

Appendix 'D'

10 St Andrews Close
Bramley
Rotherham
S66 3ZB

4th March 2014

The Registration Authority
Licensing Service
Block C
Staniforth Road Depot
Staniforth Road
Sheffield
S9 3HD

10 MARCH 2014

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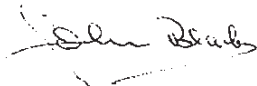
Dear Sirs

COMMONS ACT 2006 – SMITHY WOOD APPLICATION FOR DESIGNATION AS VILLAGE GREEN

I was surprised to read of this application as to my mind Smith Wood is a totally unsuitable area to designate as a Village Green. To my mind Village Green suggests an open area for recreational use, Smithy Wood is certainly not in this category. I was born in Chapeltown and know the area well. There was a large Coking Plant and Colliery adjacent to the wood which are bound to have contaminated the area. I am not aware of any significant use by the public of Smithy Wood indeed it is in private ownership. It is also likely that HS2 will be routed through the site

I must therefore register my objection on the grounds outlined above and does not meet the criteria for designation as a Village Green ie used by a significant number of inhabitants for sports and lawful activities.

Yours Faithfully



John Black

**APPLICATION PURSUANT TO SECTION 15(1) COMMONS ACT 2006
LAND KNOWN AS SMITHY WOOD ADJACENT TO M1 AT JUNCTION 35**

**STATEMENT IN OBJECTION ON BEHALF OF AXIS 1 LIMITED/ ST PAUL'S
DEVELOPMENTS PLC**

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**APPLICATION PURSUANT TO SECTION 15(1) COMMONS ACT 2006
LAND KNOWN AS SMITHY WOOD ADJACENT TO M1 AT JUNCTION 35**

**STATEMENT IN OBJECTION ON BEHALF OF AXIS 1 LIMITED/ ST PAUL'S
DEVELOPMENTS PLC**

Introduction

1. This Statement in Objection is submitted on behalf of Axis 1 Limited, a wholly owned subsidiary of St Paul's Developments Plc¹, the owner of the majority of land ("Site") which is subject to the application made by Cowley Residents Action Group ("CRAG") on 14 November 2013 (as subsequently amended) pursuant to 15(1) of the Commons Act 2006 for registration as a town or village green ("Application"). This Statement is supported by the witness statements of Mr John David Newton, Mr Nick Paul Tovey and of Mr Jonathan Paul Rhodes and the accompanying exhibits².
2. In summary, the Application should be rejected now³ by Sheffield City Council in its capacity as registration authority as it is fundamentally defective in the following key respects:
 - 2.1 The Application and accompanying "locality plan" are not based on a qualifying locality that comes anywhere close to meeting the statutory test as applied by the courts;
 - 2.2 There is a fundamental lack of supporting evidence that a "significant number" of inhabitants from the claimed locality have used the Site "as of right" for lawful sports and pastimes continuously throughout the relevant 20 year period (November 1993 to the date of the Application). The use of the Site has been insufficient to amount to the assertion of a public right and such use has not been "as of right" for the reasons set out below. In addition, there have been a number of material events throughout this period restricting access to the Site and interrupting use as summarised below; and
 - 2.3 The Application includes a large section of land which is already dedicated by the landowner (the Secretary of State for Transport) and adopted by Sheffield City as public highway (as shown on exhibits JDN12 and JDN13). This highway land cannot have been used "as of right" for lawful sports and pastimes by the inhabitants of the

¹ Both Axis 1 Limited and St Paul's Developments Plc shall collectively throughout this document be referred to as "St Paul's"

² References in this Statement to exhibits in the witness statements will be abbreviated to the initials of the witness followed by the exhibit number, for example, "JDN1" for exhibit 1 to the witness statement of Mr John David Newton.

³ At the end of this document we set out the power for SCC as registration authority to do this without holding an inquiry

claimed locality for the reasons set out under the sub-heading "Highway Land".

3. These are not matters which need to be, or would benefit from being, tested in evidence at inquiry. They are clear deficiencies on the face of the Application. The Application simply does not meet the strict statutory tests for registration and should be rejected now to avoid further delay and wasted costs for all parties. These points and other deficiencies in the Application are dealt with in detail in the sections below.

Planning Application

4. It has been well publicised that St Paul's and Extra have throughout much of 2013 been preparing a major planning application for the proposed Sheffield Motorway Service Area ("MSA") to be located on the Site. Work in connection with the planning application commenced in March 2013 and extensive public and stakeholder consultation has been carried out pre-application in accordance with planning guidance and best practice. Extra's consultant team has also for much of 2013 been carrying out necessary survey work on the Site in preparation of the Environmental Impact Assessment required pursuant to European and national planning legislation. Pre-application consultation closed on 16 September 2013 following public exhibitions held on 6 and 7 September 2013 at Ecclesfield School, Chapelton in relation to concept masterplan proposals. The finalised planning application positively responded to feedback received and was submitted on 24 March 2014 ("**Planning Application**").
5. The village green Application has been submitted in an attempt to block the proposed development and undermine any decision reached pursuant to the planning system.
6. The government introduced significant amends to the Commons Act 2006 through the Growth and Infrastructure Act 2013. The intention of these legislative changes was to give primacy to the planning system and prevent land proposed for much needed development and infrastructure from being frustrated by village green applications. In summary, where a planning application has been first publicised then a village green application cannot be submitted. The Application for village green registration was clearly submitted in a rush (as evidenced by the subsequent changes to the Application and the additional late evidence contemplated at that time of submission⁴) with a view to lodging this before the anticipated Planning Application in order to frustrate the planning process.

⁴ Section 7 of the Application states "We are submitting this application now, but are expecting to receive additional letters/ questionnaires of evidence of recreational use. We will present them in one additional submission within 2 weeks of submitting this application..."

7. By way of further background, the key benefits of the Planning Application are summarised on the leaflet at NPT1 which was distributed to members of the public following submission of the Planning Application. This notes earlier public engagement carried out in September 2013 and how the Planning Application has responded to feedback received.
8. From exhibit NPT1 it will be noted that if the MSA proceeds there will be significant environmental and economic benefits to surrounding communities and the wider City region, in particular:
 - 8.1 60,000 trees will be planted on 16 hectares of local land to be made available for public and recreational use;
 - 8.2 In addition, 70 hectares of existing local woodland shown on the leaflet (at Parkin Wood, Hesley Wood and Thorncliffe Wood) currently in private ownership will be made available to the public for community use and a community trust (Chapelton Community Woodlands Trust) will be created for long term protection and management of both new and existing woodlands, funded by the MSA. Local groups will be invited to join the Trust Management Board. There is also potential to extend the trust to include the proposed Hesley Wood Country Park which directly adjoins the claimed "locality";
 - 8.3 The construction costs of the MSA will be £36 million and firms from the City Region and Yorkshire will be given the first opportunity to tender for the project;
 - 8.4 250-300 full time jobs are likely to be created; and
 - 8.5 The business rates revenue/ income which will accrue from the development to Sheffield City Council is estimated to be in the range of £900,000 to £1.1m per annum.
9. If the Site was registered as a village green pursuant to the Application then St Paul's would in all likelihood simply apply to the appropriate national authority for this to be de-registered pursuant to section 16 of the Commons Act 2006 on the basis that the land referred to above within its control could be provided as suitable "replacement land". We would expect such an application to be readily approved. A public inquiry into the Application would therefore merely cause a significant amount of wasted costs for all concerned, particularly Sheffield City Council/ the tax payer who will be responsible for the costs of an inquiry and Inspector.
10. Local people can of course express their views on the Planning Application through the planning system and, in accordance with government policy discussed above, the planning

system is considered to be the appropriate democratic forum for determining the appropriate use of the Site.

11. Below we focus on and deal in detail with the deficiencies in the village green Application and set out why this should be rejected.

The Application and Tests for Registration

12. The Application is made pursuant to section 15(1) of the Commons Act 2006. Section 15(1) of the Commons Act 2006 states that "Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

13. The Application is based on subsection (2) which provides that:

"15(2) This subsection applies where–

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they continue to do so at the time of the application."

14. The burden is firmly on the applicant to "properly and strictly prove" each element of the statutory test highlighted above. In R (Steed) v Suffolk County Council (1998) 75 P&CR the Court of Appeal held that in view of the serious consequences of registration the onus is on the applicant to properly and strictly prove each element of the statutory requirements. The Application falls well short of this and is defective in a number of respects as discussed above and below.

The Site

15. The Site that is subject to the Application for registration as a village green is described in further detail at paragraph 5 of the witness statement of Mr Newton. In summary, the M1 runs along the eastern boundary of the Site, with Smithy Wood Business Park on the Western boundary. To the north of the Site is Cowley Hill, which is a busy road with a steep incline running up to the roundabout at Junction 35. The photos exhibited to the witness statement of Mr Newton (JDN2) reveal the steepness of the incline of Cowley Hill and distance of the alleged main access point from the claimed 'locality'.

Highway Land

16. Part of the Site is owned by the Secretary of State for Transport. The Secretary of State's title is shown edged red on exhibit JDN12. A highways search has been undertaken with Sheffield City Council and this has revealed that this land falling within the Application boundary is public highway adopted by Sheffield City Council's highways department. The extent of the adopted highway is shown coloured yellow on the highways plan provided by Sheffield City Council at exhibit JDN13. This clearly encroaches a significant extent into the Site.
17. The alleged user of this land by the inhabitants of the claimed locality cannot meet the statutory test of being "as of right" for lawful sports and pastimes. In order for use to be "as of right" the use must firstly be lawful and not involve force, secrecy or permission. The rationale and principle underpinning this is that a landowner should be in a position to know that a right is being asserted and have nevertheless acquiesced in its assertion (ie knew about and tolerated, without providing permission).
18. Use of adopted public highway is already regulated pursuant to statute, including offences for interference and obstruction of a public highway under the Highways Act 1980. The land has also been dedicated for, and is held by, the owner (the Secretary of State for Transport) for highway purposes. The owner has dedicated this land for use by the public - permission has therefore already been given. Use of that land is then subject to controls under statute for adopted highways. It is inconsistent with the statutory scheme under which the land is held and the way in which its use is regulated to claim that local people have subsequently used this land "as of right" for lawful sports and pastimes. There can also have been no assertion of a public right over this land for village green uses which a landowner can reasonably be expected to take action against where a landowner has already dedicated the land for public highway uses, this land has been adopted for that purpose by a highway authority and its use is controlled by highways legislation.

No Qualifying Locality

19. The statutory test requires proof of use of the Site by a significant number of the inhabitants of "any locality, or of any neighbourhood within a locality...". No locality has been identified in the Application which meets the requirements of this legal test as applied by the courts.
20. The courts have consistently held that "locality" is to be interpreted as meaning an administrative district or area known to the law with legally significant boundaries, such as a

town or parish⁵. The identification of an appropriate locality is important as the concept is derived from customary law and, following registration, rights relating to the village green vest in inhabitants of the qualifying locality only.

21. The Application (section 7 of the form) and the accompanying "Locality Plan" make it plain that the Application is based on the "locality" limb as opposed to the "neighbourhood within a locality" limb. Paragraph 2 of the justification for the Application (section 7 of the form) states that:

"Each questionnaire has two maps. They have indicated where they live relative to the woodland. This information has been plotted on Map in order to identify the 'locality' as defined in Section 15 of the Commons Act 2006".

22. The Application is accompanied by exhibit number 2, being a map described as "Smithy Wood VG Application - Locality" dated 9 December 2013 ("**Revised Locality Plan**"). This is a variation to the original "locality plan" submitted in support of the Application on 14 November 2013. As the Revised Locality Plan is still not particularly clear St Paul's has plotted the boundaries of the claimed "locality" on a larger scale plan. This is exhibited at JDN3.

23. From the plan exhibited at JDN3 and the Revised Locality Plan it is clear that:

23.1 The claimed "locality" on which the Application is based is not an administrative area known to the law, does not serve an administrative purpose or have legally significant boundaries⁶. The Application is fundamentally defective for this reason alone. This is not a technical point but is fundamental to the whole Application for the reasons noted above and the extent of evidence required from people claiming to have used the Site for lawful sports and pastimes. The larger the locality, the greater the amount of evidence required to satisfy the "significant number of inhabitants" test. See below further on this.

23.2 It is clear that the applicant has simply drawn a line around an arbitrary area containing the houses of a small number of people who have provided evidence questionnaires. This does not qualify as a locality or a neighbourhood within a locality.

⁵ Paddico (267) Ltd v Kirklees Metropolitan Council [2011] EWHC 1606 (Ch) (as upheld in the Court of Appeal and Supreme Court in relation to the "locality" test).

⁶ In addition, contrary to what is stated in the evidence questionnaires the claimed "locality" does not even contain any amenity facilities

Significant Number

24. In order for the Application to succeed there must be evidence proving use of the Site by a significant number of the inhabitants of a qualifying locality consistently throughout the relevant 20 year period. Significant means just that, not a handful of people which the Application is in fact based on.
25. There must be evidence demonstrating that the user of the Site has been "of such amount and in such manner as would reasonably be regarded as being the assertion of a public right" by the people of the claimed locality⁷. Again, the Application falls well short of this.
26. Only a very small proportion of the people within the claimed "locality" have submitted evidence questionnaires as to user of the Site and there are a number of issues that are readily apparent on the face of the Application:
 - 26.1 There are over 200 houses within the claimed locality boundary yet only 21 have provided evidence questionnaires.
 - 26.2 Of those 21, two houses fall outside the claimed locality and so their evidence does not qualify.
 - 26.3 The evidence of two people only goes back to 2010.
 - 26.4 The evidence of one person only goes as far back as 2012.
 - 26.5 Two people have stated they lived at addresses falling outside the locality when they claim to have used the Site.
 - 26.6 One person has not named the Site and appears to be referring to access to and use of Hesley Wood as opposed to the Site.
 - 26.7 All are based on very simple pro-forma questionnaires only.
27. It is readily apparent that there is simply a complete lack of evidence that a significant number of the inhabitants from the claimed locality have used the Site throughout the 20 year period. If the claimed locality was larger to reflect the statutory test discussed above, then there would be proportionately even less evidence from the inhabitants.

20 Years Use of the Site

⁷ R. (on the application of Lewis) v Redcar and Cleveland BC [2010] UKSC 11

28. As the Application is made pursuant to section 15(2), evidence must demonstrate that the Site has been used consistently throughout the twenty year period, commencing in November 1993 through to 14 November 2013 (the date of the Application)). As noted above, that use cannot have been trivial or sporadic, but must have been continually throughout this period without intervention and of such amount and in such manner as would reasonably be regarded by the land owner as being the assertion of a public right by the people of the claimed locality. The Application simply does not meet this requirement.
29. The extensive history of the Site and surrounding area as relevant to the claimed 20 year period is summarised in the witness statement of Mr Newton.
30. The position of St Paul's is that what little use there may have been of the Site at certain times by people for lawful sports and pastimes on foot has been trivial and sporadic only and not by a significant number of qualifying inhabitants from the claimed "locality" continually throughout the relevant 20 year period. This is for the following principle reasons:
- 30.1 Observations made by St Paul's/ Extra and the various consultants that have carried out extensive survey work over the course of 2013. As noted within the witness statement of Mr Tovey, survey work commenced in early April 2013 in connection with the environmental impact assessment of topics such as ecology and archaeology. Consultants regularly attended Site between April 2013 and late November 2013. Consultants were often on Site for full days at a time and attended the Site on approximately 45 separate days throughout this period. The evidence is that use of the Site by people on foot for lawful sports and pastimes has been virtually non-existent. On the vast majority of days no people at all have been seen using the Site itself for lawful sports and pastimes and any use witnessed on the Site has been insignificant, limited to individuals on very rare occasions. No public access issues were raised by the consultant team and there has been no evidence of a significant number of the inhabitants of the claimed locality asserting a public right to use this land which would cause a landowner to take action.
- 30.2 The history of the site and adjoining land since 1993 and the significant civil engineering works that have been carried out during that time preventing convenient access to the Site from the claimed locality - see below further on this under the sub-heading "Major Works Affecting Access to and Use of the Site".
- 30.3 The considerably greater accessibility, convenience and peacefulness of Hesley Wood and associated paths from the claimed locality during the relevant 20 year

period⁸. The majority of people that have submitted evidence questionnaires in support of the Application live in houses that back onto Hesley Wood. No major roads need to be crossed and from Hesley Wood walkers could continue onto Parkin and Thorncliffe Woods (see the plan at exhibit JDN9). It is considered unrealistic to suggest that a significant number of people from the claimed locality seeking a peaceful walk will have walked in the opposite direction of Hesley Wood and Chapeltown Park, crossed the busy road of Cowley Hill, walked up the lengthy steep incline to the claimed main access near the roundabout for junction 35 of the M1 encountering traffic coming off the motoring network to gain access to Smithy Wood (which, as noted below, has a recent history of unlawful off-road vehicle activity and is adjacent to the M1).

- 30.4 The considerably greater accessibility and convenience of Chapeltown Park which adjoins the claimed locality (as shown by exhibit JDN8) and much more resembles a village green both in terms of user and appearance. Chapeltown Park is 10 hectares in size, including park land and ancient woodland. It is used extensively by local people for lawful sports and pastimes, including nature walks, a bandstand, war memorial, playground, community orchard, regular community events and BMX tracks.
- 30.5 The paths created over land adjoining the Site (now Smithy Wood Business Park) connecting from the vicinity of the claimed locality to the Trans Pennine Trail and the experience of St Paul's that, following their creation, it is these paths that are used by people on foot as opposed to the Site (even the users of such paths are small in number). As noted in the witness statement of Mr Newton, these paths were a requirement of the planning permission for the reclamation project/ business park development, however, St Paul's was never requested to provide specific access to the Site by the local planning authority.
- 30.6 **Unlawful Motocross and off-road vehicle activity** - for a number of years the Site has been used for unlawful motocross and off-road vehicle activity. Despite concerted efforts by the landowner to prevent this, the use has increased significantly in recent years. The extent of use of the Site by motor vehicles is highlighted on the drawing at exhibit NPT5 and the photos at exhibit JDN10. As noted within the witness statement of Mr Rhodes, weekends, holidays and periods of good weather are

⁸ It is noteworthy that Hesley Wood has the benefit of a recent planning permission and so is protected from village green applications. CRAG opposed the grant of this planning permission and threatened a judicial review claim against SCC which was later abandoned.

particularly busy for motorbike and off-road vehicle use of Smithy Wood and it is simply too dangerous to members of the public to walk on the Site when this is taking place. These are precisely the times when one would expect a claimed village green to be used the most, but the evidence is that it is simply too dangerous to do so and people will be deterred as a consequence.

- 30.7 **Fire Damage** - during 1995 and 1996 there were two fires affecting large parts of Smithy Wood. These are discussed in the evidence of Mr Tovey, Director of Wardell Armstrong who oversaw the investigation into the two fires and remedial works on behalf of the owner of the land at that time. At exhibit NPT3 is a report prepared by Mr Richard Hartley, Site Engineer from Wardell Armstrong following a site inspection of Smithy Wood carried out in October 1995 following the first fire that is understood to have occurred in the summer of 1995. This records that "very much all of Smithy Wood was subjected to the fire/heat" and appends a plan showing the areas worst affected. Significant works were also carried out during February 1996 by Wardell Armstrong on behalf of Dancastle Properties to extinguish and prevent the spread of the second underground fire which is understood to have been first discovered in December 1995. The fires are understood to have continued for a number of months. The fires combined with the excavation works carried out on behalf of the owner will have affected accessibility of large parts of the Site. This represents a significant interruption in the alleged use of the Site for lawful sports and pastimes during the relevant 20 year period and as such the statutory test for registration cannot be met.

Major Works Affecting Access to and Use of the Site

31. As noted within the witness statement of Mr Newton, for significant periods of the relevant 20 year period (November 1993 to the date of the application on 14 November 2013) there have been major development works of the surrounding land significantly affecting convenient access to and use of the Site:
- 31.1 **Open Cast Mining and backfilling remediation earth works - From 1991 to July 1995** - major open cast coal mining works and land remediation works were carried out on land adjoining the Site that is now Smithy Wood Business Park. The photos at exhibits JDN4 to the witness statement of Mr Newton show the scale of works involved, the depth of the open cast mining and subsequent major earth works to back-fill this land. The site of such major works will have been sealed off for health of safety reasons, preventing convenient access from the claimed locality to the Site

along the western boundary of the Site. This access route has been claimed in many of the questionnaires submitted with the Application.

31.2 **July 1995 - July 1996** - the remediation back-filling earth works referred to above were completed in July 1995 enabling people to then walk across the land that is now Smithy Wood Business Park (adjacent to the Site). It is the experience of St Paul's that it is these paths that are used by people on foot as opposed to the Site. The photo at exhibit JDN5 from 1996 reveals the desire lines created by people walking across this land, gaining access to the Trans Pennine Trail. This connectivity was maintained as part of the planning permission for later reclamation works and business park development project as noted below.

31.3 **24 July 2006 to 14 March 2008** - a major reclamation works project was carried out as shown in the photos at exhibit JDN6 to create the levels and development platforms for the development of Smithy Wood Business Park. This included the removal of Cowley Bridge and road widening works to Cowley Hill which runs adjacent to the northern boundary of the Site. Again, it can be seen that these were major works which will have restricted convenient access to the Site from the claimed locality.

31.4 **2008 to date** - Exhibit JDN7 is a photo from July 2009 which shows the reclaimed land at that time. From this it can be seen that a series of paths (outside of the Site) were created as part of the reclamation project connecting to the Trans Pennine Trail to enable the public to continue to use a similar route to that shown in the photo from 1996 referred to above. These paths were a requirement of the planning permission for the reclamation project/ business park development, however, St Paul's was never requested to provide specific access to the Site by the local planning authority.

32. From the above photos and the evidence provided by Mr Newton it is clear that:

32.1 The alleged access routes to the Site in the vicinity of the claimed locality were significantly impacted by major civil engineering works for lengthy periods during the relevant twenty year period and it would have been unattractive and dangerous for the public to have used these during that time to gain access to the Site. It is also worth noting that no special measures or planning conditions were imposed during this time to provide access specifically to the Site despite such a major development being carried out adjacent to a woodland controlled by the developer. The focus instead was on the need to provide a bridleway across the adjoining land to connect to

the Trans Pennine Trail.

32.2 Other claimed access points in the vicinity of the roundabout connecting to the M1 at the top of Cowley Hill are highly inconvenient for access by foot from the claimed locality due to the large distance, the steep incline and busy roads. It is considered unrealistic to suggest that a significant number of people from the claimed locality seeking a peaceful walk will have walked in the opposite direction of Hesley Wood and Chapelton Park, crossed the busy road of Cowley Hill, walked up the lengthy steep incline of this busy road to the claimed main access near the roundabout for junction 35 of the M1 encountering traffic coming off the motoring network to gain access to Smithy Wood. As noted above, the adjoining Hesley Wood and Chapelton park would have been much more accessible and considerably more likely to have been used for public recreation. This is consistent with the experience of St Paul's.

As of Right

33. Use of the Site must have been "as of right". This statutory test is discussed above under the heading "Highway Land". In order for use to be "as of right" the use must firstly be lawful and not involve force, secrecy or permission. The rationale and key principle underpinning this is that a landowner should be in a position to know that a public right is being asserted and to have nevertheless acquiesced in its assertion (ie knew about and tolerated, without providing permission).
34. The evidence submitted with this objection is that the only activity of significance that St Paul's have observed over the years since they acquired their interest in the Site in 2000 has been the unlawful off-road activity. To the extent that any other lawful uses have been witnessed on the Site then these have been trivial, sporadic and highly insignificant. St Paul's denies any suggestion that it has acquiesced in the use alleged and denies that it would have been reasonable to expect a landowner to have taken steps in the circumstances. It is apparent from the evidence of Mr Tovey regarding the extensive time spent by the consultant team during 2013 on the Site that the owner could not reasonably have been expected to have taken steps to prevent public use of the Site as there was nothing to suggest that a public right was being asserted by the inhabitants of the claimed locality. This simply wasn't reflected on the ground. Had there have been concerns about public rights being asserted then steps would clearly have been taken due to the significance of the proposed Planning Application for the Sheffield Motorway Service Area described above.

Power to Reject the Application

35. Regulation 6(4) of the applicable regulations⁹ makes it plain that an application may be rejected provided a reasonable opportunity has been provided to deal with objections. The registration authority has no investigative duty which requires it to find evidence or reformulate the applicant's case. It is entitled to deal with the Application and the evidence as presented by the parties¹⁰. The registration authority is, of course, required to behave reasonably but has considerable discretion as to whether or not an inquiry is required prior to rejecting a village green application. As noted by the courts, in cases where an application has no substance the course to take will be plain and no inquiry will be necessary¹¹.

Conclusion

36. The Application is subject to the fundamental defects and deficiencies set out above and summarised in the Introduction section of this document. The burden is firmly on the applicant to demonstrate in evidence that the strict statutory tests have been satisfied. It is apparent on the face of the Application that this burden cannot be discharged.
37. The Application has already been subject to amendment and the submission of additional late evidence. The deficiencies noted in this document are not minor points that could be cured by further amendment to the Application and St Paul's considers that this would be inappropriate in the circumstances in any event. The ability for the Council as registration authority to reject the Application is summarised above and St Paul's submits that this would be the appropriate course to avoid further delay and wasted costs for all concerned.
38. In the event that the Application is not rejected at this stage then St Paul's reserves the right to submit additional evidence and make further submissions in objection.

⁹ Commons (Registration of Town or Village Greens) (Interim Arrangements)(England) Regulations 2007

¹⁰ Lord Hoffman, paragraph 61 in *Oxfordshire v Oxfordshire* [2006] UKHL 25.

¹¹ Lady Justice Arden, paragraph 29 in *R (on the application of Whitmey) v The Commons Commissioners* [2004] EWCA Civ 951

On behalf of: Axis 1 Limited/ St Paul's Developments Plc

By: J D Newton

Exhibits: "JDN1"- "JDN13"

Date: March 2014

APPLICATION PURSUANT TO SECTION 15(1) COMMONS ACT 2006

LAND KNOWN AS SMITHY WOOD ADJACENT TO M1 AT JUNCTION 35

WITNESS STATEMENT OF JOHN DAVID NEWTON

ON BEHALF OF AXIS 1 LIMITED/ ST PAUL'S DEVELOPMENTS PLC

I, **JOHN DAVID NEWTON**, Managing Director of St Paul's Developments Plc (and its subsidiary company Axis 1 Limited) ("**St Paul's**") of 3B, Phoenix Riverside, Templeborough, Rotherham, S60, 1FL, say as follows:

1. This witness statement is made in support of the objection by St Paul's to the application of 14 November 2013 made pursuant to section 15(1) Commons Act 2006 to register its land as a town or village green ("**Application**").
2. The statements contained in this witness statement are made from my own knowledge except where I specifically state otherwise, in which instances I believe my information to be true. I refer below to various documents or copies of documents which are included in the exhibits to this statement marked "JDN1" to "JDN13". To the best of my knowledge and belief, the copies are true copies of their respective originals.
3. I have worked for St Paul's since 1999 and been in my current role of Managing Director for 6 years. During this time, I have overseen the major reclamation works of land adjoining the Site and the development of Smithy Wood Business Park which I discuss in further detail below. In summary, this work has included; negotiating a development agreement with the Duke of Norfolk and Yorkshire Forward for the development of Smithy Wood Business Park, supervising the planning application and major reclamation

works, obtaining grant funding from the European Regional Development Fund, marketing of the business park and handling sales and lettings. More recently, I have also been involved in relation to the proposed development of the Site by Extra for the proposed Sheffield Motorway Service Area, which is discussed in further detail in the Statement in Objection and the witness statement of Mr Nick Tovey.

4. I summarise below and exhibit documents relating to the history of the Site and surrounding area relevant to the 20 year period from November 1993 to the date of the village green application on 14 November 2013. This history is relevant to the claimed use of the Site and claimed access routes to the Site throughout this period.

The Site

5. The land which is subject to the Application for registration as a village green is shown edged red on the plan accompanying the Application, located adjacent to the M1 at Junction 35 ("Site"). The majority of the Site is owned by Axis 1 Limited and was acquired in 2000. The title plan is exhibited JDN1. Axis 1 Limited is a wholly owned subsidiary company of St Paul's Developments plc and I shall collectively refer to both companies as "St Paul's". The Site is also shown on a larger scale drawing exhibited to the witness statement of Mr Nick Tovey (Exhibit NPT5). The M1 runs along the eastern boundary of the Site, with Smithy Wood Business Park on the Western boundary. St Paul's also owns a 50% stake of and developed this business park. To the north of the Site is Cowley Hill, which is a busy road with a steep incline running up to the roundabout at Junction 35. Exhibited at JDN2 are photos of Cowley Hill.
6. I understand that part of the Site that is proposed to be registered as a village green is owned by the Secretary of State for Transport and is adopted public highway. I have exhibited at JDN12 the relevant title plan of the land owned by the Secretary of State for Transport. At exhibit JDN13 is a plan showing the results of a highways search undertaken by St Pauls' solicitors and email from Sheffield City Council Highway Maintenance Division commenting on the highways search result. These documents are discussed in further detail in the main Statement of Objection document.

7. A planning application has recently been submitted in relation to the Site for the development of the proposed Sheffield Motorway Service Area. St Paul's entered into an agreement with Extra, the Motorway Service provider, on 1 August 2013 for this purpose. The benefits of the planning application and the preparation of this are discussed in further detail in the witness statement of Mr Nick Tovey and the main Statement in Objection document.

Claimed Locality

8. The Application is accompanied by exhibit number 2, being a map described as "Smithy Wood VG Application - Locality" dated 9 December 2013. This is a variation to the original locality plan submitted in support of the Application on 14 November 2013. The revised locality plan is still not particularly clear and so I have arranged for the boundaries of the claimed "locality" to be accurately plotted on a larger scale plan. This is exhibited at JDN3.
9. In addition to plotting the boundary of the claimed locality, on JDN3 highlighted in yellow and edged in blue are those addresses for which an evidence questionnaire has been submitted in support of the Application. JDN3 also highlights key street names in and around the claimed locality.

Major Works Affecting Site Access and Use of Site

10. For significant periods of the relevant 20 year period (November 1993 to the date of the village green application on 14 November 2013) I know that there have been major civil engineering works to the surrounding land significantly affecting access to and use of the Site:

- (a) **Open Cast Mining and backfilling remediation earth works - From 1991 to July 1995** - major open cast coal mining works and land remediation works were carried out on land adjoining the Site that is now Smithy Wood Business Park. I have exhibited photos at exhibit JDN4 highlighting the scale of works involved, the depth of the open cast mining and subsequent major earth works

to back-fill this land. The site of such works will have been sealed off for health of safety reasons, preventing convenient access via the western boundary from the claimed locality to the Site. This access route has been claimed in a number of the evidence questionnaires.

- (b) **July 1995 - July 1996** - the remediation back-filling earth works referred to above were completed in July 1995 enabling people to then walk across the land that is now Smithy Wood Business Park (adjacent to the Site). As noted within the Statement in Objection, it is my belief and the experience of St Paul's that it is these paths that are used by people on foot as opposed to the Site. I have exhibited a photo at exhibit JDN5 from 1996 which clearly reveals the desire lines created by people walking across what is now the business park, gaining access from the over-bridge (Cowley Bridge) and under-bridge shown on the photo to the Trans Pennine Trail. Prior to that time I also believe these bridges were likely to be inaccessible by the public during the relevant 20 year period.
- (c) **24 July 2006 to 14 March 2008** - a major reclamation works project was carried out as shown in the photos at exhibits JDN6 to create the levels and development platforms for the development of Smithy Wood Business Park. This included the removal of Cowley Bridge. Again, it can be seen that these were major works which I believe prevented convenient access to the Site from the claimed locality.
- (d) **2008 to date** - I have exhibited a photo from July 2009 (Exhibit JDN7) which shows the reclaimed land at that time. From this it can be seen that a series of paths (outside of the Site) were created as part of the reclamation project connecting to the Trans Pennine Trail to enable the public to continue to use a similar route to that shown in the photo at exhibit JDN5 referred to above to connect to the Trans Pennine Trail. These paths were a requirement of the planning permission for the reclamation project/ business park development, however, St Paul's was never requested to provide specific access to the Site by the local planning authority.

Chapelton Park, Hesley Wood, Parkin Wood and Thorncliffe Wood

11. As noted within the Statement in Objection, Hesley Wood and Chapelton Park are both adjacent to the claimed locality and are considered to have been more convenient and had greater accessibility from the claimed locality than the Site throughout the relevant 20 year period.

12. At exhibit JDN8 I have included a plan showing the proximity of Chapelton Park, which adjoins the claimed locality.

13. At exhibit JDN9 is a drawing (Ecological Mitigation, Compensation and Enhancement) that accompanied the planning application for the proposed Sheffield Motorway Service Area. This shows the large extent of green space adjacent to and conveniently accessible from the claimed locality. In addition, this shows:

(a) By reference to exhibits JDN8 and JDN3 (locality plan) it can be seen how the gardens of the houses along the eastern boundary of the claimed locality that have submitted evidence questionnaires back onto Hesley Wood;

(b) Adjoining the northern boundary of the claimed locality is Chapelton Park, connected by paths from the claimed locality (see also the image at JDN8);

(c) Connecting from Hesley Wood and Chapelton Park are Parkin Wood and Thorncliffe Wood.

(d) To the southern boundary of the claimed locality is the A629, a busy road which runs up a steep incline known as Cowley Hill to connect to the M1 at junction 35. Cowley Hill is shown in further detail on the photos exhibited at JDN2.

Unlawful Motocross and Off-road vehicle use

14. In the period that St Paul's has owned the Site it has been subject to regular and intensive use for unlawful motorsports, in particular for large 4x4 off-road driving and motocross bikes. As noted within the Statement in Objection and witness statement of Mr Jonathan Rhodes, it is considered too dangerous to members of the public to walk on the Site when this is taking place.

15. At exhibit JDN10 are photos of people using the Site for unlawful off-road vehicle use. These large motor vehicles drive around virtually the full extent of the Site as shown on the drawing produced by Wardell Armstrong exhibited to Mr Tovey's witness statement at NT5. Weekends are particularly busy with unlawful vehicles using the Site.

16. The only activity of significance on the Site that we have observed over the years has been this unlawful off-road activity. Working with Sheffield City Council, St Paul's has taken numerous steps in an effort to prevent access being gained to the Site by such vehicles. For example, bunds and concrete bollards have been put in place at considerable expense on paths outside of the Site as shown in the photos at exhibit JDN11. However, this has in practice had little effect and the unlawful use of the Site by vehicles remains regular and intensive, particularly at weekends despite intervention by the police on some occasions.

17. STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed J D Berk Dated 27/3/14

On behalf of: Axis 1 Limited/ St Paul's Developments Plc
By: J D Newton
No: 1st
Exhibits: "JDN1"- "JDN13"
Date: 26 March 2014

APPLICATION PURSUANT TO SECTION 15(1) COMMONS ACT 2006

LAND KNOWN AS SMITHY WOOD ADJACENT TO M1 AT JUNCTION 35

EXHIBIT OF JOHN DAVID NEWTON

This is the exhibit marked "JDN1" referred to in the witness statement of John David Newton dated this 26th day of March 2014.

Signed



This official copy issued on 13 February 2013 shows the state of this land plan on 13 February 2013 at 09:35:01. It is advisable to proceed to the same extent as the original if Land Register and 2013. This plan shows the general position and the exact line of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements taken on the ground. See Land Registry Public Guide 13 - The Plans and Boundaries. This plan is done with Land Registry, Birmingham Office.



On behalf of: Axis 1 Limited/ St Paul's Developments Plc
By: J D Newton
No: 1st
Exhibits: "JDN1"- "JDN13"
Date: 26 March 2014

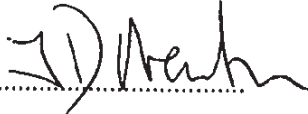
APPLICATION PURSUANT TO SECTION 15(1) COMMONS ACT 2006

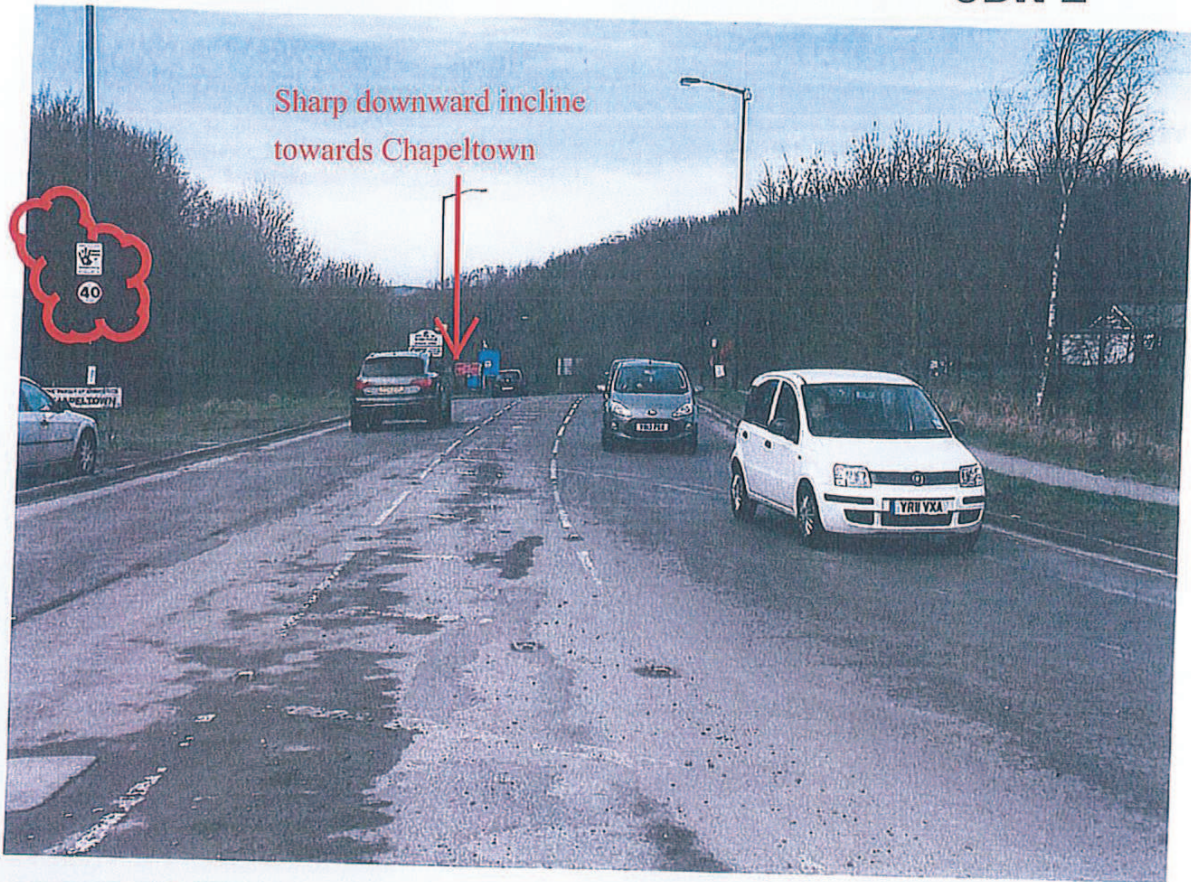
LAND KNOWN AS SMITHY WOOD ADJACENT TO M1 AT JUNCTION 35

EXHIBIT OF JOHN DAVID NEWTON

This is the exhibit marked "JDN2" referred to in the witness statement of John David Newton dated this 26th day of March 2014.

Signed







On behalf of: Axis 1 Limited/ St Paul's Developments Plc

By: J D Newton

No: 1st

Exhibits: "JDN1"- "JDN13"

Date: 26 March 2014

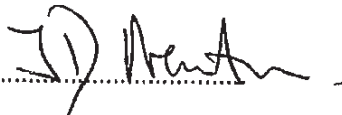
APPLICATION PURSUANT TO SECTION 15(1) COMMONS ACT 2006

LAND KNOWN AS SMITHY WOOD ADJACENT TO M1 AT JUNCTION 35

EXHIBIT OF JOHN DAVID NEWTON

This is the exhibit marked "JDN3" referred to in the witness statement of John David Newton dated this 26th day of March 2014.

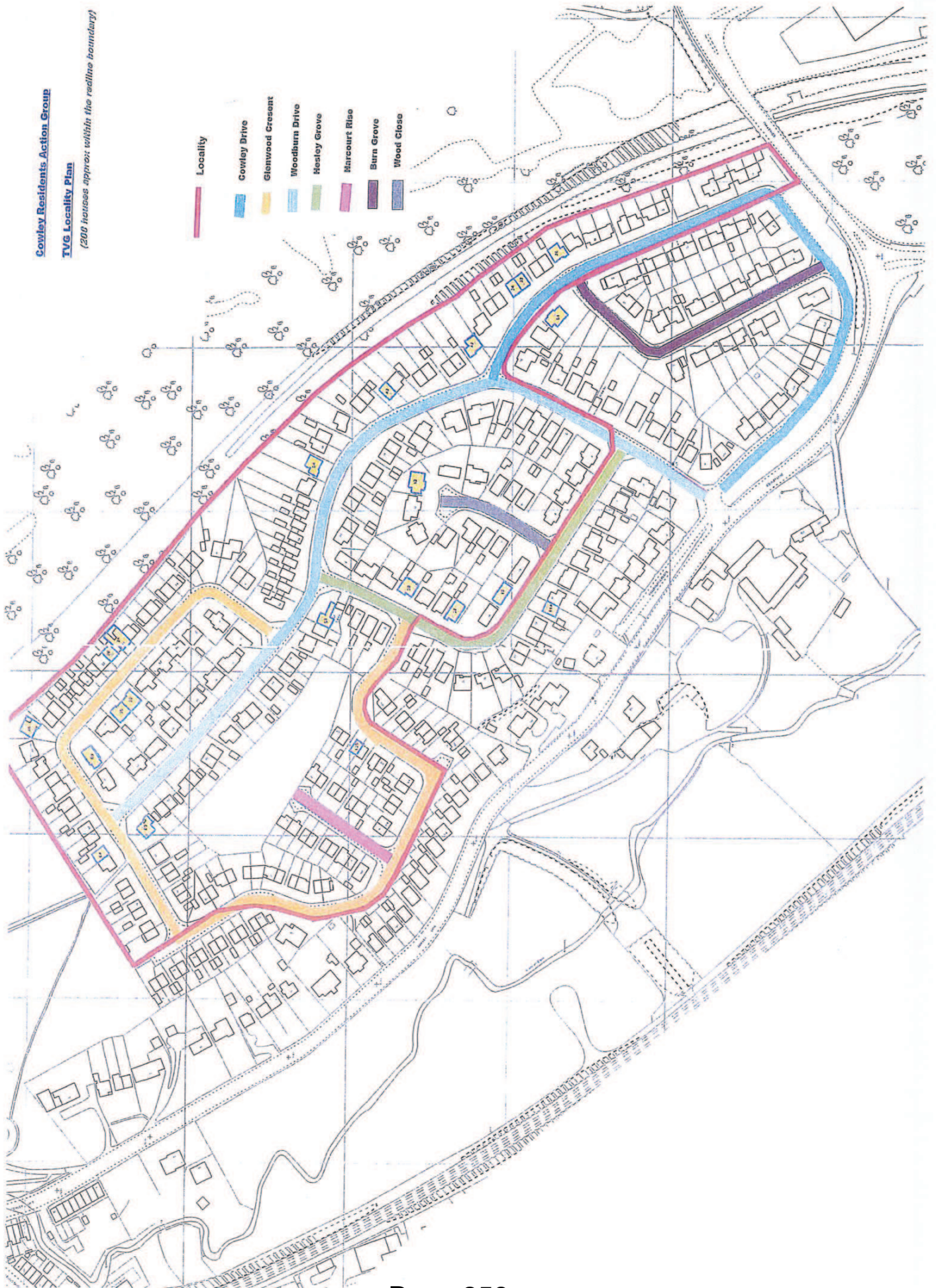
Signed



Cowley Residents Action Group

TVG Locality Plan

(200 houses approx: within the redline boundary)



On behalf of: Axis 1 Limited/ St Paul's Developments Plc
By: J D Newton
No: 1st
Exhibits: "JDN1"- "JDN13"
Date: 26 March 2014

APPLICATION PURSUANT TO SECTION 15(1) COMMONS ACT 2006

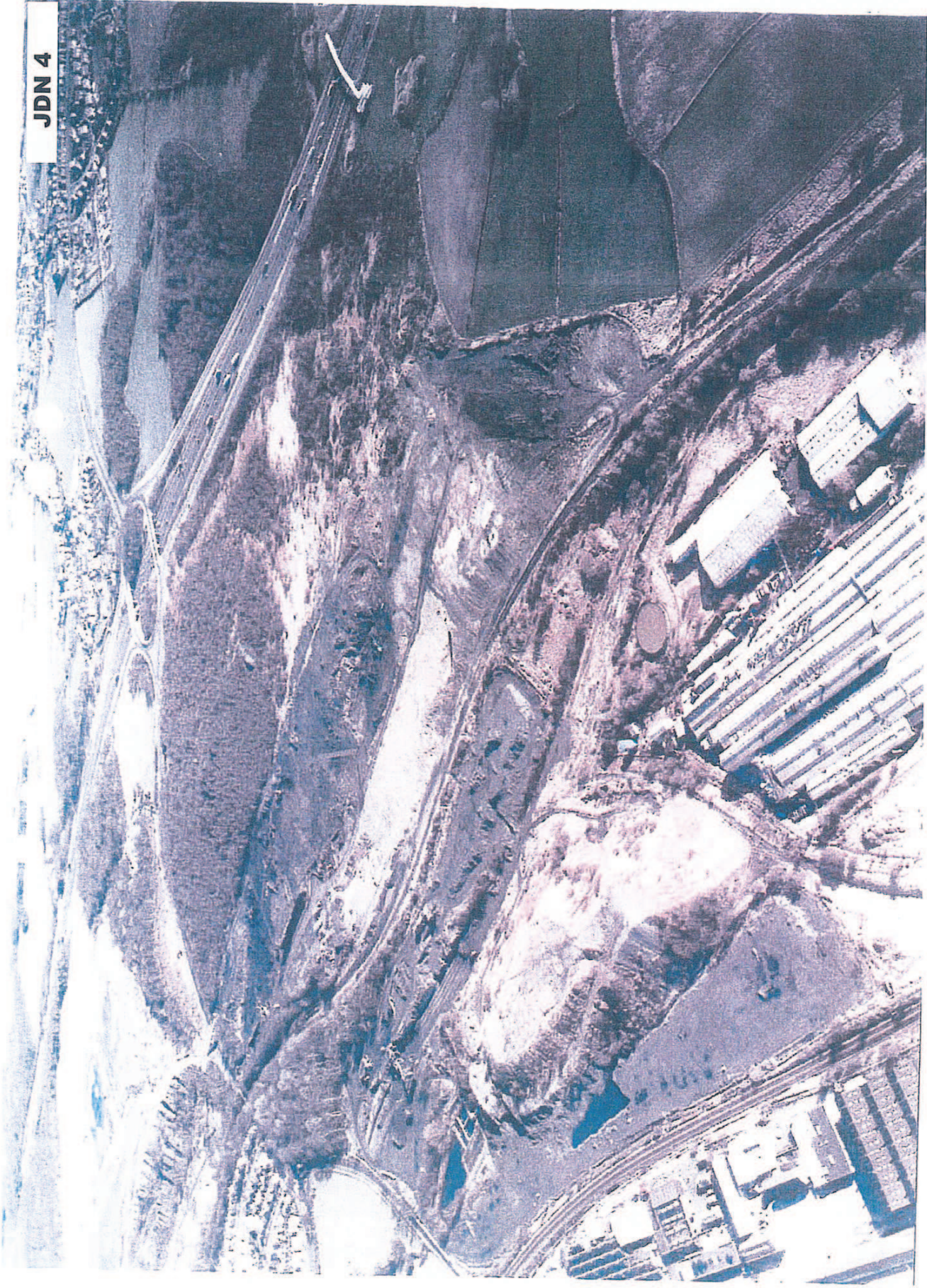
LAND KNOWN AS SMITHY WOOD ADJACENT TO MI AT JUNCTION 35

EXHIBIT OF JOHN DAVID NEWTON

This is the exhibit marked "JDN4" referred to in the witness statement of John David Newton dated this 26th day of March 2014.

Signed 

JDN 4



On behalf of: Axis 1 Limited/ St Paul's Developments Plc

By: J D Newton

No: 1st

Exhibits: "JDNI"- "JDNI3"

Date: 26 March 2014

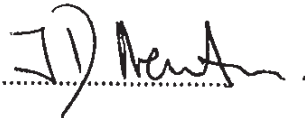
APPLICATION PURSUANT TO SECTION 15(1) COMMONS ACT 2006

LAND KNOWN AS SMITHY WOOD ADJACENT TO M1 AT JUNCTION 35

EXHIBIT OF JOHN DAVID NEWTON

This is the exhibit marked "JDN5" referred to in the witness statement of John David Newton dated this 26th day of March 2014.

Signed





On behalf of: Axis 1 Limited/ St Paul's Developments Plc
By: J D Newton
No: 1st
Exhibits: "JDN1"- "JDN13"
Date: 26 March 2014

APPLICATION PURSUANT TO SECTION 15(1) COMMONS ACT 2006

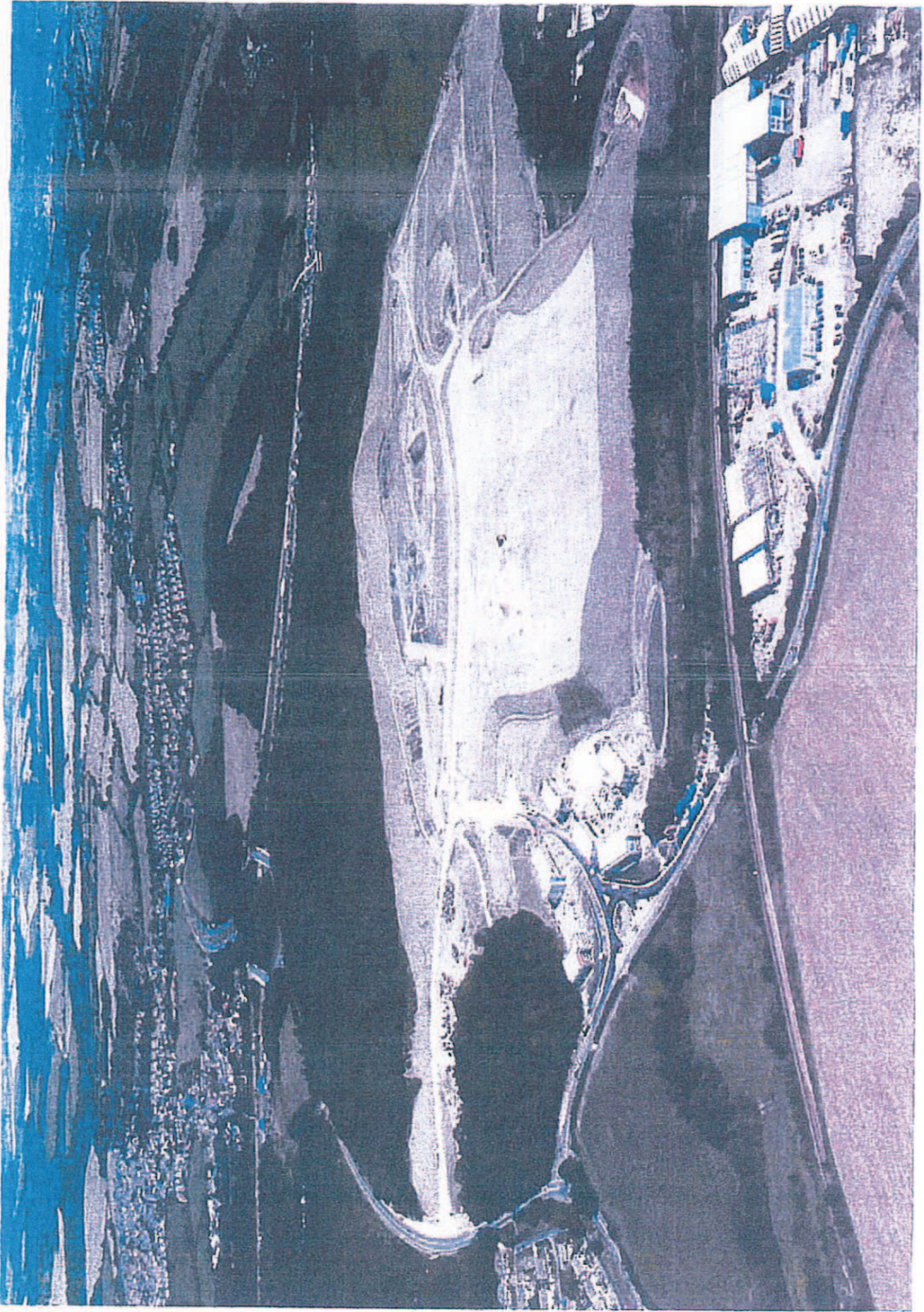
LAND KNOWN AS SMITHY WOOD ADJACENT TO M1 AT JUNCTION 35

EXHIBIT OF JOHN DAVID NEWTON

This is the exhibit marked "JDN6" referred to in the witness statement of John David Newton dated this 26th day of March 2014.

Signed





On behalf of: Axis 1 Limited/ St Paul's Developments Plc

By: J D Newton

No: 1st

Exhibits: "JDN1"- "JDN13"

Date: 26 March 2014

APPLICATION PURSUANT TO SECTION 15(1) COMMONS ACT 2006

LAND KNOWN AS SMITHY WOOD ADJACENT TO M1 AT JUNCTION 35

EXHIBIT OF JOHN DAVID NEWTON

This is the exhibit marked "JDN7" referred to in the witness statement of John David Newton dated this 26th day of March 2014.

Signed

