it extends to approximately 77 hectares and Mrs Nash does not rely upon these to derive her claimed neighbourhood.

25. I was unimpressed by Mrs Nash's questions of Mr Aspbury during cross-examination which attempted to demonstrate that he was somehow unable to assist the inquiry because he is not local to Southwater, especially given that Mrs Nash agrees with so much of his evidence. The other main plank of her cross-examination of him, which focused on the use of a small area of public open space to the east of Shipley Road, simply took up time to no effect and left large and relevant swathes of his evidence unchallenged.

26. There may be a case in which there is an area of land some of whose inhabitants own dogs and walk with them on another area of land with a sufficient degree of cohesiveness as a result that it comprises a neighbourhood for the purposes of section 15(2) of the 2006 Act. But this case is not that case.

27. On the contrary, the genesis of the boundary of Mrs Nash's claimed neighbourhood, its essentially arbitrary boundary, its straddling of two civil parishes, its part-rural and part-suburban characteristics, its lack of facilities, its four distinct and internally diverse sub-areas, its lack of historical or current references or associations and its lack even of a name

all lead me to conclude without hesitation that Mrs Nash's claimed neighbourhood is not a "neighbourhood" for the purposes of section 15(2) of the 2006 Act. It does not have anything like the necessary sufficient degree of cohesiveness to meet that test.

28. On that basis alone, and to repeat, the application fails.

29. In deference to the parties, and the energy devoted to the application over many months, I will though go on and determine at least Issues 2-3.

Issue 2: Is the locality relied upon by Mrs Nash a "locality" for the purposes of "neighbourhood within a locality" in section 15(2) of the 2006 Act?

30. The short answer to this question is no.

31. This answer is likewise fatal to the application. It should also be refused on this basis alone.

32. Again, I start first with the legal framework. This is helpfully summarised at paragraph 18 of the Objectors' Legal Authorities and Propositions document, and also agreed. It records that a "locality" is not an arbitrary line on a map. Rather, it is an administrative unit. This could be a county, a city, a town, a borough, a parish (civil or ecclesiastical) or an electoral ward. *Gadsden & Cousins on Commons and Greens*[8] states at 15-40 that "locality" in the context of section 15 of the 2006 Act "relates to a defined administrative unit known to law, which ought to reflect some community of interest on the part of its inhabitants."

[8] Sweet & Maxwell, 3rd edition, 2020.

33. Mrs Nash's claimed locality comprises the civil parish of Southwater plus that part of the civil parish of Shipley hatched black on page 37 of the inquiry bundle. This area does not relate to a defined administrative unit known to law. It is not a "locality" for the purposes of "neighbourhood within a locality" in section 15(2) of the 2006 Act.

<u>Issue 3: Did a significant number of the inhabitants of the claimed neighbourhood within the claimed locality indulge in lawful sports and pastimes on the land during the 20 years ending 28 November 2019?</u>

34. Mrs Nash's case on Issue 3 rested on a number of matters, but one in particular stands out namely her reliance upon the Questionnaires.

35. This aspect of her case, and the reliability of these Questionnaires, merits detailed scrutiny.

36. First and foremost, and as recorded above, Mrs Nash pre-completed a large number of the Questionnaire answers before they were circulated to others. I regard this conduct as being completely inappropriate. All the Questionnaires include an Important Note at the outset, part of which reads: "It is therefore necessary for witnesses to answer ***all*** the questions…" Mrs Nash's conduct was contrary to this note. In any event, one should not need such a note to be able to realise that one should not be completing answers for others. I would add that Mrs Nash is a practising solicitor, who should have known better. Incidentally, I reject Mr Robins' assertion that Mrs Nash completed the answers "to help with the understanding of some of the questions". This assertion does not stack up. Many of the questions

are very simple, the provision of "Yes" or "No" answers hardly helps with the understanding of the questions and, in any event, if a person does not understand a question they ought to ask WSCC for clarification.

37. The bottom line is that many of the answers in the Questionnaires were Mrs Nash's answers, not the witnesses' answers.

38. Upon receipt of the Questionnaires, WSCC realised that many of the answers had been pre-completed. It explained to Mrs Nash, correctly, that this may affect the weight given to them. It gave Mrs Nash two options: completion by all users of new forms in their entirety, or written confirmation from all users that they were content with the partial pre-completion and that all questions and answers had been read and understood.

39. Mrs Nash elected for the second, simpler (but less appropriate) course of action but in fact compounded her original error in the process. Rather than asking all users to write their own letters to WSCC to provide the confirmation sought, Mrs Nash instead produced a pro forma letter and provided it to some or all of the users to sign. The danger with pro forma letters of this kind is that the recipients will simply sign them, without proper consideration or understanding of what they are signing.

40. Len Cook, one of the witnesses at the inquiry, is a classic case in point. He was provided with a part-completed Questionnaire. To make matters worse, and as was revealed during his oral evidence, the balance of his Questionnaire was completed by Ms Spreadbury. It included answers,

written by Ms Spreadbury, to the effect that Mr Cook had known the land for 35 years and that he had carried out dog walking on it from 1984 to date. Mr Cook said during his oral evidence that these answers were wrong, that he had known the land for 42 years but that he had carried out dog walking on it only since around 2010. Mr Cook made it clear that Ms Spreadbury had written these answers without reference to him. Mr Cook did not sign his Questionnaire. He did though sign one of Mrs Nash's pro forma letters. Given Ms Spreadbury's completely wrong answers, I fail to see why he did so. The only reasonable inference is that he signed the pro forma letter without properly considering or understanding what he was signing.

41. Mr Robins is another case in point when it comes to the danger of pro forma letters. Question 5(a) of the Questionnaire asked as follows: "Do you agree with the boundaries of the 'locality' or 'neighbourhood within a locality' shown on the map edged in red?" The pre-completed answer was "Yes". I would add that the word "red" was written in manuscript in every case, probably by Mrs Nash (as was the answer). Mrs Nash provided all Questionnaire recipients with a map showing an area edged in red. But this area was neither a claimed locality, nor a claimed neighbourhood within a locality. Rather, it was the original Application Site. I infer that Mrs Nash did not understand question 5(a) when she answered it on behalf of herself and others. Mr Robins told the inquiry that he asked Mrs Nash for guidance on the meaning of some of the Questionnaire questions. He signed and dated his Questionnaire. He subsequently signed one of the pro forma letters, to confirm amongst other things that "all questions and

answers provided in [the Questionnaire] were fully read and understood." Yet, by his own admission, he did not fully understand all the questions in the Questionnaire (at any rate, at least not initially). But there is nothing in his pro forma letter to reflect that admission.

42. Not all of those who submitted Questionnaires provided a corresponding pro forma letter. That is but another reason affecting the reliability of these Questionnaires.

43. Only five of the people who submitted Questionnaires provided oral evidence during the inquiry, during which they were cross-examined and questioned (under oath). Mrs Nash was one of them. A virtue of the cross-examination and questioning of a witness under oath, and perhaps its principal virtue, is that evidence can be tested. Experience shows that written evidence often does not withstand scrutiny when tested. Mr Cook's written evidence (or, one could say, the evidence provided by Mrs Nash and Ms Spreadbury in his name) is a case in point. I have already covered his dog walking. Another matter which emerged from his oral evidence, but which cannot be gleaned from "his" Questionnaire, is that his walking on the Application Land was on the public footpath. Mrs Nash described Mr Cook as a key witness. The description is accurate, although not for the reason she hoped for, as his oral evidence served to assist only the Objectors. Incidentally, I commend Mr Cook for venturing to Mrs Nash's house to give his evidence and for speaking so candidly and truthfully. He did the inquiry a service.

44. Another feature of many of the Questionnaires, also affecting their reliability, is that they lack detail. Many of the questions ask for precise details, and yet detail is lacking. This is another danger of pre-completed answers. Left to answer questions for themselves, users may ponder the questions and provide details in answering them. If they see that questions have already been answered, they will be more inclined to skate over the questions and answers and to concentrate simply on the questions which have not been pre-answered.

45. Question 24 of the Questionnaire asks if the user has any photographs or any other evidence of use of the land by local inhabitants. Remarkably, only Mrs Nash provided any photographs and these were very few in number. The net result is that the assertions in the Questionnaires, largely pre-completed and very largely untested at the inquiry, are in very large measure unsupported by any contemporaneous photographs or other evidence. That also bears on the reliability of the Questionnaires.

46. My conclusion, in the light of all the above, is that the Questionnaires of those who did not give oral evidence are completely unreliable and carry no weight. The foundation on which Mrs Nash sought to erect her case on Issue 3 largely collapses.

47. What remains?

48. I find as a fact, on the balance of probabilities, that there was some qualifying user on the Application Site during the relevant 20 year period.

49. I begin with activities other than walking and dog walking.

50. Mrs Nash provided a photograph of one of her sons, and a cousin of his, taken in late 1999. The boys are holding a model aeroplane. They are standing on or just off the line of the public footpath. But is it implausible to suggest that they were confined to the public footpath when flying this model aeroplane. Rather, I conclude that they played with it on part of the Application Land. The overhead power line did not preclude it.

51. Ms Spreadbury provided evidence of her children exploring "the wild grass" in the Spring/Summer and of her eldest son's "picnic parties" on the Application Land. She also refers to "family picnics," whilst not clearly distinguishing these from her eldest son's picnic parties. That said, there is no detail in terms of the number of these various events or of their timing or precise location. Ms Spreadbury has avoided the land near the boundary with Rascals Farm since mid-2015. Doing the best I can on the evidence, I conclude that there were probably a small number of these exploration or picnic events (in single figures) but confined to the warmer months and to only small parts of the Application Site. That finding is consistent with the evidence of Mr Robins. He said he had seen picnics but only a few and occasionally. Magda Haire gave evidence to the same effect. As for when these events occurred, I conclude that they occurred prior to mid-2015. It is apparent that the arrival of the Driscolls at Rascals Farm in mid-2015 caused Ms Spreadbury to change her user of the Application Land and of course her children have grown older all the while.

52. Ms Spreadbury also gave evidence of her undertaking dog therapy training on the Application Site, although she was vague as to when and where it

occurred. I find that it occurred on a small number of occasions, likewise in single figures, since 2010, but close to the public footpath. That location is consistent with Ms Spreadbury's evidence to the effect that the dogs would thereby become accustomed to people walking on the public footpath. I also find that Mr Robins used part of the Application Site for puppy training on a very small number of occasions, also in single figures, in 2005.

53. On one or two occasions, members of the local hunt rode briefly onto the Application Site in pursuit of a fox. This took place prior to the fox hunting ban, which came into effect in 2005. In fairness, Mrs Nash does not rely upon these fleeting incidents. She did though refer to her daughter having ridden her pony "around field from 2002 to 2006". I find as a fact that these occasions were very few in number, also in single figures.

54. I am not persuaded that there has been kite flying or football on the Application Site. There is no photographic or documentary evidence of it. For the record, I am not saying that the references to it are dishonest. I simply find that the burden of proof is not satisfied. I accept that there has been berry picking on the Application Site, but this was in conjunction with user of the public footpath and is not qualifying user for village green purposes. Ms Spreadbury referred to games of hide and seek and wild camping in the woods. I find that these activities took place in the trees outside the Application Site. It is not qualifying user.

55. What then is the result of the above in terms of qualifying user? It is as follows: one incident of model aeroplane flying on part of the Application

Site; a small number of exploration or picnic events, prior to mid-2015, confined to the warmer months and to only small parts of the Application Site; a small number of puppy training occasions on part of the Application Site in 2005; a small number of horse or pony riding occasions, no later than 2006; a small number of dog therapy training sessions close to the public footpath between 2010 and the application date.

56. Does this degree of lawful sports and pastimes get Mrs Nash home on Issue 3? The answer is no, leaving aside for now the "significant number of inhabitants" issue. The user is far too sporadic to amount to continuous use for lawful sports and pastimes. Also, whilst not every square inch of the land has to have been used for lawful sports and pastimes in order for an application to succeed, I am not satisfied (applying the common sense approach set out in R (Cheltenham Builders) v South Gloucestershire Council [2003] EWHC 2803 at [29]) that the whole of the Application Site was used for these qualifying activities.

57. The next issue is whether there is any or sufficient walking or dog walking qualifying user to tip the balance in Mrs Nash's favour.

58. I have no doubt that there was walking, with and without dogs, on the Application Site during the relevant 20 year period and that some of this was qualifying user. Mr Robins did so, with members of his family and with a dog (when he had one). Mrs Haire did so. Mrs Nash did so.

59. However, I find that the qualifying user by the Robins family pre-2005 was "occasional". Their use of the public footpath, or of the Application Site as

a route to or from the Dragon Estate, was not qualifying user. I discuss 2005 above. Since 2014, the Robins family has mainly used the Application Site as a route to or from the Dragon Estate. Again, that is not qualifying user. I reject the assertion in Mr Robins' Questionnaire that his general pattern of use of the Application Site has remained basically the same during the time he and his family has used it. That answer is inconsistent with his letter and his oral evidence. The explanation for the inconsistency, sad to report, is that Mrs Nash provided his answer to question 10.

60. I have no doubt that Mrs Haire and Mrs Nash have walked on the Application Site, with their dogs, very many times during the 20 year period. Some of these instances were qualifying instances, but many were not. My explanation for that conclusion now follows.

61. The Application Site used to be open grassland. It was cut once or twice a year. Incidentally, this low-level agricultural activity does not assist the Objectors as it was not in practice inconsistent with use of the Application Site for lawful sports and pastimes. But, as is agreed, the Application Site became increasingly overgrown as the years went by. I find that Mrs Haire and Mrs Nash wandered over the Application Site in the early years of the period, as did their dogs, but that this pattern changed as the years rolled by and the application date approached. By around the middle of the 20 year period, the Application Site had become essentially scrubland. Thereafter, the scrub, bushes and trees continued to grow. The result was that, as the years went by and from around the middle of the 20 year period, Mrs Haire and Mrs Nash began to follow the same routes across the

Application Site. This had the effect of creating or consolidating visible worn tracks across the land. In other words, their initial wandering turned into walking on defined tracks which would have appeared to the owner (or to anyone else) as user referable to a right of way rather than user suggesting to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of the Application Site. In other words, and ironically, the more often that Mrs Nash and Mrs Haire walked on the Application Site on defined routes the weaker the case for registration became.

62. I cannot leave this issue without mentioning one matter of some controversy. The Driscolls believe, and I find their belief to be genuine, that their dogs bark whenever anyone is on the Application Site. But I find that this is not the case. During my two site visits, I walked up and down the public footpath on numerous occasions, over much of the Application Site and up and down the access track to Rascals Farm. The dogs didn't bark. I am put in mind of the famous line from the Sherlock Holmes story, although the context is different. But the explanation for their lack of barking is obvious. The Application Site is well-screened from the Rascals Farm land by vegetation, by the house and by the outbuildings. The dogs could be in the house or otherwise screened from the Application Site. If so, they would not see a person on the Application Site and so would not bark. No doubt they invariably do bark when they see a person; it is just that they do not always see them. The net result is that Mrs Haire and Mrs Nash have often been able to walk on the Application Site without the Driscolls'

dogs alerting them to their presence. Also, as is plain, the Driscolls could have been in the house, out, or otherwise occupied when people were on the Application Site, with the effect that the Driscolls did not see them. My second site visit is an illustration of this point. On this occasion, Mr Driscoll walked on the Application Site whilst I stood just inside his gate. Ella Spearing was at Rascals Farm at the time. But she did not see Mr Driscoll on the Application Site, for the simple and understandable reason that the stables obscured her view of the Application Site and she was rightly concentrating on attending to a horse. The dogs did not bark at Mr Driscoll either, although I put this down to the fact that they recognised their master.

63. Returning to the issue canvassed above, the result is that there was insufficient walking or dog walking qualifying user to tip the balance in Mrs Nash's favour.

64. What is more, there has not been qualifying user by a "significant number" of the inhabitants within the meaning of section 15(2) of the 2006 Act. On my findings, the number is *de minimis*. It is insufficient to indicate that the Application Site was in general use by the local community. The number was not of such amount or in such manner as would reasonably be regarded as being the assertion of a public right.

65. The answer to the Issue 3 question is, therefore: No.

66. It follows that the application fails on all of Issues 1-3. It should be refused on all or any of these bases.

Issue 4: "as of right"

67. Given my conclusions on Issues 1-3, Issue 4 does not arise for determination. I do not propose to lengthen this report unnecessarily by doing so.

Miscellaneous factual issues

68. The application threw up a range of miscellaneous factual issues. These include, in no particular order:

    (i) Did the Driscolls' Jack Russell attack a dog (or dogs)?

    (ii) Did Mrs Driscoll swear at Mrs Nash?

    (iii) Was there once fencing on the right-hand side of the access track to Rascals Farm, after the public footpath finger post?

    (iv) Did Mr Driscoll erect a sign on a tree, replacing an earlier sign?

    (v) Did Mr Burge give the Driscolls (or any of them) authority to stop any unauthorised user of the Application Site?

69. Tempting as it is, I do not propose to determine these factual issues. There is no need for me to do so, given my conclusions on Issues 1-3. I will leave it to the villagers to debate and decide these issues, insofar as they wish to do so, as villagers have done everywhere down the ages.

The perjury allegation

70. There is though one factual issue which merits determination.

71. It arose in this way.

72. During the inquiry, Mr Driscoll gave evidence that [Lady] Louise Burrell (of the Dragon Estate) had given the Driscolls permission to ride on her land. Mrs Nash briefly indicated that she disputed this. Mr Driscoll assured Mrs Nash that it was the case.

73. After the inquiry, Mrs Nash sought to adduce an email chain and she accused Mr Driscoll of having committed perjury. Perjury is a very serious offence. Accusing someone of perjury is a very serious accusation. Mrs Nash asserted that the email chain "casts credibility on [the] reliability" of the Driscolls' evidence, by which she meant that it undermined their credibility and the reliability of their evidence.

74. The email chain includes these passages from a Mr Nic Burchell, apparently agent for the Dragon Estate and the Burrells:

(i) "Having carried out some research and spoken to my Client, it is unlikely they or their representatives would have provided permission to ride horses around Blinks wood. The access to my Client's land is via a Public Footpath, which in any case, we would not have permitted them to ride on"; and

(ii) "Further to a conversation with my Client, we would be happy for you to forward on our responses however, it must be added, whilst there has been no specific or formal arrangement that my Client can recall, on occasion access may have been allowed as a one off. This would not have been in writing."

75. Pausing there, these passages are an insufficient evidential basis for the perjury allegation. I note the caveats: “unlikely”; “would not have” (as opposed to “did not”); “that my Client can recall”; “access may have been allowed…”; and “would not have been” (as opposed to “was not”). In short, the accusation should not have been made in the first place.

76. In response, the Objectors provided an email from Lady Louise Burrell to Mrs Driscoll dated 22 April 2020. Its salient passages are as follows: “In general the estate allow some people who are connected to the estate via various livery yards that are on the estate to ride. This is part of a rental agreement. We would of course allow you and your daughter (two horses at a time) to ride in certain areas. Th[e] reason we need to show you where you can go is because we have had several complaints from locals about riders riding on public foot paths. People are getting very cross, so we just want to be careful. Can we send you a map and then everyone is clear.”

77. Rather than apologising for and withdrawing her perjury allegation, as she should have done, Mrs Nash changed tack and pursued a different allegation. Thus: “Noted but it clearly states not on public footpaths and the only access from the field is via a public footpath and in their witness statements this is exactly how they say they access the Dragon’s Estate - “via the public footpath”.” The allegation thus changed from an allegation regarding Mr Driscoll alone to an allegation regarding “they”. These people are unspecified. The allegation had morphed into an allegation of riding on the public footpath on the Application Site to access the Dragon Estate. But

the Burrells do not own the public footpath on the Application Site. As for the quoted words ("via the public footpath"), I cannot find these exact words in the witness statements of any of the Driscolls. Mr Driscoll uses the words "…up the western side of the Site onto the Public Footpath and into Dragons Wood…" but he goes on to say that Mr Burge had given permission for this, which Mrs Nash does not put in issue. I am unable to conclude that the Driscolls or any of them ride on public footpaths on the Dragon Estate, but, even if they do so, that is a matter for them and the estate owners and the relevant highway authority.

78. My formal conclusions in respect of this late-running issue are as follows. I admit the post-inquiry evidence. Mrs Nash should not have accused Mr Driscoll of perjury. She should have dropped the matter upon receipt of Lady Louise Burrell's email, rather than introducing a new allegation lacking in particulars. Mr Driscoll did not commit perjury. The alleged quoted words do not exist in the Driscolls' witness statements. Mr Burge gave the Driscolls permission to ride on the public footpath on the Application Site. Whether or not he was entitled to give that permission is another matter, which Mrs Nash does not pursue. The only person whose credibility is damaged by this late-running issue is Mrs Nash. Her introduction of it was the last in a series of errors of judgment on her part during the long application process, and no doubt influenced by her determination to prevent housing development on the Application Site. That that is her motivation is not in doubt, as is disclosed in one of her post-inquiry emails. Thus, to quote: "…it could be fundamental to our case to

prevent housing development." There is nothing wrong *per se* in submitting a village green application in an attempt to prevent housing development. The only pity in this case is that the motive clouded Mrs Nash's judgment in numerous respects.

Conclusion

79. In summary, my conclusions on the main issues are as follows:

(i) The neighbourhood relied upon by Mrs Nash is not a "neighbourhood" for the purposes of section 15(2) of the 2006 Act;

(ii) The locality relied upon by Mrs Nash is not a "locality" for the purposes of "neighbourhood within a locality" in section 15(2) of the 2006 Act; and

(iii) An insignificant number of the inhabitants of the claimed neighbourhood within the claimed locality indulged in lawful sports and pastimes on the land during the 20 years ending 28 November 2019. The qualifying user is far too sporadic to amount to continuous use for lawful sports and pastimes. The whole of the Application Site was not used for the qualifying activities throughout the relevant period.

80. For any or all of these reasons, the application should be refused.

STEPHEN WHALE

LANDMARK CHAMBERS, LONDON

15 FEBRUARY 2021