

## Agenda item 5 – TVG 30/53

### Proposal

An application made under the provisions of S.15(1) and (2) of the Commons Act 2006 to register land known as Collingwood Road Green, Horsham as a town or village green.

### Evidence

The application is supported by 31 evidence forms and 1 statement from local inhabitants of a neighbourhood within a locality referred to as “Collingwood Road”. The application land is an area of open grassland forming a highway verge at the end of Collingwood Road cul-de-sac, with a size of approximately 0.19 acres (0.08 hectares) (Appendix 1a and 1b).

### Legal Tests

**A significant number of the inhabitants of any locality or any neighbourhood within a locality have indulged ‘as of right’ in lawful sports and pastimes for a period of at least twenty years and they continue to do so at the time of the application.**

The 31 evidence forms submitted by 31 addresses demonstrate the application is well supported, with 12 users having regularly used the application land throughout the whole 20-year period. Use is clearly by inhabitants of the neighbourhood within a locality of Collingwood Road. The 20-year period of use runs from September 2002 to September 2022, with evidence covering varying periods from 1975 to 2022 and therefore covers the period of use. The evidence submitted demonstrates that they users were still using the application land at the time of the application.

The land is privately owned and the landowner objects to registration, though no evidence has been provided to rebut the evidence from the applicant and other users of legal relevance to the application.

The application land is adopted highway which brings into question whether use by residents has been ‘as of right’ for lawful sports and pastimes or whether it has been in the exercise of a pre-existing right (‘by right’).

## Appendix 1a - Report Plan



## Legal Tests

**‘As of Right’** - The application land carries highway status and is maintained by WSCC as highway verge. Counsel’s advice has been provided on the legal consequences of this.

Qualifying user has to be ‘as of right’ rather than by virtue of an existing right which the public already have to use the land (‘by right’), as with highway.

*DPP v Jones [1999] 2 AC 240* is House of Lords authority that the extent of activities that may lawfully be carried out on the public highway is far greater than simply using the highway to pass and repass. Anything reasonable can be done provided it does not obstruct the right of passage or cause a nuisance.

Nature of the highway land - activities such as golf putting practice, kite flying, football and rounders would be inappropriate on a motorway verge; though on a piece of grass within a cul-de-sac not used as a route from A – B such activities would not (and did not) obstruct or cause a nuisance and so were lawful uses of the highway. Large street parties or carol singing might have caused an obstruction but in the context of Collingwood Road are lawful uses of the highway. Therefore, the considerable majority of user evidence would be categorised as use ‘by right’ not ‘as of right’.

**‘Lawful Sports and Pastimes’** - All activities could reasonably be said to fall within the phrase ‘lawful sports and pastimes’. In view of the conclusion that use of the application land was a lawful use of the highway in the exercise of a pre-existing right, the use of the land cannot qualify as use for ‘lawful sports and pastimes’. Users were not trespassers. Even if some activities were not lawful uses of the highway, they would amount to an obstruction or nuisance and therefore not qualify or be too trivial or sporadic to amount to the assertion of a TVG right. Therefore, these elements of the legal tests for registration have not been met.

### **Is a Non-Statutory Inquiry Necessary?**

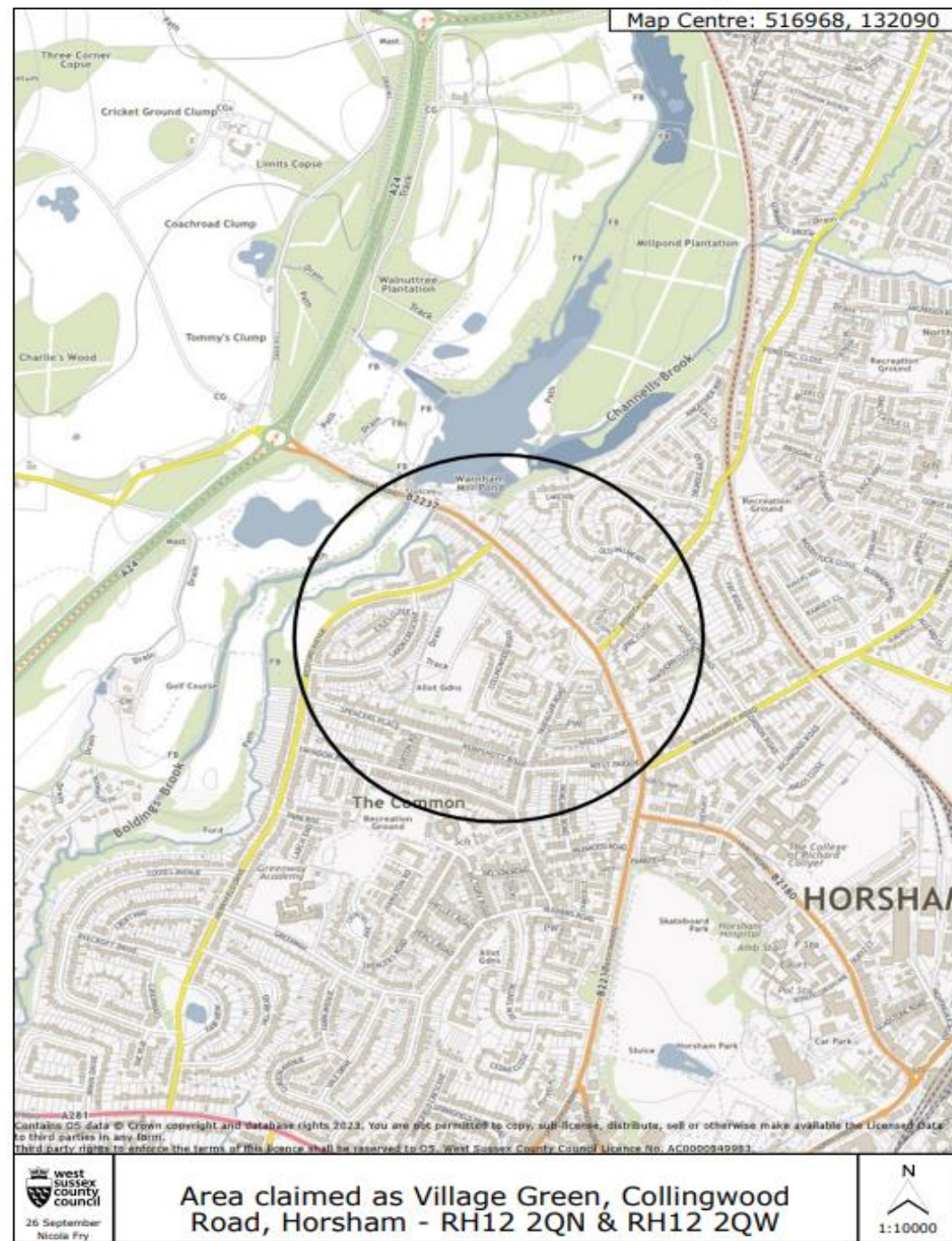
WSCC can, acting reasonably, determine the matter without a non-statutory inquiry. It is open to WSCC to hold a non-statutory inquiry to test these findings and could do so if considered it was of great local interest. Counsel was instructed to act as independent inspector to hold an inquiry to include a preliminary phase to assess the evidence to determine if the application land being highway was a knock-out blow to the application, in which case it would not be necessary to proceed with one as no purpose would be served by it.

Counsel's opinion was that the application is bound to fail on account of there being no use of the application land which can qualify as 'lawful sports and pastimes' because the majority of activities which local residents have carried out on the land have been lawful uses of the highway. Even if some were not lawful uses of the highway they would be an obstruction or nuisance or would be too trivial or sporadic as to amount to the assertion of a TVG right. That the entirety of the application land is adopted highway is sufficient to reject the application. These conclusions do not turn on any element of fact capable of dispute, no useful purpose would be served in holding a public inquiry.

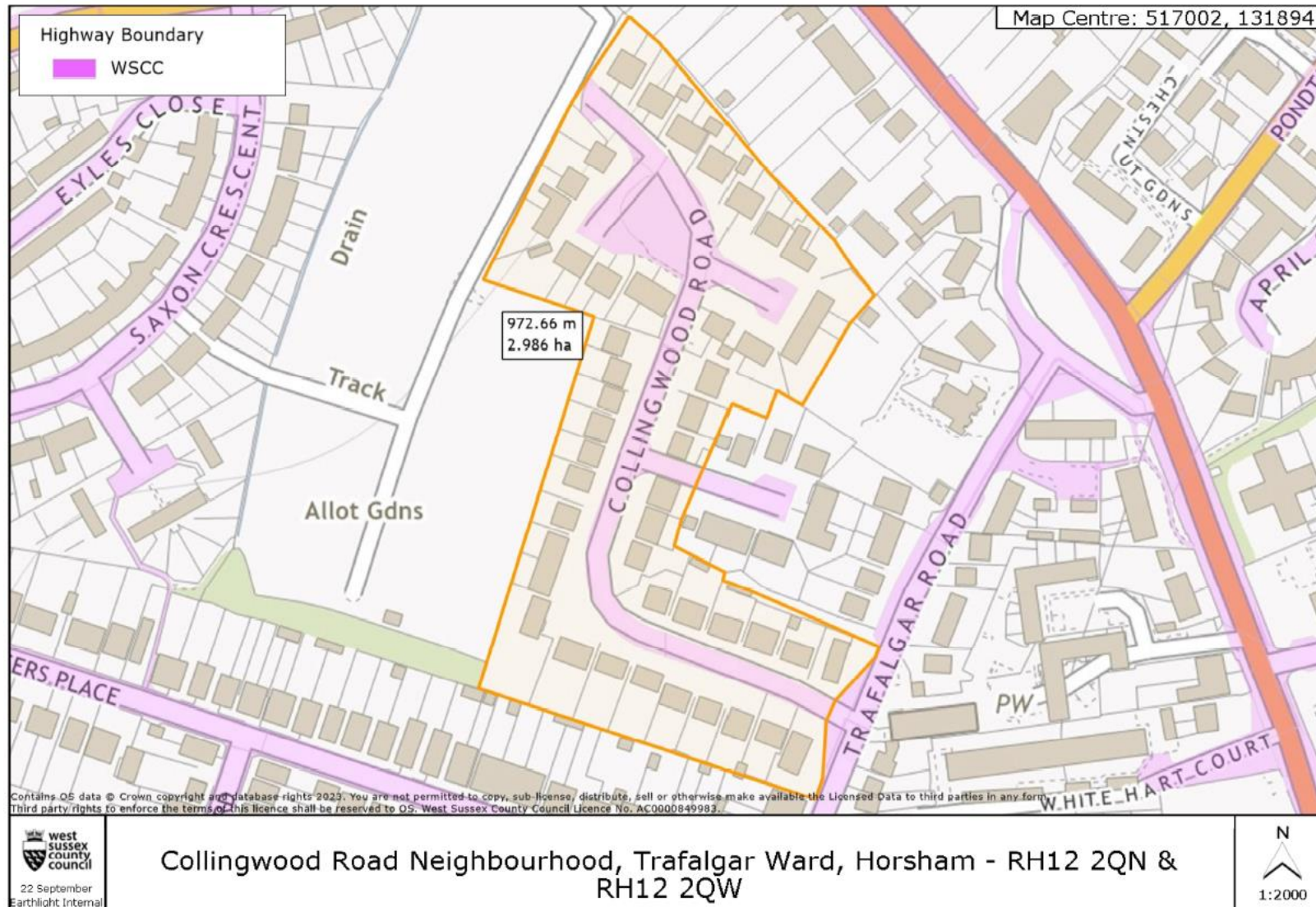
Counsel's Supplementary Note (Appendix 7) - considered with open mind the most appropriate disposal of the application and recommended WSCC reject the application on the papers. This is a matter of judgment for WSCC acting as registration authority, acting reasonably. Given the conclusion that the application fails on the basis that the land is highway, no useful purpose would be served in holding an inquiry to hear all the evidence of use. The application is bound to fail on account of the whole of the application land being highway. This constitutes a knock-out blow to the application and no purpose would be served in holding a public inquiry to investigate the issues any further.

### **Recommendation**

That the land known as Collingwood Road Green, Horsham and as shown cross-hatched black on the application plan attached be not registered as a town or village green.



## Appendix 4a - Neighbourhood



## Appendix 4b - Neighbourhood (aerial)

