Response from Felicity Harrington on behalf of the Collingwood Green Association Trustees to opinion from Naomi Taite regarding Public Enquiry on our application for VG status

We of course are not experts in this area and thus we have to give due weight we bow to Counsel's expertise – we cannot of course take on the expense of an expert Counsel ourselves to digest and consider Ms Paul's advice - although as laymen we feel there are some non-sequiturs and things which need a proper explanation to us as the Council is minded to refuse our VG application.

1. Ms Paul was asked to give her opinion, as she says, on whether "*IT WAS NECESSARY TO HOLD A NON-STATUTORY PUBLIC INQUIRY*". Just because it is not 'necessary' for the sake of public interest and reasonableness in relation to the whole matter, why should there not be one, even if it is not 'necessary'? It is not necessary that there is not one. We appreciate the WSCC may have a little expense in that but this advice is not a ruling that an Inquiry CANNOT be held, just that it is not necessary by law. WSE continue to feel it is desirable if not necessary by law. The public of the immediate surroundings of the green retain a keen interest and are keen to see that reasonableness is applied to their understandable wishes here.

   Thus, for the reasons given, we still strongly believe an Inquiry should be held and we request that it is. Failure to do so in the light of the public interest and wishes could give rise to a Judicial Review of the decision, which is something the Association could actually undertake.

   Please can we see a copy of Counsel's Instructions to Opine?

2. Again, Ms Paul talks about offering her advice as to the "*MOST APPROPRIATE DISPOSAL*" of the matter. We repeat our paragraph 1 above – what may be in her eyes 'appropriate' is NOT appropriate in the eyes of the 42 local Members of The Collingwood Road Green Association, and others we dare suggest at Horsham DC level. So, again, we suggest that the Inquiry should proceed in the interests of natural justice (a legal ground for complaint if not adhered to).

3. Her paragraph 3 – it is only '*OPEN*' to WSCC not have an Enquiry, it is not the law / rule that there must NOT be one. We repeat our plea that there should be one.

4. We note, as WSCC should, the case extract in her paragraph 3 about WSCC having to act reasonably and it should know the consequences of not doing so. ONLY where the application *'HAS NO SUBSTANCE*' it is the rule that there must not be an Inquiry. In all other cases, WSCC can decide to hold one and that is what the public and public interest want.

5. And she then goes on to quote from the case law that WSCC "*MAY INDEED CONSIDER THAT IT OWES AN OBLIGATION TO HAVE AN INQUIRY IF THE MATTER IS OF GREAT LOCAL CONCERN*". It is then crazy, insulting and simply wrong (and the Press would love it) to say that 42 of 44 properties (I ignore those unaffected at the start of the road 200 yards away) who have got together in an unincorporated Association Trust and who have made all the various representations they have to HDC and WSCC over 2 years now about the whole matter (not just this question of whether to have an Inquiry or not) is not showing such required 'great concern'. Everyone around affected is 'greatly concerned', a simple fact. What more is needed to make this of 'great concern' to the immediate locality and public – there is nothing more that could be done. So, even on Ms Paul's advice, we think the Council should accept this and have the Inquiry.

6. Her paragraph 4 – she says, again quoting a Judge, "*WHERE THERE IS A SERIOUS DISPUTE, [WSCC] WILL ALMOST INVARIABLY NEEED TO APPOINT AN INDEPENDENT EXPERT TO HOLD A PUBLIC INQUIRY*". Well, good grief, there is very serious public concern her, there is without doubt dispute. We just cannot fathom the WSCC's thinking in proposing not to have an Inquiry. What its own Counsel is advising it is the common law through the Judges' statements satisfies the need for the WSCC discretion to be used to hold an Inquiry. It is utterly reasonable that there should be one and we demand there is one.

7. Turning to some confusions in our minds about Ms Paul's advice, in her paragraph 7, she is saying that 'amenity area' as described on the plans in the late 70's automatically means adoption. On what grounds? Those words do not mean highway adoption, they must have their every-day sense meaning – land for the amenity of the community. It is not automatic, although of course adoption happened. But we would argue that this means this Council view, intention and statement from the late 60s should not be disregarded. And hence this adds to the 'public interest' the 'great concern' and the 'dispute' referred to.

8. In paragraph 7, Ms Paul states she has seen an Adoption Agreement of 10/11/1966 and she describes some details. Yet in paragraph 8 she then says she has "*NOT SEEN ANY EVIDENCE THAT ADOPTION TOOK PLACE*". This is illogical and does not make sense: there is a formal adoption agreement – what other specific action or document is needed? It seems strange to have another document or action confirming an earlier document has effect, even if the first was before the road was built. Simply, once the road was built then the Council have adopted it by their very first maintenance in accordance with the terms of the earlier agreement. Something like a letter in 1966 from Horsham UDC confirming 'yes, we will now go in and maintain it as you Federated Homes have complied with your part of the agreement' must be irrelevant 70 years later! The Council's course of conduct from the sixties is the confirmation that "*ADOPTION TOOK PLACE*". Otherwise it is being suggested that it and the whole of Collingwood Road and the side roads are still not adopted, despite 70 years of highway maintenance!

9. Concerning her paragraphs 10 and 11, surely we and our houses' prior owners are a "*SIGNIFICANT NUMBER OF INHABITANTS OF THE LOCALITY*". She leaves this point hanging. Please confirm that the Association's evidence now and from the past is from such significant number so our application satisfies Sections 15(1) and 15(2). If WSCC do not agree that there is evidence of this, then we are greatly concerned as we are firmly convinced there is. We are convinced we have satisfied and established beyond doubt that the "*BURDEN OF PROOF ON THE APPLICANT TO DEMONSTRATE THE REQUIIREMENTS OF THE STATUTORY DEFINITION ARE SATISFIED"*. Are WSCC disagreeing with this – in which case we require complete specifics as to where we have not done this, because in our mind it is manifestly the case that we have.

10. Her paragraphs 13 onwards appear to discuss the 'statutory incompatibility' issue we have discussed before. She says that being a' highway' does not stop land being a Village Green in paragraphs 14 and 15.

11. We would mention at this point that we wish to ask and clarify about two areas in West Sussex which, we understand, are both maintained by WSCC as 'highways' yet have registered Village Green status, with no difference in usage from that usage on Collingwood Road Green:

a) The first is Birch Drive at Billingshurst. This is a Village Green and is 'highway' land like the Collingwood Road Green. It became one on the same grounds of use, we believe, as in the present Collingwood Green situation. One of the Association Trustees have enquired various and multiple times of the WSCC and Horsham DC about the dates of this but is told to refer to the other and that getting a single date will cost £33 – outrageous.

b) Cootes Avenue, Horsham – we understand this received Village Green status in 2008 (after the 2006 Act) although we believe the pond was separately acquired privately. Again, we understand this is 'highway' land, is maintained by WSCC but that its usage is and was before registration exactly of the same informal type as at Collingwood Road Green.

We can provide Press cuttings of (a) (see West Sussex County Times articles about these matters on 8.12.22 and about 31.1.23 which refer to then having both Village Green status and 'Highway Status, as it calls it) but so far as we believe, the usage before the registration and the grounds for both applications were essentially identical to the Collingwood Green application; and the use by the community and public were of the same type as with Collingwood Green. Thus, we fail to see how the Council can distinguish (unless it totally goes against its own precedents) between those two greens and Collingwood Green and reject the Collingwood Green application, let alone reject having an Inquiry to get to all the details thereof. Indeed, we put WSCC to proof to fully explain this and show the material differences in use of the various areas. We would also suggest WSCC inform Ms Paul about these WSCC precedents to see if it changes her view first about an Inquiry and second, the fundamental question of registration itself.

Again, we request to see the Instructions to Counsel to Opine in order to see what if anything she was told about these precedents and situations.

12. Having discussed the statutory background she then goes back to common law developments in paragraphs 16 onwards although confusingly, a main case she refers to is the 1999 case of Jones – and, of course, this pre-dates the statutory history up to the 2006 Act she referred to in the prior paragraphs! A 1999 case would be overtaken by the 2006 Act is my understanding, on points where the Act is clear and unambiguous – and that's what she said the principle is under the 2006 Act! And that seems also to be what she concludes in paragraph 18 looking at prior Inspectors Reports. So, the activities are lawful, not contradictory, permitted. She quotes Stewart J in the Jones case anyway, saying, "*IT WOULD BE REGRETTABLE IF HIGHWAY AUTHORITIES HAD TO STOP SUCH ACTIVITIES IN ORDER TO PREVENT VERGES BECOMING A V VILLAGE GREEN*". Paragraphs 19 to 22 continue this point that "*ANYTHING REASONABLE CAN BE DONE PROVIDED IT DOES NOT OBSTRUCT THE RIGHT OF PASSAGE OR CAUSE A NUISANCE*". Exactly.

13. Incidentally, we would mention at this point that the landowners wish to build houses would obstruct it etc. We know the landowner has been told in any event that nothing can be built etc. in the Green unless the adoption etc. and public maintenance is removed. We are however concerned that the landowner is not understanding this and suggest it is clearly pointed out again to her in the pursuit of reasonableness.

14. Paragraph 24 does make an interesting point, but also speedy assumptions to get to that point. It assumes that the public using the Green for a football match, walking the dogs etc. will constitute an obstruction. Certainly, if that were to happen on a road surface then this

view is absolutely right. BUT there are shades, as she states earlier, of what happens on different parts of 'highway' land. This is not a road. Were it to be granted Village Green status, albeit still being 'highway' land as well, there would NOT be any actual or logical blocking of the actual required 'highway'. The Local Authorities could, as happened in December just past, allow utilities workmen to use the Green and store equipment on it. This happened for 2 weeks. Of course, this did NOT obstruct the road or paths themselves, and nor did any public user of the Green have any complaint.

15. If Ms Paul is simply relying on the view that a 'highway' is every square centimetre of land (even though it is impractical / impossible / pointless for vehicles to go upon it and even though for 70 years it has been clear that a patch of it is not actually used for vehicles and that there cannot be any obstruction for vehicles or pedestrians) then we see the logic of the argument from a technical sense; but from a practical, plainly obvious perspective it is silly, illogical and wrong, then that stringent application should be wrong and should be changed.

16. We agree with her paragraph 26 except (d) where we do not fully comprehend the point. Is she saying that, as we can play football on any verge (without obstructing it) then that is NOT a right? That seems very strange. Taking the "*AS OF RIGHT*" point in paragraph 22, we cannot distinguish in our minds that acts lawful in any event on highway land are not capable of "*FOUNDING THE ACQUISITION OF A PRESCRIPTIVE RIGHT*". If we are not breaching the rules of the 'highways', why does that stop our use being "*AS IF OF RIGHT*". We would appreciate a more detailed and clear explanation of this. Ms Paul then relies on this for her conclusion in paragraph 24, as if it easily just follows on. It does not in our view, maybe because the explanation is not sufficiently clear to us. We would also refer to the point above in paragraph 11 about Birch Drive and Cootes Avenue.

17. Her paragraph 28 continues on this argument but it seems clear to us that not ALL the residents and others' uses and activities are all in the concept of permitted highway activities anyway. We think her conclusion in paragraph 31 is rushed and wrong. Certain things that happen are NOT automatic highway rights in our opinion,

18. In paragraph 32 she concludes that maybe the Jubilee party was the only possible obstructing thing. This is wrong. Setting up temporary goalpost. Setting up a DJ tent with speakers, etc. People have in a minor way trespassed to set up goalposts, to have parties, speaker stands etc. and have done it for 70 years. There are other things. It is not a foregone conclusion.

19. We are concerned about her paragraph 33 where she states that the application is "*BOUND TO FAIL*". This is because this should not have been her instructions from WSCC, which should only have been to advise about the need or non-need of an Inquiry. We totally disagree with that stated conclusion; we may well be wrong of course and an Inquiry still decline a registration BUT we do require, for the reasons given and for at least 42 households (membership of the Association is by household not individual, so we are really speaking of maybe 80 people at least), an Inquiry to take place for the reasons given above. In addition, with her getting the relevant information about Birch Green and Cootes Avenue, surely her view will change?

20. WSCC should uses its discretion and should be concluding for the various reasons we have stated that an Inquiry should take place. This also gives us official documentation on which to

consider a legal appeal and to discuss with the local Press, who have already been interested. We reserve the right to disclose this response.

21. Finally, in addition to our request to see Instructions to Counsel to Opine, we would add that we wish to see any response to the Opinion WSCC receives from Ms Singh, the current landowner.