Appendix ‘E’

Cowley Residents Action Group

CRAG

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

Response to the Statement of Objections by the majority land owner, 'St Paul's Developments PLC'.

APPLICATION PURSUANT TO SECTION 15(1) COMMONS ACT 2006 LAND KNOWN AS SMITHY WOOD ADJACENT TO M1 AT JUNCTION 35 - Response to the Statement of Objections by the majority land owner, 'St Paul's Developments PLC'.

Introduction

1. This is a Statement by Cowley Residents Action Group, in response to the Statement in Objection ("SOO") submitted on behalf of Axis 1 Limited, a wholly owned subsidiary of St Paul's Developments PLC ("Owner"), 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").

2. CRAG was formed after a public meeting of the local community on 19th July 2012, to coordinate a response to the Hesley Wood planning application.

> "Cowley Residents Action Group was established to represent the views, concerns and celebrations of the local and surrounding residents of the Cowley Estate in Chapeltown, Sheffield, UK." - CRAG Facebook Page created on 10/10/2012 - https://www.facebook.com/CowleyResidentsActionGroupSheffield/info

Summary

3. In spite of the request by the Owner, that Sheffield City Council summarily reject our Application on the basis that it is 'fundamentally defective', we maintain that the Application is duly made, and should continue for consideration by the authority. Just like the Owner, CRAG is entitled to be treated fairly and in accordance with our human right to be heard on issues of importance to us. To deny us consideration of an application duly made would impinge on this human right.

4. We can state categorically that our Village Green Application is not merely an attempt to frustrate planning as stated by the Owner. This is an attempt by local residents to claim a right of commons over woodland that is of great social, community, recreational, conservation, and historical value to us. It was submitted in November 2013 whilst maintaining the option to submit additional evidence, as locals were concerned by the Owners lack of protection for this ancient woodland, in the face of increasing use and destruction by quad bikes, and locals observing 'workmen' cutting down trees.

5. Our Application was constructed on the basis of instructions and notes provided on Form 44, with reference to the government's guidance to local authorities on the subject of Village Green applications, and to the references within the guidance to case law on the issue. It is clear from these sources that our application meets all the criteria and burdens of proof that the Owner refers to. We will discuss these in comments later in this Statement.

6. After consultation with the Planning Inspectorate about possible trigger events in relation to the Land that would prohibit the acceptance of our Village Green application, Sheffield Council Licensing Services (the relevant Registration Authority) was authorised to proceed as no trigger event, as described in Schedule 1A, Exclusion of Right under Section 15 of the Commons act 2006, existed.

7. The purported benefits of the planning application submitted AFTER our Village Green application, is of no consequence in assessing the merits of our application, and we object to unfair attempts to skew the argument in favour of rejecting our Application in this manner.

In the pursuit of clarity, and in order to address the entire contents of the SOO submitted on behalf of the Owner, we will use their headings and address specific points as numbered in their Statement.

Planning Application

8. The existence of a planning application, submitted some four months and 10 days AFTER our Village Green application, is in no way pertinent to the consideration of our Application by the Relevant Authority. The details of this application are of no consequence to our Application, and Defra guidance on the subject states that where a Village green application is submitted immediately prior to a 'trigger event', the application should proceed as normal.

8.1. We consider it sufficient to state that at the date of our Application, no planning application existed, and no 'trigger event' had occurred. The planning application has yet to be decided. Our Application is a material consideration in deciding Extra's planning application, but the opposite is not true - Extra's planning application, in so far as it was submitted some time after our Application, is not a material consideration in reaching a decision on our Application. It is premature to assume that the development in Ancient Woodland will be permitted, considering that a similar application by Extra for a site just across the motorway was refused by Rotherham Council on the basis that there was no need for a service station at this point in the motorway network.

8.2. It would be unfair to us if the issue of a pending planning application were to adversely impact on our Application, especially in view of the fact that our Application was submitted well in advance of any application by Extra. Since the pending planning application submitted some time AFTER our Application is in no way material to our claim of right of commons, we will not address the claimed benefits and defects of that planning application here. However, in point 6 in their

objection, the Owner points to the fact that the government brought in changes to the Commons Act 2006, by way of the Growth and Infrastructure Act 2013 to, and we quote:

> " ... prevent land proposed for much needed development and infrastructure from being frustrated by village green applications."

Since a planning application for a service station on the opposite side of the motorway was rejected by Rotherham Council, on the basis that there was no need for it, we cannot see how that particular argument against our Application will stand scrutiny. Rotherham Council has clearly not accepted the case for 'much needed development', and we fail to see how the need suddenly becomes much more urgent on the opposite side of the road. The only thing that makes a planning application pertinent to our Application is the threat by Extra to have our Application overturned by the Secretary of State, should the Relevant Authority not capitulate on this issue. We look forward to having our case heard at such an inquiry, as is our right within a democratic society.

8.3. Later in Point 6, the owner also asserts that we submitted our Application in a rush in order to frustrate their planning application. We did in fact submit our planning application in a rush because we were concerned, and continue to be concerned, about the extensive and ongoing degradation of Smithy Wood by 4x4 vehicles, and our observation of 'workmen' cutting limbs off trees. We have been concerned that an attempt may be made to degrade the wood to such an extent that it would necessitate development in order to address an 'eye-sore'. We have been in contact with Sheffield Environmental Services concerning a growing problem of fly tipping. We have been in contact with the Police for some time now concerning damage done to the woodland by 4x4's, the riders of which have been intimidating and frightening locals going about their lawful pastimes and recreation in the wood. There are protected species in the woodland too that will be driven out or destroyed

by the 4x4's. We have been in contact with local Councillors and the local Member of Parliament about our concerns. We would be happy to provide this correspondence to the Relevant Authority or to an Inquiry. We are awaiting confirmation from the Police about the number of calls we have made in the last year concerning 4x4's in Smithy Wood. We are happy to make this information available to the Relevant Authority and/or any Inquiry. Our rushed application arose out of concern about the destruction going on in the woodland, which the Owner has failed to prevent from happening. We were and are not willing to allow the mindless destruction of an area that we have enjoyed for generations.

9. In point 9 of the SOO, the Owner states that they expect to be able to overturn a designation of Village Green status, by providing "suitable replacement land". This statement also does not bear scrutiny. In the first instance, this is an Ancient Woodland that dates back at least 850 years, which by definition and according to Standing Advice from Natural England and guidance by the Forestry Commission, is IRREPLACABLE, and is protected by the Planning System. Second, this is also a site that contains European Protected Species, is Greenbelt land, a Local Wildlife Site, a site that has a well-documented and extensive history, all in close proximity to our homes. These are the very reasons that we prefer to take our recreation in Smithy Wood, rather than in some parkland further afield. It is our IRREPLACEABLE heritage, and has intrinsic value for us. It is for these reasons that we have used the Land as of right for more than 20 years, in fact for generations, and it is for this reason that we are claiming the right of commons over it. Making existing woodland available does not compensate for the destruction and loss of Smithy Wood as irreplaceable ancient woodland. Appropriate use of the site has already been established - it is designated Green Belt, a Local Wildlife Site, and Ancient Woodland.

10. We strenuously object to the sinister attempts to influence the consideration of our application by including details of the alleged benefits of development on this site, in the SOO. These details are in no way relevant to the matter at hand, which in this case

is our claim to right of commons. Since we have no other recourse under the law, we are democratically entitled to be heard on issues that affect us, or our local environment. If the Relevant Authority is minded to refuse our application based on the disputed representations in the Owner's SOO, then it is fair and reasonable that we be allowed a public inquiry into our application. That is the cost of democracy in our country, and is enshrined in human rights legislation. The cost of any request to the Secretary of State to overturn a Village Green designation would be borne by the applicant to the Secretary of State, which in this case would be the Owner, not the taxpayer or Sheffield Council. This is another sinister attempt to influence consideration of our application, to which we must object.

11. Even where an application for registration as a Village Green is found to be defective, that is no reason to refuse to consider it. In completing our Application, we referred to Defra guidance entitled, *"Section 15 of the Commons Act 2006 Guidance notes for the completion of an application for the registration of land as a town or village green outside the pioneer implementation areas, October 2013"* as instructed on the governments website on Village Greens at https://www.gov.uk/town-and-village-greens-how-to-register which in turn referred us to *"Guidance to Commons Registration Authorities and the Planning Inspectorate for the Pioneer Implementation", Chapter 8.10.*, for detailed interpretation of the criteria for registration.

11.1. Chapter 7.10.3 of the abovementioned guidance poses the question, *"Does a defect in an application — a failure to comply with some requirement of the 2006 Act or the Regulations — invalidate the application, so that it cannot be proceeded with, even if the authority would prefer to waive the non-compliance?"* The guidance responds as follows:

> "In Defra's view, no: the authority must consider the consequences of non-compliance, in deciding whether to proceed with the 'application' as it stands. In some cases, the authority may decide to waive non-compliance, and it

would be open to a person adversely affected by that decision to challenge it in the courts. In R v Soneji and another , Lord Steyn, summarising how the courts had viewed whether adherence to statutory requirements as to procedure were mandatory or directory, said that: "the emphasis ought to be on the consequences of non-compliance, and posing the question whether Parliament can fairly be taken to have intended total invalidity."

11.2. Since our Application was accepted as duly made, and were it not duly made it would not have been accepted, it would not be reasonable or fair to dismiss it out of hand. We will address specific complaints against the content of our Application as we proceed.

12. With reference to point 10 in the Objection, we must reiterate that our Village Green Application has nothing whatsoever to do with Extra's planning application. It is presided over by entirely different legislation, and is not a matter for Planning or the Planning System. This matter is about our claim to ancient rights of commons, over land that we have used as of right for generations. It is not about what is the best use of the Land as described by the Owner in point 10.

The Application and Tests for Registration

13.The Owner is correct in saying that the onus is on CRAG, acting on behalf of local residents, to prove all the criteria for registration of our Application, strictly and properly. Lords Bingham and Lord Walker in R v Sunderland City Council, ex parte Beresford approved these dicta. However, Defra guidance issued in January 2014[1] to which applicants are referred in completing their applications for non-Pioneer areas, states that the standard of proof required is the usual civil standard, that is, the balance of probabilities. We will be referring to this Defra guidance, specifically paragraphs 8.10.21 to 8.10.72 that apply specifically to **both** Pioneer and other areas.

[1] Guidance to Commons Registration Authorities and the Planning Inspectorate for the Pioneer Implementation Para. 8.10.11 to 8.10.72

The Site

14. The incline of the road that the Applicants may have to cross in order to access Smithy Wood from one particular direction is of no consequence to our application. To suggest that the road incline is somehow a bar to accessing our preferred recreational site is disingenuous and misleading. Crossing the A629 is not an obstruction, as it has extremely well placed pedestrian crossings at the intersection with Cowley Hill/Cowley Way that are controlled by traffic lights. The A629 does not prevent local people from accessing Smithy Wood. See Plate 1 below.

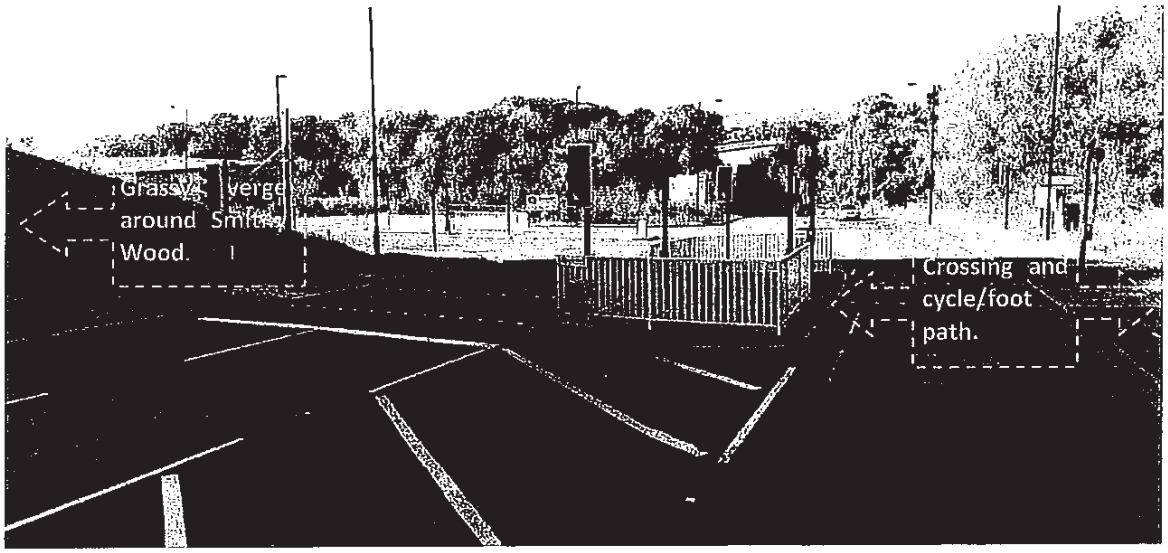


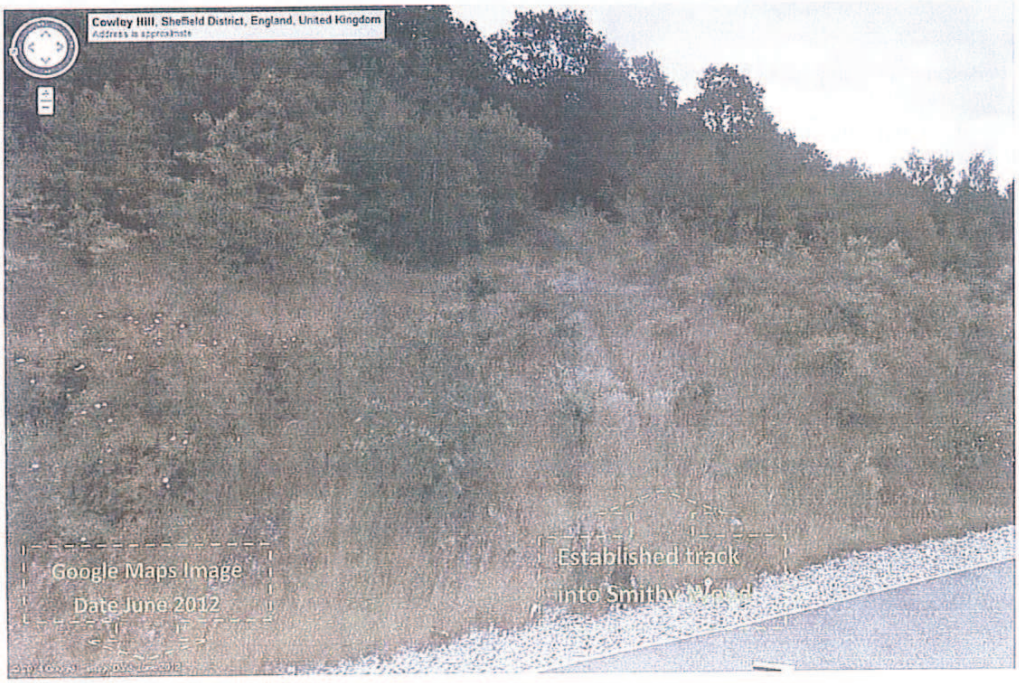
Plate 1 Pedestrian crossing at A629 junction with Cowley Way

15. The current preferred point of access into Smithy Wood is of no consequence to the application, and was merely included in our maps to provide information about the use of the wood. There is nothing in legislation or case law that requires the point of access to be within any particular distance from the 'locality/neighbourhood'. The only requirement is that the land under claim be within a distance from the 'locality' or 'neighbourhood within a locality' that would reasonably facilitate use by local residents. That is to say, that it cannot be remote from the citizens claiming right of commons. Smithy Wood as the land under claim, is not in any way remote from the citizens claiming right of commons.

15.1. Assuming residents leave the 'neighbourhood' at the footpath between Cowley Drive and Cowley Hill, make their way up to the pedestrian crossing, and along Cowley Hill/Lane to the first track, that enters the wood, then they will have travelled approximately 265m. (See Plate 2 and 2a below)

Plate 2 (above) Exit the neighbourhood from the footpath on Cowley Hill A629

Plate 2a (below) First Track into Smithy Wood as indicated in Plate 2 above.



15.2. Assuming the same route but access at the second track that enters the wood from Cowley Lane, they will have travelled approximately 300m. (See Plate 3 and 3a below)

Plate 3 (above) Exit the neighbourhood from the footpath on Cowley Hill A629

Plate 3a (below) Second track as indicated in Plate 3 above.

15.3. Assuming that locals drove to the unofficial parking area having exited the Cowley estate at Woodburn Drive - the only vehicular exit from the estate, then they will have travelled approximately 790m. (See Plate 4 and 4a below)

Plate 4 (above) Exit the neighbourhood from Woodburn Drive and proceed along the A629

Plate 4a Unofficial parking area on Cowley Hill as indicated in Plate 4 above.

15.4. The proximity of the Land to the 'neighbourhood' cannot be disputed. It is not an unreasonable distance to travel to a favoured local recreational spot.

Highway Land

16. Residents of the local area have used Smithy Wood for lawful recreation as of right for generations, before any part of the Land came into the possession of the Secretary of State. Undoubtedly, few if any residents or previous residents would reasonably be aware that any part of it had been adopted as highway land, bar the sections that actually contain a highway. On closer inspection of the title deed, it can be seen that the land outlined in red corresponds rather strikingly with the grassy verge around the edges of Smithy Wood. We are content amend our map to cover the same extent as the Smithy Wood Local Wildlife Site.

    In any event, it is not beyond the powers of the Relevant Authority to include in a Village Green registration only those sections of the Land that qualify. This will not materially prejudice either party. The requirement to produce a map indicating the land under claim is intended for identification purposes, and is not intended to be a point upon which an entire application will fail. See paragraph 11.1 above.

No Qualifying Locality

17. Paragraph 8.10.16 of the Defra guidance referred to previously states quite clearly what is required in relation to identifying a locality or neighbourhood:

    "**If** the locality or neighbourhood **is not coextensive with an administrative area** (such as an **electoral ward** or a parish), nor comprises a geographical area which may be briefly described in terms **which leave no doubt as to its boundaries** (such as an isolated village), **then** a map must be included with the application showing its extent"

    17.1. Application Form 44, section 6 is also clear:

"6. Locality or neighbourhood within a locality in respect of which the application is made. Please show the **locality or neighbourhood** within the locality **to which the claimed green relates, either** by writing the administrative area or **geographical** area by name below, **or** by attaching a map on which the area is clearly marked:"

17.1.1. Note 6 to section 6 on Form 44 clarifies:

> **"Note 6**
> It may be possible to **indicate the locality of the green by reference to** an administrative area, such as a parish or electoral ward, **or other area** sufficiently defined by name (such as a village **or street**). **If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly**."

17.2. This guidance and notes on the official form do not indicate a requirement to specify that we are relying solely on either a locality or a neighbourhood. Without legal training, a reasonable person would interpret the instructions just as we have done. To our minds, the need to identify a locality or neighbourhood stems from the need to identify the green in relation to it, and to identify the inhabitants who use the land under claim. We did not consider it a requirement upon which our application would fail. Note 6 on Form 44 indicates that the need to identify a locality or neighbourhood arises from the need to identify the green. It does not indicate that we should specify one over the other and rely upon its legal definition. If this is in fact the requirement, then our map quite obviously indicates our estate, which if it must have a legal definition, would be considered a 'neighbourhood within a locality'. We are content to include the remainder of the houses within the estate, approximately 45 homes. We do not consider those houses that face onto Cowley Lane as being part of the estate, only those that are contained within the area accessed by Woodburn Drive, the only road into/out of the estate.

18. If we are to accept the Owner's comments about our need to specify **either** a locality **or** a neighbourhood, rather than our own understanding of the Defra guidance and the application form, then Paragraph 8.10.32 of the Defra guidance states as follows:

> "The concept of a 'neighbourhood' is more flexible than that of a 'locality', and has **no connotation of legally recognised boundaries**. Lord Hoffmann confirmed this in the Trap Grounds case. There is no requirement for a range of community facilities or indeed any community facilities. In the Cheltenham Builders case, Sullivan J gave a **housing estate as an example of a neighbourhood**."

19. Since we are able to identify the geographical area of our estate as above, the issue of a map indicating it becomes redundant.

Significant Number

20. According to the Defra guidance, a significant number refers to a number will enable one to **distinguish general use** by the local community **from occasional trespass.** Paragraph 8.10.21 states that:

> "In the McAlpine Homes case the High Court provided some useful guidance about what 'a significant number' might mean. The court **did not accept** that the expression was synonymous with a **considerable, or a substantial, number**. The reason given was that a neighbourhood might have a very limited population, and a significant number of its inhabitants might not be capable of being described as considerable or substantial."
>
> "Whether the evidence shows that a significant number of the inhabitants of any locality or neighbourhood within a locality used the land for informal recreation is, according to the court, very much a matter of impression. The key question is whether the number of inhabitants using the land was sufficient to signify that it

was in **general use by the local community** (i.e. the inhabitants of the relevant locality or neighbourhood) for informal recreation, rather than occasional use by individual trespassers."

21. It is clear to see from the questionnaires, letters, and emails from local residents that they have used Smithy Wood for generations. These are not random, individual trespassers, and they are certainly not using the land merely to get from one place to another. These are families who as children played in Smithy Wood, who as parents and grandparents continue to bring children and grandchildren to Smithy Wood. The images below show the established tracks that criss-cross Smithy Wood. These images were taken before the Smithy Wood Industrial Park was built.

Plate 5 Visible established tracks throughout Smithy Wood.

Plate 5a Visible established tracks throughout Smithy Wood from the opposite direction.

22. There have been thousands of signatures on a petition on the Woodland Trust website from people across the country, many of whom previously lived in the vicinity of Smithy Wood and used it when they did. Over 900 current residents of Sheffield have signed a petition (as at the date of our Application) and approximately 315 of these have commented in support of our Application. 234 of these signatories live in close proximity to Smithy Wood, though not necessarily within our estate. Many of them use Smithy Wood. We have not included those in our Application because of a need to comply with Data Projection legislation. The Woodland Trust will confirm our comments. These residents will undoubtedly be encouraged to respond to the planning application, since their evidence was not submitted as part of our application.

23. Since the obvious intent in the criterion requiring significant numbers of users, is to establish a right of commons under ancient common law and a use as of right, as opposed to mere occasional or sporadic trespass, we think we have adequately

demonstrated that our use of the Land is "of such amount and in such manner as would reasonably be regarded as being the assertion of a public right". Ironically, the destructive use of the Land by 4x4 vehicles that we have complained about to various authorities, itself demonstrates a common use of the land by locals for recreational purposes, albeit unlawful in this instance. We are confident of our and Defra's interpretation of the criteria, and would be happy to test it in judicial review.

24. Contrary to the assertions by the Owner in various points under this heading, there is no requirement in legislation or case law that each individual resident use the Land for the entire period of 20 years, merely that common use of the Land occurs, by a significant number of inhabitants (as opposed to occasional trespassers), over at least a 20 year period before the right of commons is claimed over the Land.

24.1. Paragraph 8.10.65 of the Defra guidance confirms our view:

> "There must be evidence of qualifying use for a period of at least twenty years. It is **not necessary for particular individuals to have used the land for the full period of twenty years**, but there should be evidence that local inhabitants taken together have used the land for the full period."

25. The Owner complains about our simple pro-forma questionnaire, but there is no statutory form in which to provide evidence. We have also submitted emails, photographs and hand-written letters from local residents. We have additional comments on the Woodland Trust website from people who no longer live near Smithy Wood, about their use of the wood over generations. As stated previously, we have not included those because of Data Protection restriction, by may be able to do so in private to the relevant Authority, with permission from the Woodland Trust.

25.1. The two people, who use the Land but live outside of the neighbourhood, are giving evidence about their recreational use of the Land. The intention is to

establish use by local people - it is unfortunate that many will fall outside of our neighbourhood, but since the location of the green relevant to some locality or neighbourhood must be established, this is unavoidable. There are in fact many more local inhabitants who use the Land, that live on all sides of it. The issue of locality/neighbourhood is a technicality, upon which an application is not intended to fail, but this does not detract from the fact that many local people use the Land for recreation, and that a right has long been established. If the Owner insists on pressing this technicality, we are happy to define a number of neighbourhoods around Smithy Wood, based on evidence from other local inhabitants that do not fall within out neighbourhood. This would give us an opportunity to present their evidence.

20 Years Use of the Site

26. Applications under Section 15(2) are required to demonstrate at least 20 years **consecutive** use by local inhabitants. Observation by consultants, paid by the St Paul's/Extra, on 45 random days in an 8-month period, cannot reasonably be considered sufficient evidence that inhabitants' use of the Land over 20 years was 'sporadic and insignificant'.

26.1. We find it curious to say the least that these consultants, paid by St Paul's/Extra, cannot remember conversations they had with local residents on a number of occasions, when they were approached and asked what they were doing on the Land. Local residents will give evidence to this effect, and to the fact that when machinery was being used they remained at a distance to observe what was being done.

26.2. Many local residents use the Land after working hours on weekdays and at weekends, so it is entirely possible and reasonable that any contractors or consultants paid by St Paul's/Extra will not have encountered them during working

hours. See point 26.1 above. There is no requirement that use of the Land be at set hours during the working day/week which is by definition when people work, and not when they take recreation. There is no requirement that gangs of inhabitants all use the Land at the same time, although groups like the Sheffield Shamblers and even local Scouting groups have been known to do so. There is also no requirement that the Land be used at all times of the year. Adverse weather or darker nights in winter do not impinge on our assertion of a public right.

27. Since St Paul's/Extra clearly does not appreciate the historic, heritage, nature, conservation, or intrinsic value of Smithy Wood as ancient woodland to local residents, they are hardly qualified to comment on what is reasonable behaviour on the part of local people in seeking recreation in Smithy Wood. This is clear from their comment that nobody would want to cross a road in order to avail themselves of historic ancient woodland, full of protected species and designated as a Local Wildlife Site.

27.1. Many of the residents whose gardens back onto Hesley Wood use its paths to travel to Smithy Wood. Prior to the 'major works' referred to in the SOO there was an overpass that allowed access to Smithy Wood from Hesley Wood, in almost the exact place that the new pedestrian crossing on the A629 at Smithy Wood has been built. If anything, the improvements have assisted access to Smithy Wood, rather than deter it. We would be happy to provide testimony to this effect.

27.2. The very existence of all the facilities at Chapeltown Park and its 'extensive use' make it less suitable for 'a quiet walk'. The value of ancient woodland, protected species and peacefulness has once again escaped the Owner. If they cannot appreciate the value of these things then they are not qualified to comment on what is realistic to local people. The woodland at Hesley no longer exists thanks to the rumoured bungled attempts by ReCycoal to recover the spoil heaps. The felled trees now lying where they fell. The woodland at Parkin and Thorncliff Wood is even further afield than Smithy Wood, at a distance of approximately 2 and 3km

respectively. Compare this to the few hundred meters between our estate and Smithy Wood. Residents from Thorpe Hesley also frequent Smithy Wood, but they have not been included in our Application as stated previously. If these residents drive to Parkin Wood, by the only road available, the nearest place to park is at the Norfolk Arms on White Lane, some 2.7 km away. Smithy Wood from the centre of Thorpe Hesley is only a 1.2 km drive.

27.3. While it is true that Chapeltown Park is more in keeping with the traditional image of a village green, Defra guidance makes clear the case law on this issue. In paragraph 8.10.61 it states:

> "It was held by the House of Lords in the Trap Grounds case (although the judicial committee expressed varying views on the point) that **there is no legal requirement for land to consist of grass or conform to the traditional image of a town or village green** in order to qualify for registration. Any land can so qualify provided that it has been used in the requisite manner for the requisite period."

Local residents do not avail themselves of Smithy Wood out of convenience; they have a real passion for the woodland, birds, wildlife and the protected species in it.

27.4. If local people from our estate were using Smithy Wood to gain access to the Trans-Pennine Way (TPW) as claimed by the Owner, then it is reasonable to assume that they would use the footpath/bridleway that was created as an obligation under a previous planning application, rather than the rough tracks and trails through often thickly wooded areas. The fact that local people are in the woodland at all indicates that they are there to enjoy the woodland, and not merely as a 'highway' to the TPW. See Plates 2a, 3a, 4a, 5 & 5a, and 6 and 6a below.

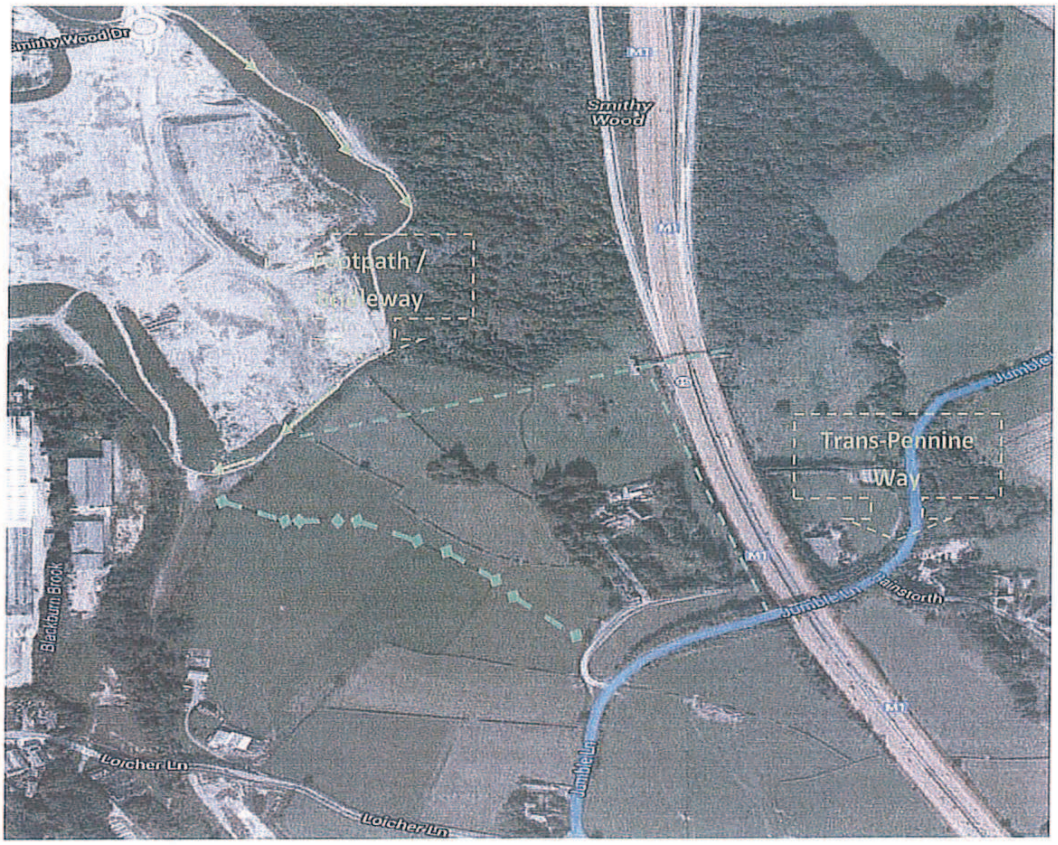


Plate 6 (above) Footpath/bridleway passing Smithy Wood.

Plate 6a (below) Footpath/bridleway at Cowley Way with no obvious tracks into Smithy Wood.

Unlawful Motocross and off-road vehicle activity.

28. We have repeatedly complained to police, local Councillors, and MPs about the destruction of this beautiful ancient wood by these vehicles, and it was largely because of the Owners lack of protection for this land, used by us as of right for recreation, that we made this Village Green application. The image below shows the measures taken by the Owner to prevent entry by these vehicles.

Plate 7(above) & 7a (below) Footpath/bridleway, including the dropped kerb and no bund to the left.

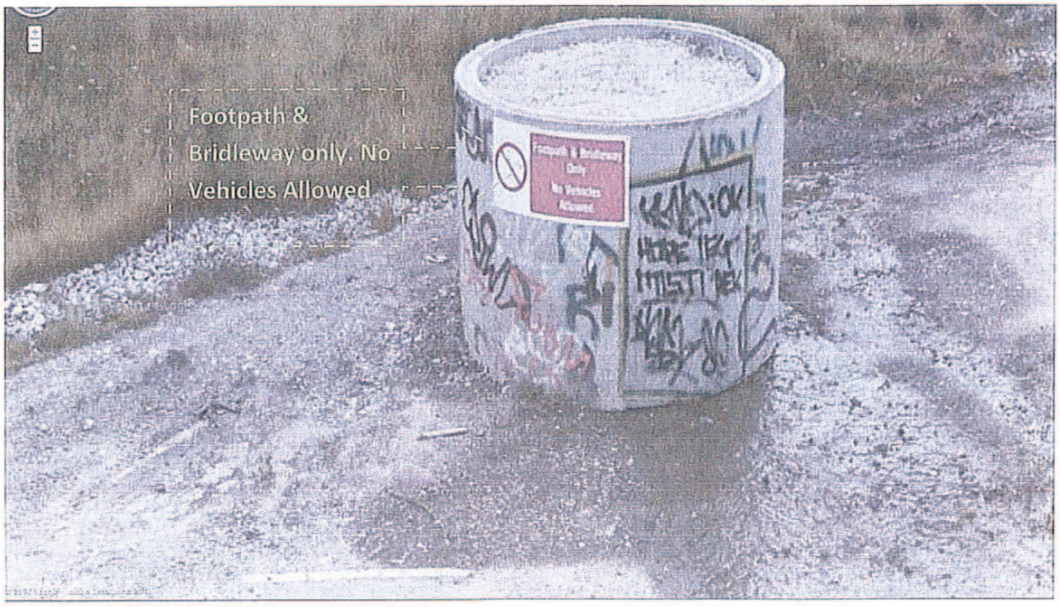


Plate 8 Shallow and incomplete soil bunds on Cowley Way. Dropped kerb allowing easy access.

Plate 8a Shallow bunds low enough to drive over on Cowley Way. Dropped kerb allowing easy access for vehicles.

28.1. Minimal efforts have been made to obstruct access. While use by off -road vehicles has been disconcerting and has often frightened lawful recreational users of Smithy Wood, this has not prevented local people from using the wood. We have made numerous phone calls to Police from within the wood to report the presence of the 4x4 vehicles. We are determined not to allow them to deprive us of our much-loved recreation in the wood. We have additional images of the damage the

vehicles are causing, **taken in the wood**, and images of the registration plates of vehicle owners and in one instance of the 4x4 user, which we have made available to the Police. We may also be able to provide these to the Relevant Authority for inspection, assuming the Police do not require them. If this is the kind of protection and management the Owner demonstrates on land owned by them, then we are not confident that the same will not happen on other land/woodland owned by them that they are offering in place of Smithy Wood.

29. Smithy Wood was indeed damaged in places by fire, but that did not prevent access to most of the site as claimed, and certainly did not interrupt our use of the woodland. Rather than detracting from our enjoyment of the woodland, a partially burned woodland has added interest and value. There is no legal requirement that the entire site should be used for the entire period, and since access to the entire site was not impeded and we continued to use the woodland, it cannot be construed as interrupted user. The Trap Ground case gives guidance on exactly this issue.

29.1. Defra guidance in paragraph 8.10.62 states:

" Another question raised in the Trap Grounds case was whether land can qualify or registration as a green even if some of it was inaccessible throughout all or part of the relevant period. The court was asked whether land could have become a green even though by reason of impenetrable growth only 25% of it was accessible for walkers. The inspector had advised that it could; recreational use of tracks, glades and clearings could amount to recreational use of the land viewed as a whole.

In the High Court, Lightman J refused to do any more than give guidance "of the broadest kind". He agreed that the **existence of inaccessible areas did not preclude land being held to be a green**, and pointed but that such areas might form part of the scenic attraction and might even themselves provide recreational opportunities. For example, a pond could be used for feeding ducks or sailing model boats.

Overgrown areas might provide a habitat for wildlife to the benefit of bird watchers and others interested in nature observation. The question whether land could properly be described, viewed as a whole, as having been used for recreation notwithstanding the inaccessibility of parts was to be approached in a common sense rather than a mathematical way. However, a registration authority should not strain its finding of fact on that question, and did not need to do so, having regard to the availability of power to register a part or parts of a claimed green."

29.2. And in 8.10.63

> "In the House of Lords, Lord Hoffmann said he was very reluctant to express a view on the inspector's conclusions without inspecting or at least seeing photographs of the site, but agreed that in principle **it was unnecessary for users to have set foot on every part (or even the majority) of the land** included in an application."

29.3. Since only parts of the Land were temporarily inaccessible for a relatively short period during the 20 years period, while the rest of the site remained accessible and in use, this cannot be misconstrued as interrupted user and we have clearly met this criterion.

Major works affecting access to and use of the site.

30. While it is true that major work took place on the site of the now Smithy Wood Business Park, this occurred **adjacent to Smithy Wood**. While access from what is now Cowley Way would have been closed off, it did not prevent local people from using the woodland as before. Works on land will not easily put off people who are passionate about recreation in the woodland **adjacent** to the wood, or inconvenience in accessing it from our preferred direction. A few hundred meters either way is not an inconvenience.

30.1. There are and always have been numerous access routes into Smithy Wood. Many residents whose gardens back onto Hesley wood have used that route to cross into Smithy Wood, eliminating the need to walk up a hill with a moderate incline on adequately paved verges. Others have existed at the cricket grounds and gained access from that direction. Many used the western side when it was accessible. Closing off access to one side of the land adjacent to the woodland, does not prevent access from every other side. Any route that was accessible at any point in time would have been used and was used. The preferred access routes indicated on the questionnaires were included in order to provide information only. There is no legal requirement to stipulate points of access, and this is certainly not a point upon which our Application turns or upon which application should reasonably fail.

As of Right.

31. It is our contention that we used the Land as of right. In the Sunningwell case it was held that use is not 'as of right' unless it is *nec vi, nec clam, nec precario*, translated by Lord Hoffmann as meaning not by force, nor stealth, nor the licence of the owner.

32. Defra guidance paragraph 8.10.42 states:

"In the Redcar case, the Supreme Court held that if the traditional 'tripartite test' [*nec vi, nec clam, nec precario*] was satisfied, that was sufficient. **There was no need to ask any further question, such as whether it would have appeared to a reasonable landowner that users were asserting a right to indulge in lawful sports and pastimes."**

32.1. The Owners knowledge, awareness, or lack thereof, of our use of the Land has no bearing on our claim of rights of commons over Smithy Wood.

33. We have regularly used the Land as of right for lawful recreation for more than 20 consecutive years, in spite of the occasional mishap or adjacent works. Generations of

local people have enjoyed Smithy Wood, for all of the reasons mentioned here and in letters, emails, and questionnaires submitted as part of our Application. We firmly believe that we have, on the balance of probabilities, adequately met the qualifying criteria for registration, and would be happy to have our case tested at an Inquiry should the Relevant Authority consider it appropriate.

34. We are content to provide any such additional evidence that the Relevant Authority may require, including anything referred to in this statement such as evidence of fly-tipping, degradation due to 4x4 use, communications with Sheffield Council Environmental Services, communication with Councillors and the MP, confirmation of out complaints to Police, and so on. We are also content to make our case personally to the Relevant Authority if required.

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End.