In the Matter of

an Application to Register land at

Hartley Woods, Hartley

as a Town or Village Green

REPORT

of Miss LANA WOOD

01 May 2009

Kent County Council

Invicta House

County Hall

Maidstone

Kent

ME14 1XX

Ref: Mr C Wade/ Miss M McNeir

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1. The Village Green Application

1.1. On 18th April 2005 Kent County Council, as Registration Authority, received an application in Form 30 from Hartley Parish Council of The Parish Council Office, Hartley Library, Ash Road, Hartley, Longfield, Kent DA3 8EL to register land known as Hartley Wood, edged bold on Plan A appended to the application, as a new town or village green. The locality was given as Hartley, Longfield, Kent and was shown edged in bold on Plan B appended to the application (erroneously described as Plan C). The application stated that the land became a town or village green on 23rd March 2005. The land was stated to have become a town or village green because local residents had used the land for lawful sports and pastimes and had done so without permission, without being stopped or seeing notices which stop them for a continuous period of 20 years. The names of persons believed to be an owner, lessee, tenant or occupier of the land were given as London Borough of Southwark. The application was accompanied by a statutory declaration in the prescribed form declared by Ms Julie Hoad on 7th April 2005.

Evidence in support of the application submitted with the application

1.2. The application was accompanied by six affidavits and 19 evidence questionnaires. Plan C accompanying the application showed by number where each of the witnesses lived.

Objections

1.3. The application was advertised by the Registration Authority. A letter of objection dated 18th November 2005 was received from Hepther Dixon acting on behalf of the London Borough of Southwark.

1.4. London Borough of Southwark claimed to own the application land as well as land adjoining the application land, known as Longfield Depot. A plan was

attached to the letter showing the land owned by the London Borough of Southwark and the public rights of way believed by the London Borough of Southwark to exist in the vicinity of the application land.

1.5. The following grounds of objection were advanced:

(1) the user had not be as of right: the application land was clearly fenced off from adjoining properties, and although the fencing was dilapidated in places, the boundary was clear on the ground. In places the fencing was relatively new (less than 20 years old), but had been broken down to gain entry. Two photographs (numbers 1 and 2) were appended showing where the new fence had been broken down. Photograph 2 was titled "New fence along southern boundary" and showed a chain link fence on metal posts, of perhaps 4 feet in height. Photograph 1 showed the break in the fence. This showed a gap in the chain-link at a point between two posts. There was some shorter chestnut palling fencing alongside the chain-link, in a position which suggested that it had perhaps been used to effect a repair to the gap. The route through the fence lead off the public right of way onto the application land. Access had been prevented by the erection of the fences and local residents had sought to gain entry by damaging the fence. In other places older sections of fence had been destroyed in order to gain access to the land. Two further photographs (numbers 3 and 4) were appended showing where older sections of fence had been destroyed. Photograph 3 was captioned "Notices pinned to broken fencing on southern boundary at entrance to woodland". The wording of the notices was not legible in the photograph. Photograph 4 was captioned "Entrance to woodland from Longfield Depot through broken fences", and showed a clearly worn path between two posts which might originally have been joined by barbed wire. Local residents had failed to take notice of lawful barriers, such as barbed wire fences, the intention of which was to stop access, as well as to delineate a boundary. Fences had been erected within the last 20 years and attempts had been made to break through those fences.

(2) there was no difference in the use of the eastern part of the application land and the land to the north of that area, known as Longfield Depot, and yet Longfield Depot had not been claimed as a town or village green. If there were doubts or reasons why Longfield Depot could not be claimed, those same doubts or reasons would apply to Hartley Wood.

(3) The evidence of 19 witnesses accompanying the application was not a significant number of the inhabitants of the claimed locality. The ward of Hartley and Hodsall Street, which includes the village of Hartley, had, at the time of the 2001 census, a population of 5,871. In this context 19 was not a significant number.

Response to objection

1.6. The Parish Council commented on the Objection by letter dated 5th January 2006. The Parish Council stated that the claim that the land owned by the London Borough of Southwark was clearly fenced off from adjoining properties was not supported by the evidence on the ground. It stated that the boundaries, as marked on a plan attached to the letter were as follows:

> A-B: boundary with the railway – securely fenced.
> B-C: eastern boundary – boundary abuts Hartley Bottom Road. There is a fence/hedge along the boundary, but there are openings in it which have been used for many years. At one of the access points bollards had been erected to stop vehicular access, but gaps had been left to allow access by pedestrians. There are no notices to discourage access.
> C-D and E-F – southern boundary abutting public right of way number SD217. A chain link fence was erected along part of the boundary between C and D some years ago, but the fence had been opened in places. Section E-F has a stock fence to prevent animals entering the woods.
> F-G and G-A – western boundary abutting public right of way number SD215. The right of way is not fenced off from the land in the London Borough of Southwark's ownership. Along section G-A there is woodland on both sides of the public right of way and nothing to indicate that the land on either side is in different ownerships.
> H-I: eastern boundary with the former landfill site – there is a line of concrete posts along the section H-I. The applicant believed they may date from before the war when the tip was established. There had been no fencing between these posts for at least 30 years.
> K-L: eastern boundary – there is evidence of a barbed wire fence on the western side of the posts between H-I between points K-L. The applicant believed this fence had been erected by travellers many years previously when they grazed horses on the former tip. A second barbed wire fence had been erected on the landfill side of the wood, the applicant believed also by travellers, about 6 years previously. The persons who erected this fence left stiles for pedestrian access.

Consideration by Regulation Committee

1.7. The matter went before the Registration Authority's Regulation Committee on 29th November 2007. Counsel for the Objector attended the meeting and addressed the panel. The Regulation Committee resolved to allow the Objector the opportunity to undertake further research and to make further submissions.

Further Objection Statement

1.8. The London Borough of Southwark submitted a further Objection Statement, settled by Mr George Lawrence QC dated 11th January 2008 and an addendum to that Objection Statement also dated 11th January 2008. Three legal submissions were advanced:

> (1) user had not been as of right: throughout the period, or for some years at the beginning of the period, use of the land had been "by

right" or "of right" and so not "as of right", by reason of the licence conferred by a leaflet dated c. 1984 and produced and distributed by the London Borough of Southwark. A copy of the leaflet had been appended to the Officer's Report to the Regulation Committee.
(2) the user had not been predominantly by local people: the leaflet was directed not just to local people but also to people well beyond the locality. There would have been no point in preparing the leaflet with the obvious intention of permitting or encouraging the residents of Southwark to enjoy the land, without taking steps to publicise it properly. It should be inferred that people from South East London would be likely to have visited the application land as a result of the invitation contained in the leaflet for some years after its issue, with the result that user of the claimed land during that period was not predominantly by local people.
(3) The area of the Parish of Hartley had changed during the relevant period and therefore could not be a qualifying locality.

Further steps

1.9. The Registration Authority took Counsel's advice. Counsel advised that there were a number of issues which required further clarification, and that this would be best resolved by holding a Public Inquiry into the matter. The Regulation Committee resolved at a meeting held on 21st February 2008 that the matter should be referred to a public inquiry.

1.10. After that date the objector sent the applicant a letter dated 19th March 2008 (copied to the Registration Authority). The objector stated that it wished to resume negotiations regarding the future use of the land and that it was keen to avoid the expense of a Public Inquiry. The objector requested that the proposed inquiry should be deferred to allow negotiations to take place.

1.11. The applicant's stated that it had no confidence that a mutually acceptable settlement could be reached. The applicant set out the history of the attempts at negotiation in its letter dated 19th December 2007[1]. In response to the letter dated 19th March 2008, Beachcroft LLP, instructed by the applicant wrote by letter dated 15th April 2008, indicating that the Parish Council had agreed to meet with Southwark Council. They asked that the Public Inquiry should be deferred for one month to enable settlement discussions to proceed and stated that if, following the discussions, it appeared unlikely that the parties were in a position to reach agreement, they would write accordingly. No letter was received after one month, and the Registration Authority, on my advice, decided to proceed with arrangements for a public inquiry.

2. <u>The Public Inquiry</u>

2.1. I was appointed by the Council (as registration authority) to hold a non-statutory public inquiry into the application and to report in writing to the Council with my recommendation whether the Council should accede to or

[1] A/3283

reject the application. I gave Directions on 9th June 2008 and Further Directions on 12th September 2008.

2.2. I held the Public Inquiry at All Saints' Church Centre, Ash Road, Hartley on Tuesday 30th September, Wednesday 1st October, Thursday 2nd October and Friday 3rd October 2008. I held an evening session between 18:00 and 20:00 on 30th September to enable witnesses and members of the public who wished to give evidence to the inquiry but who were unable to attend the inquiry during working hours to appear.

2.3. The Applicant was represented by Mr Tony Child, a partner in the firm of Beachcroft LLP. The Objector was represented by Mr Richard Wald of Counsel, instructed by the London Borough of Southwark.

2.4. I would like to express my gratitude to Mr Chris Wade and Ms Melanie McNeir who arranged the public inquiry and provided administrative assistance with great efficiency.

3. The application land

3.1. I visited the application land accompanied by Mr Wade and Ms McNeir, officers of the Registration Authority, on 4th September 2008. I also visited the application land unaccompanied on several occasions during the inquiry.

3.2. The application land comprises approximately 130,798 m^2 (32.3 acres or 13.07 hectares) of attractive woodland. The application land is part of a larger area of woodland known as Hartley Wood. Hartley Wood and the grassland to the northwest and south of the wood, totalling an area of about 98.86 acres or 40 hectares, has been identified as a Site of Nature Conservation Interest since at least 1989. Hartley Wood is ancient, mixed broadleaved woodland with old woodbanks, formerly managed as coppice, but unmanaged for about 60 years.

3.3. Hartley Wood is bounded by the Chatham mainline railway (from London Victoria to Dover) to the north and by a disused rubbish tip known as the Longfield Depot to the east, owned by Southwark LBC. To the west the wood is bounded by the boundary fences of the houses in the north-eastern part of Hartley. To the south lies farmland (comprising woodland and agricultural pasture) known as Hartley Manor Farm.

3.4. The application land comprises the eastern and southernmost portion of Hartley Wood. The whole of the application land is owned and has for the whole of the relevant period been owned, by Southwark LBC whose title is registered, together other land to the east of the application site, under Title Number K911593[2]. The disused rubbish tip is registered under Title Number K512644[3]. Southwark does not own any other land in the vicinity. The

[2] O/App 7
[3] O/App 7

western part of Hartley Wood is not owned by Southwark. The western boundary of the application land follows the ownership boundary.

3.5. The definitive map shows several footpaths in the vicinity of the application land. Footpath SD215 leads from Church Road via Hartley Manor Farm to the southern boundary of the application land where access to the woodland is obtained through a wooden kissing gate. The footpath then runs north and then west, crossing the south western corner of the application land, before turning to run in a northerly direction towards the railway along the boundary of the application land. At the junction with Footpath SD295 it turns to run in a north-easterly direction towards a railway crossing and beyond to New Barn. Footpath SD215 is not way-marked at all within Hartley Wood. Footpath SD295 runs from the turning circle at the end of Gorsewood Road through the section of Hartley Wood which is not the subject of the application, along the railway boundary, then turns in a south easterly direction to meet Footpath SD215 at the boundary of the application land. Footpath SD295 is not way-marked within Hartley Wood and its route is not obvious on the ground. Footpath SD295 is joined part-way along the railway boundary by Footpath DR213A which runs from New Barn through a subway under the railway.

3.6. Footpath SD217 runs to the south of the application land, from Manor Farm, in a north-easterly direction towards the railway. It crosses the south-eastern corner of the application land, with a wooden kissing gate giving access. From there it runs continues towards the railway, crossing Hartley Bottom Road. At the boundary with the railway Footpath SD217 meets Footpath SD216 which runs between Manor Road to the east and Hartley Bottom Road to the west. Footpaths SD296 and SD320 give access from Manor Drive and Manor Lane to Hartley Manor Farm.

3.7. The northern boundary of Hartley Woods with the railway is marked by a fence made of 5 foot concrete posts and chain-link fencing, topped by 3 strands of barbed wire. A path runs along this fence from the point where SD295 turns away from the railway through to the north-eastern corner of the application land.

3.8. The western boundary of the application land is formed, as to its southern part, by close-boarded fencing erected along the boundaries of the properties to the west of Hartley Wood. Footpath SD215 runs alongside this fencing. Where the fencing turns to run westward, Footpath SD215 continues in a northerly direction and from here the boundary runs along Footpath SD215. There is nothing on the ground marking the boundary between the application land and the remainder of Hartley Wood from this point to the railway. There is no discernible difference between the woodland which forms part of the application land and that which does not along this boundary.

3.9. The southern boundary of the application land with Hartley Manor Farm is fenced with wood post and square mesh stock-proof fencing, topped with a single strand of barbed wire. There is a kissing gate in the south-western corner of the application land giving access between Hartley Wood and Hartley Manor Farm. Although Footpath SD217 is shown on the definitive

map as crossing the south-eastern tip of Hartley Wood, on the ground it appears to skirt the woodland on the Hartley Manor Farm side. There is a kissing gate giving access to the remainder of the footpath from Hartley Manor Farm in the north-eastern corner of the field which also contains the kissing gate which gives access to the south western corner of the wood. There is no access to the application land in its south-eastern corner.

3.10. The eastern boundary with the former landfill site has substantial concrete posts at least 4 feet in height with six holes running through them along most of the boundary. Some of the posts are almost entirely buried by the slope of the landfill site. There are wire fragments in some of the holes which look like steel rope. The posts give out at about point F, as shown on the Registration Authority's map of the paths within the woods. There is no bracing post or other indication that the fence might have turned a corner. The concrete posts appear to be of considerable antiquity, and in my judgment it is unlikely that this fence has formed an effective barrier within the relevant period. On the application land side of the concrete posts is a poorly erected fence comprising 4 strands of barbed wire in places attached to wooden posts and in other places attached to trees or wrapped around the concrete posts of the earlier fence. The fence is reasonably complete until an area where there are many fallen trees. In my judgment it is clear that this fence is of more recent construction that the fence using the concrete posts, as it uses some of those posts. However, I did not hear any evidence as to when it was constructed and it was not part of Southwark's case that it had been constructed by Southwark during the relevant period.

3.11. There are effectively seven access points to Hartley Woods: (1) the kissing gate in the south western corner of the application land, (2) an informal path from the end of Beechlands Close, (3) the footpath access at the end of Gorsewood Road, (4) and (5) access across the railway from New Barn via either the level crossing or the subway, and (6) and (7) two informal paths from the former tip site. Access points (1), (6) and (7) give access immediately into the application site. From access points (2), (3), (4) and (5) access may freely be obtained to the application site, as there is no physical barrier along the northern part of the western boundary of the application site.

3.12. There are a large number of paths visible on the ground, both within the application site and in the remaining part of Hartley Wood. The Registration Authority helpfully arranged for the paths to be mapped using GPS mapping technology and produced the resultant map to the inquiry. It is apparent from that map that Footpath SD295 has deviated significantly from the route shown on the definitive map. Footpath SD215 has also deviated, on its section towards the boundary with the railway, but to a lesser extent.

3.13. There are two strong north-south paths within the application land. The more westerly of those paths continues the line of SD215 in a northerly direction towards the railway from the point where SD215 turns west within the application land. It ends at a T-junction with a path running west-east from point C. The more easterly of the north-south paths runs from the north eastern corner of the application land in a southerly direction, then coming

around toward the west to join the same junction. There is an alternative spur off directly towards the kissing gate. Where these two paths at the junction join together with the turn in SD215 the effect is that of a cross-roads of paths. It is not obvious at this junction from the appearance of the paths which is the definitive path: all four paths leading from this junction appear to be equally well-established.

3.14. As well as the west-east path between D-G mentioned above, there are three other west-east paths across the application land. The most southerly runs from point B as marked on the Registration Authority's map, the point where the close-boarded fencing which runs along SD215 turns to the west. From there it goes in an easterly direction through the application land and beyond to the former landfill site, crossing both of the north-south paths. The middle path runs from the effective junction of SD295 and SD215 (slightly to the north of where the junction is shown on the definitive map) in a westerly direction across the junction with the more westerly north-south path and finishes at a junction with the more easterly north-south path. Again, the impression at point C is of a cross-roads of paths, rather than a T-junction, as shown on the definitive map, and the west-east path which is not marked on the definitive map appears to be as well-established as the routes taken by SD215 and SD295 at that point. If one crosses the junction with the more easterly north-south path (a left and right) there is a west-east path leading to the former landfill site, and leaving the application site at point E.

4. **Opening submissions**

4.1. Both legal representatives made short opening statements. Mr Child stated that the Applicant's case was that Hartley Wood had been enjoyed for informal recreation for a period of 70 years upwards, and that all the criteria for it to be entered on the register of village greens were satisfied. He suggested that there were some aspects which might be assisted by a site visit, for instance if it were suggested that the site was impenetrable, so that it could not be a village green, a site inspection would dispel that, and also if it were suggested that people walking dogs and so on in the woods could be seen from a distance, again, a site visit would establish that to be incorrect.

4.2. There were two points in particular which Mr Child wished to emphasise: firstly that registration would leave ownership with Southwark, and that it would be entitled to use that land in a manner which was consistent with the village green rights. The Applicant was not at the inquiry to exclude others, but to uphold the inhabitants' rights. Mr Child commended to me the initial report to Kent County Council which recommended the registration of the land. When one examines the further objections raised by the Objector the conclusions of that report stand.

4.3. There were originally seven or eight grounds of objection: Mr Child invited Mr Wald to indicate if any of the grounds were no longer relied upon.

4.4. Mr Wald submitted that any recommendation had to be based on my satisfaction that the test had been met. However, Mr Wald was able to indicate that the objection on the ground of fencing is not being positively

pursued: it is not the case that the land has been enclosed by fencing at any time during the last 20 years. On the contrary, it is the Objector's case that the land has been made available for use. Secondly, the changes in the boundaries of the locality were no longer relied upon as being of any significance. There remained the question of whether the use had been predominantly from residents of the locality and neighbourhood identified. AS a result of considering the results of the Objector's own survey, the Objector was satisfied that the users did come predominantly from Hartley and therefore the locality and neighbourhood issues were no longer pursued. The Objector wished to test the question of whether there had been a significant number of users from the identified neighbourhood at the inquiry.

5. The Applicant's Evidence

5.1. The Applicant's evidence can conveniently be dealt with in two parts. First, there is the evidence of witnesses who gave oral evidence to the public inquiry and were subject to cross-examination. Inevitably, this is the evidence which carries the most weight and which I must consider in detail. Second, there are a number of evidence questionnaires, affidavits and written statements completed by witnesses who did not attend the public inquiry to give oral evidence. As this evidence could not be tested by cross-examination, it necessarily carries less weight, but must nonetheless be taken into account.

Written witness evidence for the Applicant

5.2. Evidence questionnaires were completed by ** witnesses between 2002 and 2004 on the Open Spaces Society standard form (30th January 2001 edition). Plan A attached to the evidence questionnaires, showing the claimed land, shows a more extensive area than the application land: it included an area land adjoining the south eastern corner of the application land, to the east of the application land, to the north of public footpath number SD217. Although the forms stated that the boundaries of the claimed locality or neighbourhood within a locality was edged in black on Map A, in fact the only edging showed the claimed land. Question 4 was amended, so the respondent was invited to mark the location of his house on Map B (rather than Map A, as in the original text. Map B showed outlined in black, the whole of the parish of Hartley. The evidence contained in the evidence questionnaires of those witnesses who did not give oral evidence to the inquiry is summarised in the table appended to this report. An evidence questionnaire completed in 2002 is denoted by "EQ02" in the second column, an evidence questionnaire completed in 2003 by "EQ03" and an evidence questionnaire completed in 2004 by "EQ04"

5.3. Six witnesses completed an affidavit in January 2004. The six affidavits were in a standard form:

> "I …. Of …. MAKE OATH AND SAY AS FOLLOWS:-
> 1. That I have lived at …. since …. and previously lived at …. since …. within the Parish of Hartley

2. That during the whole of that time I have had free, open and uninterrupted access to and through Hartley Wood shown edged red on the attached plan for recreational purposes and use of the woods. Sworn …"

5.4. Each Affidavit exhibited Plan A and Plan B. The plans attached to the affidavits were the same as Map A and Map B attached to the 2003 evidence questionnaires.

5.5. Mr L and Mr A Hopkins and Mr and Mrs Willis-Richards completed an evidence questionnaire in April 2005. This questionnaire was identical in form to the 2003 questionnaires. I have denoted this questionnaire "EQ05".

5.6. A further *** witnesses completed an evidence questionnaire in about May 2008, again on the Open Spaces Society standard form (30th January 2001 edition). Map A attached to the evidence questionnaires, showing the claimed land, was different to Map A as appended to the 2003 evidence questionnaires and 2004 affidavits. The only marking on Map A was of the application land which had been edged and cross-hatched. Again, although the forms stated that the boundaries of the claimed locality or neighbourhood within a locality was edged on Map A, in fact it was not shown on Map A. Question 4 was again amended, so the respondent was invited to mark the location of his house on Map B (rather than Map A, as in the original text). Map B was the same as Map B as appended to the 2003 questionnaires and 2004 affidavits, and showed, edged in black, the whole of the parish of Hartley. The evidence contained in the evidence questionnaires of those witnesses who did not give oral evidence to the inquiry is summarised in the table appended to this report. An evidence questionnaire completed in 2008 is denoted by "EQ08" in the second column.

5.7. Ten of the twelve witnesses who gave oral evidence, and 118 other witnesses who did not give oral evidence, provided a written witness statement on a form marked at the bottom "template witness statement amended". The form provided:

"I, …….. of …….. say as follows:

1. I make this witness statement in support of the application by Hartley Parish Council for the registration of land at Hartley Wood, edged red on the attached map (marked Appendix A), as a village green. In this statement, I refer to that land as "Hartley Wood" although in fact it is only part of Hartley Wood.
2. I live at …… within the parish of Hartley and have done so since ……..
3. I have marked with an X on the attached map (marked Appendix B) the approximate position of my address within Hartley village, which is a residential area within the parish of Hartley and which is edged red on the said map marked Appendix B.
4. I consider myself to be a local inhabitant in respect of Hartley Wood.

5. From …… to ……. I have had free, open and uninterrupted access to and use of Hartley Wood for recreational activities. The recreational purposes for which [I use] [I used] Hartley Wood are:
   …….
   ……..
6. I have seen others using Hartley Wood for the following recreational purposes:
   …….
7. Throughout the period that I have used Hartley Wood for recreational purposes the general pattern of use by me (and others) has remained basically the same. I have used Hartley Wood for recreational purposes
   ……..
8. I have beeen informed that Hartley Wood is owned by Southwark London Borough Council ("Southwark"). At no time have I been given permission by Southwark to use Hartley Wood. At no time has Southwark prevented me from using Hartley Wood or sought to do so [until 2006 when Southwark erected some fences].
9. My use of Hartley Wood for recreational purposes has been without force and without any opposition from Southwark [at least until 2006 when fences were erected]; openly and not secretly; and without permission from Southwark. There has been no restriction on my using paths within the wood or any other land within the wood except where parts of the wood had become overgrown. I entered and exited Hartley Wood at
   ……..
10. I have been shown marked Appendix C a leaflet that I have been informed was produced by Southwark circa 1984. I had not previously seen that leaflet. I have not followed the "nature trail" described in that leaflet but have used Hartley Wood more generally for recreational purposes.
11. I believe that the facts stated in this Witness Statement are true.

Signed: ……..…..
Name: ……..……
Dated…….September 2008."

5.8. Appendix A to the template witness statement was a map showing the application land. Appendix B showed the claimed locality of Hartley parish, with the claimed neighbourhood marked by a line. Appendix C was a leaflet published by the London Borough of Southwark Amenities Department, described in detail below under the heading "Documentary evidence on behalf of the Objector". The form was accompanied by explanatory notes on how to complete the witness statement[4]. The evidence contained in the witness statements of those witnesses who did not give oral evidence to the inquiry is summarised in the table appended to this report. A witness statement is denoted by "WS" in the second column.

[4] A/3299

5.9. At the start of the inquiry the Applicant sought permission to rely on the written witness statements of three further witnesses whose evidence was not included in the bundle: Ms Isobel Philpott, Ms Amanda Knopp and Ms Georgina Austin. The Applicant did not propose to call these additional witnesses to give oral evidence. Counsel for the Objector had been supplied with copies of these witness statements in advance of the application. He stated that the Objector did not object to the additional witness statements being submitted to the inquiry, despite the fact that they had not been served in accordance with my directions. I therefore decided to allow the Applicant to rely on the additional statements. They were included in the bundle at, respectively, A/3482, A/3490 and A/3498 and I have summarised their content in the evidence table.

5.10. Where a witness has given oral evidence I have summarised the evidence contained in any affidavit, evidence questionnaire or witness statement he may have completed in the following section headed "Oral Evidence for the Applicant" under the heading for that witness, rather than in the evidence table.

Oral Evidence for the Applicant

5.11. I heard oral evidence from the following twelve witnesses on behalf of the Applicant: Mr Christopher Alford, Mr Anthony Charles Austin, Mr Alan Golledge, Mrs Wendy Brooks, Mr Michael MacCready, Mr Grant Wren, Mr Ian Gibbons, Mr Peter Christopher Mansfield, Mrs Gill Pearson, Mrs Julie Hoad, Mr Gordon Angell and Mr Ian Mansfield.

5.12. Mr Child asked me to permit him to re-call Mr Gollege, Mr Angell and Mr Alford to deal with the issue of whether use of the application land had continued during the Foot and Mouth crisis. Mr Wald did not object to the application and I permitted those witnesses to be recalled. I have dealt with the evidence that each witness gave when recalled together with the remainder of that witness's evidence.

(1) Mr Christopher Alford of 12 Billings Hill Shaw, Hartley

5.13. Mr Alford provided an evidence questionnaire dated 14th May 2003[5], an affidavit dated 15th January 2004[6] and a written witness statement in standard form dated 12th September 2008[7]. He has lived at his present address since October 1977 and prior to that lived at 7 Round Ash Way from January 1972. He has used the application land from January 1971 to date for walking, children playing, wildlife/birdwatching and walking the dog. He has seen others using the application land for walking, children playing, wildlife/birdwatching, jogging, photography, camping and dog walking. He has used the application land 3/4 times a week. He deleted the references in square brackets to fences in paragraphs 8 and 9. He stated that he entered and exited the application land at a point which he had marked as A on the attached map, where SD215 crosses the southern boundary of the application land, but on occasions had used five other entrances. In paragraph 10 he

[5] A/72
[6] A/76
[7] A/54

deleted "I had not previously seen that leaflet" and substituted "I had not seen that leaflet until recently (3/4 years)." In his evidence questionnaire he confirmed that he agreed with the boundaries of the locality (or neighbourhood within a locality) shown on the map appended to the evidence questionnaire (the parish of Hartley). He stated that he accessed the land from a public footpath. He used the land 2/3 times per week for walking. His immediate family used the land for walking. He did not know of any community activities on the land, any use of the land by organisations for sports or pastimes or any seasonal activities. He ticked as activities he had seen taking place on the land: children playing, dog walking, picking blackberries, bird watching and people walking. He knew who owned the land, but stated that it was not occupied. He had been seen on the land by an employee of the owner and had discussed with him rubbish that had been dumped on the land. He never sought nor was granted permission to go onto the land. He had never been prevented from using the land. No attempt had been made by notice or fencing or otherwise to prevent or discourage the use being made of the land by local inhabitants.

5.14. In oral evidence Mr Alford confirmed his written statement, with one amendment: in paragraph 5 he said that he had erroneously written January 1971, whereas in fact he had moved into his property in January 1972 and his user did not begin until then.

5.15. He said that he had entered the wood from all points, but predominantly from point A. He was satisfied that the map provided by the Registration Authority was accurate in its depiction, except that he said that there was also an entrance into the application land from the north eastern corner next to the railway, where a spur was shown going off the path as it rounded the corner. The campsite referred to in the Southwark documents was within the area to the east of the application site in which the word "Martindowne" was written, in the western corner of that area. He thought that the little square shown on the map probably depicted the old toilet block.

5.16. Mr Alford said that he had researched the Parish Council files, and from that he knew that the campsite was used between 1986 and 1988. He could recall the campsite being used, but could not recall the dates from memory. Mr Alford was taken to the letter at A/3246. He confirmed that he had prepared the information contained in the letter about the existence of fencing and carried out the inspection on which it was based. He had also marked up the plan attached to the letter[8]. There was no fencing along the western boundary as the letter had stated. The fencing referred to in paragraph 2 as being to the western side of the posts, was to the western side of the posts referred to as being between H and I.

5.17. He saw two men with a pick-up truck unloading and erecting a post and barbed wire fence. There were a number of travellers' horses in the field at the time, which had been getting into the wood, and he understood that the fencing was to prevent the horses getting into the wood. The men erecting the

[8] A/3248

fence left three crude stiles in the fence, so that people could continue to walk from the landfill site into the wood.

5.18. Mr Alford stated that he uses all the wood. He has no particular route he follows. Sometimes he just walks in the woods, and sometimes he walks out of the woods and into the landfill site. It is possible to do a circuit through the wood which includes the landfill site, and he thinks a lot of people do that.

5.19. Mr Alford was asked to what extent he sticks to the paths. He said that generally he sticks to the paths. He thinks most residents of Hartley are concerned about conservation. In the spring the woods are full of bluebells and residents do not trample them, although it is possible to walk virtually anywhere.

5.20. The wood is criss-crossed with footpaths. The plan produced by the Registration Authority shows some of them, but there are others of which he is aware which are not shown.

5.21. Throughout the time he has used the wood, he has never been there and not met several people during the course of his walk. Most of the people he sees he recognises as being residents of the area. He accepted that some users came from Longfield and Longfield Hill, and he recognised them as well. He was asked to estimate the proportion from Longfield and Hartley. He said he had seen Southwark's survey and that he would estimate that 7 or 8 out of 10 of the people he sees would come from Hartley.

5.22. Mr Alford said that the only strangers he sees walking are people who are using the public right of way, who are often identifiable because they have a map in their hands. It is difficult to identify where the public right of way is, and quite often Mr Alford gets questioned about it.

5.23. The great storm of 1987 affected Hartley Wood. Mr Alford walked in the wood the day after the storm, throughout the wood. The most damage was in the section of wood outside the area which Southwark owns, where a number of Cedar trees had fallen. The rest of the woodland appeared like a giant had walked through, every so often flattening some trees. The trees were not consistently felled, they were felled in patches. It was possible to walk through the wood, although one had to divert round some fallen trees. The effects of the storm did not prevent Mr Alford from entering the wood. He had thought carefully about it, in the light of other people's evidence, but had not been able to remember any period where there had been a problem with the wood which had prevented him using it. The only period when he had not used it were when he was ill himself. He had seen others using the wood in the days following the great storm.

5.24. Mr Alford said that the Parish Council's footpath representative had had volunteers clearing the public rights of way. The public rights of way were cleared in just over three months. In the remainder of the woods residents cleared themselves, but only where it was necessary, where there were paths. He was aware of the clear up effort at the time, but has also seen reference to

it in a Parish Council minute. The three months comes from his research. He had no recollection of that himself, because, in fact, as he had said, he had never had a problem walking in the woods.

5.25. Mr Alford was not aware of any efforts being made by Southwark to deal with the effects of the great storm. Mr Alford said that there were some relatively small sections of the wood where it is difficult to pass through without climbing over trees, but in the majority of the wood, it is possible to walk through the wood if you do decide to go off the footpath.

5.26. Mr Alford thought that it would not be possible to see what was happening in the wood from the field to the south of it. The foliage along the edge is thick, and you would be looking into something with a dark background. From point A, if you stood at the kissing gate, you could see the point where the public right of way kinks to the left, and perhaps a bit beyond. You could also see people on the footpath shown in red where it comes quite close to the field. Apart from that you would not see any other activity in the wood.

5.27. Mr Alford was asked about the survey carried out by Southwark. He saw the enumerators on Thursday 1st September, the first day. Enumerator number 1 was standing at point C. Number 2 was standing at the junction of the public right of way and the footpath in red which continues to the north. On the next day, Friday, he only saw an enumerator only at point 1 (point C on the Registration Authority's map). The walk he has been doing recently tends to follow a pattern: he enters at A, straight on, following the red footpath, turning left to point B, along the public right of way to point C, then where the public right of way divides, he takes the left hand fork. He then takes a path which heads to point E, where he enters the landfill, back in at F, turning left at the cross roads, and back towards point A. He would have passed enumerator 2 had he been there.

5.28. Mr Alford said that from where the enumerators were standing they would not have been able to see people gaining access at all points; there are several points of access at some distance from those points. Most people who use the woods do a circuit. Some might come in at point B, and have done a circuit which did not pass point C. Others might come in from the landfill site and could have done a circuit without seeing them.

5.29. He produced a copy of O/App19, which he had annotated. He had checked off all of the questionnaires and altered the figures to tally with what he had counted. At first he could not work out why his figures were higher. He had eventually established to his satisfaction by spot-checking that Southwark must have been counting the number of questionnaires rather than the number of people in the party. He had added an extra column, because he was concerned when he looked at the questionnaires that there could be some misunderstanding. When he asked people where the public right of way was, in the main they thought it was the footpath through the middle of the wood, shown in red going from north to south on the Registration Authority's map, whereas in fact the public right of way runs to the west of Southwark's land. He thought that people did not know or care where the public right of way ran,

as they walked where they saw well-established footpaths. He therefore thought that the relevant question was how often people used land B, which is the Southwark land. Every one of the questionnaires has an answer, most of them say daily. He thought there had been one which was not clear. Therefore 99% of the interviewees used land B, as opposed to 77% allegedly saying that they stuck to the footpath. He had also altered the totals. He had counted 162 people entering the site, of which 107 had completed a questionnaire. Of those 87 came from Hartley, which considering the inclement weather he thought had been remarkable.

5.30. He had also added an analysis of question 6. Question 6 asked which area of the land the interviewee mainly used. 91% of the interviewees answered that they mainly used land which included area B, the application land.

5.31. In cross-examination, Mr Alford was asked about his amendments to the survey. He was asked whether the number in party shown on the sheet was the principal reason he had made alterations. He said that it was not; it had been because he was concerned about some of the questions. His original objective had not been to check the figures, but to try to establish whether, for instance, in relation to question 3, whether the answer would be more accurate by cross-referring to question 6, as he thought that people would not know where the public footpath was. When he wrote out the figures in columns it was only then he could see that there were discrepancies in the figures, and then he started cross-checking.

5.32. He agreed that the reasons for the different figures were because he had looked at the number in the party specified on each form rather than at the number of forms. Mr Wald asked to Mr Alford whether he understood that the enumerators had asked questions of each single individual within a group. Mr Alford said that on the first day, he had been in the woods with 3 others, and they had all given slightly different answers, but he had only seen the interviewer writing on one form.

5.33. Mr Alford accepted that his revised results had incorporated the number of people in the group, shown on the forms, as opposed to the number of interviewees. He accepted that the form was perhaps intended to relate to one interviewee, but said he did not know what methodology the enumerators had been instructed to employ. He said that he could only go by his own experience, which was that when he had been asked questions with 3 others, the interviewer had only used one form.

5.34. Mr Alford said that he had provided the information which went in the letter at A/3246 (the Parish Council's response to Southwark's objection statement), although he was not its author. He had provided the information in his capacity as a Hartley Parish Councillor, a post which he had held, he thought, since 2001. He came in on a by-election, he thought in 2001. He did not carry out any work towards getting other people to fill in the Open Spaces Society evidence questionnaires; that work was done by the Parish Council. There were very few of them and they were done for the purpose of the

affidavits which were signed in 2004. He was not involved in the production of the pro-forma witness statement either. It had been drafted by a solicitor.

5.35. Mr Alford agreed that there should be consistency between the answers in the witness statement and in the evidence questionnaire. He was asked why the frequency in use stated in the questionnaire had increased by the time he filled in the witness statement. He said that both were probably right. On average he probably used it 3 times a week. He agreed that recently he had been out of the country quite a lot. He has a property in Spain which he and his wife acquired in 2001, and which they use for perhaps 2 months a year, in two trips. They also have a caravan on the south coast which they use between April and October, perhaps for 9 or 10 weekends. He also has a son who emigrated to New Zealand in 2003, and he visited him first in 2004, and has been for about 4 weeks a year since then. Mr and Mrs Alford acquired the caravan in 1990. Mr Alford said that that is why the average given in his questionnaire and statement is 3 times a week. When he is at home, he quite often uses the woods twice in a day. He agreed that it could be said that his use had tailed off, but, if it had it had done so, it had only done so since 2004. Inevitably if he had a reason not to be here, that would reduce the number of times he used the wood, although he still thought that 3 times a week was an average. He thought it would still be right to say that he used the wood 3 times a week.

5.36. Mr Alford was taken to the letter written by Mr Richard Jones at A/3300. He said that he had not seen the letter before. He agreed that there were both public footpaths and unofficial footpaths, shown in red on the Registration Authority's map. He accepted that the emphasis in the letter was on clearing the public footpaths. He was asked whether he agreed that other footpaths within the wood remained blocked for longer. He said he did not agree. There were two places he could think of where large fallen trees had resulted in diversions. He said that if one walks through there now, there are no places where the paths cannot be crossed. Small branches were moved by residents. No work was carried out by Southwark. A couple of paths had to divert around larger trees.

5.37. Mr Alford confirmed that he had read Mr Mayne's evidence and its appendices, including Appendix 13. He accepted that the reference there was to footpaths rather than to public footpaths, and agreed that the reference was to the unofficial paths rather than the public footpath. He was asked whether the description of the footpaths as overgrown and choked was consistent with his recollection. He said it was not, and said that he understood that the purpose behind the letter was to get money to buy the woods, and that therefore the content might have been coloured with that objective in mind. Ms Yvonne Fry (the author of the letter) was the Chair of the Parish Council at the time.

5.38. Mr Alford said that his recollection is that the woods were generally cleared, to the extent that there were no large trees obstructing the informal footpaths, except in a couple of places, and people were able to walk along those paths. People went in with saws to clear them. The public footpaths were cleared by

Mr Jones and his team. What needed to be cleared from the informal path was cleared within weeks rather than days.

5.39. Mr Alford was taken to appendix 12 and the report to the Parish Council of Richard Jones that 2 footpaths had been cleared. He was taken to the reference dated 21st October 1988 and asked what had informed the need to clear storm damage. He said that thought that there had been trees in a dangerous situation, and that the Forestry Commission had had grants available to landowners, and the purpose was to get Southwark to do something about it. He was not a member of the Council at the time, but knew the condition of the woods. There had always been areas where there was concern about the position or situation of the trees. He was asked whether that had been raised in recent times. He said that there have been seven meetings with Southwark in recent times, and the question of the condition of the woods has been raised. He said that the Council owns some of the wood and their insurance requires them to take steps to clear the wood and that this had been mentioned to Southwark. He agreed that there would not be a Parish Council minute showing that there was a concern of urgency recently in getting the woods cleared, and said that the meetings he referred to were with Southwark. He was asked whether the concern about clearing storm damage was greater sooner after the storm. He said it was difficult for him to say because he was not a councillor then. He is now concerned because of the Council's insurance position. He said that there seems from the minutes to have been two issues: the availability of grants and the condition of the wood.

5.40. Mr Alford said that it was possible to walk in the woods immediately after the storm. There was some difficulty. People made their way around obstructions. Those obstructions were cleared, and, where it was not possible to clear them, alternative routes were found. There was some concern about trees which had not fallen down, but where there was root damage. Some of those remained today. He did not agree that the number of users reduced as a result of the difficulty in getting around the obstructions.

5.41. Mr Alford was taken to the Parish Council Minutes of 19th February 1988. He was asked whether the report that there were two paths cleared meant that other paths were not clear. He said Mr Jones would only have been concerned with the public rights of way and not with the other footpaths in the wood, because they are not designated public rights of way.

5.42. He was asked about paragraph 10 of his witness statement. He accepted that the paragraph suggested an answer, and that he had amended it. He was not aware of there having been an alternative available for people who had seen the leaflet. He said that if a witness had seen a leaflet, he should have altered that paragraph in some way, as he had done.

5.43. Mr Alford had only been aware of the campsite information since he joined the Parish Council, and had been involved in the application. In the 1980s he remembered having seen some young people on the campsite, and, walking on the tip, he had seen the remains of what must have been the toilet block. He had had no part in the arrangements. He had no involvement in any meetings

between Southwark Council and the Parish Council in the 1980s in relation to the campsite. He had seen some material on the file. He agreed that there clearly was some collaboration, but he had not been aware of it at the time.

5.44. Mr Alford agreed he had been interviewed by the enumerators when in the woods. He thought that the enumerator had said that there was an optional question in relation to giving a name and address. He was not sure whether he had given his name. He remembered being interviewed on the Thursday morning. He said he was confused by the references to A, B and C. He probably just told the enumerator he used the land for walking, although he agreed his witness statement had referred to other activities. When he looked at the form, he said that the line "purpose" was not a question he was asked; that was filled in by the enumerator. He thought that the form on which jogging had been written, the enumerator would have filled in, because the jogger did not stop, and there was no further information on the form. He agreed there was one which specified bike ride, but it appeared that the bike rider had stopped. He thought his form was the one with the postcode DA3 8EU on the bottom and question 5 saying 31 years. He went with Mr Blackman. They live in the same postcode. They would have said more than 31 years. They were both asked questions, and he thinks their interview generated only one form, because there is only one with this postcode on it. He thinks that this is the only form he answered. He said that there were two other ladies there, but they may have gone on another fork. It was put to him that earlier he had said he was in a group of 4. He said he had gone into the woods and seen the man with the jacket talking to two ladies. He and his companion joined them. He thinks that the enumerator put them both on the one form. He does not know where the ladies' forms are. He was not walking in a group of 4. He was walking with Mr Blackman. They saw the ladies talking to a man with a jacket and thought it was a policeman. When he got closer he saw the markings on his back and realised it was a survey company. He gave the information to the man. He thought the form was the result of the enumerator talking to him and Mr Blackman, but did not know what had happened to the others' form if there was one, and said that it was not clear whether the forms were in the order in which they had been collected, and that they were not timed.

5.45. Mr Alford said that he was aware that there had been a suicide in the woods. It was not during a period when he was out of the country. He did not know the period of time it took to be discovered. He did not know where the body had been.

5.46. In re-examination Mr Alford was asked whether he used Hartley Woods, and he said that he did use them every day when he is at home. He has used them since 1972. When he and Mrs Alford moved to Hartley they had two young children who would come as well, to play, and to do bird watching, climb, the sort of things children do. Now, their use is restricted to walking through with their dog.

5.47. The proposal on the letter at Appendix 13 that the Woodland Trust should take over the wood did not come to fruition. No-one did the work which was said

to be required. No-one did any work, apart from the residents immediately after the storm, so if the woods were overgrown and choked that would still be apparent today. He walked in the woods the day after the storm. He cannot be sure now whether he saw anyone else, although he would be surprised if he had not. He was not prevented at all from walking the woods by the effect of the great storm.

5.48. Mr Alford had two boys born in 1968 and 1971. They would have been 16 or 17 at the beginning of the relevant period. The childhood activities he referred to would have been when they first started using the woods, but his younger son in particular was a keen walker.

5.49. Mr Alford was recalled to deal with the issue of the effect of the Foot and Mouth crisis on the land. He remembered the Foot and Mouth outbreak in 2001. He was aware at the time that the use of public rights of way in Kent were prohibited. During that period he used Hartley Woods from time to time. His pattern of use was different because he was abroad until the middle of March, but thereafter he continued with his normal pattern of using the wood about three times a week. He saw other people using the wood when he was using it during this period.

5.50. In cross-examination Mr Alford agreed he had been a Parish Councillor during the Foot and Mouth crisis. There would have been Parish council meetings between March and May 2001 which he would have attended. There was a meeting before he came back at which the Foot and Mouth crisis was considered. Meetings are on the second Monday of the month. There would have been two meetings within the closure period, and he thinks he attended only one of those, probably not the March meeting, but the April and May meetings. At that time he thinks he might have been the chairman of the planning committee, but that might have been later. He was not involved in the correspondence between Kent CC and Hartley PC, but would have seen it at the time. He knew of the existence and location of public rights of way within the Parish. He knew there were restrictions on public rights of way as a result of the Foot and Mouth outbreak. He carried on using the wood. He normally accessed it from the south-west through point A, but during the foot and mouth crisis he knew it was illegal to use that public right of way. He knew that as a member of the Parish Council. He could not specifically recall seeing a notice, but had no doubt that notices were there. During that period he accessed the land from Hartley Bottom Road, into the former landfill site. Parking in that area was difficult at the time, because lots of other people used that route as a means of access to the woods. The posts at that point which limit the parking were not in place then. He used the wood without touching any public right of way, including SD215. He used the red lines. He did not go into the non-Southwark land. Walking was possible within the wood and on the tip. He did not use SD217 within this period either. He adapted his use of the wood to avoid breaking the restrictions. Other users did the same. It was difficult to park in Hartley Bottom Lane, although one could have parked to the north of the railway.

5.51. He said he was unable to say whether the foot and mouth outbreak reduced the number of people who accessed the woods. He thought in the early days it would have done, as the whole nation was frightened by the outbreak, but he was not in the country, so that was purely a guess.

5.52. I was not impressed with the lack of accuracy of Mr Alford's statements in relation to the frequency with which he used the application land, and neither was I satisfied with Mr Alford's explanations for the figure of three times a week. It seemed to me that if it were right that he uses the land often twice a day when at home, he would have been much more likely to write that, than to average out twice daily use over the whole year, taking into accounts periods when he was away from home. In my judgment, he had overstated his written evidence, certainly in relation to the period after 2004, but was not prepared to concede that he had. I therefore approached the remainder of his evidence with caution.

5.53. I considered Mr Alford's assessment that the number of users did not reduce after the Great Storm unlikely, and, in the light of the evidence of other witnesses that gave oral evidence that they had avoided the woods after the Great Storm, I reject it.

(2) Mr Anthony Charles Austin of "Chatenay" Manor Drive, Hartley

5.54. Mr Austin provided an evidence questionnaire dated 6th August 2008[9] and a written witness statement in the standard form dated 13th September 2008[10]. He has lived at his present address since 1977. He has used the application land from 1977 to date for walking the dog. He has seen others using the application land for dog walking, bird watching, walking and camping. He has used the application land on a daily basis. He deleted the references in square brackets to fences in paragraphs 8 and 9. He stated that he entered and exited the application land at a point he had marked A on the map appended to his statement, where SD215 crosses the southern boundary of the application land. In his evidence questionnaire he confirmed that he agreed with the boundaries of the locality (or neighbourhood within a locality) shown on the map appended to the evidence questionnaire (the parish of Hartley). He stated that he accessed the land across a field. He used the land 300 days a year for dog walking. His wife used the land for dog walking. He did not know of any community activities on the land, any use of the land by organisations for sports or pastimes or any seasonal activities. He ticked as activities he had seen taking place on the land: dog walking, bird watching and people walking. He knew who owned the land, but stated that it was not occupied. He had not been seen on the land by the owner or occupier. He never sought nor was granted permission to go onto the land. He had never been prevented from using the land. He left blank the question asking whether any attempt had been made by notice or fencing or otherwise to prevent or discourage the use being made of the land by local inhabitants.

[9] A/104
[10] A/92

5.55. In oral evidence Mr Austin said that he is a tree surgeon by profession. He confirmed the content of his witness statement. He has used Hartley Woods to walk generations of dogs. He started using the woods some time in 1977; he could not be precise as to when in 1977. He does not usually stick to paths at all. He goes where the dog leads him. He has used all of the wood, including the landfill site. He sees other people using the woods when he is using the woods. It has almost become a society of dog walkers. They all recognise each other, even if he does not know people's names. The majority he knows from his business as living in Hartley. Occasionally you get interlopers from Longfield and New Barn, but the majority are Hartley parishioners.

5.56. Mr Austin remembered the great storm of 1987, which he said had happened on 15th October. He said it was indelibly imprinted on his memory because he had done more work in that quarter than he had ever done before or since. Following the storm he continued to use Hartley Wood for dog walking, in between removing trees from people's gardens, once the immediate rush had slackened down, he carried on dog walking. He was able to get around the wood with difficulty. He was not prevented from using the wood by the effects of the storm.

5.57. Mr Austin did not remember any work being carried out in the wood to deal with the effects of the storm. He said that the remains of a lot of the trees are still on the deck. The position today with regard to walking is no different to what it was in the immediate aftermath of the storm; nothing had ever prevented him from walking. He is not aware of any work being done in the wood, or of anyone apart from himself, ever having done any work in there. He was called out once within the last 5 years to deal with a vandalised tree, but does not recollect anyone else doing anything in there.

5.58. In response to questions in cross-examination Mr Austin confirmed that Georgina Austin is his wife. Mr Austin agreed that he knows that the land is owned by Southwark, and that he has known that since at least 1977. Mr Austin did not fill out a questionnaire before the one which appears in the bundle. Mr Austin and his wife share the dog-walking, depending on who has the time to do it, and sometimes they go together. He had written 300 days a year, because to say daily was stretching the mark: there were holidays, business, illness. The 300 times is combined: one or both of them would use the woods daily and sometimes they would go together. Each of them might go on average 4 days a week, but it is more a daily activity than a weekly activity.

5.59. Mr Austin set up as a tree surgeon in 1980. As far as he is aware he is the only person who has performed tree surgery in the wood. Mr Austin knows Mr Richard Jones, the footpaths man. He has not been employed by Mr Jones in any official capacity, although he has done work for Mr Jones privately. Mr Jones did not ask Mr Austin to go into the wood and clear paths following the great storm. In his recollection the storm damage did not have the effect of closing the paths. If one wanted to walk the paths, it was possible to do it, with difficulty obviously, but it was possible.

5.60. Mr Austin was taken to the map produced by the Registration Authority. He said he made no distinction between the formal and informal paths, he walked wherever he wanted to. If he wanted to walk horizontally across the woods he would do. He accepted that the path shown in purple was an official footpath, but said it had no relevance to him and his use of the wood. He was not aware of having been in touch with Mr Jones at the time of the great storm. He had worked for Mr Jones at his house as a private client. He had not worked for Mr Jones on local authority work.

5.61. He said that he was the only person who had carried out tree surgery in the wood, because he had never seen anyone else carrying out tree surgery in there. Hartley Parish Council had employed him on the occasion he worked in the wood. A tree had been sawn and was in danger of collapsing. When he uses the wood he is in the wood for 45 minutes start to finish. He lives 5 minutes walk from the start of the wood. He thinks that his wife walks for longer than his 45 minutes.

5.62. He agreed the wood is relatively dense, and that within it one might or might not catch sight of others in the wood. He thought that if you were walking dogs, the dogs would pick up sounds of other people and dogs – you would be aware of people within a certain radius.

5.63. He said he would know if there had been any tree surgery – he could smell tree work a mile away – he would know if there had been any work in the woods.

5.64. Mr Wald said that he would shortly be taking Mr Austin to some documents which set out the need to clear the woods. Mr Austin said he was still confident that no work had taken place in the wood. He would know of any cutting of trees with chainsaws. Mr Austin was taken to A/3300, the letter from Richard Jones dated 16th September 2008. He agreed that the implication of the letter was that it was necessary to clear the paths so that people could walk them once again, but said that he could walk through the woods. He was a young man at the time, and he could not say whether other people would have been able to do so, or whether he would now. He did not recall there being a reduction in the number of people able to use the paths at the time. 30 years ago, he was climbing trees at the time, if there was something in his way, he would just hop over it. He agreed that his degree of agility in 1987 was more than most people's. He could not comment on whether there was a reduction in the number of people using the woods; he did not know. He said he would imagine it was a completely different generation of dog-walkers in those days. He imagines the people who were walking 30 years ago, perhaps are now dead. Mr Austin agreed that people had been using the wood for at least 70 years. His uncle had been shot dead in an accident 70 years ago, as a boy, when rabbiting.

5.65. The chainsaw contractors referred to in the letter were not him. He agreed that the letter suggested that people other than him had been employed to carry out work in the wood. He agreed that it appeared that there had been

some work done in the wood which had escaped his notice. He did not think that he would have missed it. He agreed that it appeared that there had been some work in February 1988 in the woods to clear public paths through Hartley Woods. He maintained it was not difficult for him to get through the wood, although he could not say whether it would have been difficult for other people.

5.66. Mr Austin was taken to O/Appendix 12. He confirmed that he had never been involved in the Parish Council or its workings. He would never have seen the Minutes of its meetings before. In recent years he has seen other people using the woods on a daily basis. He did not agree that there were fewer people in the time shortly after the great storm. He said he could not say. He said that some days, even today, you can walk the woods and not see anyone, other days you might see 30 people. He thought that was the same over the whole period.

5.67. It was suggested to him that those who were not as agile as himself might have struggled, or avoided the wood altogether after the great storm. He said he could not help on the number of users immediately after the great storm. He could not say whether there were more using it then than now.

5.68. He was referred to the summary of the Parish Council minutes and to the entry headed 19th February 1988, that Richard Jones had reported that two footpaths had been cleared and to the entry dated 18th November of that year, expressing concern to ensure that work was done to clear storm damage. Mr Austin said that he was not concerned or consulted on work that was done or was to be done. He was asked whether the concern to clear up storm damage was consistent with his recollection of the degree of damage to the wood and in particular to the difficulty of the public in moving around the wood after the storm. Mr Austin said that as two footpaths had been cleared, after having cleared that there would have been other trees damaged in the wood which had just been left there, which obviously were not causing problems to the general public.

5.69. Mr Austin could not remember ever having seen people clearing footpaths in Hartley Woods. He did not dispute that Mr Jones had had a work party in there and had done it.

5.70. Mr Austin did not camp himself. He said that the question was what have you seen. He said by camping he was referring to individuals who had actually camped in the wood with a tent, rather than to the campsite on the landfill, with which he was familiar. He did not know that that campsite was a Southwark initiative.

5.71. Mr Austin was asked about Foxbrough Wood. He knows that wood, and uses it and has walked it with generations of dogs, as had his wife. It could be included in the dog-walking. If they were feeling vigorous, they could use both woods. They would tend to use either Foxbrough Wood or Hartley Wood. Some of the 300 uses would be Foxbrough Wood instead of, or sometimes as well as, Hartley Wood. He lives mid-way between the two. It is

determined by where the dog wants to go. Out of preference he would always walk Hartley Woods.

5.72. In re-examination Mr Austin said that the work he had carried out in the wood was on the part of the wood owned by Southwark Borough Council, rather than on the bit owned by Hartley Parish Council. He used the wood following the storm. He said there was also a storm in 1990 in which damage to trees occurred. He carried on walking in 1990 as well.

5.73. I asked Mr Austin to comment on the remarks on A/3303, the report of Public Footpaths and Bridleways obstructed or made unusable by fallen trees following the Great Storm, sent under cover of Mr Jones' letter dated March 1988 (A3302). He agreed that the descriptions in that report were fair and reasonably accurate. He did not know how other people had coped with the obstructions, but he had managed to access the wood in spite of it. The whole area was severely full of destruction.

5.74. Mr Austin's written evidence as to the frequency of his visits to the application land was overstated: in his 300 visits per year, he had included his wife's visits and his own visits to Foxbrough Woods. In this regard his written evidence was inaccurate. However, he conceded this point readily when questioned about it, and I did not draw any adverse inference as to his honesty when giving oral evidence from this, although it did raise concerns as to the degree of care which he had employed when completing his written evidence.

5.75. I accept that Mr Austin's observations as to the effects of the Great Storm in this part of Kent are likely to be reasonably accurate and in particular his evidence that the whole area was "severely full of destruction" following the storm. I think it likely that his evidence that he could get around Hartley Woods but with difficulty, is accurate, however, I have approached that assessment in the light of his evidence that he was agile at the time, and would have been more agile than the majority of other users. However, I am not satisfied that Mr Austin has any clear recollection of the condition of the woods in the weeks and months following the storm, in particular because he had no recollection of any work being done in the woods to clear the public footpaths, whereas it is clear (as he conceded) from the documentary evidence that such work was carried out.

(3) Mr Alan Golledge of Timbercroft, Gorse Wood Road, Hartley

5.76. Mr Golledge provided an evidence questionnaire dated 19th May 2008[11] and a written witness statement in standard form dated 15th September 2008[12]. He has lived at his present address since March 1982. He has used the application land from March 1982 to date for walking and walking the dogs. He has seen others using the application land for walking, jogging and exercising dogs. He has used the application land daily. He deleted the references in square brackets to fences in paragraphs 8 and 9. He stated that he had entered and

[11] A/174
[12] A/162

exited the application land at the end of Gorse Wood Road and also via the close leading off of Gorse Way. In his evidence questionnaire he confirmed that he agreed with the boundaries of the locality (or neighbourhood within a locality) shown on the map appended to the evidence questionnaire. He stated that he had known the land since 1974 and used it from that date. Prior to moving to his current address in Hartley he used the woods for dog walking when he was living in New Barn. He stated that he accessed the land from a footpath at the railway line end of Gorse Wood Road, from the railway track crossing from the main road, and from the end of the close off Gorse Way. He used the land daily to walk the dogs and to enjoy the woodland. His immediate family used the land for dog walking. He did not know of any community activities on the land, any use of the land by organisations for sports or pastimes or any seasonal activities. He ticked as activities he had seen taking place on the land: dog walking and people walking. He did not know who owned or occupied the land. He had not to his knowledge been seen on the land by the owners or occupier. He never sought nor was granted permission to go onto the land. He had never been prevented from using the land. No attempt had been made by notice or fencing or otherwise to prevent or discourage the use being made of the land by local inhabitants.

5.77. In oral evidence Mr Golledge confirmed his written statement. He said that when he is using the wood he quite regularly sees others using the wood. Virtually all the people he sees are local people from the area around the woods, from Gorse Way, Gorse Wood Road and Woodlands Road, the roads in the immediate vicinity. Those are the people he recognises and sees on a daily basis. He has never come across any individuals or groups who have said they have come from Southwark or elsewhere in London.

5.78. Mr Golledge said that he was not prevented from using the wood after the Great Storm. Immediately afterwards he went into the woods to see what the damage was, and was surprised to find he could still walk the dogs in the wood. There were some places where trees were hanging over the paths and you had to duck round them, but it did not prevent him using the wood.

5.79. He used the woods normally on a circular tour, but a different route every day, depending on time. He has taken different routes and wandered all over the wood at various times. He sticks to the paths. There is not much point in doing otherwise. There are so many paths criss-crossing the woods, it is logical to follow the routes other people have walked.

5.80. Mr Golledge said that he is aware that some work has been undertaken in the wood since the storm, but that it depends how you define work. There have been branches across paths which have been removed, but he is not sure that it has been on an official basis. He had no idea who had done it; he had just seen the evidence the following day. He had never seen anyone working in the wood.

5.81. In cross-examination, Mr Golledge was asked about his written statement. He agreed it had been presented to him as an almost complete statement with gaps for him to fill in. He had completed a witness statement for legal proceedings

previously and had both done statements with gaps, and started from scratch. In the former case the statement would have been prepared by the legal department of his employer for him. He had done dozens of statements. When he was asked to make a statement, he had been happy to do his own, but he was given the pro forma. If he had not been happy with the pro forma he would have produced his own statement. He had previously signed forms produced by others but tailored to him and to his views and experience. He insisted that the statement fully reflected his views. He had previously put his name to a statement which had been prepared for him before. He had accepted this statement and signed it. He said that he has signed a standard form witness statement previously with gaps for his own additions. He had done so in relation to an employment tribunal case. He was presented with a prepared statement which he added to and signed. That statement had not been mass-produced. He was the only person who, with amendments, put his name to the statement. He agreed that it was a totally different set of circumstances.

5.82. Mr Golledge was taken to paragraph 10 of his statement. He said it was correct that he had not seen the leaflet referred to in that paragraph. He saw nothing wrong with paragraph 10 and did not think it was odd that it had not been prepared in a more neutral way.

5.83. Mr Golledge said he walked through the woods quite comfortably after the great storm. He went there the following day out of curiosity.

5.84. He is a daily user of the wood, virtually every single day. His wife sometimes accompanies him. He does not use other woods, for instance Foxbrough Wood. He is in the wood for anything between 30 minutes and an hour.

5.85. He was asked whether he was aware of the work of the chain saw gang in the aftermath of the great storm. He was aware that there was a public right of way through the woods but was not sure which was the public right of way and which the informal footpaths, and said he used them all. He said that some of the paths are wider than others. He agreed that the purple line paths were wider and more established than the red ones. He was taken to A/3300. Mr Golledge worked as a housing officer for a local authority. He was aware that a local authority had a duty to keep footpaths free of obstructions. Mr Golledge said that the great storm did not cause uniform damage right across the woods. The damage was in pockets. There were some areas where there were trees across the paths, but it did not stop the use of the woods. Mr Golledge would not accept that paths were completely obliterated. He said that parts were obliterated. He would walk round those parts, and then continue on the path. He said the paths were obliterated in parts, by walking around the obliterated part you could continue to use the path. He did not consider that employing a chain saw gang was an unnecessary expense.

5.86. He was taken to A/3303. He said that he did not accept that the line of the path is obliterated meant that the whole path was obliterated, but said that rather it could mean it was obliterated in sections, and its line was unclear as a result.

5.87. Mr Golledge was recalled to deal with the issue of the effect of the Foot and Mouth crisis on the land. Mr Golledge said that he was not aware of the dates of the closure, or of the fact of the closure of public rights of way within Kent before hearing of it at the inquiry that day. During the period 27th February – 12th May 2001 he did not stop using Hartley Woods for recreational purposes. To the best of his recollection he saw no indication that the woods were closed and he continued to use them and other people continued to use them.

5.88. In response to questions in cross-examination Mr Golledge confirmed that he had previously said that his use was virtually daily, and that he walked the paths throughout the woods, using both formal and informal paths, although he was not aware of which were public rights of way until he had seen the map at the inquiry. He accessed the woods from the end of Gorsewood Road and also from the end of Beechlands Close off Gorse Way. His normal walk is in through Beechlands Close, crossing over SD215, do a loop through the woods and back out again. He was asked whether the close-boarded fencing went up alongside SD215 in 2001. He was not sure when it was erected, but remembered it being erected over a long period of time.

5.89. Mr Golledge said he saw no restriction signs at all. He was aware that there were restrictions on access to the countryside from the television and news, and also because of his involvement in show-jumping, and potential restrictions on that sport. He uses the countryside on a frequent basis. He knew that the restrictions related to access to the countryside in some controlled areas. The advice he received through show jumping was that Foot and Mouth had no effect on people, horses or dogs, and the main restrictions were on farmland. Mr Golledge had produced to the inquiry draft Foot and Mouth Guidelines. He is a show jumping judge, an official of the British Show jumping Association. Hartley Wood was not a designated infected area to his knowledge, and he therefore thought he was free to move around it. He agreed that there were also controlled areas, but as far as he was aware, Hartley Wood was not affected at all.

5.90. Mr Golledge was referred to O/App 26/p.2, the second paragraph. Mr Golledge used to work as a local government housing officer from 1967 until 1997 for five different London Boroughs: Hackney, Islington, Greenwich, Bexley, Westminster and Islington again, commuting from Hartley.

5.91. Mr Golledge said that he was aware there was a public right of way within Hartley Woods, but would not have been able to say which path it was, because it was not signposted or labelled. He was aware that there was some involvement with public rights of way around infected areas, but was not aware of a general closure of public rights of way.

5.92. Mr Golledge was referred to page 8. He said that he would not have been concerned with closure of public rights of way as a show jumping judge, because show jumping does not take place on bridleways. He was aware of restriction on movement of horses around the area, and that was why the documents he had produced to the inquiry had been drawn up. He is not a

horse rider himself. He insisted that he had no knowledge or reason to be aware that Hartley Woods was closed for his use, having regard to paragraphs 2.3 and 2.1 of the Equestrian Society's advice. Bearing in mind the advice he was receiving, and having no knowledge of the restrictions, he continued to use the woods. He acknowledged that had he been aware he was crossing a public footpath, he might have been liable to a fine, but said that he doubted he would have been liable, had he not been aware of the closure of the footpath.

5.93. Mr Golledge doggedly insisted that there was nothing unusual about be asked to sign a standard form statement in the face of his considerable experience of producing, or having produced for him, individually drafted witness statements of evidence he was to give in his professional capacity. I do not accept that that can be his honest assessment of the situation, and infer that he was not willing to concede the point for fear of damaging the applicant's case.

5.94. I accept Mr Golledge's evidence that he did not know which paths were the public rights of way, and that he did not know that the public footpaths through Hartley Wood were closed. I infer from his answers that he would have been prepared to argue that he was walking on a closed path, had he been stopped, and that he continued to use the woods in spite of the outbreak.

(4) Mrs Wendy Brooks of Cedars, Manor Drive, Hartley

5.95. Mrs Brooks provided an evidence questionnaire dated 3rd December 2004[13] and a written witness statement in standard form dated 12th September 2008[14]. She has lived at her present address since 1958. She has used the application land from 1958 to date for walking. She has seen others using the application land for walking and dog walking. She has used the application land approximately on alternate days. She did not delete the references in square brackets to fences in paragraphs 8 and 9. She stated that she entered and exited the application land at Beechlands Close – end of Manor Drive. In her evidence questionnaire she confirmed that she agreed with the boundaries of the locality (or neighbourhood within a locality) shown on the map appended to the evidence questionnaire, although no such boundary appears to be shown on the copy map included in the Applicant's bundle with her questionnaire. She stated that she accessed the land from a public footpath. She used the land frequently to walk through the woods. Her immediate family used the land for walking. In response to the question about community activities on the land, she stated that there was a footpaths walking group, in which she participated. She did not know of any use of the land by organisations for sports or pastimes or any seasonal activities. She ticked as activities she had seen taking place on the land: children playing, drawing and painting, dog walking, picking blackberries, bird watching, picnicking, people walking and bicycle riding. She did not know who owned or occupied the land. She did not know whether the owner or occupier had seen her on the land. She never sought nor was granted permission to go onto the land. She had never been prevented from using the land. No attempt had been made by notice or fencing

[13] A/128
[14] A/116

or otherwise to prevent or discourage the use being made of the land by local inhabitants.

5.96. In oral evidence Mrs Brooks said that when she has been using the woods she has seen others using the woods, mainly for dog walking, and also for just walking. Of the other people she has seen, the vast majority she thought came from Hartley. She had lived here for 50 years, worked in the doctor's surgery for 20 years, and the library for 5 years, her husband was born here, and her children went to school here, so she knows an awful lot of people.

5.97. When she used the woods, whether she stuck to the paths depended on why she was using them. When she had the grandchildren with her they would wander off the paths. Years ago (about 30 years) they had a dog, and then she would go off the path. Mainly she would stick to the path. Her grandchildren are 13, 12, 7 and 5. Her own children were born in 1968 and 1970. Mrs Brooks was taken to the Registration Authority's map and asked whether that showed the extent of the paths she used. She said she went on most of the ones shown. There were additional paths to the ones shown which she used. She said that the area is criss-crossed with paths, so it is difficult to say where the ones she uses are.

5.98. She had not met any individuals or groups in the woods who had identified themselves as coming from Southwark or London.

5.99. Mrs Brooks said that she remembered the great storm. She had continued to use Hartley Wood in the period immediately after the storm. She was not prevented from doing so by fallen trees. She was not aware of any work carried out between 1987 and the present day to deal with the effect of the storm, but she said that obviously something had been done because the paths were cleared. She could not remember from 20 years ago which paths she was walking in particular. She said that obviously immediately after the storm paths were obstructed. After that they were cleared. She just walked round, went over or under the obstructions.

5.100. In cross-examination Mrs Brooks agreed that she has used the woods approximately on alternate days. A group meets up every morning at 07:00 to walk, more often than not in the woods. They meet Monday to Friday, but do not go through the woods every time. She also goes out with her husband and her grandchildren and Hartley Footpaths Group. She uses Foxbrough Wood, Manor Field and Hartley Country Club; they go a variety of places. She goes for a walk every day, Monday to Friday, give or take, and probably three of those days they would go through the woods. She is a member of Hartley Footpaths Group which follows footpaths round the area, not always through the wood. The footpaths that Group follows would be official footpaths. She was only aware of the difference in status of the paths in Hartley Wood from looking at the Registration Authority map. She did not agree that the purple paths were wider. She said that the path down the middle marked in red was as wide and well established.

5.101. The effect of the great storm was that areas of paths were blocked. She did not really use different paths as a result, but would walk round the obstructions.

5.102. Mrs Brooks was taken to O/App 11. Her recollection was not that alternative routes were "circuitous to say the least" she said you just walked around the trees, it was not difficult. She agreed that 1987 was a long time ago, but said she did not remember any path she could not get down. She did not remember tree surgery work or chainsaw work. She did not remember seeing it happen, but remembered the effect, paths becoming clear. She could not remember how long it took: whether it was days weeks or months, but she did remember that there came a time after the storm when paths had been cleared. She did not mind the obstructions, although obviously the clearing was a good thing.

5.103. She did not remember other users back in the 1980s; she could not remember back that far.

5.104. She could not remember when she became aware that the land belonged to Southwark.

5.105. Mrs Brooks was asked about her witness statement. Making a witness statement is not an experience she is used to. She agreed, in reference to paragraph 8, that she already knew that Hartley Wood was owned by Southwark. She had probably known for 10 years. It used to be called Southwark tip. She could not remember when she knew. She agreed that it would be more accurate to say "I have come to know over the years". She said she thought that Mr Wald was splitting hairs: she must have been informed otherwise she would not know. She said that the use had not changed over the period. She agreed that the land has been used by motorised vehicles. That was a new feature of the land, and had taken place over the last few years, probably 5-10 years. She agreed that she could have phrased paragraph 7 more accurately, had she written it individually. She read it as the pattern of use by her was basically the same. She thought that "(and others)" referred to anyone who was with her. The only difference is that motorbikes use it.

5.106. The 07:00 walk has been for the last 10 years. Prior to that she used the woods very frequently; it is the nearest country walk to her home. She worked part-time and did have time to use the woods before she stopped working at the GP surgery. She said that she had always used the woods a lot.

5.107. I was satisfied that Mrs Brooks was an honest witness, although, understandably, her clearest recollections related to her more recent use. I do not accept that she has any clear recollection of the early part of the period, and in particular, I did not consider that her recollection of the after-effects of the Great Storm, having regard to the other evidence, was likely to be accurate.

(5) Mr Michael MacCready of 4 Perran Close, Hartley

5.108. Mr MacCready provided an evidence questionnaire dated 18th May 2008[15] and a written witness statement in standard form dated 13th September 2008[16]. He has lived at his present address since 1981. He has used the application land from July 1981 to date for dog walking. He has seen others using the application land for Scouts, nature study and walkers. He did not state how frequently he had used the application land and in paragraph 7 wrote "dog walking". He deleted the references in square brackets to fences in paragraphs 8 and 9. He stated that he entered and exited the application land at the bottom of Gorse Wood Road. In his evidence questionnaire he confirmed that he agreed with the boundaries of the locality (or neighbourhood within a locality) shown on the map appended to the evidence questionnaire. He stated that to his knowledge there were no public paths crossing the land. He stated that he accessed the land on foot. He used the land daily to walk his dog. His immediate family did not use the land. He did not know of any community activities on the land or any seasonal activities. The Scouts used the land for various activities. He ticked as activities he had seen taking place on the land: children playing, drawing and painting, dog walking, bird watching, people walking and bicycle riding. He did not know who was the owner or occupier of the land. He did not know whether he had been seen on the land by the owner or occupier. He never sought nor was granted permission to go onto the land. He had never been prevented from using the land. In response to the question whether attempt had been made by notice or fencing or otherwise to prevent or discourage the use being made of the land by local inhabitants he stated that fencing stakes were put up a couple of years ago, and notices were put up by Southwark Borough Council.

5.109. In oral evidence Mr MacCready confirmed the content of his witness statement. He was taken to the form completed at an interview carried out by an enumerator on behalf of Southwark. He was asked to explain the inconsistency between his witness statement where he said that he had used the land since 1981, and the answer recorded to question 5, which stated 6 years. He said that the answer recorded on the interview sheet was certainly what he had said. The day on which he was interviewed was wet. He walked through the wood and saw a couple of fellows. One of them said "Would you mind answering some questions". He agreed, but he thinks he would have said the same to him as he said in his witness statement. The only reference he can think of to 6 years, was that he said that his Jack Russell dog was 6 years old. He has been to the wood with his previous dogs. When he uses the wood, most days he sees quite a number of people, but on that day the weather was bad, and he did not see anyone else. He commented to the men that he would not fancy their jobs.

5.110. He sees the same faces pretty much every day. There are a few people who he knows live near to where he lives. There are other people who he sees and speaks to but he does not know where they come from. He assumes they come from round his way.

[15] A/198
[16] A/186

5.111. He has not met any individual or group who said that they came from Southwark, other than the enumerators who came from Southwark. Although he initially said that he knew they were from Southwark because he originated from South London and they spoke the same language, he then said that this had been a joke and that they said they were from Southwark and he would not have known it if they had not said so.

5.112. When Mr MacCready's son was in the Scouts they used to camp up in the woods. Mr MacCready's son was born in 1972. That would have been in 1985 or 1986.

5.113. Mr MacCready remembered the great storm in 1987. He continued to use the wood after the storm and was able to do so within a day or so. It was pretty devastated and there are still signs of that devastation, but you could work your way round.

5.114. He had not seen anyone doing work to clear up after the great storm. Pretty much every year the railway people prune the trees along the railway, but he did not think that was in consequence of the storm, it was just to keep the trees off the railway. So far as the fallen trees, he had not seen any sign of work. Now and again he saw logs chopped up, but he was not sure whether that was just people chopping logs to take for their own use. He was not sure what went on.

5.115. The wood is not substantially different from the way it was after the great storm. When they first came down there was foliage, now they are skeletons, so it does not look so dramatic. Some of the logs have been chopped, but he does not know whether that is work that has been commissioned. An area of dead trees does not look as dramatic as an area of trees which have just blown down.

5.116. Mr MacCready did not follow the same route every day when he walked in the wood. The paths shown on the Registration Authority's plan were the main paths, although there were other minor paths which had been created by people walking across. Mr MacCready would use all sorts of paths and go all sorts of ways. He more or less follows his dog, rather than the dog following him. He does not go the same route every day, and does not think that any dog-walker would.

5.117. In cross-examination Mr MacCready was taken to O/App 8A. He said that he saw the plan when he filled in his statement, and the young men from Southwark had one as well. They showed him the plan. He lives to the west of A. He said he does not go over to land C, but had probably used A and B in equal measure. It was about 21 years since he had first started taking the dog over there. He said that there were foxes on land C which was why he did not go there with his dog. He thought he had been using the land since about 1987, when there was a very big snow. He thought it was just before the big storm when they got the first dog and he started using the land. He put 1981 in his statement because that was when they moved to the area. Mr MacCready said he cleans windows for a living. He is not a lawyer. If he put

1981, that was a mistake, rather than an intentional misrepresentation. They moved in in 1981 and got the dog a couple of years later. When it was put to him that the same date was in his questionnaire, and that in fact he had stated the same date four times, he repeated that it was a mistake. When he completed his witness statement he was not looking at his questionnaire. He filled out the witness statement at the Hartley Library. He was asked to come up and do it. There were one or two other people there also doing their statements. He signed it, but he said he could not have read it carefully, because otherwise he would have noticed the mistake. He had parked his car in the forecourt of the library and he had the librarian telling him to move it, so he was quite stressed.

5.118. He was aware of motorbikes using the land. That had only been in the last couple of years, since trail bikes had been popular with youngsters. He had also seen quad bikes. That was only in the last couple of years. He was asked whether he could think of any other changes in the pattern of use, and he said he could not. He agreed that there had in the last couple of years been a new type of use: motorised vehicles coming onto it. He was asked to look at paragraph 7. He said he had read that paragraph before. He was asked about the inconsistency between his oral and written evidence, and it was put to him that paragraph 7 did not quite fit his knowledge of the land. It was roughly right, but not completely correct. He said it was not, but he would not have chosen to mention the bikes because he did not want to get other people into trouble.

5.119. Mr MacCready had only learnt in the last couple of years that the land was owned by Southwark. He was referred to paragraph 8 and it was suggested that the first sentence could not be a reference to his finding out that Southwark owned the land a couple of years previously.

5.120. He did not remember reading a leaflet produced by Southwark. He did not remember ever having seen it at all. In relation to what the enumerator had written in relation to 6 years, he had not written it, and he had not signed what was written, and did not think it was his fault that it was wrong. He was taken to A/196 and said to the best of his recollection this was the first time he was looking at the leaflet and he had not seen it before. He was then referred to paragraph 10 of his statement, and asked whether he had read that paragraph before. He said he was very embarrassed, and he did not remember having read it before, and he should have read it before he signed the form. He confirmed in oral evidence that he had not seen the leaflet in 1984, and neither did he see it on 13th September 2008 when he signed the witness statement and he did not read the paragraph before he signed the statement.

5.121. In re-examination, Mr MacCready was asked whether, when he signed the witness statement, the leaflet was attached to it or not. He said that he was in such a rush to get out that he signed the statement before he had read it. He did not know whether the leaflet was attached to the statement or not, it could have been there.

5.122. Mr MacCready's written evidence had not been completed with an appropriate degree of care, either his written statement or his evidence questionnaire. He misstated the dates between which he had used the application land, and had not read the whole of the standard form statement before signing it. There were inconsistencies between his written evidence and the answers given to the enumerators. I am not satisfied that his evidence can be regarded as reliable.

(6) Mr Grant Wren of Grenfell Cottage, Briars Way, Hartley

5.123. Mr Wren provided an evidence questionnaire dated 7th July 2008[17] and a written witness statement in standard form dated 13th September 2008[18]. He has lived at his present address since 1972. He has used the application land from 1972 to date for horse riding, dog walking, mountain biking, recreational walking, blackberry picking and wide games with the Scouts. He has seen others using the application land for the same activities. He has used the application land daily. He deleted the references in square brackets to fences in paragraphs 8 and 9. He stated that he entered and exited the application land at Beechlands Close to Hartley Manor (Manor Drive), plus other entries and exits from time to time (Longfield Hill and Gorse Wood Road). In his evidence questionnaire he confirmed that he agreed with the boundaries of the locality (or neighbourhood within a locality) shown on the map appended to the evidence questionnaire (the parish of Hartley). He stated that he gained access to the land through Manor Field (Hartley Manor, through Gorse Wood Road, through Beechlands Close, through the crossing (railway) and through Longfield Hill. He previously (many years ago) used the land for horse riding. At the time of filling in his questionnaire he used the land for dog walking and family walks, and for mountain biking and running. He used the land every day. His immediate family used the land for the same activities. He stated that Scout activities had taken place on the land: wide games and orienteering, also camping, many years ago. He participated in those activities. He did not know of any seasonal activities on the land. He ticked as activities he had seen taking place on the land: children playing, dog walking, team games, picking blackberries, bird watching, people walking and bicycle riding. He did not know who was the owner or occupier of the land and did not think he had been seen on the land by the owner or occupier. He never sought nor was granted permission to go onto the land. He had never been prevented from using the land. In answer to the question whether any attempt had been made by notice or fencing or otherwise to prevent or discourage the use being made of the land by local inhabitants he stated yes, and stating that Southwark Council contractors had marked the boundaries two years previously without any notice and without any sympathy for the surrounding area e.g. using barbed wire and red spray paint.

5.124. In oral evidence Mr Wren confirmed his witness statement, although he said that he too had not added in reference to motorcycle usage. He confirmed that the questionnaire at A/272 was his. He had used Hartley Wood ever since he moved into Briars Way when he was 11, in 1972. When he had used the

[17] A/270
[18] A/258

wood, he had seen others using the wood. There were quite a few people he knew from Hartley, and some people say from Longfield Hill. The greater number of people using the wood came from Hartley. Mr Wren was taken to the Registration Authority's map, and asked where he walked. He said he goes pretty much wherever the dogs go. Without mapping out the footpaths he thought that the map showed pretty much all the footpaths, although there were other little footpaths linking them up.

5.125. He had never met any individuals or groups who said they came from Southwark. He remembered the great storm. It did not prevent him using the wood, although there were a lot of fallen trees. He did not go in on the same day, but went perhaps a couple of days after. He had never seen anyone carrying out work in the wood, but there was work done. Pretty much soon after the storm people had been in using chainsaws clearing the rights of way. By the rights of way he meant the paths in red as well as the paths in purple: the general passage through the woods was cleared. A lot of the original tree lines had gone.

5.126. He was asked in what way Hartley Wood was different today from how it was after the storm. He said that most of the original paths exist now. The tree lines used to have lines of yew trees and lines you could walk down. A few of them have disappeared, but most of them are the way they were.

5.127. In cross-examination Mr Wren agreed he would have been 26 in 1987. His father went to the woods the day after the storm. He was asked whether the number or the type of people changed after the storm. He said it did not change. There were still people who had dogs to walk, which is the major usage of the woods.

5.128. Mr Wren was not interviewed by the enumerators. He had seen the plan at Appendix 8A he thought when he had done a questionnaire at home. He did a questionnaire in the library, and a questionnaire at home, but no others to his knowledge. A/258 is the one he did in the library. A/270 is the one he did at home. He cannot remember how he received it. When he went to the library it was common knowledge that you had to go and fill in a witness statement on that day. He thought that the Parish Council had asked him, and there was also a notice up in the woods. The forms were on a table at the back of the library, and the Council was there, he did not know who. He did not have a copy of his questionnaire available when he filled in the form. He used to go horse riding in the wood. That stopped when he was 14 or 15 (mid to late 1970s). His sister also used to ride. He had seen other horse riders in the 1970s and 1980s, but not after that. Horse riding pretty much stopped after the storm, because there were a lot of overhanging trees. Mountain biking was more recent, probably from the early 1990s onwards. He used to take his push-bike through. He agreed that he ought also to have added to his statement that there used to be horse riding but no longer, and that since the 1990s the land had been used by mountain bikers. He used to be in the Scouts and they used to play wide games there. Everyone went blackberry picking there. He thinks that the Scouts do not go there now – health and safety dictates it. He personally used it when he was 12 or 13. He said everything

changes over time. He had not seen quad bikes, although he had seen tyre tracks, he could not say it was quad bikes. He had seen camping, he remembered it tonight. He was taken to paragraph 7, and asked whether in the interests of accuracy he would change it. His witness statement was not done hastily. He said that he was answering 7 by reference to the activities that he had put in paragraph 5. Paragraph 5 does not ask when the activities started or stopped. Paragraph 7 asks whether the pattern has changed over time. He said that if had realised the implications of paragraph 7 at the time, he would have answered it more fully.

5.129. He had not seen the leaflet until the day in September in the library when he signed his statement. He confirmed that there was no other alternative statement available which allowed for the possibility that someone might have seen the leaflet.

5.130. Mr Wren's oral evidence was careful, and he was ready to concede respects in which he could have given fuller answers in his written evidence. I am satisfied that he was an honest witness. However, having regard to the evidence of other witnesses who gave evidence to the inquiry, I do not accept his evidence that the number of users of the application land did not change in the immediate aftermath of the Great Storm.

(7) Mr Ian Gibbons of Wyvern, Gresham Avenue, Hartley

5.131. Mr Gibbons provided an evidence questionnaire dated 29th April 2008 and a written witness statement in standard form dated 15th September 2008[19]. He has lived at his present address since 1960. He has used the application land from May 1961 to date for dog walking and to take Cub Scouts for tracking, nature study and fire lighting. He had been a Cub Scout leader for 35 years. He has seen others using the application land for dog walking. He has used the application land weekly. He did not delete the references in square brackets to fences in paragraphs 8 and 9. He stated that he entered and exited the application land from the footpath across Glovers Field. In his evidence questionnaire he confirmed that he agreed with the boundaries of the locality (or neighbourhood within a locality) shown on the map appended to the evidence questionnaire. He stated that he had known the land since 1960 and used it since 1973. During summer the Scouts use Manor Field as their base. He walks the Cub pack into the wood. He used the land at 2 or 3 times a year during summer to train Cubs in wood craft, nature study, tracking, camp fire lighting and making bivouacs. He has used the land every year he has been a Cub Scout leader (35 years) to train Cub Scouts. His immediate family had used the land in the past for dog walking. He listed as community activities which had taken place on the land, Cubs and Scouts and stated that he had taken over 800 boys and girls into the woods over a 35 year period to be trained. Longfield and Hartley Scout Group used the land for sports and pastimes. Under seasonal activities he wrote that there were Cub Scout activities in the summer months. He ticked as activities he had seen taking place on the land: children playing, dog walking, team games, people walking and bicycle riding. He knew who owned the land, but not who occupied it.

[19] A/138

He thought that the owner or occupier had probably not seen him on the land. He never sought nor was granted permission to go onto the land. He had never been prevented from using the land. In response to the question whether any attempt had been made by notice or fencing or otherwise to prevent or discourage the use being made of the land by local inhabitants he stated "nothing has stopped our Cubs and Scouts". At the end of his questionnaire he wrote that he had been involved in training Cub Scouts to respect the woods and nature and in his view it would be tragic to take this opportunity away.

5.132. In oral evidence Mr Gibbons confirmed that he had received a copy of the explanatory notes document at A/3299, and said that he had read it while he was filling in the witness statement.

5.133. In relation to question 8 on the evidence questionnaire Mr Gibbons said that when he had filled that in he had been thinking of his Scouting activities with which he had first been involved in 1973. In fact he had used the land since 1961 when he first got a dog.

5.134. Mr Gibbons was taken to the appendices to his witness statement and asked whether they were attached to his witness statement when he signed it. He confirmed they were.

5.135. When initially he moved to Hartley and got a dog in 1961 he began using the woods for dog walking. For dog walking he came in the Gorse Wood Road end, walked level with the railway line and into the woods.

5.136. When he became involved in Scouting in 1973, the Akela lived on Manor Drive, and they used to use the woods with the Cub pack. The Cubbing activity used the entrance across Manor Field and came into the woods that way. They used Manor Field as their base in the summer. The Cubs used quite a lot of the wood when they were tracking.

5.137. He saw other people when he used the woods, for instance when the Cubs were doing fire-lighting activities, people were quite interested and attracted by the smell of cooking sausages. The other users came mainly from Hartley. There were some people he knew quite well who came from New Barn and Longfield, but their use would be less frequent than those who came from Hartley. The greater number came from Hartley.

5.138. He had never met anyone in the woods who had suggested that they had come from Southwark or London.

5.139. After the great storm, initially there were some trees down which made it awkward for dog walking. By the time it came to cub activities in the summer months, they had been cleared, and there was no problem using the woods. In fact the fallen trees were helpful for making bivouacs.

5.140. He thought that it was maybe a week or two weeks after the storm before he used the woods again for dog walking. He first went in out of curiosity, and

then found that access was reasonable, and thereafter carried on using it as previously. He had expected to find it a lot worse than it was.

5.141. In cross-examination Mr Gibbons said it was right that he had two principal uses of the woods: dog-walking and Cub scouting. He said there were gaps, for instance between one dog dying and getting another. The Cubs was a summer activity programme. The Cubs did not use the woods in the winter months. That was every year, continuing to date.

5.142. Mr Gibbons said that he thought he had been provided with guidance notes when filling in the questionnaire. He was given those at A/3299 with the witness statement. He thought that he had been given the notes at A/157 with the evidence questionnaire. He agreed those were notes for the interviewer, but said he thought he did have some guidance notes when he filled the questionnaire in. He had filled in the form by himself, not with an interviewer. He said that he had taken those notes as guidance for filling in the questionnaire. He was asked how the notes helped him: he said he was looking at whether he could satisfy the test in the notes for the interviewer. He said that as far as he was concerned the land was open for his use, dog-walking and with cubs, and he had never been approached and told he should not be in the woods with the Cubs. He read the notes through, and said they gave him a clue as to where he should go. He agreed that they gave him guidance as to which answers would satisfy the test, but said that, at the same time the questions on the form were clear and straightforward. He agreed he had read the notes, and used them to help him craft his responses.

5.143. His answer to question 15 related to the Cub activities. He agreed that the question was open, and that he had limited his answer to cub activities, although he had also used the land for dog walking. He agreed that there was a substantial difference in the frequency of use given in his witness statement and the questionnaire. He said he had filled in the questionnaire thinking about his Cub activities. He did not have anything other than the notes for interviewer to help him fill out the questionnaire.

5.144. He was taken to A/3299. He agreed that he was aware of motorbikes and quad bikes using the land in more recent times. Prior to the motorbikes it was more bikes. It is only in recent years that youngsters have been able to afford motorbikes. He had seen evidence of horse riding, but that was mainly in years gone by. He had not seen camping in the woods. Any camping would not have been a Cub or Scout activity. They would camp in an open field. He agreed that the pattern of use of the land had changed over the years. He said he did not read the guidance carefully. He was under pressure to get the form filled in. He was asked to pick the form up, and given the notes. There were other people in the library as well. They were talking about the woods. He filled the form in as best he could. He was under pressure of time, and had an appointment to get to. He had about an hour to look at the content of the witness statement. He thought an hour was adequate, but had said he was under pressure, because he needed to make sure he was away on time. He was talking to other people, and he was conscious he needed to get the form done in the time he had. There were 4 other people in the library. The main

problem they had was identifying their home on the map and he helped them with that. There was some discussion of the leaflet: Mr Gibbons commented it could have been useful to the scouting group. The library itself was not open. The Parish Council clerk had given him the form and the guidance, and he took it and sat at a desk in the library and filled it in. He was asked by the Parish Clerk to come and pick the form up from the library. He was not asked not to discuss the content of his statement with other people.

5.145. He was taken to paragraph 7 of his witness statement. He agreed that the pattern of use had changed, and in fact that things in general had changed: wealth had changed and activities had changed with changing wealth. He said that dog walking and the activities he had been involved with had remained the same. The words "(and others)" were pointed out. He referred to the notes which said "If other members of your family have used Hartley Woods for recreational purposes, please note this at the end of this paragraph." He agreed that it would have been more accurate to say that his own use had remained the same, but that the use by others had changed over the period.

5.146. He knew about the campsite; it had been discussed at a Scout meeting. The discussion was about the tip area, which they were not using at the time, and the Scouts were told not to go on it at the meeting. He knew that at meeting had taken place with one of the Scout leaders at the time, and he reported back to the Scout leaders' meeting. He agreed there was discussion about making the area available for enjoyment by the public. They would have welcomed the proposal, had they not been cautioned by the Scout leader who had been at the meeting not to use the land. There was a campsite on the landfill site. Under normal circumstances they would have welcomed it, but were warned not to use the tip or the campsite on the tip. They used the woodland, but not the tip. He would have welcomed the opportunity to use the woodland, but they were already using it at this stage. Mr Gibbons, had he had direct contact with Southwark, would have welcomed encouragement to use the woodland.

5.147. Mr Gibbons said he had read the Dartford and Swanley Chronicle in the past. He was taken to O/App10. He did not know whether the scouts were part of the meeting referred to. He was not aware of those proposals at the time. Mr Gibbons is an assistant Cub Scout leader. He was not involved in the discussions. Mr Doug Wilson represented the scouting movement in the discussions.

5.148. The Cubs would also use Foxbrough Woods for some of their activities, although they were not suitable for all activities. For quite a while (a couple of years) they were not able to use Foxbrough Woods because Foxbrough Woods was being coppiced and Mr Glover asked them not to.

5.149. Mr Gibbons said the report was of discussions regarding the campsite. He knew there were discussions regarding the campsite. He was not aware that the woods were involved in those discussions. The report concerned the campsite. He knew that the wood belonged to Southwark and had done for many years. He did not know in the very early years. He became aware of it when discussions took place regarding the campsite. The two became married

together. When he was a Parish Councillor, for 15 years from the early 1980s until about 2001, he learnt more about the involvement of Southwark with the woods.

5.150. He was both a Councillor and a Cub Scout assistant leader at the time of the discussions but was not directly involved in either capacity. There was a committee of the Council set up to deal with the issue. Wildlife was something the Cubs enjoyed and went to the woods for. Mr Gibbons was referred to O/App25, p.6, and agreed that he had used the woods as a source of wood, and as a playground for the cubs.

5.151. Mr Gibbons was taken to App25 p11. He knew Mrs Styles, the clerk. He was the only Parish Councillor who was also involved with the scouting movement. He was not a Parish Councillor in March 1983, but thought it was the end of 1983 going into 1984 that he became a Councillor, in the November time, when another Councillor, Mr Borrick, left and he took over his position. He had asked at times for donations towards running the scout group, and reported on any activities which affected the Parish Council. He was the chairman of the Parish Council for the last 3 years he held office.

5.152. He found out later on, more about the efforts being made to open up the wood, about 4-5 years after he had joined the Council. He was aware of the discussions with Southwark at that stage. That would have been the mid 1980s. He welcomed those efforts and thought that they were a good thing.

5.153. There was no re-examination.

5.154. Mr Gibbons was in my judgment an honest witness. He was straightforward about the factors which might have tainted his evidence and ready to concede the inaccuracies in his written evidence.

(8) Mr Peter Christopher Mansfield of 33 Cherry Trees, Hartley

5.155. Mr Mansfield provided an evidence questionnaire dated 28th April 2008[20] and a written witness statement in standard form dated 11th September 2008[21]. He has lived at his present address since 1962. He has used the application land from 1962 to date for walking for exercise and observing nature. He has seen others using the application land for walking and walking with dogs. He has used the application land approximately 4 times per month. He deleted the references in square brackets to fences in paragraphs 8 and 9. He stated that he entered and exited the application land at Hartley Manor Field. In his evidence questionnaire he confirmed that he agreed with the boundaries of the locality (or neighbourhood within a locality) shown on the map appended to the evidence questionnaire. He stated that he had known and used the land from 1963 to date. He stated that he accessed the land by road then public footpath over Hartley Manor Farm. He used to use the land, apart from the public paths from time to time for exercise. He used the land once a week on average for walking. His son also used the land for exercise. He did not know

[20] A/222
[21] A/210

of any community activities on the land, any use of the land by organisations for sports or pastimes or any seasonal activities. He ticked as activities he had seen taking place on the land: dog walking, bird watching and people walking. He did not know who owned or occupied the land, and did not believe that he had been seen on the land by the owner or occupier. He never sought nor was granted permission to go onto the land. He had never been prevented from using the land. No attempt had been made by notice or fencing or otherwise to prevent or discourage the use being made of the land by local inhabitants.

5.156. In oral evidence Mr Mansfield said that he had his own copy of his statement which he had had the opportunity of reading. He did not wish to change anything in it. When he completed the statement he had the explanatory notes at A/3299. He said you had to read it to fill in the statement, as some of the questions could be taken two ways, so it was a help. All the appendices were present when he signed his statement.

5.157. Mr Mansfield said that when he had been using the wood he had seen other people from time to time. He could not say whether they came from Hartley, New Barn, Longfield or further afield. He got to recognise people. He liked to go on every path he could find. The area was criss-crossed with paths.

5.158. He went to the wood out of curiosity after the storm. It was a bit dangerous because there were some trees which had not come down. He tended to steer clear for a while. He started using it some time afterwards, months, although he could not say exactly. It was dangerous for a time. He could not say whether the wood was affected uniformly or whether there was a different pattern in different parts.

5.159. In cross-examination Mr Mansfield was asked about the explanatory notes at A/3299, and asked to clarify what he had meant by questions which could be taken two ways. He gave an example of paragraph 5, where it says "which [I use] [I Used]" and said there were one or two other places like that. He was taken to the questionnaire, and his attention was drawn to the fact that whereas the questionnaire contained questions, the statement did not. He agreed that the statement contained statements of fact to which he had been asked to sign up and said he had done so and filled in what applied to him. He read through his statement last night. It might have taken him 10 minutes or quarter of an hour. He could remember filling in the Open Spaces questionnaire. He was surprised when he was rung and asked to fill in another. There were 2 or 3 other people in the library when he went there, and the Clerk to the Council gave him the statement and he took it home. She had rung him and asked whether he was prepared to do a statement. There were 3 or 4 people there, waiting for the form, or filling it in. As it was busy he decided to take his home. He did not discuss it with anyone else there. He completed the evidence questionnaire at home, having obtained it from the library as well. He did not complete it with an interviewer. He did not pay too much attention to the notes. He said it was quite a simple form to fill in. He filled it in himself at home.

5.160. He was asked about his answers to questions 14 and 15 in the evidence questionnaire. He agreed that, apart from time to time, he used the public footpaths. The public footpath was a wide path. He said that he liked the small paths. The whole area is criss-crossed with paths. He thought his answers were misleading, and that he tended to use both. He agreed that the questionnaire suggested that he was on the land once a week on average, and used non-public footpaths from time to time. He said that the questions are confusing, and that they looked almost the same to him when he filled the form in. He said the questions were so closely allied that he could have put the same thing in both bits. Just to vary it, he put from time to time. His intention was that from time to time would be the same as once a week. He agreed that once a week was very regular. When it was suggested that time to time was less regular, he said that was nit picking, and he had just wanted to vary it. He agreed that by the time he filled in the witness statement he had opted for the once a week. He used the land for recreation and exercise. He has blood pressure problems and makes sure he gets regular exercise. He also uses Foxbrough Wood. Sometimes he uses that instead. He might go for walk more than once a week. He thought once a week in Hartley Woods. He might go in Foxbrough Wood once a fortnight. He might go for a walk three times a week. He also goes to other parts of Hartley. The answer he gave did not include his excursions to other parts of Hartley.

5.161. He said that he had not really seen the use of the land change over the period. He had not seen a motorbike, although he had heard talk of them, or any mountain biking. There was talk in the village of use by motorbikes. He had seen horse droppings, but never a horse. He had seen that from time to time, not very often, possibly within the last 10 years. It was put to him that other witnesses had said horse riding had stopped after the great storm, and he said he was not certain when he had seen it. On his recent walks he had seen horses' droppings.

5.162. He remembered the great storm. Afterwards there were trees half down and half up, and he thought it was dangerous. Mr Mansfield had never been involved in the Parish Council, although he had been to an occasional meeting. He agreed that the report that two footpaths had been cleared was about 4 months after the storm. Mr Mansfield did not remember anyone with chainsaws in the wood after the storm.

5.163. Mr Mansfield was asked to cross-refer the footpaths referred to on A/3301 to the Registration Authority's plan. He said that he had no clear recollection of the time scale between the storm and being able to go back into the wood. He could not say whether the four months was consistent with his memory. His description of the wood as dangerous applied to both formal and informal footpaths. He made his own personal assessment and decided to keep away for a while. There came a time when he did not consider the woods dangerous and went back into the wood, although there were still trees which you had to skirt round. He agreed that when he went back in there were fewer paths available than there had been before the storm. It was a few months or years before there was as much access as before, although by the current day, with

trees rotting, the position has reverted to about the same as it was before the storm.

5.164. He was taken to O/App 13. He knows Yvonne Fry. She is a neighbour of his. Until recently Mr Wakefield did not know who owned the woods but he understood now what the Southwark section referred to. He said he was a bit confused by the second paragraph because he thought that the paths somehow naturally occur, and people find their way around obstacles. He agreed that the Parish Council and other people might be busy at work without him knowing about it. He was asked whether the reference to more work being needed to return the woods to the state they were in before the storm was consistent with his recollection and in particular whether the reference to the footpaths being overgrown and choked was inaccurate. He said he thought it was inaccurate. The woods were not particularly thick, and one could always find a way around any obstruction.

5.165. Mr Wakefield was asked whether there was any reason to doubt the accuracy of Mrs Fry's statement, and he said that he could not answer that question.

5.166. In re-examination Mr Wakefield said that the only official footpath so far as he knew through the wood was SD215. All the rest are not marked on the Ordnance Survey map. He did not differentiate between the paths and went over them all.

5.167. I was not satisfied with Mr Mansfield's claim in cross-examination that he had meant the same by "once a week" as by "from time to time". I consider that, when completing his evidence questionnaire, it is likely that he considered carefully how often he used the land apart from the public paths and that he meant by "from time to time", less frequently than the "once a week" that he used the land.

5.168. Mr Mansfield was the only witness who suggested that horse riding had taken place on the application land in recent years, and I do not accept his evidence in this regard.

5.169. However, I do accept Mr Mansfield's evidence that he avoided the woods for a matter of months after the Great Storm, having visited them once and assessed them as dangerous.

(9) Mrs Gill Pearson of Mintmakers, Church Road, Hartley

5.170. Mrs Pearson provided an evidence questionnaire dated 7th May 2008[22] and a written witness statement in standard form dated 11th September 2008[23]. She has lived at her present address since 1976. She has used the application land from August 1976 to date for walking, collecting conkers, bird watching, identifying wildlife etc with grandchildren and for photography. She has seen others using the application land for walking, exercising dogs, tracking, identifying birds and plants and for photography. She has used the application

[22] A/246
[23] A/234

land 2-3 times a week except when it is raining or the ground is exceptionally wet for early morning walks. She has used the land with her grandchildren 5-6 times a year. She entered and exited the application land at Manor Drive/ Gorseway/ Beechlands, Gorse Wood Road at the side of the railway line. In her evidence questionnaire she confirmed that she agreed with the boundaries of the locality (or neighbourhood within a locality) shown on the map appended to the evidence questionnaire. She stated that she accessed the land (i) from Manor Drive across Manor Field to Hartley Wood (ii) from Gorse Way to Gorse Wood to Hartley Wood and (iii) from the bottom of Gorse Wood Road to the footpath at the side of the railway line to Gorse Wood and then Hartley Wood. She walks through the land two or three times a week as part of her morning constitutional starting and 07:00 with three or four friends. She used to use the land 2/3 times per week usually at weekends and in holiday periods when her sons were at home and used to take part in the following activities: walking, nature study, games/tracking, hide and seek. She now takes part in the follow activities: walking, observing flora and birds through the changing seasons. Her immediate family use the land for walking, nature study, games/tracking, hide and seek. She listed the following community activities that take place or have taken place on the land: Scouting (for over 30 years), walking groups (for over 30 years) and bird watching (as part of the first two activities listed. The local Scout Group uses the land for sports or pastimes. The following seasonal activities take place on the land: in autumn, gathering conkers and leaves for painting or artwork. She ticked as activities she had seen taking place on the land: children playing, dog walking, picking blackberries, bird watching and people walking. She knew that the owner of the land was Southwark LB, and in response to the question do you know who is the occupier of the land stated "N/A". She thought it unlikely that she had been seen on the land by the owner or occupier. She never sought nor was granted permission to go onto the land. She had never been prevented from using the land. In response to the question as to whether any attempt had been made by notice or fencing or otherwise to prevent or discourage the use being made of the land by local inhabitants she stated that for a short period markers were used with labels identifying the area owned by Southwark LB. She did not have any photographs or any other evidence of use of the land by local inhabitants. In response to the question as to whether she had made a separate written statement she stated only on a Green Form.

5.171. In oral evidence Mrs Pearson confirmed the content of her witness statement. She had a copy of the explanatory notes when she completed her statement and read them: as she was filling in the form she referred to each section of the notes. The appendices were appended to her witness statement when she signed it.

5.172. She sees other people using the wood when she uses the wood. She thinks the people she met, and certainly over the last 13 years when she has been walking on a very regular basis in the wood, the majority of people had been Hartley people. She had got to know people that she met on a regular basis in the mornings, and knew quite a lot of people in the village, having lived here for some time.

5.173. She had not met anyone who had identified themselves as coming from Southwark.

5.174. She was asked by reference to the map where she mainly went. She said that she uses the centre path, not the footpath. They used to use that, but it is not so pleasurable walking along a fence. They turn towards point C. Sometimes they do the walk the other way around. Sometimes they come along the railway, turning south at point G, and cutting across towards B, then down the same central path towards point A.

5.175. She remembered after the great storm, she and her husband went to the woods out of curiosity to see what damage had been done. There were about 20 trees down on Manor Drive. They made their way around and through. Trees were down. You could see the root-balls. They had to amend their route to avoid the trees that were down. After the curiosity factor, they did not use it as frequently; in fact they possibly did not use it at all until more clearing had been done, which she now understands was in about the February time.

5.176. In cross-examination Mrs Pearson agreed that until the fence was erected she had tended to use the public footpath, and after that, she had migrated over towards the central footpath. The fence was erected about 5 years ago. She did not accept the proposition that up until then her predominant use was along the footpath. She meets people in various parts of the wood, on an early morning walk at 07:00. Monday to Friday there are relatively few people out in the woods at that time. She also uses it at weekends, not as regularly, but perhaps when she has her grandchildren with her. She takes family photographs and so on the woods. She did not take photographs after the storm, but is aware that people did, and had seen them doing so.

5.177. She said that it was always possible to get around and about, but it was easier once the obstructions had been removed. She thought the damage to Foxbrough would have been similar, but did not have a clear memory. She was not as curious as that. She is closer to Hartley. She has walked on the landfill site, but does not currently chose to walk that way. She could not say whether people preferred un-wooded areas after the storm. After the storm, she would still have walked, along the side of Manor Field, across the field by the Black Lion, in un-wooded areas unaffected by the storm. When she went back to the wood she could not remember clearly which paths had been cleared, but said that she could use the wood. The ability to get all around the area improved over time. She agreed that after a devastating storm it might have been a challenge to get around paths which had not been cleared, but said she quite liked a challenge. She could not remember which paths she used when she first went back into the wood.

5.178. She did not always know that the wood was Southwark's. She became more aware of it when they were building the toilet block and the hard standing, in the 1980s. She was not particularly aware of measures being taken by Southwark to improve public access to the wood. She did not question prior to that who owned the wood.

5.179. Mrs Pearson was taken to A/3303 and the entry next to FP217. She agreed that the entry is consistent with her recollection of what the path looked like after the storm. The entry next to FP215 again accorded with her recollection. She agreed that there was a period of months when she could not use the wood and then went back into the wood.

5.180. Mrs Pearson had not seen motorbikes using the woods, or mountain bikes or horse riding.

5.181. She filled out her witness statement in the library. There were others by the time she was finishing there were others there who had come to do statements. She did not discuss her statement. There was not anyone attending at the library organising production of witness statement. She had not produced a witness statement before.

5.182. I am satisfied that Mrs Pearson was an honest witness, and I accept her evidence.

(10) Mrs Julie Hoad of Cranmere, Church Road, Hartley

5.183. On the second day of the inquiry Mr Child on behalf of the Applicant indicated that he wished to call an additional witness, Mrs Julie Hoad, the clerk to the Parish Council to give oral evidence. Mrs Hoad had not provided a witness statement within the bundle, and her evidence was to be limited to the circumstances in which the standard form witness statements had been produced. A type-written summary of Mrs Hoad's proposed evidence had been prepared and was given to Counsel for the Objector, who indicated that, subject to having sufficient time to prepare cross-examination, he had no objection to the witness being called and I therefore permitted her to be called to give oral evidence.

5.184. Mrs Hoad is the Clerk to the Parish Council and has been since 1998. She provided a written summary of the evidence she proposed to give to the inquiry which she had produced during the course of the inquiry[24]. She had not previously produced any written evidence.

5.185. Mrs Hoad was present during Mr MacCready's evidence. She stated that she had been aware of the altercation between Mr MacCready and the librarian. He had arrived early at about 9:30 before the library was open. He had parked inconsiderately. When the librarian arrived she was cross. She said he was blocking other users, and he said that he was only going to be there for a little while.

5.186. In response to questions in cross-examination Mrs Hoad said that Mr MacCready was flustered. She was present in the library when he came. She was not present in the library when every statement was completed. She was there for the majority of the time, probably 75% of the time. The rest of the time her assistant was there or Parish Councillors. There was always someone from the Parish Council present. She agreed that one witness had said that

[24] A/281A

there was no-one there from the Parish Council but could not remember who. She said that that was not true: there was always someone there. She heard someone say that there was discussion. She did not think that that was untrue, although she did not directly witness any. Most people went into the library. The parish office is next door. There were on a number of occasions a number of people there, and she did not doubt there were discussions. She did not witness any, or encourage any, although she did not discourage it. No mention was made of encouraging it or discouraging it. She received advice on the process of securing witness statements from a solicitor. The pro forma was drafted by the legal advisers as well. She did not have any input into it.

5.187. Mrs Hoad said that she was herself a recent user of the land, probably within the last 12 months. She did not sign a witness statement because she did not have sufficient involvement with the land. She had read the pro forma statement and considered it. She was not concerned that it was pre-fabricated, because people's attention was drawn to the guidance notes, and at the top of the guidance it says that witnesses should amend the statement as they saw fit. She agreed that prior to the witnesses being referred to the guidance notes, no-one had referred to them. She could not say first hand that others had referred people to the guidance notes, but they were instructed to do so. With the numbers of witnesses producing statements it would have been very time-consuming to produce individual statements. She said it would not have been practicable with the time-scales involved to tailor-make statements, even for those who were giving oral evidence. It was not possible even to ask people to write down their own recollections because of the very tight timetables involved.

5.188. The selection of the actual witnesses did not take place until quite late on in the proceedings. It was based on the statements collected and the information contained in those. Therefore there would not have been time between having collected the pro forma witness statements, and selecting from them the witnesses who would give oral evidence to obtain individual statements from those people in time to put those statements in the bundle. However, she agreed, in response to my questions, that possibly it would not have been any more time consuming to give people a piece of blank paper and ask them to write down their recollections than it would have been to conduct the exercise that had been conducted.

(11) Mr Gordon L Angell of Gorse Cottage, Gorse Way, Hartley

5.189. Mr Angell provided a written witness statement in standard form dated 15th September 2008[25]. He has lived at his present address since 1980. He has used the application land from 1980 to date for recreational walking, dog walking, photography and nature studies. He has seen others using the application land for dog walking, jogging, nature study and recreational purposes. He has used the application land daily. He deleted the references in square brackets to fences in paragraphs 8 and 9. He stated that he entered and exited the application land at Beechlands/ Manor Lane (Hartley Manor).

[25] A/80

5.190. In oral evidence Mr Angell confirmed his written statement. He had a copy of the explanatory notes when he completed his witness statement, and read them before completing his statement. The appendices were attached to his statement when he signed it.

5.191. He sees other people using the wood when he is using it. He had probably met over a period maybe 20 people, two of whom come from outside Hartley, one from New Ash and one from New Barn. He had never met anyone who said they came from Southwark, apart from some men who were doing surveys recently.

5.192. Mr Angell said that he primarily used the paths marked in red and other paths. He found it difficult to relate the map to the position on the ground, and could not say whether all of them were shown on the map. He recognised them on the ground as being trodden down paths. His use was pretty general, but he always used the footpaths.

5.193. Immediately after the great storm Mr Angell was able to use the wood, and continued to do so. His recollection was that the storm created a lot of damage, but not total devastation. One could walk round the fallen trees, and create another footpath. He did not remember not being able to walk through the woods. Certainly a lot of trees came down. A lot of trees came down everywhere. He went to work the next day in Orpington and his son went to school in Rochester and his daughter went to school in Bromley. It was difficult, but not impossible. He was sure he had accessed the wood after the storm.

5.194. Mr Angell said that he had not filled out an Open Spaces Society questionnaire. He had seen one, but he had not filled one out. He said he probably had not filled one out because he did not have one, although he did not recall. He had answered a questionnaire in the wood. He was interviewed more than once.

5.195. He did not say that he was unimpeded when moving through the wood after the great storm. He did say that he still accessed the wood. He was asked whether after the storm of 1987, any part or parts of the land were inaccessible. After the storm parts of the land were inaccessible in the sense that you had to walk around a tree to get there, but there were no parts of the wood that you could not get to, except where there were fallen trees. You could get into all parts and move around.

5.196. Mr Angell was taken to O/App 18 and to a questionnaire which bears his name. The handwriting is that of the person who completed it, not his. He was referred to the answer to question 10: “After the storm of 1987, was any part or were parts of the land inaccessible” where yes had been ticked. He said if one were talking in a broad sense the whole of the woods were accessible, but parts were not. He accepted that he might have said yes, but said it depended on how the question was couched. He said if you walk along a footpath and there is a tree across it, that area becomes inaccessible, but you

can walk around that tree. He said it depends on how the question of accessibility is put.

5.197. He said he did not remember the amount of use of the wood diminishing significantly after the storm, because one created other paths by walking around trees.

5.198. His use had been pretty much daily. He had always been a dog owner. He remembered paths being cleared by chainsaws. He operated a chainsaw to clear access to Gorse Way, but not within Hartley Wood. He knew that people were using chainsaws within the wood. The evidence was there to be seen. He used a chainsaw to clear his own road. He knew that that kind of activity was going on.

5.199. Mr Angell was taken to O/App 12 and Richard Jones' report that two footpaths had been cleared. He does not know Richard Jones. That is not consistent with his recollection. He did not use the purple footpaths, he used the red ones. Taking into account the obstructions caused by the storm, he was able to use the wood as freely as before. He thought he probably had noticed a reduction in the number of other people using the wood at the time. Certainly in the period immediately after the storm, many people did not work, and access was not very good, certainly public transport-wise.

5.200. He learnt that Southwark owned the land maybe 20 years ago, some time prior to when the Woodland Trust became involved. He said there was no reason before that to know that it belonged to Southwark. Mr Angell was conscious of the Woodland Trust being in existence, but was not involved in it. He did not remember the campsite being developed in the adjacent land.

5.201. He had seen evidence of motorbike use of the land, but no motorbikes. He knew that the land had been used by quad bikes, but had never seen them. He had not seen mountain bikes or horse riding. He had seen tyre tracks, and heard the noise from outside the wood. That use had always existed. When asked whether it was so used in the 1980s, he said, very loosely yes. He is a keen amateur photographer, and has taken photographs within the wood. He did not take any photographs of the storm damage.

5.202. Mr Angell was taken to O/App 25, p.4, paragraph 4, and the reference to the Woodland Trust. He was not aware of any of the initiatives by Southwark.

5.203. Mr Angell signed his witness statement at home. He picked it up from the Parish Council, took it home and filled it out and signed it, and took it back. He was taken to paragraph 8. It was put to him that the suggestion there was that someone had recently told him this. He said that the words did not give a time factor. He had been informed, and had had that knowledge for a number of years.

5.204. Mr Angell did not know whether the Woodland Trust ever did become involved with the wood, and said he was not community-orientated enough to know.

5.205. Mr Angell was recalled to deal with the issue of the effect of the Foot and Mouth crisis on the land. Mr Angell remembered the Foot and Mouth outbreak. He was aware that for a period in 2001 there was a prohibition on user of public rights of way within Kent. During this period he continued to use Hartley Wood, and saw other people doing the same. Mr Angell said he enters the wood mainly from Beechlands Close, halfway down Gorse Way, probably at point B. He had only become aware that Hartley Wood contained public footpaths during the course of the inquiry. Within the wood there is nothing to indicate that any path is different to any other. He did not remember measures being taken after the storm to clear any particular paths. He did remember works taking place. He was asked whether the works were restricted to particular paths. He thought the works were to deal with major obstructions rather than any particular paths. He agreed that possibly certain paths enjoyed the benefits of clearance treatment rather than others. He said there was certainly no notice where he accessed the wood. He was not present during Mr Glover's evidence. He did not see a notice in connection with Foot and Mouth. He was aware of it through news generally. It did not occur to him that the areas he used were affected. He was aware that the footpath alongside Mr Glover's meadow was affected, but saw no reason to stop using the woods. The footpath he knew was a footpath was SD217, from Manor Drive, across the field, and down the side of the field. He knew it was a public footpath, and that it was affected by restrictions, but was not concerned, because he was not intending to use it. He had used it on organised footpath walks. He did not think SD217 was necessarily more obviously a footpath than SD215. Mr Angell did not see any sign at the end of Beechlands Close. He had not ever seen a sign on paths leading to the wood and within it indicating that there was a public footpath. He has never used the subway at the bottom of Gorse Wood Road to access the wood, perhaps only once in 28 years, and has never gone in from the entrance at the end of Gorse Wood Road either.

5.206. I am satisfied that Mr Angell was an honest witness and I accept his evidence.

(12) Mr Ian Mansfield of 33 Cherry Trees, Hartley

5.207. On the third day of the inquiry Mr Child applied to introduce to the inquiry two photographs of the wood taken in January 1994, and three photographs taken by Mr Mansfield's son and daughter immediately after the great storm. Mr Wald on behalf of the objector took no objection to the admission of the photographs, but asked that evidence should be given as to the date on which they were taken and the location of the photographer when taking each photograph.

5.208. On the morning of the fourth day of the inquiry, Mr Child stated that, in relation to the photographs produced on the third day, the three photographs dated 1987 were not in fact of Hartley Wood. The woodland shown was Foxbrough Wood. The two taken in Manor Field have Hartley Wood in the background. The Applicant was no longer seeking to rely on the photographs.

5.209. Mr Child then applied to introduce a further photograph to the inquiry, taken by Ian Mansfield, Peter Mansfield's son. Mr Wald indicated that he had no objection to the photograph being introduced or to Mr Ian Mansfield giving evidence as to when it was taken and where.

5.210. Mr Mansfield had not provided a witness statement. Although he did not confirm this to the inquiry, I think that the evidence questionnaire at A/3016 is probably his. In his evidence questionnaire he confirmed that he agreed with the boundaries of the locality (or neighbourhood within a locality) shown on the map appended to the evidence questionnaire. He stated that the land was known as Hartley Wood. He had known and used the land from 1975 to 2008. During the time he had used the land the general pattern of use had remained basically the same. He accessed the land by footpath. He used the land, apart from the public paths once a month for leisure activities and took part in walking, taking photographs and nature watching. His immediate family also used the land for walking and nature watching. He listed as community activities which had taken place on the land, Scouting and Guides activities. No organisations used the land for sports or pastimes and no seasonal activities take place on the land. He ticked as activities he had seen taking place on the land: children playing, dog walking and bird. He did not know who owned or occupied the land, and did not know whether he had been seen on the land by the owner or occupier. He never sought nor was granted permission to go onto the land. He had never been prevented from using the land. No attempt had been made by notice or fencing or otherwise to prevent or discourage the use being made of the land by local inhabitants.

5.211. In oral evidence Mr Mansfield stated that he lives with his parents, Mr and Mrs Peter Mansfield. Mr Mansfield took the photograph produced to the inquiry and included in the Applicant's bundle at A/3519. He said that it is a photograph taken within Hartley Wood. It was taken within a few weeks of the October 1987 storm. He was not sure what time of day it was taken, but thought it might have been taken at midday or in the afternoon. He could not be sure where it was taken, and said it all looks very similar inside the wood. He usually enters from Manor Field, through the stile, sometimes straight down towards the railway, and sometimes he does a circuit. He thought it was likely that he had taken it in the southern end of the wood, because that is the area he goes to most. He was asked why he had taken the photograph. He said it was a winter afternoon, with the sun peeking through the trees, the sun quite low in the sky, October-ish.

5.212. In cross-examination, Mr Mansfield asked for his best recollection as to where the photograph was taken. He said it was a long time ago and he could not be sure. He thought in the centre in the southern area. He agreed it was a guess, but thought it was unlikely to be in the northern part. He said it was definitely in Hartley Wood. He did not know whether he had gone off the path to take the photograph, and said that he sometimes does that, but agreed that it did not show any informal or formal paths. He thought that it was within 2 or 3 weeks of the storm, at the least. He had found the photograph in a box of photographs this morning. It was not within the album from which the photographs had been taken which had previously been produced to the

inquiry. Some of those photographs were taken within a day of the storm, some were taken later. The one produced to the inquiry was taken with the ones of Manor Field. He said that they were taken two or three weeks after the storm. He did not agree that it would have been late December or January. He agreed that the leaves would be on the trees into November. He said that that year, the storm might have brought the leaves down early. He thought the photographs were taken between two and three years after the storm.

5.213. He does not remember being excluded from the wood in 2001 for Foot and Mouth. He was not aware of any signs. He said he would have gone there to walk at that time. He remembers hearing on the news that areas of the country were off-limits. He did not believe that that had affected him in his use of the wood.

5.214. He thought that the photograph was taken within a month of the storm. He agreed the photographs are undated and he had no records which would confirm the date.

5.215. He did not remember any significant event. It was put to him that he had been candid when asked to state the location, but did not confess to difficulties in dating the photograph. He agreed he could not be sure of the date, but thought that the trees which came down in Manor Field were not there for very long after the storm, but had been removed reasonably quickly.

5.216. He had discussed the inquiry with his father. Mr Mansfield said that he thought he had filled in a form in relation to the application, although not the most recent one. He was asked whether he had been told that it was important to indicate that the wood was free from obstruction very soon after the storm. He agreed that he had been told that obstruction was an issue. He had known that the photograph was of the inside of Hartley Wood when he found it because he was familiar with Hartley Wood. He agreed that he knew that the area between SD215 and Hartley is woodland. He was 100% certain that the photograph was from Hartley Wood. He said he knows the wood and knew that it was taken within Hartley Wood. In his album he has half a dozen and two or three more. He went out principally to take photographs of trees that were down. There are no other photographs that he has identified from his photographs as being photographs of Hartley Wood.

5.217. In response to my questions Mr Mansfield said that he had dug out the photographs presented to the inquiry from his album and given them to his father yesterday because he had thought they might be relevant to the inquiry. I asked him how he could now be sure that the photographs presented to the inquiry yesterday as being of Hartley Wood definitely were not Hartley Wood. He said that it was the size of the tree that was down in the photograph, and he did not think that there were any trees of that size within Hartley Wood.

5.218. In relation to the position from which the photograph was taken, he agreed that when taking a photograph of the setting sun, one must be facing west, but

was not sure that the photograph showed the edge of the wood. He commented that woods were quite similar.

5.219. Mr Wald asked about the leaf from the album which was presented yesterday. Mr Mansfield agreed that he had, on reflection, decided that they were not of Hartley Wood. He found the photograph presented today at 09:30 this morning. He had not had the opportunity to look at it carefully before giving evidence, but had looked at it in some detail while giving evidence, and said that he remained absolutely certain that it was taken within Hartley Wood.

5.220. Having regard to the amount of foliage visible on the fallen tree and standing trees in the other photographs taken by Mr Mansfield, which he subsequently decided were not of Hartley Wood, I am unable to accept that the photograph which he did think was of Hartley Wood was taken in October 1987. I was not satisfied that Mr Mansfield was able accurately to remember when the various photographs he had taken had been taken, and, particularly having regard to the fact that he had the previous day put forward photographs to the inquiry which he later said were not of Hartley Wood, I am not satisfied that he was able with the requisite degree of certainty to state where any particular photograph had been taken.

Documentary evidence on behalf of the Applicant

5.221. The Applicant submitted a number of documents. Several were referred to in the course of evidence. I have re-read all the documents submitted, whether specifically mentioned or not, and here set out details of those I consider most relevant.

Applications to include introduce further documents to the inquiry by the Applicant

5.222. The day before the inquiry commenced, the Applicant's legal representatives sent by email to the Objector, the Registration Authority and me copies of 9 additional pages of documents on which the Applicant wished to rely. No objection was taken to the inclusion of these documents within the Applicant's bundle, and I therefore permitted them to be included in the Applicant's bundle at A/3472-A/3481.

Information and documents from Mr Richard Jones

5.223. The Applicant produced a letter dated 16th September 2008 from Mr Richard Jones of Loan Oak, Castle Hill, Hartley addressed to Mrs Hoad, the Clerk to the Parish Council[26]. No reason was advanced as to why the Applicant had not chosen to call Mr Richard Jones to give oral evidence. Mr Jones' account of his current recollection of the state of the wood after the Great Storm was not subject to testing by cross-examination and I have therefore approached this evidence with caution.

5.224. Mr Jones wrote that he understood that it had been alleged that the public were unable to access Hartley Wood due to storm damage which closed the public footpaths. He stated that, as footpath representative, he had been

[26] A/3300

responsible for clearance of storm-damaged paths in Hartley, Fawkham and Ash. The final clearance of the paths through Hartley Wood using chainsaw contractors had taken place on 12th and 16th February 1988. Long before those date Mr Jones and his friend Mr Ray Richards had carried out a survey and a preliminary clearance using bow saws and loppers. They had met people walking their dogs and had been annoyed to see people walking in the wood but not making any effort to clear the paths. Mr Jones enclosed what he described as a more detailed note[27], together with a copy of his letter dated 15th March 1988 to Mr Ogley of the Highways Department of Sevenoaks District Council[28] and of his report on footpaths and bridleways referred to in that letter[29].

5.225. A/3301 also took the form of a letter addressed to Mrs Hoad and headed "Access to Hartley Wood after the Great Storm 1987". Mr Jones stated that he and Mrs Hoad had recently discussed the condition of SD215 and SD295 in Hartley Wood after the Great Storm and whether the damage prevented access to the wood. He had said that people had still used the wood and that a chainsaw gang he organised had subsequently cleared the paths. He set out the history of his involvement: he retired at the end of 1985, and, together with Ray Richards, who had retired a few months earlier, he walked all the local paths for some distance around Hartley, removing barbed wire from stiles and cutting back undergrowth. In the summer of 1986 he became the Footpath Representative for Hartley, and represented the Parish at meetings at Sevenoaks District Council, the then Highway Authority.

5.226. Mr Jones stated that after the Great Storm many woodland paths were completely obliterated by the branches of fallen trees, and gave examples. Mr Ogley, the Rights of Way officer for Sevenoaks District Council had asked Mr Jones to organise the clearance of rights of way in the Hartley area.

5.227. Mr Jones and Mr Richards walked all the local woodland paths and identified those needing clearance. They compiled a report which was sent to Mr Ogley. Mr Jones said that he would have walked the Hartley paths first before extending his survey to the distant parts of Fawkham and Ash, and therefore estimated the date of his visit as November or early December. They started from Gorsewood Road on SD295 and followed the railway line, then the trodden track into the wood until it became covered in branches, whereupon they retraced their steps to the railway line, and followed it to SD215. SD215 was also obliterated by fallen branches but they were able to follow its route by following the small pieces of rusty barbed wire stapled to tree trunks on the east side of the path. After the junction with SD295 the path, although obstructed, became easier to follow. Mr Jones said that he had been astonished to see people walking their dogs in the area to the east of the path, but thought that that could be explained by the fact that people entering the wood from the Hartley Manor end continued straight ahead at the point where SD215 turns sharp left.

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27 A/3301

28 A/3302

29 A/3303

5.228. Mr Jones said that he was able to recruit Mr Martin Erwood's chainsaw gang to clear the obstructed paths. Prior to the chainsaw gang starting work Mr Jones and Mr Richards dealt with small trees using a bow saw and loppers. On SD295 they were also able to cut branches off larger trees and make the path passable. The trees were bigger on SD215 and so this was not possible. He remembered being perched on the crown of a fallen tree cutting off the smaller branches and watching a lady and her dog picking their way around the edge of the tree.

5.229. Mr Jones provided two contemporaneous documents: his letter dated 15th March 1988 to Mr Ogley of the Highways Department of Sevenoaks District Council[30] and his report on footpaths and bridleways referred to in that letter[31]. The letter is headed "Clearance of rights of way after storm damage October 1987". The letter enclosed two bills for payment, and attached what Mr Jones described as "a copy of [his] original report noted to show the present position regarding obstructed paths."

5.230. A/3303 is the report. Footpaths SD215 and SD295 are dealt with together. The entry reads:

> "Sections of these paths through Hartley Wood completely obliterated by fallen trees.
> Chain & handsaw
> Note residents with 40 years knowledge of wood unable to find their way."

5.231. The notes to show the updated position are in a slightly darker ink. The entry against SD215 and SD295 is marked with a cross, which appears from the other entries to denote that the path referred to has been cleared, and the entry is marked with a note "cleared by chainsaw gang".

Letter from Mrs Laister

5.232. A/3472 is a letter from Mrs Pamela Laister of Mariners, Gorse Way, Hartley dated 24th September 2008 and addressed to Mrs Hoad, the Clerk to Hartley Parish Council. Mrs Laister states that the Parish Council's solicitor had telephoned her regarding the pamphlets produced by Southwark Council which gave details of their campsite on the landfill and walks in the woods. Mrs Laister said that she was not sure whether she had been that helpful. She said that as far as she could remember she and others had walked unhindered in the Southwark woods from the 1970s onwards. At that time the landfill was still in use. Once the landfill was capped, she and others had also walked on that area.

5.233. In the late 1970s and early 1980s fly tipping had started on the landfill. Mrs Laister contacted Southwark Council's Parks and Open Spaces department (she thought that was the department she had contacted) to tell them that this had happened. On one occasion a successful prosecution had resulted. On

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30 A/3302
31 A/3303

another asbestos had been tipped and environmental officers from both Southwark and Sevenoaks had become involved. At about this time and after the campsite had been established, during one of Mrs Laister's conversations with Southwark about fly-tipping, she had in passing discussed the campsite and the lack of interest shown by the youngsters of Southwark in using the site and in country matters. Mrs Laister was asked whether she would like to see a pamphlet/leaflet produced by Southwark Council detailing the flora and fauna that could be seen in the woods and a nature trail. She said yes, and following this conversation a couple of leaflets were sent to her. She stated that she had not at any time sought permission to walk in Southwark Woods or been given to do so and did not know of anyone else who had.

Extracts from the records of Hartley Parish Council

5.234. A/3473- A3481 appear to be extracts from the records of Hartley Parish Council.

5.235. A/3474 is a letter from Mr West to Mrs Lea of Hartley Parish Council concerning a complaint made by her by letter of 6th May 1986 that motor cyclists were using Hartley Wood as a scrambling track. The second paragraph states that Southwark would be sending an officer to Hartley Wood to assess the situation and to look at ways in which entry to the woods could be closed to motorcyclists without hindering the other users. The fourth paragraph states that Southwark had accepted a few weekend bookings from various Scout and Cub groups for weekends only over the following few months. The season had started late because of vandalism to the toilet block.

5.236. A/3473 is a memo of a telephone conversation on 5th August 1987 between someone at the Parish Council and Mr West of Southwark Leisure about a complaint in relation to the campsite. The memo shows that the campsite was being used at this time, but reference is made to the fact that there had only been four bookings that year.

5.237. A/3475 is a memo of a telephone conversation between the Clerk to Hartley Council and Mr West on 11th January 1989 and of a second telephone conversation between the Clerk and Mr Brown at Kent County Council relaying to Mr Brown the information obtained in the first conversation. The purpose of the telephone call to Mr West was to seek a response from Southwark Council to the letters written by Hartley Parish Council and Kent County Council regarding Hartley Woods. The fifth paragraph of the memo states that Mr West said that Southwark had ceased using the campsite the previous year.

5.238. A/3476 is a letter dated 15th March 1989 from Mr Rayner of Southwark Property to the Clerk to Hartley Parish Council, stating that the Council would be considering the future of the site within the next few weeks and whether to declare it surplus to requirements and deemed for disposal.

5.239. A/3478-3481 is an undated document headed "For sale by informal tender Former Refuse Depot Longfield Kent". A contact telephone number is given with an 071 area code, which suggests that the document was produced after

May 1990, when the London 01 area code was replaced with 071 and 081, or only shortly before that date, and before April 1995, when the 071 area code was replaced with the 020 area code now used. The area for sale comprised approximately 69 acres and included the infill area, the former campsite and parking area and approximately 28 acres of woodland. The plan at A/3479 shows clearly the former campsite/parking area.

Documents from Kent Trust for Nature Conservation

5.240. Documents from the bundle of documents obtained by Dr Roberts were inserted into the Applicant's bundle at the request of the Applicant at A/3516 and A/3517. A/3516 was a letter dated 11th August 1989 from Kent Trust For Nature Conservation to Kent County Council's County Planning Officer objecting to an application for a proposed gypsy site. The letter stated that the site was close to Hartley Wood, a Site of Nature Conservation Interest, and enclosed details of Hartley Wood. A/3517 is those details, which comprise Kent Trust for Nature Conservation's record in relation to the Site of Nature Conversation Interest site reference number SE46, which includes Hartley Wood. The record describes Hartley Wood, and notes that storm damages was about 25%.

6. <u>The Objector's evidence</u>

6.1. I heard oral evidence from the following witnesses on behalf of the Objector.

(1) Dr Jennifer Roberts of Orchard House, Church Road, Hartley

6.2. Dr Roberts provided a written witness statement dated 17th September 2008[32]. Dr Roberts stated that she had lived at her current address in Hartley since she first moved to the area in June 1997. She had known the land since that date. She uses the land about 3 or 4 times a year and has probably used the land a total of 35-40 times in all, mainly in the mornings on various days of the week. The land forms part of a circular walk she often takes when she has visiting relatives or friends. She usually accesses the land through the access point marked A on the Registration Authority's map and predominantly sticks to the footpaths. She does not leave the footpaths or use any other areas of the land for any other reason or activity except as a means of access. She does not remember seeing any other people on the land while she has been walking along the footpaths.

6.3. Dr Roberts has acquaintances, particularly from New Barn, who predominantly use the footpaths over the land for access, when they are en route to elsewhere. Her understanding from occasional attendance at meeting held by the Kent Wildlife Trust is that walkers are as likely to come from Longfield and New Barn as Hartley.

6.4. Dr Roberts had been told that Southwark Council distributed leaflets in the 1980s providing information about the woods and inviting people from the wider area and as far afield as South London to walk in and use the land. She had heard this from two sources: Mrs Brudenell (now deceased) who had told her she received such a leaflet through her door in the early to mid-1980s, and

[32] O/App6

Mr Laister, who had spoken publicly at a meeting of the Kent County Council Regulation Committee, stated that his wife had received similar leaflets from Southwark Council in 1983, inviting the recipient to come and use the land.

6.5. Dr Roberts did not live in Kent at the time of the 1987 great storm. She had read articles in The Hart, the local parish magazine and minutes of Hartley Parish Council, and had spoken to acquaintances in the area, and understood that the storm had had a devastating effect on the area. She believed that the land had been rendered impassable by fallen trees. In 1997 much storm damage had still been evident on the land in the shape of fallen and uprooted trees.

6.6. In oral evidence Dr Roberts confirmed her written statement. She was interviewed and asked questions by the team from Southwark who took her answers and produced a draft witness statement. They asked her to go through the draft carefully and delete anything which was incorrect. They then produced a final draft which they asked her to check carefully before signing. It was done at her convenience.

6.7. Dr Roberts confirmed that she could give evidence only in relation to the period 1997-2005, so far as the relevant period was concerned. Hartley Wood is not that close to her, and she uses it on occasion only. She said that the official footpaths are extremely well-marked, which suggests other people stick to them. She has not seen anyone else there when she has been there, so cannot comment more exactly on what others do.

6.8. At the time of the storm she lived in Hertfordshire, on the edge of the storm, but there was still substantial damage there. She also has an uncle who worked at the pumping station at Hartley Bottom about half a mile from the application land. That was completely inaccessible because of flattened conifer trees. Her uncle had a lorry with lifting gear on the back, and had the contract to clear those trees from Hartley Bottom, so that access could be restored. There was so much wood that he disposed of it locally rather than taking it back to Sittingbourne where his business was based. She also had friends in Surrey who she visited a few weeks after. Although the roads were open by that time, there were fallen trees at the side and the footpaths were impassable. Her neighbours here have also told her that they lost many trees in their gardens.

6.9. She said that she thinks Hartley Wood is an old coppicing wood, so the trees would have had lots of trunks, which were weakened at the bottom where they were cut. She thought that the trees would have come down like ninepins. She said that she had spoken to Richard Jones and he had told her how the woods were left. Trees had come down and they had to clear them one by one to clear the footpaths. They did not talk about the informal paths; he was just concerned about the footpaths.

6.10. The references in paragraph 5 of her statement were to the documents behind App 12 and 13. She had found the article in *The Hart* and had sent it to Kent County Council, and had extracted the Parish Council minutes and passed

them on to Southwark. She said that it was likely that, if there had been substantial storm damage, light would have been let in, and the undergrowth would have got overgrown.

6.11. Dr Roberts' doctorate is in chemistry, but she said that she is interested in growing things. Her friendship with Mrs Brudenell arose out of a common interest in land management.

6.12. Dr Roberts said that she realised that there must be lots of documents in existence. She had been told that there was a planning application to use the area as a campsite, and also an application to use it as a gypsy site. She had looked in Sevenoaks District Council's archives, and that was where she had found the documents in Appendix 25. Lots of the documents were on microfiche and the microfiche quality was not very good. It was not viewed by her but by a friend of hers. She thought that the material supplied would be the important documents and would be representative of the content of the microfiche.

6.13. Dr Roberts' children went to school in New Ash Green. Her children's friends from New Ash Green tended to come places like Hartley Woods to make BMX circuits because no-one disturbed them there. That is how she knows that Hartley Woods has been used for activities other than walking.

6.14. In cross-examination Dr Roberts was asked about the documents in Appendix 25. She agreed that the documents in the bundle were a selection of the documents she had passed to Southwark's representatives.

6.15. Dr Roberts obtained the documents relating to the gypsy campsite. They had been handed over to her the Thursday before the inquiry, although a summary of the content of the documents had been emailed to her two or three weeks previously. She had forwarded that email to Southwark, although it had not been possible to email the documents, as the copies were poor, so Southwark had collected the documents from her on the Tuesday morning on which the inquiry began. She had the summary on her computer, but had not brought it with her.

6.16. Dr Roberts was not approached by Southwark to assist in the preparation of the inquiry. She got involved because some friends of hers had been to the Kent County Council meetings, and had thought that the whole truth was not being presented. She had therefore decided that Southwark should have all the available information and had passed it on. She said that she is not particularly hostile to the Parish Council, although she has asked questions and has found that she does not always get a straight answer. She approached Southwark, rather than the other way around, but she was a reluctant witness, and said Mrs Brudenell, had she not died, would have been the witness. She did not have personal experience to bring to the inquiry; she had acted as the coordinator for information obtained, and had passed things on to Southwark. Some of it they had taken no notice of. The group she coordinated was a group of friends who meet on a regular to discuss things that are going on,

including some of the things that the Parish Council does, things in Ash Green, and sometimes things that Dartford are doing.

6.17. Dr Roberts was asked whether she could speak to the truth of the content of the documents. She agreed she had no personal knowledge of the truth of the content of the documents; they were simply copied from the files of Sevenoaks District Council.

6.18. Similarly she had no first hand knowledge of the campsite. Dr Roberts did know about the leaflet through her friend Mrs Brudenell, but agreed that she had not seen it at the time it was available. She had not used the woods relying on the leaflet. The first time the leaflet came up was at a Parish Council meeting. Mrs Laister brought it to the meeting, and Mrs Brudenell recognised it, having seen it before. Mrs Brudenell was going to attend the site meeting in relation to the woods in November, and she spoke to Dr Roberts, asking whether there was a copy of the leaflet available. She said she remembered the leaflet, and described its content fairly accurately. She then attended the KCC meeting, and said that she had also had a copy of the leaflet. She told Dr Roberts about this, and Dr Roberts asked how she could remember a leaflet from 20 years previously. She was adamant it had come through her door. She knew the content and how it was folded. She said she was sure she still had the leaflet because she had used it in some work she had done with primary school children. She said she would find it, but unfortunately within a few days she was taken seriously ill and subsequently died, so she never had the opportunity to look for it.

6.19. Dr Roberts herself had never used the wood relying on the leaflet. When she walks she sticks to footpaths and does not go onto other people's land without permission.

6.20. Paragraph 2 of her witness statement was put to her. She said that the access referred to was to Gorse Wood Road, or from Longfield. She did not accept that her statement suggested that she went off the paths.

6.21. She had never seen anyone else on the land, although she tended to go mid-morning, and thought dog-walkers would tend to go early morning or after lunch. She said that she was not exactly looking for people and agreed she would not have been able to see people in the wood from the footpaths she was using.

6.22. She had no personal knowledge of people who came to use the woods in the 1980s when the leaflet was published.

6.23. Dr Roberts was taken to A/3472. Dr Roberts agreed that she did not have any personal knowledge as to how Mrs Laister had acquired the leaflets, she only knew what people had told her.

6.24. Dr Roberts agreed she had no first hand knowledge of the impact of the storm on Hartley wood, as she did not live in Hartley at the time. She could only say what her own experience was, and what her neighbours had told her. She said

that local residents had told her that Foxbrough Wood was impassable after the storm, and she thought that the whole area would have been affected identically. She could not comment on the evidence of witnesses who said that there more damage on the western rather than the eastern side. She had no personal knowledge until she moved to Hartley in 1997.

6.25. In re-examination, Dr Roberts was asked what motivated her in providing assistance to the inquiry. She said that she and Mrs Sharp had been to a planning meeting, which was followed by a special projects meeting, to discuss the agenda for the KCC meeting in relation to Hartley Woods. The agenda had not arrived, but the Parish Council appeared confident that they were going to get the village green. When they got home Dr Roberts rang KCC. The officer sent them a copy of the agenda by first class post. She looked at it, and thought some of it did not ring true. Mrs Sharp decided to that she wanted to go on the site visit. It was arranged that Mrs Brudenell would take Mrs Sharp. They gained the impression that the decision had already been made before Southwark arrived (Southwark were late). They thought that was unfair. They had not originally intended to go to the meeting at KCC, but decided to go to the Regulation Committee meeting. Dr Roberts understands that Mrs Sharp spoke at the meeting. No decision was made and Southwark was given a chance to put its case. They went to the meeting in February, and were again angered by what took place at the meeting. The group therefore decided to provide the inquiry with any information they could obtain, so that the decision would be fair, whatever it was. All the information provided has been in the public domain and could have been obtained by Southwark, had they spent the time and money doing what Dr Roberts and her friends had done.

6.26. There was nothing to suggest that any document was a forgery. They all appeared to be genuine records.

6.27. The questionnaire marked Pam Laister would be the Mrs Laister she had referred to. Dr Roberts did not know Mrs Laister very well, but knew her to say hello to in the street. She was cross-referred to Mrs Laister's witness statement[33] in which she stated that she had seen a copy of the leaflet. Mrs Laister was sitting in the audience on Wednesday. She is retired, but able bodied and sharp-minded. Dr Roberts knew of no reason why she should not have been called to give evidence about the leaflet.

6.28. Yesterday she had also been shown an original of the leaflet by Mr Cramp, who she said was sitting in the audience. He had said he had two copies of the leaflet. He had also produced a witness statement[34] in which he stated that he had previously seen a copy of the leaflet. She did not know of any reason why the Applicant might not have called him. She thought that anyone who had had the leaflet had deliberately not been chosen to give evidence.

[33] A/1655
[34] A/1133

6.29. She did not think that the leaflets were distributed door to door. Although Mrs Brudenell's had come through her letter-box, they thought a friend had posted it. She thought that people from Southwark must have been on the land, and had handed leaflets to people whom they had met on the land. She had been surprised that none of the people who had given evidence had said that they had had copy of the leaflet.

6.30. Dr Roberts was asked about O/App 25 p.18-21. She explained she had extracted documents relating to the campsite development and to the possibility of the development of a gypsy camp on the landfill site. The document was an annex to the County Secretary's note of a meeting at Longfield School on 21st March 1990. She thought that the note backed up her evidence that the storm had been extensively damaged in 1987, and also suggested that the wood had been damaged in the 1990 storm.

6.31. In cross-examination Dr Roberts was taken to the photographs at A/3506 and A/3507. She said that there were records of the Parish Council about the travellers' horses escaping from the tip into the woods. She agreed that the wood appeared to be passable in the areas shown in the photographs. She commented that the wood had regenerated quite well. She did not suggest that anyone had been into the wood cutting (coppicing) the trees, but rather referred to the natural process of regeneration after storm damage.

6.32. I found Dr Roberts to be a reliable witness to the extent that she provided evidence of fact.

(2) Mr Marcus Mayne of Southwark Property, Chiltern House, Portland Street, London SE17 2ES.

6.33. Mr Mayne provided a written witness statement dated 19th September 2008[35]. In oral evidence in chief Mr Mayne confirmed and expanded upon his statement. Mr Mayne is employed by the London Borough of Southwark as Principal Surveyor within that authority's Property Department, and has been so employed since 1992. He currently works for Southwark on a part-time basis, three days a week. He is a member of the Royal Institution of Chartered Surveyors. Mr Mayne has been personally involved with the land since July 2007, when the village green application matter was allocated to him. Prior to that he had been aware that a couple of colleagues had been dealing with a village green application. There was a reorganisation within Southwark. His colleagues had gone to a new department which had been set up. He had remained within the Property Department and had been asked to take over the project. Since July 2007 Mr Mayne has visited the land on five occasions, and had carried out investigations in respect of it. Other than that, he had no personal knowledge of the land.

6.34. Mr Mayne gave a description of the land and its situation in paragraphs 2-7 of his statement. Mr Mayne produced copy official copy entries of title for land including the application land and for the adjacent land known as Longfield Refuse Disposal Site. The land forms part of land registered under Title

[35] O/App 5

Number K911593 on 27th October 2006. Southwark was the first registered proprietor. Although Mr Mayne states in paragraph 8 of his statement that he deduced from an entry in the charges register that Southwark had taken a conveyance of the land in February 1914, in fact that entry is on the register of the adjacent land, Title Number K512644, and relates to part only of the land within that title. There are no clues on the register of Title Number K911593 as to when Southwark acquired the land. It was Southwark's case at the inquiry that it had been the owner of the application land for the whole of the relevant period. This was accepted by the Applicant, and it appears from the other documentary evidence before the inquiry overwhelmingly likely.

6.35. Mr Mayne said in oral evidence that he was not aware of too many parcels of land owned by Southwark which were dislocated from Southwark. He said that when ILEA split up, its spoils were divided, and the same happened in relation to the GLC, but most of the land Southwark had acquired as a result of those processes was within London. This site was furthest out from Southwark of which he was aware.

6.36. Mr Mayne said that he had read the files from 2005, and had seen that there was an application made to Kent County Council in October 2005. His colleagues took legal advice and advice from planning consultants. They negotiated with Hartley Parish Council. He understands that at the time there was uncertainty about village green law. From reading the file, it appeared that they had decided to leave the application and see how the *Trap Grounds* case was resolved by the House of Lords. When he took over in the middle of 2007, he got the impression that the authority did not really know where it stood. The lawyers previously instructed did not appear to him to have particular expertise in the area, so he instructed them to go out and get the best legal advice they could find. As a result of that instruction the advice of George Lawrence QC was obtained.

6.37. Mr Mayne said in his statement (at paragraphs 11 and 12) that it quickly became apparent from his investigations that the geographical dislocation of Southwark from the land had made it difficult for Southwark to invigilate the land as it might have done had it been located within its area. He examined records and enquired with long-serving employees, but was unable to locate any officers within Southwark's Environment and Leisure or Property Department with any historic first hand knowledge of the application land or of the landfill site. The files he did find related mainly to the landfill site and the application land appeared to be treated as an adjunct of the landfill site. He was aware of Southwark's duty as a local authority to safeguard its assets, including the application land, and concluded that this duty would be best discharged by further inquiry and by testing the evidence of the Applicant.

6.38. In paragraph 13 of his statement Mr Mayne listed a number of issues in relation to which he had concluded from the objections lodged on Southwark's behalf by Hepher Dixon and from the advice on the merits provided by Mr Lawrence QC that further detailed investigations were required. He agreed that some of those issues were not pursued at the inquiry. He said that he relies on advice he gets, as he is not a village green expert. The

recommendations he makes to the council are based on legal advice. The outcome of the advice was that there were a number of issues raised. The fencing issue had not been pursued because it was so difficult to prove conclusively the date of the remnants of fencing which Hepher Dixon had found on the western boundary.

6.39. The issues which continue to be pursued were those set out in 13.4: that there was evidence of a leaflet distributed by Southwark during the early to mid 1980s conferring a licence to enter and use the land, indicating that use was by Southwark's permission rather than as of right, and in 13.5: that there had potentially been an interruption of the use of the land for recreational pastimes during the relevant 20 year period due to storm damage by the Great Storm of 1987 which made the application land inaccessible to users. He said that his statement dealt with the leaflet at paragraphs 24-28 and the storm at 29-38.

6.40. At paragraph 17 Mr Mayne stated that he wished to make it clear that throughout the relevant period Southwark had not sought to restrict public access to the application land or to the public footpaths. On the contrary, the indications were that Southwark had, by means of the leaflet, conferred permission or a licence on locals and on those from further afield to enter and use the land. Southwark had, since the application was made, given the Applicant its assurance that it would not hinder continued access to the land or to the public footpaths along it.

6.41. Mr Mayne referred to the leaflet which was included in the Objector's bundle at Appendix 9. The leaflet was produced by Southwark. He thought that it had been produced in about 1984, because of the date under contact points for bookings from 1984. Mr Mayne said that he had not found the provenance of the leaflet, and had not been able to discover a more accurate date. He had inquired of various departments within Southwark who he thought might have dealt with it. He had seen the documents from Hartley Parish Council and Sevenoaks District Council. He said that he was ashamed to say that Southwark's own records of these matters were not good. Mr Mayne set out in paragraph 24 a number of features about the leaflet which he considered notable. In paragraph 25 he stated that he had been unable to determine the extent and duration of the leaflet's circulation with precision. He said that Mr Laister had given evidence at meetings of the Registration Authority that he and his wife had independently received the leaflet in 1983 or 1984, and Mrs Laister had sent a copy to Southwark under cover of a letter dated 19th March 2006. He understood that Mrs Brudenell (since deceased) had also informed the Registration Authority that she had received the same or a similar leaflet in the early to mid-1980s. Mr Mayne stated that Mr Glover recalled having received a leaflet in addition to and possibly from Mr and Mrs Barr. Mr Glover also remembered that there were visitors to the land from London. Mr Mayne said that in his view it was reasonable to assume a connection between the licence offered by the leaflet and the users from London observed by Mr Glover.

6.42. In paragraph 27 of his statement Mr Mayne said that there seemed to be little doubt that the campsite did in fact operate and attracted considerable numbers

of visitors to the campsite and Hartley Woods from London. He referred to the article from *The Dartford and Swanley Chronicle* of 30th August 1984[36]. Mr Mayne inferred from the article that the complaints reported suggested that the campsite was at the time of the report operational. Having regard to the other available documentary evidence I do not think that this is correct.

6.43. In oral evidence Mr Mayne was taken to O/App 25. He thought that the content of those documents supported the view that he had been developing in recent months and weeks that there was a genuine effort made by Southwark. The campsite was built with an ablutions block. There was reference to a septic tank and to a sewer. He had seen records which showed that the woodland was an important adjunct to the use of the campsite. The campsite was short-lived in the 1980s and was used by people from Southwark. It was difficult to gauge how long the use had gone on or how extensive it was. The last reference to use had been in 1988. There was no reference to revocation of Southwark's intention to licence access to the land. There were references to an intention to bring people onto the land, and development of nature trails. He thought the efforts showed a genuine intention to bring people onto the land and make use of it, and that it was not just local people. That extended into the relevant period, and must have had an impact.

6.44. Mr Mayne said that the facts he was able to deduce were facts from the written evidence. Southwark was testing the evidence. Southwark had not, so far as he was aware, sought to exclude people from the site. There was never any intention to exclude people, quite the reverse. He pointed to the leaflet and the articles in the press, locally in Dartford and in the Southwark Sparrow. He said that Southwark's intention might have petered out by 1990, but it existed during the early part of the relevant period, and he thought it was important.

6.45. Mr Mayne said that he had tried to find out when the building was demolished but had not been able to do so. Mr Mayne agreed that the reference which he had been thinking about when he said 1988 for the ceasing of use of the campsite was at A/3485.

6.46. Mr Mayne was asked about paragraph 27 of his statement. The inference that the use was well organised was from the written evidence of local involvement. He recalled seeing mentioned that Southwark had a relationship with Hartley Parish Council to improve the woodland for everyone, not just people from Southwark.

6.47. Mr Mayne said that it was difficult to say whether users had knowledge of the invitation by Southwark to use the woods. He would have been surprised if, with everything that was occurring at the time, there would not have been a wider knowledge than has appeared at the inquiry of the involvement of Southwark. People who started using the application land later would not have had any reason to know. But in the early part of the period he thought that use

[36] O/App 10

was permissive, and it was unlikely that people would not have known of Southwark's involvement.

6.48. In paragraphs 29-35 of his statement Mr Mayne said that during the course of his investigations, which included meeting local residents at meetings of the Registration Authority and on other occasions, he encountered increasing reports that storm damage from the Great Storm of October 1987 had devastated the entire county of Kent, and in particular, had caused the land to become impenetrable and overgrown. He appended various contemporaneous documents from which he had drawn the conclusion that there was an interruption in the use of the application land lasting up to or over a year after the storm in October 1987.

6.49. In paragraphs 36-38 Mr Mayne said that he had researched the impact of the Great Storm more extensively through local and national press coverage. The strongest winds were recorded along the English Channel and through Hampshire, Sussex and Kent which were consequently the worst hit counties. Approximately 15 million trees were estimated to have been uprooted and destroyed. Mr Mayne had been unable to find any photographic evidence of the damage to Hartley Wood, but appended aerial photographs of other similar woodlands in Kent showing the damage and the recovery process.

6.50. In oral evidence Mr Mayne said that he did not wish to revise paragraph 29 in the light of the evidence at the inquiry. He understood that witnesses might have stepped over or walked around things, but from his own recollection and from the documentary evidence, including the Parish Council records and the clearances on the public footpaths. They were low priority. It took 4 months fro those to be cleared. It would have taken longer for the other routes to be cleared. It was not Southwark which cleared them. The North Downs of Kent were the hardest hit, and Sevenoaks District Council area was very hard hit within that area. He had not found any photographic evidence of devastation here, and could only rely on the Parish Council records, and Mr Jones' recollection. That struck him as entirely consistent with his recollection of the situation at the time.

6.51. The Hartley Parish council documents came into the inquiry in this way: Southwark was alerted to the first ones by residents within Hartley, then he sent an officer down to go through the records. The officer did not produce much additional documentation. Mr Mayne was not aware of any Hartley Parish Council documents having been put before the inquiry by the Applicant.

6.52. He was asked which parts of the land which he referred to when he said parts of the land fell into disuse for a year or more. He said there was evidence of the public footpaths being cleared four months after the storm. The dividing line of the land within Southwark's ownership and the other land within the wood was the footpath. Once that was accessible he found it hard to believe that people would have gone out into the wood, while they would still have been clearing their own gardens. In 1993 there was the reference to the requirement to clear the paths. He thought therefore it would have taken some

considerable time. A well-respected member of the community, Mrs Fry, had said that the Southwark land was overgrown and inaccessible. He thought the Parish Council would have been concerned to clear their own part of the wood first. He was taken to the reference dated 18th November 1988 on App 12 and said that was what had taken him to the year reference. He had referred to the 1993 article because he thought it supported his view that clearing up would have taken ages.

6.53. Mr Mayne was not present, but he found it surprising that people had said that everything carried on as normal within a few months. He thought it would have taken a long time to re-establish the sort of access which had been enjoyed before the storm. He did not want to amend paragraph 35 in the light of the evidence he had heard. His view based on experience and recollection was that it would have taken at least a year for those red footpaths to be reopened.

6.54. In paragraphs 39-41 Mr Mayne summarised his observations on the five site visits he had carried out since July 1997, each of between 1-2.5 hours' duration. He had observed the likely access points and marked them on a map appended at Appendix 8b. On each of the five occasions he had visited he had observed no more than one or two people walking along the public footpaths. He visited on Wednesday 3rd September 2008, which he said was a particularly mild and sunny morning well-suited to walking, for 2.5 hours. He saw only two people on or near the application land. He also noted that there was still considerable evidence of storm damage, in the form of fallen and uprooted trees all over the land.

6.55. In paragraphs 42-45 Mr Mayne set out the background to the questionnaire survey commissioned by Southwark and carried out by Transport Surveys Limited in August 2008 and the methodology used. Mr Mayne stated that Transport Surveys Limited have expertise in carrying out surveys to collate transportation, parking and land use data. They use trained and experienced enumerators to carry out the surveys. The objective of the survey was to obtain accurate data from an independent source about the users of Hartley Woods including the origin of the user, points of access, areas of the land or public footpaths use and length and nature of user. Southwark had decided to present all the evidence to the inquiry whether it supported or detracted from its case.

6.56. The questionnaire was designed in co-operation with Transport Surveys Limited. It was decided to carry out the interview in summer and over time periods likely to capture the intensive use both during weekdays and weekends. Although it had been intended to carry out the survey in August, there was a great deal of rainfall, and it was decided to postpone it until early September. There was good weather in the first week of September, and so they decided to start the survey. The survey was carried out over 12 hours from 7 a.m. to 7 p.m. each day in order to capture the full extent of any user. The survey was carried out over four consecutive days: Thursday 4th, Friday 5th, Saturday 6th and Sunday 7th September 2008. Two interview points (shown on Appendix 8c) were chosen: one at the junction of SD295 and

SD215, and one at the junction of SD215 and SD296. These were chosen as being the likeliest points to intercept users regardless of their origin. Trained and adequately briefed enumerators from Transport Survey Limited were positioned at points 1 and 2 and approached visitors to answer the questionnaire. Those who had already been interviewed were recorded but discounted in the table of results. The weather on site during the survey was reported by Transport Survey Limited as:

Thursday 4th September	Cloudy but mainly dry
Friday 5th September	Intermittent showers with some heavy rain at times
Saturday 6th September	Intermittent showers with some heavy rain at times
Sunday 7th September	Improved, somewhat cloudy but dry.

6.57. Mr Mayne said that in his opinion whilst the weather conditions might have had a small effect on reducing the number of visitors, it was unlikely to be significant. Further, he understood that user had intensified in the time leading up to and since the application, and thought therefore that the results should be deemed reliable, and, if anything, more generous to the applicant than a similar survey carried out during the relevant 20 year period might have been.

6.58. In oral evidence Mr Mayne was asked about the survey. It was commissioned on the recommendation of George Lawrence QC, who had said that it was necessary to test the facts. When he was first involved there was no indication that the application would come to public inquiry. George Lawrence had recommended that the evidence should be tested, and he recommended a questionnaire. Southwark had employed Transport Surveys Limited.

6.59. In paragraphs 46-52 Mr Mayne dealt with the analysis of the survey results. All of the completed questionnaires were appended at Appendix 18, split by day of interview. The results had also been analysed and that analysis was presented in a tabular form at Appendix 19, tables 1-3.

6.60. Mr Mayne said that 120 interviewees had been recorded as accessing the land either at access point 1 or 2. Of those, 29 had been counted more than once. The total number of interviewees over the survey period was therefore 81. 81% of the respondents came from Hartley. The remainder came from New Barn, Longfield and elsewhere. In response to question 3 of the survey 77% of the 81 respondents indicated that they predominantly used the public footpaths, despite later saying that they used the woods. In response to question 5, 37% of the 81 respondents claimed use of the land for 20 or more years. 10% had used the land for between 11-20 years, and the remaining 41% for between 0-10 years. The reported activities were dog-walking, walking and one or two joggers.

6.61. Mr Mayne's view, which he said was shared by Transport Surveys Limited, was that the response to the questionnaire was greater than expected. He suggested that the unexpectedly high response might partially have been on

account of respondents turning up in greater numbers as a show of support for the application, once word of the survey spread through the area.

6.62. Mr Mayne stated that in his opinion two key statistics: that 77% of users said that they stuck predominantly to the public footpaths and that only 37% claimed user for a continuous period of 20 or more years (and bearing in mind that the survey was carried out 3 years post-application), did not appear to evince "use by a significant number of the inhabitants of the locality over a continuous 20 years period for the purpose of recreational pastimes."

6.63. In oral evidence Mr Mayne said that he thought it was plain from the results that there was no issue with locality, because the majority of users had come from Hartley. That part of the test had been proved to his satisfaction. The following issue remained of concern in the light of the questionnaire: whether the use was predominantly on the public footpaths. The questionnaire was designed to elucidate the information as to where people came from, which parts of the wood they used, and whether they used the footpaths predominantly or not. Mr Mayne came to the view in the light of the survey that about three quarters of the people were predominantly using the footpaths. The other issue which remained a concern was interruption in the 20 years. The applicant's questionnaires had not raised the question what was the effect of the storm in 1987. The description of footpaths as devastated did not surprise him. He therefore wanted to find out what had happened in the rest of the wood.

6.64. Mr Mayne was asked to explain the statistics in paragraph 51 of his statement. He said that there was a question on the questionnaire which related to these issues. They suspected that people might not provide names and addresses. Some people did not want to respond at all. They did not want to double count. The proportions shown are of people who answered the questionnaire. 81% originated from Hartley. 77% said they predominantly used the public footpath. When he had been to the wood he had always seen someone but never more than 2 people. On his most recent visit, he had seen a woman on the footpath who said she came from Longfield. The only other person he saw was on the landfill site, going towards the wood. Mr Mayne said that in his opinion the informal paths are well-established, but the public footpaths are more established. The others are used, but the public footpaths are more used.

6.65. In cross-examination Mr Mayne was asked whether he had any evidence of the position in Hartley Wood after the storm, beyond the record of clearing of the public right of way. Mr Mayne said there was a lot of evidence from the Parish Council of devastation of the footpath, and there was no reason to assume that the same would not have applied across the wood. The footpaths run through the centre of the Southwark and non-Southwark wood. If the wood was affected in the centre, it would have been effected elsewhere. He thought that the devastation would not just have followed the public footpath. He also referred to the Parish Council's evidence in 1993 talking about the informal footpaths on Southwark land being overgrown and inaccessible. He thought it likely that the devastation was such that there was an interruption probably for a number of years.

6.66. Mr Mayne agreed that there was nothing in the 1993 document which showed that Mrs Fry was referring to the aftermath of the great storm, but he said that it did show that the footpaths were overgrown and choked in 1993. Mr Mayne agreed that the woods had not been vested in the Woodland Trust. He agreed that appendix 13 was in part an appeal for money because it was seeking donations. It was suggested to him that Mrs Fry might have put forward her best case for getting money. He agreed. He agreed there was no certainty as to how much of the area was overgrown and choked. He suggested that if it required funding, it was more than local residents could do on a Sunday afternoon.

6.67. Mr Mayne was referred to A/3300 and the Registration Authority's map. He agreed that the public footpaths are shown in purple. He was asked whether question 3 on the survey was ambiguous. He said that he did not think so, as people talked about the wood in its entirety, rather than just the area owned by Southwark. He pointed out that the wood was defined in brackets as the whole of land A and B. He did not think that people would have been confused between the public right of way and the path shown in red on the Registration Authority's map. He thought that people talked about the whole of the wood, and therefore would understand what was meant by a path through the centre. It was only part of the wood which was the subject of the application. He agreed that there was not wood on both sides of SD215; part of it went along a fence. It was in the wood for half its length. He thought looking at a map which showed the entirety of the wood showed a different perspective to a map which centred on the Southwark land.

6.68. Mr Jones' letter was headed by reference to two rights of way. SD215 and SD296. SD215 is the one which forms the boundary of the application site. Mr Mayne was not sure where SD296 ran. He drew conclusions from Mr Jones' report in relation to public footpaths within Hartley Wood. He agreed that it appeared from the documents that SD215 was cleared by February 1988. Mr Mayne said that he believed that the County Council was obliged to keep open public rights of way, and therefore they were obliged to clear it.

6.69. Mr Mayne was asked about the second paragraph of Mr Jones' letter. He was asked whether that provided clear evidence that people used the wood before the paths were cleared. He said that people were very determined, but he thought that the use of the woods would have been dramatically reduced following the storm. His judgment was based on carrying out a similar operation on the North Downs of Kent. He agreed that the storm affected different areas differently, and said that he had not been able to find any pictorial record of what happened in Hartley, but the photographs of Sevenoaks District, within which Hartley falls showed that the damage was considerable. He could not comment on whether the damage in the eastern part of Hartley Wood might have been less than in the western part. He thought it would be surprising if the eastern part had not been damaged: it was exposed to the east, by the tip, which is open. He did not think the damage would have been less on the exposed side than it would have been on the sheltered side.

6.70. Mr Mayne said that he did not suggest that the people who had given evidence that they used the site after the storm were lying, but he thought that the use of the wood was most likely to have been reduced after the storm for a significant period. He accepted that there was a level of use which continued immediately following the storm. He did not suggest that the witnesses were lying. How soon people were able to access the wood after the storm and how regularly they made the effort, he was not sure, but he was sure that some people did, because they would not be here saying so otherwise.

6.71. Looking at Hartley Parish Council Minutes for 19th February 1988 Mr Mayne agreed that the reference to paths would have been to the public footpaths. Mr Mayne had seen no evidence in Southwark's records to suggest Southwark did any work in the woods. He commented that there was no evidence before the inquiry to suggest who did any work that might have been done.

6.72. Mr Mayne was asked about the campsite. He agreed it was in the area marked Martindowne on the Ordnance Survey map supplied by the Registration Authority, to the west of that area. He thought that it might have be that that area was chosen because it might not have been dumped. The concrete base and tiles remain in the wood.

6.73. Mr Mayne was asked about the survey carried out by Southwark and referred to O/App 8C. He agreed that both interview points were on the public right of way. He was asked whether that would make it more likely that people walking on the path past the interviewer would answer positively about whether they used public right of way. He thought possibly, but said that they had tried to balance that by asking about use of areas A, B and C. The survey was formulated in discussion with the firm who carried out the survey. It was not realistic to saturate the wood. Within the budget they had, they chose 2 interviewers to work from 07:00-19:00, to try and catch morning and after-work users. They walked through the wood and confirmed with the enumerators where they wanted to be. He agreed that the enumerators would not have been able to see people in other parts of the wood. He said that people meander around the wood, and they picked two points where they hoped to intercept the most people. The instructions given to the interviewing company were written and oral. The interviewing company was involved in drawing up the questionnaire, as were Southwark's legal advisors. Mr Mayne did not go to the wood on the survey days. He did not meet any of the enumerators. He had no contact at all with any of the individual interviewers. He said that the agreed form was effectively the written instruction. A lot of the contact was verbal and by email. Mr Mayne works three days a week. His assistant Tom Kemp was the primary contact for the surveying company. Tom Kemp might have emails on his system.

6.74. The instructions to the actual interviewers would have been given by the company itself. He did not know whether the instructions were approved by Southwark.

6.75. Mr Mayne was referred to App 18, question 6 of the questionnaire. He was also referred to A/79A and B, Mr Alford's annotated version of Mr Mayne's summary of the results. The summary had been produced by Mr Mayne in conjunction with Tom Kemp. He was asked whether in his view there was an ambiguity between question 3 and question 6. He thought not, and said it was sometimes helpful to ask a similar question in a different way to get to the truth. He agreed that if one mainly used area A, B or C, one would not predominantly use the public footpath. He agreed that it was sometimes difficult to draw conclusions from the result of a survey, but thought the questions were fair, and tried to get to the truth of the use of the site.

6.76. Mr Mayne was taken to A/79B and the annotation relating to the answers to question 6. He said he had not done the exercise that Mr Alford had done for the 81 interviewees, rather than the 107 figure which Mr Alford had arrived at. He was not sure how accurate the analysis was. On his figures it looked right. He said it could be a similar proportion of the 81. He thought that one was inferring too much by expanding the total number of interviewees to 162. He agreed that the figures suggested that area B was the area that the respondents mainly used. He was asked how that was consistent with them saying that they mainly used the footpath. He said it was possible that they regarded the footpath as part of land B, but he could not be sure how people had answered the questions.

6.77. Mr Mayne did not know whether the enumerators were instructed to show the completed form to the interviewees. He knew that interviewees were not asked to sign the form. He thought that had been on the advice of the company. They were concerned that Southwark wanted to ask too much. The form was originally much longer. This was a pared down version. The company had said of the original version prepared by the lawyer that you would not get any answers at all, and that the questions had to be simple. They had to decide what were the pertinent points. It was a genuine effort to try and throw light on the position, whether or not it suited the Objector's case. For instance as a result of the survey results the Objector dropped the locality objection, because it was clear that the substantial number of users came from Hartley.

6.78. Mr Mayne was taken to O/App 25 p.1, the report by the Deputy Town Clerk to the Libraries and Amenities Department of the London Borough of Southwark. Mr Mayne said that although the document came from Sevenoak's files, it must have been a copy of a Southwark document provided for information to Sevenoaks. The same was true of p.3 . The document at page 12 is a Sevenoaks document.

6.79. Mr Mayne was asked about paragraph 2.1 on App 25, p. 1. He thought that the reference to a camp site at Longfield was a reference to the campsite on

the landfill site which was established in the mid 1980s and closed in 1988. Southwark tended to refer to the landfill site as Longfield. References to Longfield were to the tip, rather than the wood. He had seen documents within the last week which referred to the offering of the freehold interest in the refuse tip for sale. He had seen sales particulars for the wood and infill site together. That was the first time he had seen evidence of an effort being made to sell both together. He did not know whether there was any interest, but the land had not been sold. Southwark has had discussions with the applicant in relation to offering the wood for sale recently. In the year he has been dealing with the land, the only discussions have been with Hartley Parish Council, rather than more widely. Mr Mayne said that it would not be possible easily to sell the dump site.

6.80. Mr Mayne was asked whether the negotiations he had referred to led to an agreement. He said they did not, although he had read file notes written by the previous people dealing with the application that they had found evidence that it had been offered to the London Wildlife Trust, but the Trust was seeking an indemnity, and Southwark was not prepared to offer one. As a result the Trust was not prepared to take over the woodland.

6.81. Mr Mayne was not aware how far the matters referred to in paragraph 5 progressed and was not aware of them coming to fruition.

6.82. Mr Mayne was taken to page 6, an appendix to a report to Southwark's parks and recreation sub-committee, written by Elizabeth Hamilton of the Woodland Trust, and in particular to paragraph 3(ii), where the document states that the footpaths are clearly well-used. He was asked whether in 1982 Southwark knew that footpaths were well-used. He said he did not know to what the document referred, which footpaths. If one assumes that the appendix was addressing the Southwark area, he agreed that he would not be surprised if there were both formal and informal footpaths within that area in 1982, although he commented that the nature trails on the leaflet extended beyond the area owned by Southwark. Southwark also knew from the report that the wood provided an attractive local recreation resource. He said it was clear that Southwark was happy for people to use it. There was a substantial use of the wood as a recreation resource. They encouraged this by producing the leaflet, both for people in Southwark and locally. Southwark spent money on opening up nature trails, and distributed the leaflet, inviting people to use the wood.

6.83. Mr Mayne said that from the files he had seen the first reference to inviting people onto the land was the leaflet. From 1982 to the date of the application, there is nothing on the file to suggest that Southwark took any action to prevent people going on to the land.

6.84. He was asked whether the use of the woods for the nature trail and use by local inhabitants for instance for dog walking, not on the nature trail, were incompatible. He agreed that they were not. Before the leaflet was published people went onto the land for those purposes.

6.85. Mr Mayne had not found any detailed management plan of the sort envisaged in paragraph 6, so could not say that one had been drawn up.

6.86. He was referred to the fourth paragraph of App 25/ p.11, a letter dated 28th March 1983 from the Clerk to Hartley Parish Council to the Planning Officer at Sevenoaks District Council. He said that he had assumed that the nature trails and walks had been opened up by Southwark. He had not seen any evidence of a separate planning application having been made by Southwark for the nature trails and walks or of it being included in the campsite and toilet block application.

6.87. He said that he was unable to date the leaflet accurately and could not say whether the leaflet had been published in 1983. The planning application had been made in the spring of 1983. The leaflet was produced before the summer of 1984. He could not say when it had been published. To the best of his knowledge that is the only leaflet produced by Southwark. There was also publicity in the Southwark Sparrow, and possibly a press release to Dartford. The leaflet invites people to go onto the land. The article in the Southwark Sparrow was inviting Southwark people specifically to go onto the land. He understood from Dr Roberts that the article it had come from Sevenoaks District Council's files and was from the Southwark Sparrow. He was aware that the Southwark Sparrow was a paper in circulation some years ago, paid for and published by the London Borough of Southwark. Mr Mayne had not been able to ascertain the date of publication of the article.

6.88. The fourth paragraph referred to a proposed campsite. The fifth paragraph stated that nature trails guiding visitors around the area were available from council offices, libraries and information centres. Mr Mayne had no further information as to the distribution of the leaflet, although he had made substantial enquiries, with no results. The article said that the leaflet was available in council offices, libraries and information centres. Dr Roberts had mentioned the possibility of leaflets being given out in the wood, but he did not know about that. There was mention of contact with schools, but other than that, he could not comment on the distribution of the leaflet. Apart from the individuals from Hartley, he was not aware of any other person within Southwark or elsewhere who claimed to have seen the leaflet.

6.89. Mr Mayne was asked to look at the leaflet. He agreed that the contact points were all Southwark-based. Mr Mayne was asked what, if anything, in the leaflet suggested that it was addressed to inhabitants of Hartley. He said there was nothing in the leaflet itself specifically addressed to the inhabitants of Hartley. It was a fairly general leaflet, but was addressed mostly to inhabitants of London, because it showed them how to get there. It was for the benefit in the main of people within Southwark, but had some distribution within Hartley. There was no co-operation on the leaflet, but the general intention and the nature trails were discussed, as can be seen from the Sevenoaks files. He did not know how the leaflet had been prepared. Mr Mayne had not seen the printer's name before seeing the original today; it had been cut off on the photocopy with which he was provided. There was no record of the leaflet on Southwark files. He said that Southwark's files are not

in good order. Mr Mayne said that the leaflet encouraged people to make use of the nature trail. He thought the leaflet had been published before summer 1984. He did not know whether it was still being distributed in 1985, although he noted there were still copies in circulation today. He did not know the longevity of its distribution.

6.90. Mr Mayne was taken to A/3473 and to O/App 10. He was asked whether he had found any record of the proposed management committee comprising both Southwark and Longfield organisations being set up. He had not. The article stated that the campsite was intended to be used by 30 persons for 20 weekends per year. Mr Mayne did not know how many people used the site. There were no records of usage, other than those which suggested by 1988 it was petering out and had petered out by 1989. He was taken to A/3473 which said there were only four bookings for that year. He said that he had nothing to counter that. A/3474 said that the Council had accepted a few weekend bookings in 1986 for weekends only. A/3475, a 1989 document, records that Southwark had ceased using the site the previous year (1988). Mr Mayne did not know whether the invitation to use the campsite was extended beyond Southwark children. He mentioned that Mr Gibbon had said that the local scouts would have used it but were warned off it.

6.91. Mr Mayne was taken to A/3508, a letter on behalf of Southwark seeking to amend the application "to include use of the site as a camping ground for the children of this Borough, all as previously agreed". Mr Mayne was taken to A/3513. Condition 8 stated "When the site is not in use by a youth organisation from the London Borough of Southwark, it shall be fenced and locked securely to prevent unauthorised use". He said that he understood that this was a renewal of a previous planning permission for campsite use. He was not sure that the earlier permission had ever been implemented. By the time this planning permission was granted, whatever the earlier intention might have been, it appeared that the campsite was only to be used by the children of Southwark.

6.92. He agreed that the campsite had to be booked, and users needed Southwark's consent to use it. There was no reference to obtaining permission to use the nature trail. He agreed that the nature trail did not cover the whole of Hartley Wood. He agreed that the encouragement to use the nature trail lived side by side with the established use of the wood for informal recreation. The leaflet specifically related to the nature trail, rather than to general recreational user. There was no other document granting permission to use the wood of which Mr Mayne was aware.

6.93. Mr Mayne agreed that point 1 of the nature trail was not on land owned by Southwark. He commented that the map is hand-drawn and it was difficult to be sure where the path went, but said that he did not think the path followed the public right of way and in any event that he does not know when the public right of way was confirmed. He agreed it would have been beyond Southwark's powers to license use of other's land, but he did not know whether that had been done with the agreement of the landowner. He had not found any documents to suggest that Southwark sought to restrict access to the

wood for informal recreation or at all. There are signs on the infill site, dating back to the days of the GLC, telling people to keep off. There are no signs on the woodland site telling people to keep off.

6.94. He was not aware of any document or licence predating the leaflet, or post-dating it, in relation to any use of the land.

6.95. In re-examination Mr Mayne was asked whether he thought that users were intended to stick to the line of the path. He said he thought they were, and the leaflet was explicit in this respect by saying look to the right and look to the left: it intended that people should follow the path, and stick to the path.

6.96. Mr Mayne was asked whether he remembered the date of Mr Gibbons' involvement with the Parish Council. He did not. He had seen committee minutes referring to encouraging co-operation between Southwark and local groups to use the woods. Apart from the leaflet, Southwark was encouraging people in London to use the woods, and the article in the Dartford paper could also be read as encouraging people to use the woods.

6.97. Mrs Brudenell and Mrs Laister had received leaflets were from Hartley. There was also mention of another person who had received one, but Mr Mayne did not know his name. Mr Mayne said that if Mr Glover had been aware that Southwark were advertising the land and allowing people to use it, then it must be the case that the invitation extended to local people, rather than just to those from Southwark. Mr Barr, the recipient of the leaflet referred to in Mr Glover's statement was local. Also the gentleman who had provided the original to the inquiry that day was local. Mr Mayne was referred to Ms Scott's statement at A/2126, and to paragraph 10, where she said she had followed the nature trail and to Mrs Fry's statement at A/1318, at paragraph 10 confirms that she had previously seen the leaflet. Again she was a Hartley resident.

6.98. Mr Mayne said that the leaflet was evidently not exclusively for Southwark people. The leaflet was a general leaflet and did not look to exclude anyone from the site.

6.99. Mr Mayne had been involved in the production of a leaflet for a local authority. You need a budget to print something to that quality. You would have to request that budget be set aside to producing leaflets. People who write things might do it for nothing or might charge. The expertise to produce the leaflet would not have existed within Southwark.

6.100. Mr Mayne felt that the results of the survey indicated a predominant but not exclusive of public footpaths. Mr Mayne has walked the public footpath. It is not within Southwark's ownership, and therefore was not included within area B.

6.101. Mr Mayne accepted that it appeared that when Mr Alford had been interviewed together with another person only one form had been filled in. He said that different people within the same group might have given different

answers and that is why Southwark relied only on the completed questionnaires.

6.102. Mr Mayne thought that the questionnaire would have been a more effective information gathering tool than the pre-formed witness statement, because it gave people options. He thought the survey had been reasonably effective. The choice of survey positions was much debated, considered on a site meeting, and discussed with transport Solutions. He thought that the chosen positions would have counted the highest number of people. He thought that a position at the confluence of the red paths would have resulted in a smaller sample. He thought that people would have come out at one of the two points selected. Those points are also the closest points within the application site to the parish of Hartley.

6.103. In my judgment Mr Mayne was an honest witness. Where his evidence concerns matters of fact, I have no hesitation in accepting it. However, I consider that both cross-examination and the points raised by Mr Alford revealed some serious short-comings in his analysis of the data produced by the Transport Solutions Limited survey, and I do not accept that analysis.

(3) Mr Roy Glover of Hartley Bottom Farm, Hartley

6.104. Mr Glover produced a written witness statement dated 17th September 2008[37] in which he stated that he had lived in Hartley all his life (67 years). He knows the local area including the application land very well. He lives and, as one of four partners, runs a farming business from land at Hartley Bottom Farm, which adjoins Hartley Manor Farm. Hartley Manor Farm adjoins the southern boundary of the application land. The farming partnership also owns Hartley Manor Farm, which includes a bungalow located in the farmyard of Hartley Manor Farm, adjoining the land, which is currently rented by the partnership's stock manager. In 1969 the partnership took a lease of Manor Farm, which immediately to the south of the application land. He stated that he used to walk through the application land quite often in the 1970s to recover animals that had strayed from the farm, because although there was a fence between the farm and the woods, it was not always in the best state of repair. A new fence was erected in 1987 after damage caused by the Great Storm.

6.105. From the 1980s to date, Mr Glover estimated that he would have been onto the land about 5 or 6 times a year. He usually accessed the land from Hartley Manor Farm and walks along footpaths SD217 and SD215. Alternatively he sometimes has to go onto the land from the old Longfield Depot (land C), mainly in order to retrieve straying animals. He sticks to the footpaths, except when it is necessary to go further in to retrieve animals. He is involved in a pheasant shoot which runs the perimeter of the land. On occasion they let their dogs loose into the woods to flush off the pheasants.

6.106. Mr Glover stated that he knows of about 10-12 other people, including friends, family and employees who know or use the land. He said that they

[37] O/4

used the land in a similar way to the way he used it himself. Lucy and Derek Ball, Helen Smith, Eric Glover, Steven Glover and David Glover occasionally walked the public footpaths on the perimeter or accessed the land to retrieve livestock. He estimated that 50% of the people he knew who used the land did so weekly and mostly they circled the footpaths along its perimeter.

6.107. He said that he has views onto the land, or at least parts of it from the farm, especially from close to the southern perimeter, or from the top of Crab's Hill. From what he sees, about 1-5 walkers or dog-walkers use the land per day. They mainly circle the perimeter and keep to the public footpaths. He thought that more people had started using the land for walking and dog walking within the last 2-5 years. He did not believe that the numbers of walkers or dog-walkers was greater than those he had seen, and recounted an incident about 3-4 years previously when a man had committed suicide by hanging in the woods, about 20 metres away from the public footpath to Hartley Manor Farm. He was not found for over a week, and only then because people started noticing the smell. He stated that the woods were not so dense that they would completely camouflage a person hanging. Had dog-walkers been walking all the paths around the perimeter of the land or walking on the land regularly, rather than mainly the public footpaths, in his opinion the body would have been found sooner, perhaps within a day or two.

6.108. Mr Glover estimated on the basis of his personal observations and also from his involvement with the Woodland Trust in the mid-1990 and as a former Parish Councillor (1999-2003) that three-quarters of the walkers come from Hartley, most of the remainder from Longfield and New Barn, and a proportion from outside the parish area. He thought that on a weekly basis about 5-6 people came from outside the area, because he noticed people driving and parking their cars at the top of Crabbs Bank, under Foxbrough Woods, on Hartley Bottom Road (including at the turning circle) and occasionally along Manor Drive, sometimes obstructing gateways. Such people often ask Mr Glover about the area before accessing the application land, either when he is out on the farm, or in the shop (there is both an equestrian store and a butcher's shop on the farm).

6.109. Mr Glover remembered having received a leaflet published by Southwark Council in the mid 1980s, which he remembered as being something between the sizes of A4 and A5, which gave lots of information about the land, the wildlife and directions, telling people to come and visit. Mr Glover thought that he had received the leaflet from his neighbour Mr Barr. Mr Glover stated that he knew of other people who had received leaflets about the land, but did not identify any particular person or persons.

6.110. Mr Glover remembered the old Longfield Depot being used as a landfill site until the 1980s. In the early to mid-1980s Southwark Council began using the depot site as a campsite for boy scouts. He thought that this, together with the leaflet, had meant that the land was walked by a lot of people from outside the parish area, including from London.

6.111. Mr Glover stated that the great storm of October 1987 had had a devastating effect on Hartley Parish. Kent was one of the worst hit areas in the country, according to press reports at the time. Mr Glover remembered the whole woodland, including Southwark's land and land belonging to the farm partnership was completely decimated by storm damage. Huge numbers of trees, in the hundreds, were uprooted all over the application land. This made the woods inaccessible for a considerable time, he thought for longer than a year, if not years. Trees were uprooted or felled, sometimes interlocking with each other so that they blocked the footpaths, and made the rest of the land impenetrable. Mr Glover had heard of people attempting to go into the woods with chainsaws to try to clear some paths, but thought this was one or two individuals and would not have been for months after the storm, or successful. The urgent priorities were getting basic utilities up and running, and then to get the highways cleared. Clearing public footpaths, never mind woodlands, was last on the list of priorities.

6.112. Mr Glover thought that Hartley Parish Council would have had many meetings about the issues arising from the Great Storm, considering how best to support the clear-up operation and residents. He remembered that a lot of locals, including his son Steven, had volunteered for essential clear-up operations. Mr Glover stated that the initial stage - connecting utilities and secondary priorities like clearing the main roads and highways by removing hundreds of uprooted trees – took months. His son had told him that he also remember this part taking a few months and continuing right into 1988. Once those urgent priorities were dealt with, from about 3 months after the storm, they had begun to repair fences and to start to clear the public rights of way.

6.113. Mr Glover said that it was Spring 1988 before any reasonable headway was made into clearing the public rights of way and about 12 months before they were all clear. They then contacted the Forestry Commission to begin discussions about dealing with the remaining fallen trees in their fields and woodlands. They then started clearing uprooted trees and other debris from Mr Glover's own wooded area to make it accessible and to use the wood. This process took a few months. They only did as much as was necessary to clear the land. The area he referred to was nearest the southern boundary of the application land. Whilst they were doing this work, he could see onto the application land and along the public footpaths on its perimeter. As far as he could see the land and the footpaths were blocked with felled and uprooted trees. Mr Glover said that for months as he cleared up, any people walking towards the application land, with or without dogs, were unable to walk along the public rights of way, never mind on the application land itself. They had to take big detours around the many large fallen trees. He did not remember seeing anyone actually able to walk in the woods, or along Footpaths SD217, SD215 or SD299.

6.114. Mr Glover stated that anyone visiting the woods at the time of the inquiry would still see a lot of storm damage: a lot of uprooted trees further into the wood and fallen branches, despite later clear up operations, probably years after the event. He said that they had still been clearing up old uprooted trees on his own land as recently as a couple of months ago. He said that there

were issues years after the storm about the application land being overgrown and inaccessible for walkers and needing a clear up operation.

6.115. In oral evidence Mr Glover confirmed the content of his witness statement. He lives at Hartley Bottom Farm which is at the junction of Hartley Bottom Road and Hartley Hill. The land which his farming partnership farms runs from Hartley Bottom Farm on the west side of Hartley Bottom Road all the way up to the Southwark land to the north, and to the back of the residential area to the west, with the exception of the pumping station. He moved back to Hartley Bottom Farm in 1989 and lived at Slides Farm before then. The farmland was used predominantly for dairy stock until 2003 and since then it has revolved around the production for a butcher's shop which opened in 1998, pig, sheep and beef, together with arable to feed the animals, and for the equestrian supplies. There has been an equestrian store since 1978. The farm adjacent to the application land, Hartley Manor Farm, produces the beef, sheep and pigs for the butcher's shop.

6.116. In the mid 1980s Mr Glover would have attended Hartley Manor Farm on a daily basis because there was no stock person living at the farm. Since the mid 1990s there has been a stock person living there, so he has not visited so frequently since then, possibly two to three times a week until 2003, and thereafter, maybe once a month. Mr Glover would mostly have gone onto the application land when his animals strayed. During the pheasant shooting season they run the dogs around the perimeter of the land. They come onto the land by the landfill site, near the old campsite and go around the perimeter of the land fill site, through the middle of the wood and out on the southern boundary, over the fence, lifting the dogs over to flush the pheasants out.

6.117. Mr Glover had always known the land as the Southwark land. Mr Glover was asked about the leaflet. He said that leaflets drop on his desk every day. The leaflet he had had come from either Mr Barr or Mrs Barr, who was a local teacher. They were his ears and eyes at that end of the farm. They were protective of that area, because they were concerned about what went on on the Southwark land. They were concerned that if youths were invited onto the land, there would be a safety issue, because in the past youths had burned barns. Hartley Manor farm is not far away from the site. He thinks that is why they brought the leaflet to his attention.

6.118. The people named in his statement in paragraph 9, Lucy and Derek Ball, Helen Smith, Eric Glover, Steven Glover and David Glover, were people who had retrieved animals. Occasionally he saw people walking in the woods or on the tip, but he could not name them. He saw people going to and fro across the field. He thought that the use might be more evident at the weekends. He did see many people walking, but said there could be people there that he did not see. He did not think that Hartley Woods were walked to the same extent as other woodland he knew. If he was next to the fence he could see 40-50 metres into the woodland. Crabbs Bank is to the east of the land and he can see into the wood from there. He can also see into the wood from Manor Road. He does not walk the wood himself now at all. Years ago he did, but not now.

6.119. In 1987 he was living at Slides Farm and was at home during the great storm. The partnership had dairy cows. He could not get from Slides Farm to Hartley Bottom by road, and had to walk. The lady who milked the cows lived in Briars Way off Gorse Way, and had not been able to drive there either. She had walked over the top of a car in Hartley Hill. That was at daybreak. Next he had to get to Hartley Manor. He walked there, and met the manager trying to cut his way by chainsaw through Manor Lane. They walked back. The only way to get there was through the fields. The area was devastated in a big way. The first thing to do was to safeguard the animals. The trees and fences had come down everywhere. The coppice at the top of Crabbs Bank was devastated, as was Hartley Wood. Not every tree was down; there were trees still standing, but you could not get anywhere; the only way of getting anywhere was through the fields where there were no trees. He was amazed to hear people say that they went there to look at the damage. He had other priorities. They could not get near the wood. Footpath 217 was obliterated. There were trees down in the fields adjacent to it. How people got around, and why they would have done so amazes him, because there was so much else to do.

6.120. The farming partnership did not get animals back into the field next to SD217 until the following year. After a while people walked the footpath, going round the trees. No-one said anything to them about the fact that they were deviated from the route of the footpath, because they could not do anything else. He did not see anyone walking along SD215 for quite a while, maybe weeks or maybe months. He had to deal with Foxbrough Woods, and did not get those footpaths open for a good 6 months.

6.121. Mr Glover was referred to paragraph 20 of his witness statement. He said that what he meant by the public right of way was the path 1 metre or 1.5 metres wide. People had had to go off the public right of way and take detours. Once that happens they are not walking on the public right of way. He did not know how long it took before people went back into the woods for recreational purposes. The public rights of way were cleared in February 1988. He could not see that people would have had an easy walk around the woodland. Mr Barr was his main source of information, and he walked with his dog. He could not penetrate the south east corner of the wood for well over a year after the storm. He walked Crabbs Bank instead.

6.122. Mr Glover said that the top photograph of the photographs produced by Mr Ian Mansfield was Manor Drive going into Manor Lane. The other two could be Hartley Wood, but could be elsewhere.

6.123. There was storm damage in 1990, but nothing like there had been in 1987.

6.124. Mr Glover was taken to O/App26. Foot and Mouth affected the area: they shut the public rights of way, including the public rights of way through Hartley Wood. He remembered a report on a Friday in February, saying there was foot and mouth in Essex. The butcher's shop was very busy because people were worried that meat would be short. Then there was a decision to

shut rights of way: Kent County Council decided to shut Kent's rights of way. That would have been in early March 2001. Mr Glover was given notices; he was not sure whether they came from Sevenoaks District Council, the NFU or Trading Standards. It could have been Kent County Council or public rights of way. Because it was such a big job, they asked landowners to help erecting the notices. The notices said that the footpaths were shut under the foot and mouth order. They were posted on the entrances to all rights of access. Mr Glover and the farm partnership employees put up the ones for Hartley Woods, on the stile at A, on Manor Lane, at Hartley Bottom Road, and at the Longfield area where the paths come over the railway line: everywhere the general public had access onto the farm land, they were put up. Mr Glover thought the public were good at keeping off the land. They never tried to go there. The closures lasted 6-9 months, not as much as a year, although it could have been; it was a long while. Mr Glover did not know of anyone being fined, or breaching the requirements of the notices he put up. Mr Glover was referred to the extracts from the Independent at App 26 pages 1 and 4. This area was not one of the ones that opened earlier.

6.125. Mr Glover said that he had been involved with the Parish Council since the early 1970s, although he had not become a Councillor until 2001. He was aware of initiatives between Hartley Parish Council and Southwark to make the land open for access. He was not aware of any initiatives other than the leaflet. He was involved with the Woodland Trust. The Parish Council had meetings to see if the Woodland Trust would take Hartley Wood up. One of Mr Glover's jobs was to get people to pledge money to buy the wood from Southwark. This could have been in the late 1980s or early 1990s. Southwark was not involved in the discussions when he was present.

6.126. Mr Glover was taken to App 26/ p.15. The date of mid-January 2002 as the date on which Britain was declared free of foot and mouth disease was consistent with Mr Glover's recollection, one or two months short of a year. The advice was not to go into the countryside.

6.127. Mr Glover was referred to App 13. Mr Glover knows Mrs Fry. The date of the document is July 1993. Mr Glover does not think it was possible to move freely through the woods at that time. Mr Glover said that in his opinion Mrs Fry's description can be relied upon. She is an upstanding lady of the parish for years, and has always worked very hard for the Parish Council. She is very truthful and good to her word.

6.128. In answer to questions in cross-examination Mr Glover stated that his farming business partnership operates six farms, possibly one fewer in the earlier part of the relevant period. He had not lived at Hartley Manor Farm at all during the relevant period. There is a stockman at Hartley Manor Farm, who moved in in 1995 or 1996. Prior to that the farm was managed by Mr Glover. If he were to stand 50 metres from the boundary of the wood, he would able to see maybe 50 metres into the wood. He agreed that would leave a large area of the wood he could not see. If he stood by the fence halfway along the boundary of its southern end, he could not see all the way into the wood. He checked his perimeter fences frequently.

6.129. Mr Glover was asked whether the outcome of the inquiry was of relevance to his business, whether either alternative outcome had any advantage to his business. He said that a campsite with 200 youngsters running around would make a difference, but the difference between now and what it would be if the application land were a village green would not affect his farming on the adjacent land. He thought it would be neutral to his business.

6.130. Mr Glover is not a great user of Hartley Wood. He probably used it more when he was at school, travelling to and from school. He had walked along SD215, but he had largely stuck to the path. He said it was the easiest access to the wood. He thought most people walked that footpath and went off it to various parts of the woodland. No-one can see all the woodland wherever they are. You can only see people a few yards away from you.

6.131. The retrieval of stray animals referred to in his statement from the application land was from 1969, mostly up until the great storm in 1987. After the storm he did not go in so much, because they erected a new fence along the southern boundary of the land.

6.132. Mr Glover agreed that from the top of Crabbs Bank he cannot see all parts of the wood. From the fields at Longfield Hill he can see the woodland, although he would only see people on the perimeter. People walk the wood; he can see them in the southern-most path marked in red, because there they are just inside the woodland. There are also footpaths within the wood that are not marked on the map. A lot of people walk across the tip and take a circular walk through the wood. He would not accept that there was a criss-cross myriad of paths, but said there was one in the south-eastern corner which was not marked. People walk a circular walk, sometimes round the wood, and sometimes through it.

6.133. He was asked whether he had any reason to doubt the witnesses' evidence as to their use of the wood. He said he did not.

6.134. He thought the leaflet had come from Mr and Mrs Barr. They were the people who would have shown or given it to him. He does not know where they got it from, although he would not have thought they got it from Mrs Laister. Mr Barr corresponded with LB Southwark on occasion, or Mrs Barr might have picked it up from the school at Hartley.

6.135. Mr Glover was referred to paragraph 14 of his statement, and asked how he knew that Southwark Council was using the depot site as a campsite for Boy Scouts. He said that when the campsite was going, there were lots of people from London. He had asked them where they came from, and that was the answer. A car was parked in the gateway a couple of weeks ago, and the couple responsible came from London. The people from London he was aware of were the people using the campsite and the wood. They were there is quite big numbers. They were the people staying at the campsite he was referring to in paragraph 14.

6.136. In Hartley the farms at Hartley Manor and Hartley Bottom were the areas of the partnership's farming land which were worst hit by the Great Storm. He did not agree that Foxbrough Wood suffered more than Hartley Wood. Mr Glover was taken to O/App 11. He said he could not comment on the state of the footpaths through Hartley Wood. People were walking and were trying to walk as best as they could along the footpath, but they had to go around or over trees to get along. He disputed the evidence of people who said they had done it the next day or the day after, as people had been without electricity for several days. He could not remember seeing people walking in the wood, metres away from the footpath. If there were people using the wood immediately after the storm he did not see them. He had been into the woods to retrieve the animals who were in the woods.

6.137. Mr Glover was referred to A/3300, the letter dated 16th September 2008 from Mr Richard Jones. He thought it was likely that the dates in February 1988 given by Mr Jones were correct. He had no reason to dispute what Mr Jones said when he said that he and Ray Richards had met people walking their dogs in the woods before that date when they carried out a survey and preliminary clearance.

6.138. Mr Glover said that he just found it difficult to believe that people went into the wood the day after the great storm. He could not see where they would have accessed it. He said that of course people would have tried to walk the woodland: they tried to walk the fields as best they could.

6.139. Mr Glover's recollection did not accord with the article in *The Hart* at O/App 11. He thought the position in Foxbrough Wood was similar to what it was in Hartley Wood. In the end the farming partnership had cleared the path in Foxbrough Wood. He did not know whether Kent CC had cleared Hartley Wood or who had done it. There was financial assistance to do some work after the storm, but exactly where it went he could not say.

6.140. Mr Glover was asked about the Foot and Mouth outbreak. He thought the orders closing the footpaths were made within a week of the matter blowing up on a Friday in February, in early March. The order was closing public rights of way: bridleways, RUPPs any public right of access onto farm land. The order did not extend to informal footpaths such as those marked in red in Hartley Wood, but it was generally advertised that people should not go into the countryside, although the order related to public rights of access.

6.141. Mr Glover said that he never saw anyone walking dogs within Hartley Wood at that time and never had to tell anyone off. Mr Glover was referred to the entry dated 16th March 2001 on App 26/p.9 which was an extract from the *Dartford Times* headed "Farmer vents fury at dog walkers as crisis widens" the summary of the article read:

> "As foot and mouth disease reaches Kent, farmer Roy Glover expresses concerns that dog walkers and horse riders aren't always following MAFF guidelines to prevent the spread of the disease".

6.142. Mr Glover said that everyone should know that reporters were not always accurate: it was horses and not dogs that were the problem. It was the horse fraternity that were not quite so good at following the guidelines.

6.143. In re-examination Mr Glover said that his complaint about the horse riders was not that they were accessing the land, but rather that they were going around the roads. The complaint did not in any way relate to Hartley Wood.

6.144. Mr Glover inspected Foxbrough Wood after the great storm and assessed the damage to it. He thought that the level of damage in that wood was very similar to Hartley Wood. Foxbrough is on top of a hill, in line with Hartley Wood. The devastation went right along the top of the hill.

6.145. Mr Glover was asked why he had come to the inquiry. He said that the partnership owns several farms. He is concerned that this might happen somewhere else on his farms. They deal with four district councils and one county council and several parish councils. If this land becomes a village green, this might have a knock on effect on other parish councils. There is set-aside land, land put aside for environmental use, not checked daily, or even monthly. He was asked whether he had a principled objection to registration of land as a village green. He said he was concerned. When he was on the Parish Council he had asked whether the Parish Council would take on liability for the land. He was assured by the Council that it would still be Southwark's responsibility if a tree fell on someone. He does not think that it is correct that this particular piece of land should be registered. He is also concerned more generally for the generations to come in farming that this legacy should not be left. This is not a good thing for the countryside. They try and provide recreation. He says that there are pieces of land which can be made into village greens. He is not totally against village greens, but it does concern him for the future.

6.146. He does not think that the witnesses for the applicant have anything to gain. As far as he knows the land cannot be developed. What has been going round the village is that this safeguards the land for the future, but he thinks it is safe as ancient woodland.

6.147. Mr Glover has not been present throughout the inquiry. He has not heard everyone's evidence. Although he had been asked generally whether he could dispute evidence, there was some evidence with which he could neither agree nor disagree because he had not heard it.

6.148. He thought that it was very difficult to believe that people were moving around the wood the following day.

6.149. He found it hard to believe that anyone who had lived here for any length of time would not know that the application land was Southwark land. He also found it difficult to believe that people had walked through the woodland and did not know where the public rights of way were.

6.150. There were foot and mouth signs at the subway, a sign at the crossing and a sign where the footpath enters off Longfield Road, but he could not be sure whether there were signs as you came in from the tip.

6.151. I found Mr Glover to be a fair and honest witness, and accept most of his evidence. I do not accept his evidence that the damage to Foxbrough Woods and Hartley Woods was similar:

Documentary evidence on behalf of the Objector

6.152. The Objector submitted a number of documents to the inquiry. Several were referred to in the course of evidence. I have re-read all the documents submitted, whether specifically mentioned in this report or not, and here set out details of those I consider most relevant.

Applications to include introduce further documents to the inquiry by the Objector

6.153. In the morning of the first day of the inquiry Mr Wald indicated that further documents had very recently been obtained by the Objector which it might wish to put before the inquiry. Copies of these documents had not been supplied to the Applicant and I adjourned the inquiry for a short time in order that copies might be obtained and so that Mr Child might have the opportunity to consider them. Following the short adjournment, Mr Wald applied for permission to include 17 pages of additional documents in the Objector's bundle. He told me that those documents had been obtained at 08:25 on the morning of the inquiry. The documents had been obtained from Dr Roberts who had collated them from documents she had found during the course of her recent research. The documents supported the Objector's contention that before the relevant period and during it there was a degree of collaboration between the Parish Councils, Southwark and residents towards the proper management and beneficial use of the application land.

6.154. Mr Child indicated that he had no objection to the documents being included within the Objector's bundle, and accordingly I permitted them to be included as pages 1-17 of Appendix 25.

6.155. On the third day of the inquiry Mr Wald applied to introduce further documents to the inquiry. He stated that Mr Glover had mentioned the effect of the foot and mouth outbreak on user of the application land and that he would be asking Mr Glover about that in chief. The documents he wished to adduce were documents which had been printed from the internet about the nature and duration of the foot and mouth outbreak in the Kent area and in particular in relation to Hartley Woods.

6.156. Mr Child indicated that he had no objection to relevant documents being placed before the inquiry, but said he would like to read the documents, and might need to take instructions, and may need to recall witnesses to deal with the issues raised or perhaps even to call new witnesses to give oral evidence. I permitted a short adjournment in order that he could read the documents and consider his position.

6.157. Having read the documents Mr Child stated that he had no objection to them being introduced, but needed further time to take instructions and to consider whether to call further witnesses to deal with the documents. He agreed that the appropriate course would be to complete Dr Roberts' cross-examination and then to take some time for that task and that was the course I followed. The additional documents were included as Appendix 26 to the Objector's bundle.

6.158. Mr Wald stated that in addition to the bundle of documents obtained by Dr Roberts and which related to the development of the campsite which had been provided to the inquiry, there was a second bundle of documents which had not been provided, because the documents contained within it were thought not to be relevant. Having reviewed those documents, the Objector wished to rely on one of them. A complete copy of the documents obtained by Dr Roberts was made available to Mr Child. This complete copy was inserted into the Applicant's bundle at A3508-3515. Mr Child did not object to the documents being adduced. Documents from the bundle of documents obtained by Dr Roberts were inserted into the Applicant's bundle at the request of the Applicant at A/3516 and A/3517. The document on which the Objector relied was inserted at pages 18-21 of Appendix 25.

The most relevant documents

6.159. O/App 25/1- are a series of documents from the records of Sevenoaks District Council. O/App 25/1-2 is the minutes of a meeting of Southwark's Libraries and Amenities Committee held on 31st March 1982, the purpose of which was stated to be to consider further proposals for the establishment of a camp site and ecological area at Longfield, Kent. Item 5.1 records London Wildlife Trust's offer to draw up a nature trail in the woodland area for use by schools.

6.160. O/App 25/3-10 is the minutes of a meeting of Southwark's Parks and Recreation Sub-Committee held on 6th October 1982. Item 4.2 notes that

> "The London Wildlife Trust has begun work on a series of nature trails suitable for parties of children. It is hoped that these nature trails will be available in the near future. Liason with schools in Southwark and Longfield is being undertaken by Ms Mary Tood of the Southwark Teachers' Centre. So far, the Headteacher of Hartley Primary School has offered accommodation and other facilities necessary to enable Southwark school children to take advantage of the nature trails. It is hoped that other local Longfield schools will become involved with Southwark schools on a similar basis."

6.161. Appendix I to the minutes is the report of the London Wildlife Trust, which notes at 2

> "(i) Access within the wood is good since a ride runs north/south through the centre. (ii) Access into the wood appears to be by footpath only, either across the railway at the northern end, or via the camp site or the various other paths entering the wood from the east and south. I

could find no evidence of a vehicular access which could be utilised for the removal of coppice material.",

and at 3(ii):

"The footpaths are clearly well-used and the wood provides an attractive local recreation resource…".

6.162. Appendix II to the minutes is a discussion paper about the management of the campsite and the woodland. Taking the content of that paper together with the minute at 4.2, I think that the reason for suggesting that representatives of schools local to Hartley Wood should form part of the group responsible for the management and running of the woodland was in order that local schools could be encouraged to provide hospitality to the school groups who it was proposed would visit the woods from Southwark. This reinforces my conclusion, when considering the contact details on the nature trail leaflet referred to below, that that leaflet's target audience so far as schools are concerned was schools in Southwark, rather than schools local to the application site.

The Nature Trail leaflet

6.163. O/App 9 was a leaflet published by the London Borough of Southwark Amenities Department. The leaflet set out information about Hartley Wood under the following headings: Location; Hartley Wood – the Woodland Story; The History of Hartley Wood; Contact Points; and Hartley's Trees - Traditional Uses. The section headed Location, is sub-headed "How to get to Hartley from London" and is illustrated by a section of map showing the location of Hartley Wood in relation to the A2.

6.164. The leaflet illustrates and describes a 10-point nature trail beginning from Gorsewood Road (to the north of the railway, crossing the railway via the subway on Footpath DR213A and then turning onto Footpath SD295 (to the west of the land owned by Southwark). Once the trail enters the land owned by Southwark it follows a looping trail through the wood within the whole of the area owned by Southwark. The nature trail is illustrated by a map on which two other potential access points from which the nature trail can be joined or left are shown in addition to the access from Gorsewood Road: along footpath DR215 from the junction between New Barn Road and Longfield Hill (Main Road) (the location section warns that this involves crossing the railway) and along footpath SD217 from the campsite (the access to which is described in the location section as from Hartley Bottom Road).The campsite is marked on the map. Longfield (CE) Middle School is also shown, as is the railway. The map is coloured to show which areas were owned by Southwark (the campsite and the application site are coloured) and to show that the woodland area through which SD295 runs was not owned by Southwark, and neither was the area between the campsite and the wood.

6.165. Under the heading "The History of Hartley Wood" the following information is included:

> "At the end of the First World War the old Southwark Council planned to set up a summer camp at Longfield for the borough's poorer children, but it was another half century before the plans became reality."

6.166. Under the heading "Contact Points" the names, addresses and telephone numbers of the following organisations together with the following information:

> Southwark Borough Council, SE3 – John Haslett (for campsite bookings Summer 1984 onwards).
>
> Youth Service ILEA, SE5 (for Youth Clubs)
>
> Lyndhurst Centre, SE15 (for schools)
>
> Southwark Wildlife Group, SE15 (LWT)

6.167. O/App 25/16 is a letter dated 8th August 1984 to Mr Barr of Martindowne, Hartley Bottom Road from Mr Dimoldenberg of Southwark administration, inviting Mr Barr to a meeting of those who have an interest in the campsite and woodland on 21st August 1984 at the Jubilee Hall in Longfield. The first sentence of the letter stated "As you know, Southwark Council will soon be opening the Longfield Campsite and Woodland to the public."

6.168. O/App 10 was an article from *The Dartford and Swanley Chronicle* published on 30th August 1984 which reports a meeting between Hartley and Longfield Parish Councils and Mr Dimoldenberg and colleagues. The report states that local residents, leaders of clubs and head teachers had been invited to the meeting to discuss the Longfield campsite and woodland at Hartley Bottom. Southwark was proposing that a "management committee" comprising both Southwark and Longfield organisations be set up. The operation of the camp site was of concern to local residents who questioned the provision of adequate fencing, trespassing, refuse collection and the appointment of a part-time warden. The report stated that it was intended that the campsite be used by 30 persons for 20 weekends during the year and also that parties of youngsters would visit the area for the day to follow the proposed nature trail through Hartley Wood.

6.169. It seems likely to me that this report concerned the meeting to which Mr Barr was invited.

6.170. O/App 11 was an article from *The Hart* published in February 1988. The article was a report of the activities of the Hartley Footpaths Group. They had decided in December 1987 to walk through the Hartley woodland to assess the damage done by the October hurricane. They found that the two paths through Hartley woods "were passable over part of their distance", but that "where blocked the alternative diversions were circuitous to say the least." It also commented that the path through Foxbrough Wood was impassable over most of its length.

6.171. O/App 12 contained a précis of miscellaneous minutes of meetings of the Parish Council, and extracts from the minutes of the meetings of 19th February 1988, 21st October 1988 and 18th November 1988. Minute 3(d) of the meeting of 19th February 1988 records:

> "The Parish Councillors representative Mr Richard Jones attended the meeting of Footpaths representatives held at Sevenoaks on Thursday 11th February. Mr Jones has reported to the Clerk that there are now two paths cleared through Hartley Woods and he is starting work on Foxbrough Woods. The Parish Council is grateful to Mr Jones for his hard work on behalf of the village."

6.172. Minute 4(b) of the meeting of 21st October 1988 records:

> "Kent County Council "Replant the Garden of England" Trust Fund: a grant of £2,000 has been made to Hartley from this fund. This is primarily for private landowners to clear up from last autumn's gales, particularly Southwark Borough Council for their land in Hartley Woods. There are many formalities with the grant and Southwark do not appear to be particularly interested. As a result a meeting has been arranged with the person from Kent County Council who is handling the fund so that Hartley Woods can be inspected and perhaps plans made to clear it up."

6.173. Minute 4(b) of the meeting of 18th November 1988 records:

> "The Clerk had circulated a report on the meeting held with Mr N Brown of Kent County Council, attended by Mr Howe the Parish Council's forestry adviser and Mrs Coutts, to inspect and discuss the condition of Hartley Woods. As a result letters have been sent to two landowners and to the London Borough of Southwark to see if their co-operation can be obtained in making an effort to clear the storm damage in this woodland…"

6.174. O/App 11/2 was an extract from the minutes of Hartley Annual Parish meeting on 3rd March 1989. The extract states (as relevant):

> "The meeting was then opened for questions by residents. These included the following topics:
>
> Hartley Woods – a resident adjacent to the woods who also owned some of the woodland said that they were against spending their money on the woodland which for many years had been abused by horses and motorbikes. If it was cleared and replanted it would not stand a chance. At present it is providing cover and shelter for wild life and inhibits the more destructive elements. It should be left to regenerate."

6.175. O/App 13 was an article written by Mrs Yvonne Fry for the Parish Council which was published in *The Hart* in July 1993. The article was headed "HOW TO SAVE OUR WOODLANDS. WILL YOU HELP?" and read (as relevant):

> "The part of Hartley Woods owned by Southwark Borough Council and the land going down to Hartley Bottom have been put on the market by Southwark. …
>
> Hartley Parish Council is deeply concerned that the Woods should not be purchased by somebody who would use it for anti-social activities. The Council sought the advice of the Woodland Trust … The cost of purchase would be beyond the Parish Council on its present budget and therefore other ways of acquiring the area (just the woods) were examined. The Woodland Trust could put in an offer supported by pledges from residents for which the WHOLE OF THE VILLAGE would be canvassed. … The woods (the Southwark section) would be vested in The Woodland Trust who would take over the management i.e. open up the footpaths at present overgrown and choked; coppice in rotation; and keep the woods as a natural habitat.
>
> Enquiries are going forward to this end … Our residents will be asked to give a one-off donation to save these woods for ourselves and for posterity. …"

6.176. O/Appendix 25/15 is a letter of objection dated 23rd July 1989 to a planning application made by Southwark for permission to use land adjacent to the application land as a travellers' site written by Colonel and Mrs Cowan of Kilrymont, Gorse Way. The fifth paragraph of the letter states:

> "Local residents have been welcomed by the owners to use the woods for walking. The woods are a well-known area for dog-owners to exercise their dogs. They have up till now been considered a safe area for all ages, including the many women who walk unaccompanied."

6.177. App 25/18-20 is a copy of the representations made on behalf of Hartley Parish Council, objecting to an application made in 1989 by Southwark for planning permission to use land adjacent to the application land as a travellers' site. Paragraph 5 states:

> "For some time the Parish Council has been negotiating with the Sevenoaks District Council and the London Borough of Southwark with a view to the management of Hartley Wood as a Site of Nature Conservation Interest being put on a proper footing … Hartley Wood suffered extensive damage in the October 1987 and January 1990 storms and this damage has not yet been rectified. … Unless the County Council are themselves prepared to take on the task of restoration and subsequent management of Hartley Wood it is most likely that a Gypsy Caravan Site in this location will result in Hartley Wood deteriorating further and remaining in a derelict condition for ever. It would become 'no man's land'.

6.178. O/App 26/1-6 were extracts from *The Independent* about the Foot and Mouth outbreak. O/App 26/7-14 was a summary from www.Hartley-Kent.org.uk of news stories affecting Hartley during 2001.

The Transport Surveys Limited survey

6.179. Transport Surveys Limited, commissioned by Southwark, administered a survey in the vicinity of the application land on Thursday 4th, Friday 5th, Saturday 6th and Sunday 7th September 2008. Two enumerators were employed for 12 hours a day from 7 a.m. to 7 p.m. to stand at two points and to approach users of the woods who passed them.

6.180. The questionnaire provided as follows:

QUESTIONNAIRE – Land at Hartley Wood – Village Green Application – (Land B on map)

Words in italics form instructions or clarification to the enumerator/ surveyor

DAY/DATE _____Refused to answer any questions [ ]
ENUMERATOR _____ Already been asked [ ]

Purpose: Walking dog [ ] Walk [ ] Other _____ No in party _____

_____

1. Can you tell me which village you come from? *Please tick*

Hartley [ ] New Barn [ ] Longfield [ ] Other [ ] (*please state*) _____

2. How do you usually access the wood? (*the wood is the whole of Land A and Land B*)

Access point a [ ] b [ ] c [ ] d [ ] e [ ] f [ ]

3. Do you predominantly use the public footpath through the centre of the wood? (*the wood is the whole of Land A and Land B*)

YES [ ] NO [ ]

4. How often do you use the land (B)?

Indicate no. of visits Annually ____ Monthly ____Weekly ____ Daily_____

5. For how long have you used the land (B)? (*no of weeks, months or years*)_____

6. Which areas of the land do you mainly use? (*show map*)

Area A [ ] B [ ] C [ ] None, I stick to pubic footpath [ ]

_____

WOULD YOU BE PREPARED TO ANSWER FIVE MORE QUESTIONS ABOUT THE USE OF THE LAND?

Yes [ ] *Proceed* No [ ] *Thank you for your time*

7. Do you use Land A (*show map*)

(a) more often than [ ] or (b) less often than [ ] or (c) as often as Land B [ ]

8. Do you use Land C (*show map*)

(a) more often than [ ] or (b) less often than [ ] or (c) as often as Land B [ ]

9. Have you ever visited the land having seen any leaflets inviting visitors to do so?

YES [ ] NO [ ]

10. After the storm of 1987, was any part or were parts of the land inaccessible or not used?

YES [ ] NO [ ] I don't know [ ]

11. Are you prepared to provide your name and address? Declined [ ]

_____

_____

Comments/observations of enumerator (*nature of use of on the day – i.e. means of access, activity undertaken, footpaths used, areas of land B used, any additional unsolicited comments made by users about historic knowledge/ use of land B and its condition after the Great Storm of 1987*):

7. Closing submissions

7.1. At the conclusion of the inquiry I invited the representatives for the Applicant and for the Objector to make closing submissions.

Objector's closing submissions

7.2. Mr Wald produced written outline closing submissions upon which he expanded orally. Mr Wald stated that the test to be met is that defined by section 22(1) of the Commons Registration Act 1965:

> "land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right..."

7.3. Mr Wald said that in the preparatory stages running up to the inquiry, certain of the issues raised in Mr Lawrence's advice had fallen away, and others had come to prominence. At the inquiry the focus had been on:

- 20 years continuous user (and whether the great storm and/or the foot & mouth outbreak caused a significant break). Mr Wald submitted that where there was, on the evidence, a total break or a serious reduction in the number of people using the land, that would remove the necessary degree of significance or predominance.

- the identity of the land (in contra-distinction to the footpaths). Mr Wald submitted that where user had been along footpaths, that did not satisfy the village green test. In order for use to be of "the land" there would need to be a significant degree of departure from the footpaths over the whole period.
- as of right (and whether the combined effect of the leaflet and other initiatives to facilitate public access to the wood and/or use of the land illegally (during the foot & mouth outbreak) defeats this). Mr Wald submitted that I should find that the leaflet was only part of a process opening up the land to members of the public generally, not just to inhabitants of Southwark. That was made plain not just by the leaflet, but by minutes of meetings and correspondence. The second limb was whether the period of use during the foot and mouth outbreak introduced an illegal use of the land. Use could not be as of right where legislation required individuals not to be on the land, or not to use footpaths to access it.

7.4. Mr Wald submitted that it was right to point out (as Mr Mayne had) that, as a result of the preparatory work which had been undertaken for the inquiry, certain issues were now not pursued. Predominance and locality, for example were established by Southwark's own survey, more so, probably, than from any other source. No point was pursued on fencing. It was important to note when evaluating the evidence that the teasing out of evidence came at least in part from Southwark's own survey.

7.5. Mr Wald submitted that my conclusion as a result of the inquiry process should be that:

- the 20 years' user had been significantly interrupted, even if a residual number defied the obstacles presented by mother nature and Parliament or a combination of the two. Both events (the storm and the foot and mouth outbreak) were natural events, and the second resulted in intervention from Parliament. Both resulted in an elimination or a reduction for a time of the numbers of members of the public coming onto the land;
- most of the use of the land was along established and official footpaths in any event. Mr Wald stated that that had been the evidence of Mr Glover, who in the Objector's submission was the person with the greatest knowledge of the area. The Applicant's witnesses, even those who used the land every day, were only on the land for 45 minutes to an hour at a time. For the first 10 years, Mr Glover was on the adjacent land every day. For the critical periods, the storm and the foot and mouth outbreak, because of the proximity of his stock to the land, he was intimately involved with the wood.
- Southwark granted and did not revoke permission for people to use the land and/or people used the land illegally. Mr Wald submitted that the authorities showed that there was no need for everyone to know of leaflet – the test was any significant interruption.

7.6. Mr Wald submitted that the burden of proof is on the applicant (see *Beresford*) to prove its case, and the standard of proof is high: "it is no trivial matter for a

landowner to have land registered as a green, and all the elements to establish a new green must be properly and strictly proved" (*Beresford*).

7.7. Mr Wald submitted that against this background the Applicant faces serious problems with its evidence including:

- the manner in which is was secured (pro-forma, collaboration, witnesses not knowing what they were signing, questions 7 & 10 were loaded and inaccurate), some took interviewers guidance as their own – there was total confusion. It is preferable with a questionnaire to have an interviewer: the form contains advice for the interviewer. The evidence gathering exercise was pro forma and collaborative. The whole process of going to the library, chatting with other witnesses and signing up to a pro forma statement cast doubt on the evidence. There were three years between the application and the inquiry. The applicant could have ensured that its witnesses produced tailor-made witness statements. Many of the witnesses who gave oral evidence were unable to say that they would be happy to sign up to their written statements in the light of their oral evidence.
- the choice as to which witnesses to call. Mr Wald submitted that it would be fair to assume these 10 or so were the best there was;
- the notable absences from some key witnesses: there was nothing from Yvonne Fry. Mr Wald submitted that she could have written an explanation for her absence, and that it would be fair to assume that the reason she was not there was because her evidence would be adverse to the applicant's case. There were documents from her, some of which could have been clarified, had the applicant wished to do so.
- There was nothing from Mr Crump and Mr Wald said the same points could be made as in relation to Mrs Fry. Mr Crump sat patiently through the inquiry. His original leaflet was extracted by Mr Mayne. He was a local historian, whose evidence could potentially been illuminating.
- Others who had seen the leaflet were buried in the (literally) hundred of loaded, pre-fabricated pro forma witness statements.
- There were no Parish Council minutes produced by the Parish Council itself. Some Parish Council minutes are absent e.g. 1988 ones – Dr Roberts had been unable to unearth them. Copies could have been brought by members of the Parish Council. Mr Wald submitted that I should draw infer from their absence that they would not have supported the applicant's case.
- Several witnesses said they were keen photographers, but did not produce photographs. On the last day of the inquiry Mr Ian Mansfield gave evidence undermining his second hand evidence of the previous day. Mr Wald submitted that the eleventh hour photos produced led precisely nowhere and that this was odd given the number of users who claimed they went on to the land for photography. In the light of this it was appropriate to draw a negative inference from the absence of any photographs and to infer that any photographs which could have been produced would have gone against rather than supported the applicant's case. Mr Ian Mansfield's late evidence only served to undermine his earlier erroneous and anonymous submissions to the inquiry.
- The quality and content of individual witness evidence (see below).

The leaflet

7.8. On the basis of the evidence seen and heard at the inquiry Mr Wald submitted that Southwark's ownership and grant of permission were well known. That was the evidence of Mr Glover, and of some of the applicant's witnesses. In any event it is not a requirement of the grant of a prescriptive right that it be communicated to all. The key factor is the grant of permission, rather than its communication. As Lord Lindley explained in *Gardener v Hodgson's Kingston Brewery Co Ltd* [1903] AC 239:

> "The common law doctrine is that all prescription presupposes a grant. But if the grant is proved and its terms are known, prescription has no place."

7.9. Similarly, in *Billson*, unknown to users, a deed had been executed in 1929 by the landowners which was intended to permit public use of the common for air and exercise under s193 of LPA 1925. No right of way arose because the use was one which was expressly permitted by the deed.

7.10. Mr Wald's primary submission was that the permission was known as a matter of evidence, but his secondary submission was that, even if it were not, the permission granted by the leaflet and the other encouragement being given by Southwark in the early 1980s to members of the public, including the public from Hartley to use the land would be sufficient to prevent use being as of right.

7.11. Mr Wald invited me to draw the following conclusions in relation to those witnesses who gave oral evidence on behalf of the Applicant:-

Mr Alford

7.12. Mr Wald submitted that Mr Alford shifted ground in relation to the frequency of his visits. His recollection of how many times he had used the site increased as the inquiry approached. There was confusion about the number of people in his group, and how the survey was conducted. Initially in cross-examination he indicated he was in a group of 4. His questionnaire said 2. He was unable to substantiate his adaptation of the figures in the Southwark survey. The survey could only record answers given by a single individual. It would be wrong to make assumptions about the potential answers of other members of the group who might have given different answers.

7.13. "Every day" must be inaccurate given the considerable extent to which he is absent from the area (something of central relevance to his evidence and to the inquiry). Long periods of non-use were relevant and should have been considered.

7.14. Mr Alford's Parish Council role gave him a privileged position from which to understand the degree of collaboration between Southwark and the Parish Council. Despite his Parish Council role, he grossly understated the degree of collaboration between Southwark and the Parish Council and locals (but accepted some) even in the face of documents.

7.15. In relation to the storm damage, he disparaged Yvonne Fry (described in glowing terms by Mr Glover in examination in chief) by saying that her account of the blocked paths was cynical and was designed to secure funding. Mr Glover's evidence was that the description would have been accurate and untainted by any objective or motive.

7.16. Mr Wald suggested that Mr Alford appeared more reasonable on his second visit to the witness box. Unlike the others, he accepted that he knew that the footpaths were out of bounds and adapted his behaviour accordingly. Also he (quite reasonably) surmised that use would have tailed off at the time of the outbreak but (finally) conceded that this was merely conjecture since he was out of the country in March.

Mr Austin

7.17. Mr Austin was a tree surgeon who had walked generations of dogs. He said that October 15th 1987 was indelibly fixed in his memory. But unbeknownst to him (and although he though he could smell tree surgery by others), he was apparently not the only tree surgeon in town. Others did work within the wood to clear the official public footpaths within the wood (see invoices from chainsaw gang 3300 et seq.). Mr Wald submitted that the logical implication from these documents was that unofficial informal footpaths remained uncleared.

7.18. Mr Austin's stated 300 visits are to be divided between Hartley and Foxbrough Woods and between him and his wife. He described himself as particularly agile (in 1987 at least) and therefore able to go in shortly after the great storm. Mr Wald submitted that not all users in 1987 (if there were any) would have been so agile. The logical inference is that use stopped (as documents and Mr Glover recalled) or tailed off significantly for at least a year. Mr Austin had no answer to the committee minutes.

Alan Golledge

7.19. Mr Golledge had considerable experience in local government. He had signed dozens of statements at five London local authorities, but Mr Wald submitted that he was all at sea over this one. Nevertheless he had stated in examination in chief "I'm happy with that statement". Mr Wald submitted that I should note that in response to one of my questions, he did accept that. When he had been probed, it was revealed that it was not possible to produce a statement which applies to all individuals who are to appear at an inquiry. He accepted that there had been a change in the pattern of use and that therefore Q 7 was not one size fits all.

Mrs Brooks

7.20. Mrs Brooks confirmed that she was happy with her statement but then it transpired that she would wish to change 7 & 8. She was a good example of the dangers of a pro forma witness statement. She was a member of the Hartley Footpath Group. She conceded that there came a time when it was possible to go back to the woods, thereby accepting that there was a break or interruption in use.

Mr MacCreadie

7.21. Mr MacCreadie was the witness about whom Mrs Hoad had to explain that he got into a spat with the librarian. Mr Wald submitted that it was impossible for me to tell what other circumstances had pertained to other witnesses who did not give oral evidence. He had seen motorbikes on the application land and said that it was pretty devastated up there after the storm. There were inaccuracies in the questionnaire and statement – e.g. 1981 to 1987. His evidence was totally discredited in relation to paras 7, 8 and 10. He hadn't even read the leaflet on the date he signed the statement. He had signed up to para 10 without understanding what significance it had to him. Mr Wald submitted that one was left wondering which other witnesses who did not give oral evidence did the same. He said that Ms Hoad's explanation did not mend this gaping hole in the applicant's evidence.

Mr Wren

7.22. Mr Wren mounted biked. Mr Wald reminded me that Mr Wren had thought that he was nit-picking in relation to whether it was appropriate to put his signature to paragraph 7, and said that I should bear in mind the statements in *Beresford* and the implications of registration. Para 7 was simply not made to measure. Mr Wren's evidence demonstrated just how procrustean[38] the applicant had been. There is one witness statement, and witnesses are stretched or shortened to fit it. Mr Wren confirmed that there was no horse riding in the wood after the great storm, having been engaged in horse riding himself up until 1987.

Mr Gibbons

7.23. Mr Wald submitted that it was clear that Mr Gibbons was (possibly like other witnesses) confused about the guidance notes. He seemed to have relied on the interviewer's ones. Mr Wald emphasised that unlike Southwark's survey, there was no interviewer and often no person attending the completion of witness statements in the library. Mr Gibbons (again, possibly like others) discussed his evidence with others in the library and said that he was unsupervised (contrary to Mrs Hoad's evidence).

7.24. Mr Gibbons indicated that the woods were clear and able to be used for the summer months (almost a year after the storm). The fallen trees were very useful for making bivouacs.

7.25. Mr Wald submitted that Mr Gibbons was reluctant to acknowledge involvement by Southwark initially, but when it was pointed out to him that he was a scout leader and Parish Councillor at the time he eventually conceded that he knew in the 1980s that Southwark was positively encouraging the use of Hartley Woods.

Mr Mansfield

7.26. Mr Wald pointed out that Mr Mansfield's evidence that he used the land "once a week" was at odds his evidence that he used it "from time to time". He gave

[38] ruthlessly enforcing uniformity

clear evidence that the wood was obstructed after the Great Storm (although he said that he could get in nonetheless). Mr Wald said that Mr Mansfield was given less than 10 seconds to read his own statement before being asked in chief to confirm its content.

Mrs Pearson

7.27. Mr Wald submitted that Mrs Pearson had given straightforward answers. She walked the footpath until 5 yrs ago. After the Great Storm she found alternatives (in particular non-wooded areas). As a matter of commonsense that it what many people would have done. Although there would have been an element of curiosity, that novelty would soon have worn off, and people would have sought areas where walking could have been freely carried out. She conceded that she wood was impassable until February 1988. Mr Wald submitted that that was very telling: he said that it must have been the official footpath only that was used after that – otherwise why not go in sooner. He highlighted Mrs Pearson's comment "or we possibly didn't use it until the clearing in (I now understand) February time."

Mrs Hoad

7.28. Mr Wald stated that the decision to call Mrs Hoad had been made after the embarrassment of the witness statement, but her evidence did not assist the applicant's position. Her responses to the question as to why people had not been asked to prepare individual statements were inadequate. "With the timescales involved it wouldn't have been practical". Mr Wald said that it was worth pausing to consider what those timescales were, and what the practicalities were of collecting written evidence between 2005 and the date of the inquiry. Mr Wald asked me in particular to remember my own questions and pointed out that Mrs Hoad's own statement had come in overnight and there had been many nights between the application and the inquiry.

Mr Mansfield Junior

7.29. His contribution served only to undermine his own earlier anonymised evidence and gives a sense of the collaborative attempt to meet the ill-understood tests of VG registration no matter the evidence. His guesswork as to location was inconsistent with certainty as to date. Given the number of photographers strange that photo evidence was so late and so poor, unless the facts could simply not support a helpful photo.

The Objector's witnesses

7.30. Mr Wald invited me to find that by contrast with the Applicant's witnesses the Objector's witnesses were as helpful as possible. Their motivation was to assist the inquiry – Dr Roberts said to ensure that the process was fair - unlike the Applicant's supporters. It was notable that Mr Cramp was not called. Mr Wald asked why his copy of the leaflet had to be extracted by Mr Mayne and why were we left to guess as to how he got it and as to who else might have received it? Mr Wald stated that much of the relevant information was within the control of the Parish Council or could have been supplied to the inquiry by any number of the applicant's witnesses. Mrs Laister, Mrs Brudenell (deceased), Mrs Barr, Mrs Scott, Mr Cramp all received leaflets but were not called by the applicant to give evidence. In sum the objector (whose task it is

not to prove the case) had done more work, some of which helped the application, but the totality of the evidence was not enough.

Dr Roberts

7.31. Mr Wald said that Dr Roberts was asked again and again in cross-examination about her non-involvement over the relevant period when it was clear that her contribution was to the supply relevant documents - all of which were in the public domain, and all which must have been known to the applicant but were not disclosed by it – to enable the inquiry to form a full picture.

7.32. Dr Roberts was motivated by a desire to ensure that the inquiry was open, honest and fair. She helped to draw Southwark's attention to the fact that the leaflet had been received by Laister, Crump, Brudenell, Enid Scott and Mr & Mrs Barr. To add to these there was Mr Glover and his named individuals, all of whom received the leaflet.

Mr Marcus Mayne

7.33. Mr Wald submitted that Mr Mayne had helpfully sifted out non-issues, but said that those which remain, remain.

7.34. cf Mayne – survey – it was a genuine effort to shed light on the issue whether or not it suited the position of the objector … it certainly proved that 81% of the people came from Hartley – so we were able to drop that issue – criticisms of the methodology of the survey were unwarranted.

7.35. When challenged on the ambiguous nature of the survey, explained, drew attention to the whole of land A & B etc.

7.36. The result of his survey shows clearly the most use was of footpaths and not informal routes.

Mr Roy Glover

7.37. Mr Wald said that like Dr Roberts, Mr Glover was helpful and neutral as to outcome. His real concern was with a fair process. It worried him to see land registered which should not be – it could be his land next. However he confirmed he had no principled objection to the legislation. He knows the site better than anyone, especially over 1985-95, and all day long (not merely for 45 minutes at a time). He confirmed that most use was on the official footpaths and that both the storm and the foot and mouth outbreak stopped use for a time.

7.38. In relation to the leaflet and notification generally, his evidence was "I find it difficult to believe that people who lived there would not have known that Southwark owned the land and had given permission to use it."

7.39. His account of posting foot and mouth notice is inconsistent with the evidence of the applicant's witnesses who were re-called on this issue. In Mr Wald's submission it was inconceivable that frequent users would not have seen the notices.

7.40. Mr Glover offered a valuable contributions in relation to the effect of the great storm. The escape of his cattle into the wood meant that he, by necessity, went into the wood and saw its condition.

7.41. Mr Wald made the following other general points:

- the Objector continued to rely on the survey in support of its contention that the users of the wood predominantly used the footpath.
- It was a matter of clear logic that those who were able to go into the wood after February 1988 would have used the cleared public rights of way, not the red informal paths.
- There were untested inaccuracies in the pro forma statements.
- The selection of witnesses both in relation to the selection of those to give oral evidence in the first place, and secondly those who were recalled to give evidence on foot and mouth. One should infer that they were the best available, and that others not called may have had evidence adverse to the application.

7.42. Mr Wald invited me to draw the following conclusions.

- In sum the application land was a valued resource which locals and others had used for parts of the 20 year period but not all, with the active encouragement of Soutwark.
- Mr Glover explained the misapprehension many of the locals are under: this is not a piece of land which is about to be developed, it is an ancient wood which would be protected from development. His legitimate concern (as a land owner himself) was that land which is not suitable for registration, such as this, should not be registered. Like Dr Roberts, his motivation for attending the inquiry was honourable – in the words of Dr Roberts: the inquiry was necessary to ensure that the process was open honest and fair.

7.43. Mr Wald submitted that the irresistible conclusion following that inquiry process was that by virtue of interruptions to the 20 year period, the licence given by Southward and the predominant location of user, namely on the footpaths themselves, the requisite test was not met and Hartley Wood should not be registered as a TVG.

7.44. Mr Wald expanded on his submission in relation to the predominance of footpath use as follows: once the use of the public right of way is discounted, one as a matter of evidence is left with not very much use at the best of times, and very little at all after the great storm. The effect of the great storm would have been more pronounced along the informal paths. The reverse may have been true for the Foot and Mouth – one may get an increase in the ratio of people using the informal paths – although the overall numbers would have dropped.

7.45. Mr Wald submitted that lack of continuity is a question of fact and degree for the Registration Authority. He accepted a short period, as per Lord Scott in *Trap Grounds* would not prevent continuity, but said that the evidence

suggests at the very least a 4 month period of disuse of the public footpaths, and probably a longer period in relation to the informal paths. Four months would be sufficient to constitute an interruption in the 20 year period.

7.46. Mr Wald said that there are two reasons to distinguish this case from *Beresford*: throughout the 20 years period, there was encouragement to use the land. Prior to that Southwark had a history of fencing parts of land when it chose to. After it decided to make the land available generally, it no longer repaired or erected fences. Any fencing indicates an intention to exclude and control the grant of permission. Mr Wald submitted that there was no other way of interpreting the meetings between Southwark and other organisations: if it had been an irrevocable grant, there would have been no need for such efforts. Once an invitation exists in perpetuity it is a nonsense to keep making an invitation.

8. Applicant's closing submissions

8.1. Mr Child made oral closing submissions. He relied on his opening submissions, and highlighted in addition one or two points relevant to the issues which were maintained by the Objector.

8.2. Mr Child stated that the Parish Council's objective is to protect and maintain public access in Hartley Wood. It seeks to maintain the access rights of the inhabitants of Hartley.

8.3. Mr Child said that the inferences to be drawn from the documents are a matter for me, and submitted that I am in as good a or a better position to draw judgments from the content of that documents than the witnesses.

8.4. The Applicant's witnesses (other than Mr MacCready) came across as patently honest and helpful witnesses, seeking to assist the inquiry. In essential points they maintained their evidence in the face of cross-examination. There were differences on points of detail, but witnesses were prepared to adjust their evidence where they thought they should do so. The essential evidence was nevertheless correct.

8.5. Mr Child submitted that I should bear in mind when considering the written evidence not only the witness statements but also the evidence questionnaires. Whether or not I consider that the method of obtaining witness statements might have been different, I should still give weight to those statements and should also give weight to the questionnaires. Differences in recollections of events 21 years ago might be thought to add to rather than detract from the credibility of the witnesses.

8.6. In relation to Mr MacCready, I should put no weight on his written evidence, but should accept his oral evidence as to the use of the wood immediately following the great storm. His oral evidence was not tainted by the flawed approach to the completion of the written statement.

8.7. Mr Child submitted that I should consider the criticisms made of the statement in the light of the instructions on filling it in, in particular the instruction to read the statement carefully, and alter anything with which they disagree. Some of the witnesses have done that, e.g. Yvonne Fry amended paragraph 10. Enid Scott also amended paragraph 10. Paragraph 7 includes the words "basically the same", rather than "exactly the same".

8.8. Mr Child said that paragraph 10 was the other paragraph that came in for particular criticism. Mr Child drew my attention to the fact that there were witnesses who had amended that paragraph, and said there was no constraint on people doing so.

8.9. The applicant did not suggest that Mrs Hoad had supervised the completion of statements, other than being present whilst they were completed.

8.10. In considering the witness statements I should also look at the other evidence, including the evidence advanced by the Objector. I should consider whether there was significant use over the period as a whole, not whether there was a reduction from time to time. The 20 year period has to be looked at as a whole in considering whether the statutory test is satisfied.

8.11. The evidence given by witnesses for the applicant as to user of the whole site was extensive and corroborative. The whole site had been used for a range of activities properly classified as lawful sports and pastimes: dog walking, children's play, nature observation, photography. The application site is a substantial area of land. It is inevitable that parts of the site are inaccessible: anyone looking at the site can see that there is wide accessibility with many informal paths, and it is possible to walk in areas where there are no informal paths.

8.12. As a matter of law, the fact that part of the land may have been inaccessible from time to time is not in itself sufficient to defeat the application. In the *Oxfordshire* case at paragraph 67, Lord Hoffman envisaged that part of an application site might be inaccessible, but that that would not necessarily prevent registration of the land as a whole.

8.13. Here the land is woodland, and it is only to be expected that large parts of a wood might not be accessible. The fact that parts of the wood may from time to time have been impenetrable is not of itself a ground for rejecting the application. The question for the registration authority is whether it can sensibly be said that the whole of the site has been used for 20 years, rather than every square foot of it: Mr Child relied on the words of Sullivan J in *Cheltenham* at paragraph 29:

> "When dealing with "the issues" the report correctly stated that the onus was upon the applicants for registration to prove on the balance of probability that the site had become a village green. Thus the applicants had to demonstrate that the whole, and not merely a part or parts of the site had probably been used for lawful sports and pastimes for not less than 20 years. A common sense approach is required when

considering whether the whole of a site was so used. A registration authority would not expect to see evidence of use of every square foot of a site, but it would have to be persuaded that for all practical purposes it could sensibly be said that the whole of the site had been so used for 20 years."

8.14. Mr Child submitted that, looking at the 20 year period as a whole, there was no basis on which I could conclude that the user was discontinued, and therefore for that reason is not established, on the basis of the evidence to the inquiry. Even if it is the case that user diminished, (as may have been the case given the impact of the storm on the wood), that would not break the continuity of use that it would be necessary. Complete non-user for a short period would not be lack of continuity e.g. if people were snow bound and could not use the woods for a month, that would not break the continuity. Reduced user, as long as the number of users is still significant, does not break the continuity.

8.15. On the evidence, I should find that a significant number of people continued to use the wood during that period. The document sent under cover of Kent Trust for Nature Conservation's letter of 11th August 1989 to the County Planning Officer at Kent County Council describing Hartley Wood talked in terms of 25% storm damage in the wood. That level of damage was unlikely to have resulted in a less than significant number of people using the wood. Of the 10 substantive witnesses for the applicant, 2 said that they did not use it for a period.

8.16. In evaluating the witness statements, it is a matter of what weight should be given to them. Having had the advantage of hearing oral evidence, I should be satisfied that a significant number of people continued to use the wood in the period following the great storm.

8.17. Mr Child submitted that Richard Jones' letter is consistent with the documents at the time, as to what his activities were. Mr Child said that there was also the reference in *The Hart* O/App 11 to two paths being inaccessible, with diversions which were circuitous to say the least and said that those diversions must have taken people into Hartley Wood, although Mr Child accepted that such use might well be right of way type user rather than village green type user.

8.18. Mr Child submitted that I should also consider what the contrary evidence was. It amounts to Mr Glover, a very busy farmer owning a number of farms. It is not difficult to see how he would have been especially occupied in the period following the great storm. He suggests nevertheless that he was able from Manor Field and from a vantage point to the east of the wood to be able to see into the wood. Mr Child invited me to consider how far one really can see into the wood and said that in his submission there is only limited visibility. Mr Glover could not have seen the level of user within the wood in the days and weeks following the great storm. He even went so far in cross-examination as to say he found it very difficult to believe that people were using the wood, but did not say that they did not. He may have had different

priorities to the users of the wood, but that is not a basis for rejecting the oral evidence in support of the Applicant, from users who said they used the wood in the period following the great storm and that they saw others doing so. In Mr Child's submission, on the evidence, there was no break in continuity.

8.19. Mr Child said that the position in relation to Foot and Mouth outbreak is very much the same. That matter was raised very late: for the first time on the third day of the inquiry. The same approach has to be taken and the same test applied in looking at continuity: it is a matter of fact and degree for the Registration authority. The clear evidence of the three witnesses who were recalled to deal with it, unshaken in cross-examination, was that Hartley Wood continued to be used by them and others for informal recreation during the period when there was a prohibition on use of public rights of way. Even if the use had been discontinued for the period of the statutory prohibition, that would not as a matter of fact and degree break the continuity of use over a 20 year period, but in any event the clear evidence was that there were significant numbers of inhabitants using the wood during that period. The test is not how much reduced the use is, but whether it was still significant.

8.20. The suggestion was made that the use was illegal. Mr Child said that the documents before the inquiry demonstrated that it was only use of public rights of way which was prohibited, and that there was no prohibition in relation to the wood itself.

8.21. Mr Child said that Mr Mayne's evidence was fair in many respects, seeking to establish the factual position rather than taking a stance. With Southwark unable to present a positive case based on evidence, the applicant should succeed.

8.22. The argument that the predominant use was of the footpath, rather than of the wood, should be rejected. The two points selected for Southwark's survey were on or near the public right of way. It was hardly surprising that people approached there would say that they predominantly used the public footpath.

8.23. Looking at question 3 in the context of point A, there is no wood to the left. Without any identifying marks as to the public right of way, that question would appear to relate to the substantial red path running through the centre of the wood, not the public right of way.

8.24. Even from the survey itself, when it came to asking which land people had used, a very substantial proportion said land B, which is not the public footpath. I should not find anything from the survey persuasive on the question of whether the predominant use was of the footpath.

8.25. Mr Child turned next to the question of whether the use of the woods was by licence granted by Southwark. He asked, did Southwark make clear to the inhabitants of Hartley that their use of the woods continued only with Southwark's permission? Southwark relies on two matters: the degree of collaboration between the Parish Council and Southwark in relation to the proper management and beneficial use of the land. It was not clear how

collaboration between Southwark and the Parish Council could constitute a licence to the inhabitants, and I should not adopt that analysis.

8.26. Dr Roberts' researches revealed reports to the London Borough of Southwark (App 25 p.6). There was no reference there to granting permission to the local inhabitants to continue the uses to which they were putting the land. Even if it were possible to identify some collaboration in relation to the production of the leaflet and the use of the nature trial, there was nothing there which made clear to the inhabitants that permission was being given to them to use the woods for the informal recreational uses already established prior to the production of the leaflet. That report referred to the established use of the wood. Southwark was not able to say that it did not know of the use being made of the wood by the local inhabitants.

8.27. Southwark also rely on the Southwark Sparrow article App 25, p.17: which said that the leaflet was available from sources within Southwark. Mr Child submitted that it was apparent from the leaflet itself that it was directed to Southwark residents rather than to anyone else, including the inhabitants of Hartley.

8.28. The initiative undertaken by Southwark involved the establishment of a campsite and the publication of the leaflet encouraging people to use the nature trail. The campsite was not used much or for long, but people from the campsite did use the woods. There is nothing in the leaflet referring to the existing recreational uses taking place on the land and nothing to say that those uses might continue with the permission of the London Borough of Southwark. The identified nature trail relates to only part of the wood. There is no invitation to enjoy the rest of the wood. Part of the nature trail is on land not owned by Southwark. There is no qualification in relation to that area. There is nothing in the leaflet to suggest that general use by the local community for informal recreation was being approved or given licence by Southwark.

8.29. Mr Child said that fencing was not a point before the inquiry, and I should not make any findings on fencing.

8.30. On the face of the leaflet, it was available before summer 1984. There is no evidence that it was reprinted and no evidence that it reappeared in 1985. I should not draw an inference or assume that the same leaflet was available in 1985, even if it did have some licence-granting quality, which the applicant did not accept.

8.31. There was nothing in the document to indicate that licence was granted to locals. Of course the use of the nature trail was entirely compatible with the existing informal recreational use by the inhabitants of Hartley. This was not a case of a potential conflict between the uses; they were compatible. That also tells against any contention that Southwark had made clear to the inhabitants of Hartley that they could only continue their pre-existing activities which did not have permission, following Southwark establishing a nature trail in part of the woods.

8.32. Mr Child submitted that encouragement by Southwark to people, principally from Southwark, to use the nature trail, cannot constitute permission or licence sufficient to defeat the application. Permission cannot be implied either from inaction or from acts of encouragement by the landowner.

8.33. A small number of Hartley residents obtained a copy of the leaflet. Mrs Laister provided a letter A/3472 stating how she came to obtain a copy of the leaflet. She is the only person who had provided evidence that she obtained one from Southwark.

8.34. There was no distribution of leaflets within Hartley such as to enable Southwark to claim that the residents of Hartley were using the wood by licence or permission of Southwark.

8.35. Southwark cannot satisfy the requirement that any inhabitants of Hartley using the licence should know that it is a revocable licence. Licence cannot be implied by toleration. Action by the owner which encourages the use of the land does not constitute revocable permission. Mr Child referred me to the speech of Lord Scott in *Beresford* at paragraphs 49 and 50 and submitted that the present case is on all fours with *Beresford*:

> "[49] Was there any sign that the permission was intended to be temporary or revocable? There was none. The fact that the land was publicly owned seems to me highly material. Neither WDC nor CNT nor the council were, or are, private landowners. Their respective functions were and are functions to be discharged for the benefit of the public. The provision of benches for the public and the mowing of the grass were, in my opinion, not indicative of a precatory permission but of a public authority, mindful of their public responsibilities and function, desirous of providing recreational facilities to the inhabitants of the locality. In these circumstances, there seems to me to have been every reason for the inhabitants of the locality who used the sports arena to believe that they had the right to do so on a permanent basis.
>
> [50] Accordingly, the nature of the implied permission from the landowners that the evidence shows to have been present was not, in my opinion, such as to prevent the use of the sports arena by the public from being use as of right. The positive encouragement to the public to enjoy the recreational facilities of the sports arena, constituted, in particular, by the provision of the benches, seems to me not to undermine but rather to reinforce the impression of members of the public that their use was as of right."

8.36. Mr Child stated that the photograph does not show all the trees down; it does not show devastation, although Mr Child accepted that it does show some trees down. Mrs Fry's description of the wood in 1993 is not inconsistent with a finding that village green user was going on at the time.

8.37. Dr Roberts apparently came into the process concerned about the unfairness of the process: the Parish Council wished to make clear that in its view the initial report was thorough and legally correct.

9. Findings of Fact

9.1. Having re-read and carefully considered all the evidence submitted to the Public Inquiry (whether specifically mentioned in this Report or not) I reach the following conclusions in relation to the evidence.

Quality of the evidence produced on behalf of the Applicant

9.2. In my directions I requested that the Applicant should provide a written statement of every witness whom it intended to call to give oral evidence at the inquiry and of every witness upon whose evidence it wished to rely, but whom it did not intend to call to give oral evidence. In every other inquiry where I have given this direction, it has elicited individually drafted witness statements, sometimes quite informal in nature and often handwritten, but which reflect the individual recollections of the witness concerned. The standard form witness statements produced by the Applicant here did not fulfil that function.

9.3. It transpired that the circumstances under which some of the witnesses who gave oral evidence completed the standard form witness statements were not ideal: Mr MacCready was anxious because he had parked his car somewhere inappropriate and did not finish reading the form. Mr Gibbons was pressed for time because he had another appointment to get to. There was also some evidence of discussions between witnesses who were attending the library to complete their forms. I do not know whether the reliability of the evidence of those witnesses who gave written evidence only was affected in similar ways, but it seems overwhelmingly likely to me that it was, at least in some cases. Even where witnesses had read the guidance notes carefully, the prescriptive nature of the form and the small amount of space provided for individualised responses in my judgment meant that it was likely that evidence collected in this way would be inaccurate and unreliable.

9.4. Those witnesses who completed evidence questionnaires were given the blank questionnaires together with guidance notes for an interviewer. In fact no interviewer assisted in the completion of the evidence questionnaires. It is possible that the evidence of those who read the guidance notes might have been coloured by those notes and I have borne this possibility in mind.

9.5. I have considered whether I have been provided with all questionnaires and witness statements which were completed or whether further statements and questionnaires which were unfavourable to the Applicant's case might have been suppressed. The Applicant's bundle included questionnaires which stated that the witness did not use the land (W Bowen A654) which suggests that all questionnaires were included. Some questionnaires (Cammack A824, Cleveland A1122) referred to previous written statements which the witness had made. Those statements were not made available to the inquiry.

9.6. In evaluating the Applicant's evidence I have borne in mind when considering the evidence questionnaires and witness statements of those witnesses for the Applicant who did not give oral evidence to the Inquiry the features of those documents which may mean that the evidence collected in this form is less reliable than, for instance, an individually drafted witness statement. There are a number of inconsistencies in the written evidence of those witnesses who gave written evidence only which highlight this inherent unreliability, and support my view that I should approach the evidence of those who gave written evidence only with caution. It was notable in my view that the frequency of use and range of activities and sometimes period of use specified for those witnesses who completed both evidence questionnaires and witness statements tended to increase between the evidence questionnaire and the witness statement.

9.7. I am aware that it may be difficult for witnesses who are familiar with the application land as it has been in recent times to recollect accurately what it might have been like at the beginning of the relevant period, and I have borne this in mind when evaluating the evidence of user at the beginning of the period.

9.8. It also seemed to me, when considering the evidence as a whole, that, whereas one might expect an Applicant to select the witnesses who best support his case to give oral evidence, in this case there was some force in the submission made on behalf of the Objector that there had been some selection of the witnesses on the basis of what they did not know about and therefore could not say. In particular, it was notable in my judgment that none of the applicant's witnesses who recalled having seen the leaflet published by Southwark were called to give evidence (Mr Blackman, Mr Cramp, Mrs Fry, Mr & Mrs Laister, Mrs Scott). Mrs Scott had also amended the standard form witness statement to state that she had followed the nature trail. Further Mr Keith Blackman[39] and Mr and Mrs Laister were listed on the applicant's table of witnesses[40] as being witnesses who would give oral evidence, but they were not in fact called to give oral evidence. No explanation was advanced for this change of intention.

9.9. Several of the witnesses who gave oral evidence, in my judgment, overstated the frequency with which they used the application land (Alford, Austin, **) or the period during which they had used the land (MacCready). It seems to me likely that there would have been a similar degree of exaggeration or innocent misstatement by those witnesses who did not give oral evidence and I have borne this in mind when considering the written evidence.

Quality of the evidence produced on behalf of the Objector

9.10. Southwark was hampered, as Mr Mayne candidly accepted, in its ability to adduce any positive evidence to the inquiry, by the poor standard of its record keeping. The

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[39] Mr Blackman stated in his witness statement that he had not seen the leaflet until 3 or 4 years before he made his statement.

[40] At A20 and following

Use of the application land during the relevant period

9.11. There was ample evidence that the application land had been used by a substantial number of individuals for dog walking and walking throughout the relevant period.

9.12. There was also a substantial amount of evidence of use of the woods for children's play and by Scouting groups.

9.13. There has been no horse riding in the woods since the Great Storm in October 1987.

The campsite

9.14. Southwark applied for planning permission to erect a toilet building to provide toilet facilities for camping on land to the east of the application land (shown on the plan at A/3479) under Application Number SE83/33, and by letter dated 16th February 1983[41] amended their application to include the use of the site the subject of the planning application as a camping ground for the children of Southwark. Planning permission was granted in April 1983 for use of the land as a camping site by youth organisations from the London Borough of Southwark and a condition was imposed that when the site was not in use by a youth organisation from the London Borough of Southwark, it should be fenced and locked securely to prevent unauthorised use[42]. The campsite operated between late summer 1984 and 1987.

The leaflet

9.15. The documentary evidence establishes that it is likely that the nature trail was devised in 1983. The letter dated 16th February 1983[43] from Southwark architects to the Planning Officer of Sevenoaks District Council, requesting that the planning application should be amended to include the use of the site as a camping ground for the children of the London Borough of Southwark, states "Nature trails and walks <u>have</u> been opened up in the adjoining woods" [my emphasis], suggesting that the nature trail had been completed by that date. The Clerk to Hartley Parish Council, Mrs Styles's letter of 28th March 1983[44] states "It is noted that nature trails and walks <u>have already</u> been opened up" [my emphasis] (although it is possible that she is merely re-stating the information contained in Southwark architects' letter). The September 1983 issue of *The Southwark Sparrow*[45] headed "Southwark's own 'bit of the countryside'" states (in the caption to the accompanying photograph showing children in woodland) that Councillor John Wentworth had taken his class of eight-year olds to try out the nature trail and picnic in the country. (The article from *The Southwark Sparrow* can in turn be dated from a letter dated 31st October 1983[46] written by Mr Byrom for Sevenoaks District Council's Planning Officer which refers to an article published in the September issue of *The Southwark Sparrow*, which I am in no doubt from the content of the letter must have been the article now produced, and from B.E.T. Simmonds' letter

41 A/3508
42 A/3511
43 A3508
44 O/App25/11
45 O/App 25/17
46 A/3510

of 26th September 1983 on the same subject[47]). The only documentary evidence which tends to suggest that the date of opening of the nature trail might have been later is the article in *The Dartford and Swanley Chronicle* of 30th August 1984 which refers to "the proposed nature trail", but in the light of the other evidence, I am satisfied that the report was inaccurate in this detail.

9.16. I infer from the fact that the contact points information on the leaflet gives Mr Haslett's name "for campsite bookings Summer 1984 onwards" that the leaflet was prepared and published in anticipation of the campsite opening and before it opened. Southwark's letter dated 8th August 1984 inviting Mr Barr to the meeting on 21st August 1984 states that the campsite was at that time soon to open. On balance, I think it likely that the leaflet was published after the nature trail was tried out by Councillor John Wentworth's class in September 1983, but before summer 1984.

9.17. I infer from the contact points given that the leaflet that the leaflet was intended to serve the dual purpose of informing the reader about the campsite and how to book it and about the nature trail. From the information given within the leaflet, and considering this together with the planning restrictions imposed when planning permission was granted for the campsite, and its stated purpose as a campsite for the children of the London Borough of Southwark, it seems to me that the leaflet's intended readers were youth organisations from the London Borough of Southwark which might want to book the campsite, including Youth Clubs and schools operating within that Borough.

9.18. I have already commented above under the heading the quality of the applicant's evidence about the applicant's decision not to call any of the individuals who stated that they had received a copy of the nature trail leaflet to give oral evidence. I find that copies of the leaflet were received by Mr Cramp, Mrs Fry, Mr and Mrs Laister, Mrs Scott, all of whom were witnesses whose evidence was relied upon by the Applicant and also by Mrs Brudenell, Mr Glover and Mr and Mrs Barr.

9.19. Mr Cramp was described as a local historian. No explanation was advanced as to how he came to have two copies of the leaflet. Mrs Fry was the former chair of the Parish Council. No explanation was advanced as to how she came to have seen a copy of the leaflet, although it seems possible that she may have done so in some official capacity. Mrs Laister provided a letter[48] stating how she came to obtain a copy of the leaflet: she was in contact with Southwark about fly-tipping and was offered a copy of the leaflet. No explanation was provided as to how Mrs Scott came to have seen a copy of the leaflet.

9.20. Mr Glover's copy of the leaflet was passed to him by Mr and Mrs Barr, but he did not know how they had come by it. Mr Barr was invited by Southwark to a meeting of those who have an interest in the campsite and woodland on 21st

47 O/App 25/13
48 A/3472

August at the Jubilee Hall in Longfield. It is possible that he obtained copies of the leaflet at that meeting or through his contact with Southwark in relation to the campsite. There was no information as to how Mrs Brudenell might have come by her copy of the leaflet.

9.21. I note also that two of the respondents to Southwark's questionnaire were reported as having responded positively to the question "Have you ever visited the land having seen any leaflets inviting visitors to do so?" The same postcode (DA3 7DF) is given for both respondents but no name or address. A third respondent (DA3 7BY) and a fourth (Da3 8AS) also responded positively. None of the postcodes given is shared by Mr Cramp, Mrs Fry, Mr and Mrs Laister or Mrs Scott. I cannot be sure what leaflet was referred to by the respondent. I note that another respondent (Ann Oxtoby) who responded positively told the enumerator that the leaflet s/he was referring to was the application pack which had been handed out.

9.22. Having regard to my conclusions as to the intended audience for the leaflet set out above, and having regard to the comparatively small number of residents of Hartley who remember having seen a copy of the leaflet, I do not think that there can have been any general distribution of the leaflet within Hartley. This view is reinforced by a consideration of where the funding to produce the leaflet came from: the leaflet was funded by Southwark. There was no evidence that Hartley Parish Council or any other local authority in the vicinity of the application land contributed to its publication. It does not seem likely to me that Southwark would have made the leaflet available for general distribution within Hartley, as to do so would not have been within its functions.

The Great Storm

9.23. I accept that the whole of the area in which the application land is situated suffered a severe degree of destruction during the Great Storm, and that the application land was severely affected by the storm, although not totally devastated, as some areas were. I accept the assessment contained in Kent Trust for Nature Conservation's record sent under cover of their letter dated 11th August 1989 that storm damage to Hartley Wood was about 25%.

9.24. A lot of trees came down within the woods, and some of them would have fallen across the paths. I turn therefore to consider the effect that the storm damage had on the formal and informal footpaths and on the use made of the wood in the months and years after the storm.

9.25. I am satisfied that the content of Mr Jones' reports is accurate as to the effect of the storm damage on the two public footpaths within Hartley Woods: that sections of the paths were completely obliterated by fallen trees. I accept his evidence that it is likely that he carried out his initial assessment of the condition of the footpaths through Hartley Woods in November or early December 1987. I attach little weight to the remainder of his reported recollection of the state of the woods at this time, as it was not subject to testing by cross-examination.

9.26. I consider that it is likely that the report of the condition of the footpaths in Hartley Wood and Foxbrough Wood by Hartley Footpaths Group following their December 1987 walk through the woods is reasonably accurate. I conclude therefore that in December 1987 the two public footpaths through Hartley Woods were passable over part of their distance, and that, where they were blocked, it was possible to find routes around those blockages, although the diversions were circuitous. Although Mr Jones states that he and Mr Richards carried out some work to small trees with a bow saw and loppers, and this is supported by the reference in his report to "Chain & handsaw", he does not state when this work might have been carried out. It seems unlikely to me that he would have carried out this work before completing his survey of all of the footpaths for which he had responsibility, and therefore I conclude that it is unlikely that this work had been carried out by the date of the Footpath Group's visit in December 1987.

9.27. It is likely that the pattern of blockage of the informal paths would have been the same as the pattern of blockage of the official footpaths. As a result I infer that it is likely that the condition of the informal paths through Hartley Wood as at December 1987 would have been similar to the condition of the public footpaths: that is, they would have been blocked in parts by fallen trees, but it would have been possible to find a route round those blockages. I conclude therefore that the application land was not impassable either on the public footpaths or on the informal paths in the aftermath of the Great Storm.

9.28. I am satisfied that a substantial number of users would have considered that the woods were dangerous immediately following the Great Storm and would have avoided the area (and indeed other woodland areas) for a while after an initial visit. However, I am also satisfied that there were a substantial number other users who continued to use the woods throughout the period. I reach this view in part in reliance on the evidence of the Applicant's witnesses, who were split between those who continued to use the land and those who avoided it (with a majority continuing to use it), and in part on reliance on the results of Southwark's survey, in which the respondents were split roughly equally between those who said responded positively to the question "After the storm of 1987, was any part or were parts of the land inaccessible or not used?" and those who responded negatively to the same question. My view is supported by commonsense: those with dogs would have had to continue to walk them, and I consider it likely that a good number of those who were in the habit of walking their dogs in the woods would have continued to use them, in spite of the obstructions caused by the storm. I conclude that the number of people using the woods during this period reduced substantially, but that nevertheless a significant number of individuals continued to use the application land throughout the period.

9.29. I accept Mr Jones' evidence, supported by the Parish Council Minute of 19th February 1988 that the obstructions to the public footpaths were cleared by chainsaw gang on 12th and 16th February 1988.

9.30. There is no evidence that any work was carried out to the remainder of the application land to clear the storm damage. Indeed the correspondence with

Southwark and the Parish Council Minutes suggests strongly that no work was carried out, despite there being grants available. It seems to me likely therefore that the informal footpaths would have continued to be blocked by fallen trees in places after the public footpaths were cleared. I have considered carefully whether, in the light of this conclusion, I can accept the evidence of the Applicant's witnesses that they did not just stick to the public footpaths which would have been much more easily accessible after February 1988. On balance, and having regard to the fact that there was quite a substantial delay between the storm and the work to the public footpaths, I am prepared to accept that those who had found ways around the obstructions across both the formal and informal footpaths between October 1987 and February 1988 would have continued to use the informal footpaths after the formal ones were cleared.

9.31. I have also considered carefully whether I can accept the evidence of the Applicant's witnesses that they continued using the application land over the whole of the relevant period in the light of the article written by Mrs Yvonne Fry for the Parish Council published in *The Hart* in July 1993. The article was written in connection with the proposed purchase (to be supported by public donation) of the woods by the Woodland Trust. It stated that the Woodland Trust would open up "the footpaths at present overgrown and choked".

9.32. Mr Alford suggested that Mrs Fry might have exaggerated the state of the footpaths within the application land when she described them in the article published in *The Hart* in July 1993, and Mr Mansfield said that her description was inaccurate. I have considered carefully to what extent I can accept that evidence. Mrs Fry was not called by the Applicant, and did not have the opportunity to answer such a suggestion. I was informed on the second day of the inquiry that Mrs Fry is infirm, but she completed a standard form witness statement in September 2008, and I can see no reason why, even if she was unable to give oral evidence, she should not have made a written statement about her involvement. Her description was contemporaneous, whereas the witnesses who disagreed with her description at the inquiry were doing so on the basis of their recollection. Others spoke highly of Mrs Fry. She was a respected member of the community and the Chair of the Parish Council for a number of years (continuing to serve as a Councillor until her resignation in 2001). On balance, having regard to all the other evidence, whilst I accept that it is likely that Mrs Fry would have been putting forward her best case for securing donations, I do not accept that the description was entirely inaccurate. Dr Roberts' suggestion that it was likely that the undergrowth in the wood would have increased as a result of the destruction of parts of the canopy in the 1987 and 1990 storms accorded with common sense. However, I do not conclude that as a result of the increase in undergrowth the wood was inaccessible, but accept the evidence of the Applicant's witnesses that they continued to use the application land throughout the period.

The Foot and Mouth outbreak

9.33. As a result of enquiries made of Kent County Council, the following information was provided to the inquiry. Public rights of way in Kent were closed under emergency powers granted to Kent County Council pursuant to the Foot and Mouth Disease Order 1983 (as amended). From 18:00 on 27th February 2001 all public rights of way which crossed farmland or woodland were closed. Licence to enter that part of Footpath SD295-DR213A which runs between Gorsewood Road, Hartley and Main Road, Longfield was granted on 14th March 2001.

9.34. At 06:00 on 12th May 2001 all public rights of way, other than those from Swale Borough Council up to the border with Medway Unitary Authority, were opened. The remainder of the public rights of way in Kent were opened on 9th July 2001.

9.35. The public footpaths which cross the application land were therefore closed from 18:00 on 27th February 2001 until 06:00 on 12th May 2001.

9.36. Mr Alford said that he could not specifically recall seeing any notices, but that he had no doubt that there were notices there. I accept Mr Glover's evidence that he and others employed by the farming partnership put signs up where the public footpaths entered the woods from the north (at the railway crossing and at the subway) and where DR215 comes off Main Road/ Longfield Road. It also seems likely to me from the press reports that people would have been aware that they should not cross Hartley Manor Farm on any of the public footpaths to access the woods from the south. However, Mr Glover said that he could not be sure whether there would have been signs as people came in from the tip. Further, there was no evidence of signs at the entrances into the western part of Hartley Wood from Beechlands Close and Gorsewood Road. I accept Mr Angell's evidence that it did not occur to him that Hartley Wood was affected by the closures and that he continued to use the application land, accessing it from Beechlands Close. I accept Mr Golledge's evidence that he continued to use the application land during the Foot and Mouth outbreak. I accept Mr Alford's evidence that the number of vehicles parked on Hartley Bottom Road by dog owners who walked across the landfill site to the application land increased and infer from this that there were a significant number of other people who continued to use the application land in spite of the Foot and Mouth outbreak.

The Transport Surveys Limited survey

9.37. The instructions given to the enumerators who carried out the Transport Surveys Limited survey were not provided to the inquiry. It is clear to me that even if the enumerators had been instructed to complete a separate questionnaire for each individual they encountered, they did not do so. For instance the enumerator at point 1 on Thursday 4th September 2008 filled in a questionnaire for K Wilson of DA3 7NH who was in a party of 3. One would expect to find two other questionnaires for the other individuals in the party from point 1, either completed or stating refused to answer any questions or already been asked, also stating that that individual was part of a party of 3.

The same applied in relation to other questionnaires from point 1, and point 2 and to questionnaires completed on the subsequent days. I do not therefore consider that the conclusion that Mr Mayne drew that the total number of completed questionnaires was equal to the total number of people entering the site can be supported.

9.38. No specific link was made in Mr Mayne's evidence between the maps shown by the enumerators to the survey respondents and the maps behind Appendix 8, but I assume that the map showing the access points used in connection with question 2 must have been the one at Appendix 8B, and the map used to identify areas A, B and C must have been the one at Appendix 8A. It is not clear when each of those maps was shown to the respondent. It seems from the instructions in italics that Appendix 8B would first have been shown in connection with question 2, and Appendix 8A in connection with question 6, but it may be that both maps were shown at the outset. The public footpath was not shown on Appendix 8A, and "the public footpath through the centre of the wood" referred to in question 3 was not defined by reference to a map.

9.39. I consider it likely that many of the respondents would not have understood which path was meant by question 3. I do not consider that it can be inferred from a positive response to question 3 "Do you predominantly use the public footpath through the centre of the wood?" that the respondent did not use areas of the land other than the public footpath on a regular basis. This view is reinforced by the fact that only two respondents when asked what areas s/he used chose the option "none I stick to public footpath". Further, every other respondent referred to (most frequently) land A, B and C, or to one or more of those areas. Any respondent who stated that they used land C cannot have stuck exclusively to public footpaths as there is no public footpath crossing land C. I do not therefore consider that the conclusion that Mr Mayne drew from this that 77% of those surveyed kept to the public footpaths can be supported.

9.40. I accept that only 37% of the completed surveys stated that the respondent had used the application land for a continuous period of 20 or more years.

10. The Law

Which definition applies?

10.1. The Commons Act 2006 received Royal Assent on 19th July 2006. Section 15 of the Act was brought into force by the Commons Act (Commencement No. 2, Transitional Provisions and Savings) (England) Order 2007[49]. By paragraph 4(4) of the Order, where an application is made before 6th April 2007 to a registration authority, pursuant to section 13(b) of the Commons Registration Act 1965, for the amendment of the register of town or village greens as a result of any land having become a town or village green and the registration authority has not determined the application before 6th April 2007, the registration authority shall continue to deal with the application on and after 6th April 2007 as if section 13(b) had not been repealed. The applicable definition for the purposes of this application is therefore that contained in the Commons Registration Act 1965.

[49] SI 456/2007

10.2. The application therefore falls to be determined under the provisions of the Commons Registration Act 1965 as amended by the Countryside and Rights of Way Act 2000.

10.3. It is convenient to divide the law into substantive law and procedure.

Substantive law

10.4. The Commons Registration Act 1965 provided for each registration authority to maintain a register of town or village greens within its registration area. There was a period expiring on 31st July 1970 for the registration of greens. By s. 1(2)(a) of the 1965 Act, no land which was capable of being registered as a green by the end of the original registration period "shall be deemed to be…a town or village green unless it is so registered". Section 13 of the Act provides for the amendment of that register where any land becomes a town or village green after the end of the original registration period.

10.5. The expression "town or village green" is defined by s 22(1) of the Act. The definition has three limbs:

- statutory greens (i.e. greens created by statute),
- customary greens (i.e. greens based on immemorial use) and
- prescriptive greens (i.e. greens based on 20 years' use).

10.6. It is the third limb of the definition, i.e. prescriptive greens, which is relevant in this case. The applicable definition of a prescriptive green is contained in section 22 of the Commons Registration Act 1965 as amended by section 98 of the Countryside and Rights of Way Act 2000:

> "…land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either (a) continue to do so, or (b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions."

10.7. No regulations have been made to implement paragraph (b).

The Legal Issues

10.8. The main legal issues that have been decided by the courts are as follows:

What is a town or village green?

10.9. A town or village green is land which is subject to the right of local inhabitants to enjoy general recreational activities on it. Activities are not limited to those which have been historically enjoyed[50].

What is the effect of registration?

10.10. The effect of registration can be summarised as follows:

[50] Oxfordshire [2006] UKHL 25, paras 3-16, 37-39, 115 & 124-128

- The fact that land is registered as a green is conclusive evidence that it was a green as at the date of registration[51].
- The fact that land is not registered as a green is conclusive evidence that it is not a green
- The fact that land is a registered green (a) gives local people recreational rights over the green and (b) subjects the land to the protective provisions of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876[52].

What is the meaning of the CRA 65 definition as amended by CROW 2000?

10.11. The meaning of the definition contained in the Commons Registration Act 1965 as amended by the Countryside and Rights of Way Act 2000 has been extensively considered by the courts.

Land…

10.12. Land is defined as including land covered by water.

…on which for not less than 20 years…

10.13. Subject to any regulations to the contrary (and there are none at present) the 20 year period under the definition contained in the Commons Registration Act 1965 as amended by the Countryside and Rights of Way Act 2000 is the 20 years immediately before the section 13 application[53]. It is not relevant that the land was subject to 20 years' recreational user before 31st July 1970 because any land not registered as a green by that date lost its status as such and can only reacquire that status by a further 20 years' user.

…a significant number…

10.14. "Significant" does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers[54].

…of the inhabitants of any locality…

10.15. A "locality" cannot be created by drawing a line on a map[55]. A "locality" must be some division of the county known to the law, such as a borough, parish or manor[56]. An ecclesiastical parish can be a "locality"[57] but it is doubtful whether an electoral ward can be a "locality"[58]. The users must be

[51] Commons Registration Act 1965 s. 10
[52] Oxfordshire [2006] UKHL 25.
[53] Oxfordshire, para 44.
[54] R (McAlpine) v Staffordshire CC [2002] EWHC 76 (Admin) at para. 77
[55] R (Cheltenham Builders Ltd) v South Glos, DC [2004] 1 EGLR 85 at paras 41-48
[56] Ministry of Defence v Wiltshire CC [1995] 4 All ER 931 at p 937b-e, R (Cheltenham Builders Ltd) v South Glos. DC at paras 72-84 and see R (Laing Homes Ltd) v Buckinghamshire CC [2003] 3 EGLR 69 at para. 133
[57] R (Laing Homes) Ltd v Buckinghamshire CC
[58] R (Laing Homes) Ltd v Buckinghamshire CC

predominantly the inhabitants, although the land need not be used exclusively by the inhabitants.[59]

...or of any neighbourhood within a locality…

10.16. By contrast with a locality, a "neighbourhood" need not be an administrative unit known to law. A housing estate can be a neighbourhood[60]. A neighbourhood need not lie wholly within a single locality[61].

10.17. In my judgment, despite Lord Hoffman's comment that the phrase "any neighbourhood within a locality" had been drafted with a deliberate imprecision which contrasted with the insistence of the old law upon a locality defined by legally significant boundaries, it cannot be correct that a neighbourhood may be either an imprecisely defined area, or any area drawn on a map.

10.18. In my judgment in order for the word "neighbourhood" to have any meaning, it must import some further requirement above and beyond an area drawn on a map. In my judgment for an area to constitute a "neighbourhood" it must, as suggested by Sullivan J in *Cheltenham Builders* have some degree of cohesiveness:

> "a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a locality… I do not accept the Defendant's submission that a neighbourhood is any area of land that an applicant for registration chooses to delineate upon a plan. The registration authority have to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness; otherwise, the word "neighbourhood" would be stripped of any real meaning. If parliament had wished to enable the inhabitants of *any* area (as defined on a plan accompanying the application) to apply to register land as a village green, it would have said so."[62]

10.19. Further, in my judgment, the area defined as the neighbourhood must have defined and definable boundaries, rather than "woolly" or "fuzzy" edges. The question of whether a "significant number of the inhabitants" has used the application land is linked to the area to which the application relates: the question "a significant number of the inhabitants of where?" is answered by reference to the locality or the neighbourhood claimed. The gloss that was put on the statute by the House of Lords in *Sunningwell*, that the users need not all be inhabitants of the locality in question, but only predominantly the inhabitants of that area, can only properly be applied if the locality or neighbourhood on which the applicant relies is clearly defined.

10.20. This interpretation is supported by the decision of the majority of the House of Lords in *Oxfordshire* that registration confers rights on the relevant

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[59] R v Oxfordshire CC ex p Sunningwell PC[2000] 1 AC 335 at p.358
[60] R (McAlpine) v Staffordshire CC
[61] Oxfordshire para. 27 disapproving R (Cheltenham Builders Ltd) v Sth. Glos. CC at para. 88
[62] R (Cheltenham Builders Ltd) v Sth Glos. CC at para 85

inhabitants[63], rather than on the general public, for instance. The owner is not altogether excluded from the land. He has the right to use the land in any way which does not interfere with the recreational rights of the inhabitants.[64] The owner may properly be concerned to know who has the right and whom he may exclude.

10.21. In my judgment there must also be some degree of fit between the claimed locality or neighbourhood, and the users of the application land. If no element of fit were required, then in any application where the users came from such a wide area as to raise the objection that it appeared that they were members of the public rather than inhabitants of the locality or neighbourhood, it would be possible to increase the size of the locality relied upon (to a county, or perhaps to the whole of England) to achieve the result that the predominance of users came from the claimed locality, albeit they were scattered unevenly and widely across the area. In my view, such an approach would remove the relationship between the local area and the claimed land that is clearly intended by the statute.

…have indulged in lawful sports and pastimes…

10.22. The words "lawful sports and pastimes" form a composite expression which includes informal recreation such as walking, with or without dogs, and children's play. Those activities which would today be regarded as sports or pastimes are included, and in modern times, dog walking and playing with children tend to be the kind of informal recreation which may be the main function of a village green[65]. Walking of such a character as would give rise to a presumption of dedication as a public right of way is not a lawful sport or pastime[66]. Use incidental to such walking, such as stopping to pass the time of day with another walker does not convert the walking into lawful sports and pastimes.

…as of right…

10.23. Use of land "as of right" means use without force, stealth or permission ("nec vi nec clam nec precario") and does not turn on the subjective beliefs of users[67]. User "as of right" must be use as a trespasser and not use pursuant to a legal right[68]. An application should not be refused merely because the witnesses do not depose to a belief that the right attaches to them as inhabitants of the village[69].

10.24. "Force" does not just mean physical force. User is by force in law if it involves climbing or breaking down fences or gates, if it involves ignoring notices prohibiting entry, or if it is under protest[70].

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63 Lord Hoffmann, paras 50-51; Lord Rodger, para 114; Lord Walker, para 124.
64 Lord Hoffman para 51.
65 R v Oxfordshire CC ex p. Sunningwell PC at pp 356F-357E
66 Oxfordshire CC v Oxford CC [2004] Ch 253 at paras 96-105
67 R v Oxfordshire CC ex p Sunningwell PC
68 R (Beresford) v Sunderland CC paras 3, 9 & 30
69 R v Oxfordshire CC ex p Sunningwell PC
70 Newnham v Willison (1987) 56 P&CR 8

10.25. "Permission" can be express, e.g. by erecting notices which in terms grant temporary permission to local people to use the land. Permission can be implied, but permission cannot be implied from inaction or acts of encouragement by the landowner[71]. Toleration is not inconsistent with user as of right.[72]

10.26. The argument in *Beresford* was directed to whether it was ever possible to imply a licence by a landowner to use land in the prescribed manner, and if so whether the facts of the case could properly be held to give rise to such an implication[73]. All of the members of the House of Lords considered that in principle it might be possible to imply a licence where the facts warranted such an implication[74].

10.27. As in *Beresford*, there is no suggestion in the instant case that the Council expressly licensed the inhabitants' use of the land, either in writing or orally. In *Beresford* Lord Bingham concluded that authority established that a licence to use land could not be implied from mere inaction of a landowner with knowledge of the use to which his land is being put[75], and that the acts of encouragement could not be relied upon to contend that user had not been as of right. In any event the council's conduct in mowing the grass and providing benches for the accommodation of spectators and other users was equivocal as to whether licence was being granted or not.[76] Lord Roger concluded that the mere fact that a landowner encouraged an activity on his land did not indicate that the activity took place only by virtue of his revocable permission. Neither cutting the grass nor constructing and leaving the seating in place justified an inference that the landowner granted a licence to the local inhabitants.[77] Lord Walker stated his opinion that in this area of the law it would be quite wrong to treat a landowner's silent passive acquiescence in persons using his land as having the same effect as permission communicated (whether in writing, by spoken words, or by overt and unequivocal conduct) to those persons. To do so would be to reward inactivity. Despite his failing to act, and, indeed, simply by his failure to act, the landowner would change the quality of the use being made of his land from use as of right to use that is (in the sense of the Latin maxim) precarious[78]. As a general proposition, Lord Walker held that implied permission could defeat a claim to user as of right, provided that the permission was implied by (or inferred from) overt conduct of the landowner, such as making a charge for admission or asserting his title by the occasional closure of the land to all-comers because such actions have an impact upon members of the public and demonstrate that their access to the land, when they do have access, depends upon the landowner's permission.

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71 R (Beresford) v Sunderland City Council [2004] 1 AC 889

72 R v. Oxfordshire CC ex p Sunningwell at p.358F

73 [2003] UKHL 60 per Lord Bingham at paragraph 4.

74 Lord Bingham at paragraph 5; Lord Scott at paragraph 43; Lord Roger at paragraph 59; Lord Walker at paragraph 83.

75 Lord Bingham at para 6.

76 At paragraph 7.

77 At paragraph 60.

78 Paragraph 79.

10.28. On the facts in *Beresford,* the House of Lords held that there was no evidence of overt acts (on the part of the city council or their predecessors) justifying the conclusion of an implied licence.[79] The fact that the city council and its predecessors were willing for the land to be used as an area for informal sports and games, and provided some minimal facilities (now decaying) in the form of benches and a single hard cricket pitch, could not be regarded as overt acts communicating permission to enter. Nor could the regular cutting of the grass, which was a natural action for any responsible landowner. To treat these acts as amounting to an implied licence, permission or consent would involve a fiction.[80]

…and continue to do so.

10.29. The House of Lords held in the *Oxfordshire* case that the relevant user need only continue down to the date of the application: user need not continue to the date of registration. This reverses the Court of Appeal decision which had the effect that, after an application had been made to register a new green, but before the green was actually registered, the landowner was able to take steps, e.g. by fencing the land or erecting notices on the land, to prevent user "as of right" from continuing.

Procedure

10.30. Procedure on applications to register new greens made before 6th April 2007 is governed by The Commons Registration (New Land) Regulations 1969. These regulations have proved quite inadequate to resolve many disputed applications and registration authorities have had to resort to procedures not contemplated by the Regulations to deal with such applications.

Who can apply?

10.31. Anyone can apply to register land as a new green, whether or not he is a local person or has used the land for recreation.

Application

10.32. Application is made by submitting to the registration authority a completed application form in Form 30. The form has not been updated to take account of the new definition. The form asks a series of questions which are very hard in practice to answer.

- Part 3 asks for the "locality" of the application land. Few people completing the form are aware of the narrow technical meaning given by the courts to "locality".
- Part 4 asks the applicant to state on what date the land became a green. It seems that, after the *Oxfordshire* case, this will be the date of the application. Few applicants get this date right
- Part 5 asks how the land became a green. The technical answer is that the land became a green when it complied with the requirements of the second definition. Again, few applicants are in a position to work this out.

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79 Paragraph 83.

80 Paragraph 85.

ccompanying documents

10.33. Although the application form has to be verified by a statutory declaration by the applicant or his solicitor, there is no requirement that the application should be accompanied by any other evidence to substantiate the application. Instead, reg. 4 provides for the application to be accompanied by any relevant documents relating to the matter which the applicant may have in his possession or control or of which he has the right to production. In most cases, there are few, if any, of such documents as the application turns simply on a claim that the application land has been used for recreation by local people for more than 20 years

Evidence

10.34. The applicant is only required to produce evidence to support the application if the registration authority reasonably requires him to produce it under reg. 3(7)(d)(ii).

Preliminary consideration

10.35. After the application is submitted, the registration authority gives it preliminary consideration under reg. 5(7). The registration authority can reject the application at this stage, but not without giving the applicant an opportunity to put his application in order. This seems to be directed to cases:

- Where Form 30 has not been duly completed, or
- Where the application is bound to fail on its face, e.g. because it alleges less than 20 years use or where the supporting documents disprove the validity of the application

Publicity

1.1. If the application is not rejected on preliminary consideration, the registration authority proceeds under reg. 5(4) to publicise the application:

- By notifying the landowner and other people interested in the application land
- By publishing notices in the local area, and
- By erecting notices on the land if it is open, unenclosed and unoccupied.

Objectors

10.36. Anyone can object to an application to register a new green, whether or not he or she has any interest in the application land.

Objection Statement

10.37. Any objector has to lodge a signed statement in objection. This should contain a statement of the facts relied upon in support of the objection. There is a time limit on service of objection statements. The time limit is stated in the publicity notices issued by the registration authority. However, the registration authority has a discretion to admit late objection statements.

Determination of application

10.38. The most striking feature of the regulations is that they provide no procedure for an oral hearing to resolve disputed evidence. The Commons

Commissioners have no jurisdiction to deal with disputed applications to register new greens: *R (Whitmey) v Commons Commissioners*.[81] The regulations seem to assume that the registration authority can determine disputed applications to register new greens on paper. A practice has grown up, repeatedly approved by the courts, most recently by the House of Lords in the *Oxfordshire* case, whereby the registration authority appoints an independent legally qualified inspector to conduct a non statutory public inquiry into the application and to report whether it should be accepted or not.

Procedural issues

11. A number of important procedural issues have been decided by the courts:

- **Burden and Standard of Proof.** The onus of proof lies on the applicant for registration of a new green, it is no trivial matter for a landowner to have land registered as a green, and all the elements required to establish a new green must be "properly and strictly proved"[82]. However, in my view, this does not mean that the standard of proof is other than the usual flexible civil standard of proof on the balance of probabilities.
- **Defects in Form 30.** The House of Lords has held in the *Oxfordshire* case that an application is not to be defeated by drafting defects in the application form, e.g. where the wrong date has been inserted in Part 4, provided that there is no procedural unfairness to the objectors. The issue for the registration authority is whether or not the application land has become a new green
- **Part registration.** The House of Lords also held in the *Oxfordshire* case that the registration authority can register part only of the application land if it is satisfied that part but not all of the application land has become a new green
- **Withdrawal of application.** Also in the *Oxfordshire* case, the Court of Appeal held that the applicant has no absolute right to withdraw his application unless the registration authority considers it reasonable to allow withdrawal. Despite the applicant's wish to withdraw, the registration authority may consider that it is in the public interest to determine the status of the land. The House of Lords did not dissent from this view

11.1. There is no power to award costs.

12. **Applying the law to the facts**

12.1. The Applicant's case is that every part of the application land should be registered as village green. If I am of the opinion that the application must fail in relation to the whole of the land, following the decision of the House of Lords in the Oxfordshire case, I must consider whether part only of the application land should be registered.

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81 [2005] 1 QB 282.

82 R v Suffolk CC ex p Steed (1996) 75 P&CR 102 at p 111 per Pill LJ approved by Lord Bingham in R (Beresford) v Sunderland at para. 2

Land…

12.2. In my view, the application land has been sufficiently clearly defined to constitute "land".

…on which for not less than 20 years…

12.3. The House of Lords determined in the Oxfordshire case that the relevant 20 year period is the period ending with the date of the application for registration. In this case the relevant period therefore is 19th April 1985 to 18th April 2005.

…a significant number of the inhabitants…

12.4. In my judgment the whole of the application site has been used by a substantial number of local inhabitants, sufficient to indicate to a reasonable landowner that the whole of the application land was in use by local inhabitants generally for recreation.

…of any locality or of any neighbourhood within a locality…

12.5. In my judgment Hartley Civil Parish is a qualifying locality. There was in my judgment a good "fit" between the users and the claimed locality.

…have indulged in lawful sports and pastimes…

12.6. There was ample evidence of use of the application land over the whole of the relevant period for dog walking, walking and children's play.

…as of right…

12.7. In my judgment the use of the application land for recreational purposes by the local inhabitants was use as of right, tolerated by the landowner.

…and continue to do so.

12.8. The use of the application land continued down to the date of the application.

13. Conclusion and Recommendation

13.1. I conclude that the application succeeds. Accordingly, I recommend that the registration authority should accept the application. I recommend that the Registration Authority should give all parties to the inquiry written notice of its reasons for acceding to the application. I recommend that the reasons are stated to be "the reasons set out in the Inspector's Report dated 06 January 2009".

Lana Wood
06 January 2009
Lincoln's Inn