



HILLINGDON
LONDON



Registration & Appeals Committee

Councillors on the Committee

Councillor G.Cooper (Chairman),
Councillor Hensley (Vice-Chairman)
Councillors Allen
Curling,
Lewis and
R. Mills

Date: TUESDAY, 22 JANUARY 2013

Time: 5.30 PM

Venue: COMMITTEE ROOM 6 -
CIVIC CENTRE, HIGH
STREET, UXBRIDGE UB8
1UW

Meeting Details: Members of the Public and Press are welcome to attend this meeting

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Agenda

- 1 Apologies for Absence
- 2 Declarations of Interest
- 3 Application to Register Land known as The Medi Parc, Harefield, Hillingdon as a Village Green
To consider the report into the application (*attached*)

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APPLICATION TO REGISTER LAND KNOWN AS THE MEDI PARC, HAREFIELD, HILLINGDON AS A VILLAGE GREEN

Committee	Registration and Appeals Committee
Officer Contact	Rory Stracey
Papers with report	Report of the Inspector to the Public Inquiry
Ward(s) affected	Harefield

SUMMARY

The purpose of this report is to assist Members in determining an application submitted by the Harefield Tenants and Residents Association to register the site known as the Medi Parc Site, Harefield as a village green pursuant to Section 15 of the Commons Act 2006. The approximate extent of the application site is shown edged red on the plan at Appendix 1 of this report.

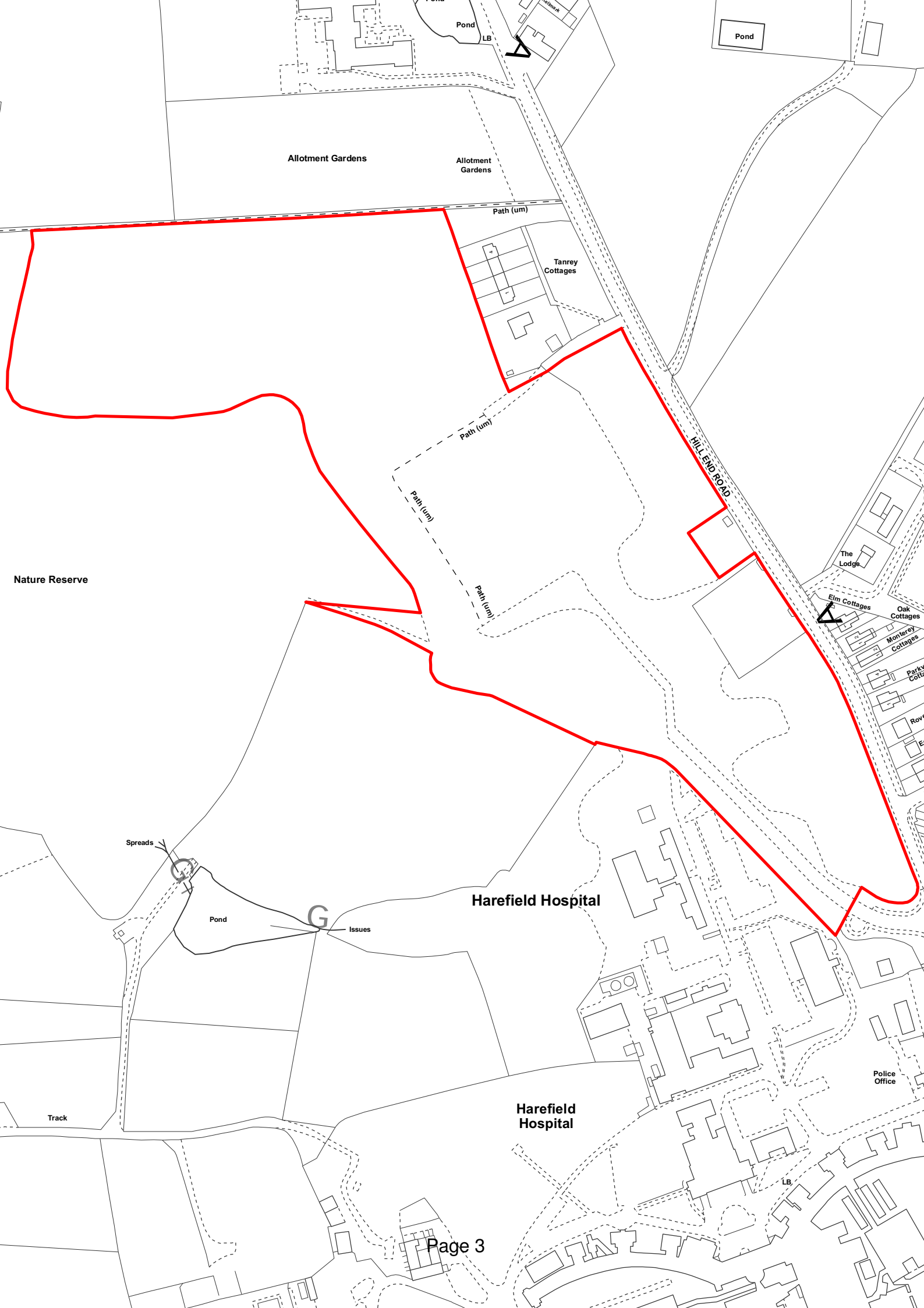
RECOMMENDATION: That, having considered the contents of the Inspector's report at Appendix 2 and, having regard to the legal tests and the conclusions of the Inspector, the application to register the site as a village green be refused for the reasons set out in the Inspector's report.

BACKGROUND INFORMATION:

1. The Commons Act 2006 ("the 2006 Act") sets out a statutory scheme enabling applications to be made to registration authorities for the registration of any land as a town or village green. The Council is the registration authority for the purposes of the Commons Act 2006 and is therefore responsible for determining applications to register land as town or village greens within the borough.
2. Where village green applications are received, the Council must register the land as a village green where the applicant proves on the balance of probability that *"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"* (Section 15(2) of the 2006 Act). The law relating to village greens is complex. However, briefly there are a number of limbs to the legal test for registration:
 - **"a significant number"** does not mean considerable or substantial. What needs to be shown is that the number of people using the land is sufficient to signify that the land is in general use by the community rather than occasional use by individuals as trespassers.
 - **"locality or of any neighbourhood within a locality"** means either a legally recognised locality (for instance a parish, manor or borough) or a neighbourhood within one or more localities (for instance a housing estate or street).
 - **"have indulged as of right"** means that the use must not be by force (for instance breaking fences or climbing over gates), nor by stealth (for instance by concealing the use from the owner), nor with permission of the owner.
 - **"lawful sports and pastimes"** means informal recreation such as walking or playing informal games.
 - **"on the land"** means the land that is the subject of the application.

- **“for a period of at least 20 years”** means that the use must have continued for the whole of the 20 year period although certain periods of non-use will be disregarded.
3. Once registered, town and village greens are protected by statute to ensure that the use or enjoyment of a village green as a place of recreation is not interfered with. The registration of land as a village green effectively prevents that land from being developed by a land owner: those who interfere with the recreational use of the village green may be held criminally liable.
 4. On 23 April 2010 the Council received an application from The Harefield Tenants & Residents Association C/O Tina Wane (“the Applicant”) to register a parcel of land known as “the Medi-Parc Site” as a village green pursuant to Section 15 of the Commons Act 2006 (“the Application”). The land subject to the Application is owned by Brookstream Properties Limited (“the Objector”).
 5. On 4 June 2010 that the Application was formally validated by the Council. On 28 July 2010, formal public notice of the Application was published in the Harefield Gazette which is a local newspaper with a circulation within the Borough and in particular within the locality of the Application site. On 28 July 2010, 5 site notices publicising the Application were erected at or around the Application site. On 30 July 2010, the Council formally served a copy of the statutory notice on the Objector. A notice was also published on the Council’s website. The notices stated that any representations relating to the Application must be submitted to the Council by not later than 10 September 2010.
 6. Following the close of the statutory consultation, there followed a short written representations procedure whereby the Applicant and the Objector were invited to submit their comments on representations received by the Council in response to the application. Following this procedure, the Council instructed Richard Ground of Counsel to advise the Council generally in its capacity as registration authority and if appropriate to act as an inspector at a non-statutory public inquiry.
 7. In consultation with the Applicant and the Objector, the Council arranged for a non-statutory public inquiry to be held so that the evidential and factual issues arising from the application could be examined and tested. There was some degree of delay in convening the public inquiry because it was necessary to allow the Objector sufficient time to carry out investigations into the claims made by the Applicants. A public inquiry was finally held between 21 – 24 March 2012, 28 – 31 March 2012 and 21 – 24 May 2012. The inspector carried out a site visit on 22 May 2012.
 8. Following the public inquiry, the inspector appointed by the Council, Mr Richard Ground of Counsel, prepared a detailed report into the evidence presented at the inquiry and his findings based on that evidence. Members are advised to consider the inspector’s report carefully in coming to a decision on the application.

Background Papers: Site Plan: Appendix 1; Inspector’s Report: Appendix 2



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**In the Matter of
Application to Register
Land known as The Medi Parc, Harefield Hillingdon
as a Town or Village Green**

REPORT

1 SUMMARY OF RECOMMENDATION

1.1 In summary I advise the Registration Authority to reject this application for a village green on the following basis.

i) There was not a significant number of users and a sufficient quality of user for registration in the following periods:

a) February 1990 to September 1991;

b) September 1991 – January 1992; and

c) January 1992 – spring 1998.

1.2 Thus the application does not meet the test for registration in section 15 the Commons Act 2006 and the registration authority should refuse to register it.

2 INTRODUCTION

- 2.1 The Inquiry heard all the evidence on oath over 3 weeks. It sat over 3 weeks 21-24 March 28- 31 March and 21- 24 May. I conducted a full site visit on 22 May 2012 and an informal site visit before the Inquiry.
- 2.2 I would like at the beginning of the report to thank all the witnesses and advocates who were extremely helpful to the Inquiry and courteous honest and industrious. The Applicant put a very well researched and evidenced application together and clearly had considerable expertise and put in much work in assembling the vast amount of material. The community spirit of Harefield was apparent in supporting their vast endeavour. Mr Agg who acted voluntarily as their advocate did so with authority, skill and charm. I am also grateful to Mr Laurence QC and Mr Lewis who was doing his last case at the Bar.
- 2.3 I know all the parties would want to thank the London Borough of Hillingdon for their hosting of the Inquiry and all the administrative arrangements and in particular Mr Stracey for his work.

3 APPLICANT'S EVIDENCE

MRS CHRISTINA WANE

- 3.1 Mrs Tina Wane has lived at 1 Tannery Cottages, Hill End Road. She has lived there since 14 April 1997. She said that she had a view on to the site from the upstairs of her house. She said that from 1997 to 2010 there was always someone out there on the application site. The access point was not closed until 2010.
- 3.2 In 1997 she remembered a stile that was very overgrown near point c on page 42 plan. By the kissing gate further left there was ranch type fencing that one could walk through. The gates were open.

- 3.3 The kissing gates were installed around 1997. The main gates were open at that time. The stile fell into disrepair it was overgrown and to the side of the kissing gate.
- 3.4 At D on page 42 was the hospital gate.
- 3.5 There were also holes in the fence along the Hillingdon Trail. These were near Y and Y1 on BS4. She did not use any entrances on Hill End Road. You could also get in opposite the cottages at G. You could also get in near B on page 42 plan and all along the boundary with Old Park Wood. Those were the openings in 1997-2010.
- 3.6 At Q on BS4 the fence was down. Between T and Y the boundary was just trees. There were public information signs welcoming people to Old Park Wood. G1 on page 42 plan was where you could walk into Old Park Wood. The signs were in the Medi Parc before enclosure in 2010 and then were moved to outside it.
- 3.7 She said that since 1997 she had walked in the Medi Parc 2 or 3 times a day. She walked her dog strolled with friends met local people. She went to the occasional bonfire party and picked blackberries. She varied her route. She repeated at 1.5 of her statement that from her bedroom window she would always see someone enjoying the area. She had never been given permission or been restricted from entering up to February 2010.
- 3.8 She gave evidence at paragraph 2.2 of her witness statement of 4 organised walks that had been led by Sue Coldwell in the Medi Parc between 2004 -2009. These walks focused on the flora and fauna. Page 320 is a contemporaneous document evidencing the walk that took place at the Medi Parc on 11 June 2005.

- 3.9 She looked through the photographs at page 860-864 and said that they were pictures of the Macleans playing on the site in 2002/3.
- 3.10 In 3.2 of her witness statement she explained that the site was fenced on 13 April 2010 but there was access via one gate up to 8 July 2010.
- 3.11 She explained the photographs she took in bundle E. Page 74 at the top was a photograph taken on 18 Dec 2009 looking at Tannery Cottages. It is clear from this photograph that there were lots of footpaths being made in the snow.
- 3.12 The photograph at the top of Page 75 shows a group of walkers on 19 February 2010. The bottom one shows the sign still within the site. The top photograph on Page 76 shows the kissing gate on 11 March 2010. There was a tree blocking it which was put up when they did the clearance. She was hesitant to say whether the gate had been moved.
- 3.13 On page 77 at the bottom was a photograph showing the clearance being done on March 18 2010 as were the photographs on page 78. There was a further photograph of the site being cleared dated 20 March 2010 and one dated 28 March 2010 with it largely having been cleared. By April 22 2010 the perimeter fence had gone up but there is a photograph of the gate being left open. There were various examples of people walking in May 2010 on pages 83, 84, 85, 86, 87 and in June on page 88 and 89, 90, 91. Page 93 shows the sign relocated to a position outside the application site.
- 3.14 She read paragraph 3.4 of her witness statement which explained that she had gathered and submitted further evidence in the form of 128 witness questionnaires from 139 people. She also submitted 122 short forms.

- 3.15 After that date which was 6 July 2010 the gate was locked. From the plan at page 1232A the area of the application site is roughly 23 acres.
- 3.16 She said generally in terms of the planning applications that most people would not think to object on the basis that they used the land but rather would object on planning issues.
- 3.17 Tina Wane explained the letter that was sent by Dr Tom Day of the Herts & Middlesex Wildlife Trusts at page 95 of the bundle E. The letter explained that they acquired Old Park Wood in 1978 and have always had a requirement to make it available to the public. He was aware of an informal agreement to allow access to Old Park Wood with the NHS Trust. In 2005 there was an agreement between the Wildlife Trust and the Hospital to put Old Park Wood entrance signs up. Dr Day also indicates that he does not believe there was ever a fence between Old Park Wood and the Medi Parc site. One of his officers had worked there for ten years and reports there being no evidence of any such fence.
- 3.18 This lack of fence between Old Park Wood and the application site is further evidenced by the witness statement of Mr Timms [page 23 Red Bundle E] who was contracted to install fencing round the North Wards in the 70s and 80s but did not erect on the boundary with Old Park Wood. He said:
- “.. there has never been a fence between these two areas, until a couple of years ago.”*
- 3.19 She quoted Mary Shepherd’s book the “Heart of Harefield”. This says on page 175 that:
- “In 1986 the Rehabilitation Unit and geriatric beds from Wards 5 and 6 ... were the last to leave the ‘north side’.”*

- 3.20 Similarly Mr Croft in a planning proof for an Inquiry in October 1990 at paragraph 2.17 said:

“Their use was generally being run down from 1976 onwards and they were last used in 1986.”

- 3.21 Mrs Wane had no personal knowledge of the use of the building but said that Jude Wadley’s evidence showed she had freedom to enter the wards in 1988. Stills of the DVD from 1988 show people in the building. Lizzie Reakes stated she entered the North Wards in the late 1980s. Mrs Foster’s letter gave evidence that she walked freely around the wards. The photo at page 180 showed her father outside the north wards in 1987. Mrs Hill [page 199] said that she used to play hide and seek amongst the derelict buildings.

- 3.22 The evidence of Marilyn Phillips from her diary entry dated Friday 20 September 1991 was that work started on Medi Parc that week. [page 68 and 246a] It said:

“Work started on Medi Parc this week.”

- 3.23 The letter of 27 November 1991 from Trafalgar House to Mr and Mrs King [A 63] said:

“The demolition works have now been completed”

- 3.24 She explained that page 21 of bundle E was a photo of Vince Reynolds behind the north wards with a digger in the background. The statement of Vanda Tandek explained that she found access to the wards easy because there was no fence between the cottages and the rest of the site.

- 3.25 She gave evidence about the aerial photographs but did not claim any expertise in looking at these.

- i) Page 1252 is an aerial photo dated 6 May 1993. On this she could clearly see the new access road which had been constructed. In addition the path from point R to U from the hospital to the Old Park Wood is clearly visible.
- ii) Page 1256 was an aerial photo dated 27 August 2001. Mrs Wane pointed to a number of other tracks on this photo.
- iii) 1 July 2006 aerial on page 96 of bundle E. This is the same as page 521 in blue 4 at page 521. It shows many footpaths around the application site.
- iv) Page 93 is an aerial photo from 2003 which shows numerous paths all around the application site. The enlarged views at 99 - 103 show these various tracks in more detail.
- v) Page 104 -106 show an aerial photo of 9 September 1999 which also shows numerous tracks.

3.26 Mrs Wane went through her observations on the photos of Mr Ayres but she did not have any first hand knowledge of the site at that time.

Cross-examination Mrs Wane

3.27 She confirmed that she had been back to the witnesses who were giving evidence but not Mrs Crawley to say that objectors making case that fences between Y1 and R1.

3.28 Mrs Wane accepted that the Transfer document from the Secretary of State for Health to Trafalgar House Business Parks showed that the Secretary of State retained the right to gain access along the footpath shown purple on the plan at page 42. This was provided by clause 4B.

- 3.29 She also accepted that it provided an obligation to fence it forthwith between points X and Y. This was at paragraph 4D.
- 3.30 She was put the Objectors case that RPS Clouston Landscape specification document dated July 1991 specified that chestnut paling protective fencing was to be erected on the areas indicated on drawings 695.18 and 695.19. [Blue 4 p 624] This is shown on 616 and 617. This does show a continuous fence between Y1 and R1. She accepted that that is what the documents showed but could not accept or dispute it from her personal knowledge. She said that is what the proposed position was on the documents. Her comments were similar on the evidence of Mr Ayres and his photographs.
- 3.31 She said she saw the stile to the left of the main gate to Medi Parc when she moved in which was in 1997. She said she thought the kissing gate was put in soon after she moved in. She used to go through the kissing gate. It was blocked off in 2010.
- 3.32 She accepted that very few of the witnesses giving evidence claimed to get access from Hill End Road before 1991. Chapman and Gray said they did and 2 others were less clear.
- 3.33 She was asked further questions about the access from Tanrey Cottages. When she was shown the witness statement of Vincent Reynolds on page 672-3¹ she accepted that the access from Tanrey Cottages to the Medi Parc was not one that the public were using to get on.
- 3.34 She said that Pauline Crawley went to watch the demolition.

¹ Blue Bundle 4

- 3.35 Mr Lewis asked her further questions in cross-examination. She was asked about the objections to the planning applications and said that she objected in 1998 but did not think of saying that she walked her dog there.
- 3.36 She said that she had gates at the end of cottages so she would walk straight on to the site. She said others had gates and there were no signs up. Since 1997 no evidence of fences between Medi Parc and Old Park Wood. She had generally seen people on the Medi Parc.
- 3.37 She accepted that she had seen the sign at page 367 of Blue 1 which was beside the Hill End Road.
- 3.38 She had not seen one at Point Q on BS4 shown at 1125 Vol 5 Blue and 612 Volume 4 Blue before she became interested in the village green inquiry.
- 3.39 She said of the letter from the Wildlife Trust [Red E page 95] that it was a permission to put up signs and the signs were put up inside the Medi Parc.
- 3.40 She was asked again about the basis for the objection to the planning applications. She said that people objected on basis of the green belt.
- 3.41 The photograph at page 24 she said was taken at an odd angle but she did not think it was a barrier to Old Park Wood.
- 3.42 Looking at the aerial photograph blow up from January 1997 she said it was possible to walk in south of the gates around the pillar.
- 3.43 Looking at the aerial from July 1991 [page 517 Blue 4] she accepted that the footpath network had not developed at this stage. However by 2006 it had [p521 Blue 4].

Re-examination

- 3.44 In re-examination she was taken to Mrs Washbrook's evidence [B 433] which said that there was never a fence separating Old Park Wood from the application site. She was also taken to Mrs Lindsay's evidence who used the site from 1979 to present. [806 Red C] She said the site was never fenced off until 2010. [p 812] She was also taken to Mrs Crawley's evidence. This is all evidence from others and not her own recollection.
- 3.45 She said that she had no recollection of the sign at 1126 of Blue 5 at the entrance gate. The sign along Hill End Road she did not think made any sense since 1997. She assumed it related to the hospital.

DONALD CHAPMAN

Examination-in-chief

- 3.46 He read his statement at page 146 of Red Bundle A. He has lived at 2 Hall Drive since 1960 to the present day which is 4 minutes from the main hospital gate.
- 3.47 He would originally go though the hospital and then double gates but occasionally enter further up Hill End Road. North of Sanctuary Close there was a plank across Hill End Road. He used this shortly after Trafalgar House closed off the hospital.
- 3.48 He used the site once every 3 weeks usually in daylight. He had a stressful job and it was convenient to slow down.
- 3.49 He saw others when he went to the application site but not every time.
- 3.50 He said he was a little vague about the period of demolition and construction work in Autumn 91 to Spring 1992. He said that he did not go on during the demolition.

- 3.51 He did not remember seeing any sign on Hill End Road. He did not recall any fencing between Medi Parc and Old Park Wood. He said it was not unusual to see children when the buildings were vacated but he cannot honestly say that he walked close at the time of the demolition.
- 3.52 He was a school governor 1990-2010. He went on trip with them once with 20 to 30 children.

Cross-examination

- 3.53 He said in cross-examination it was possible that he was confused over the year regarding 145B but then when he looked at 432A it would appear he was not.
- 3.54 He was born in May 1928 and was 61 in 1989. He would say when asked what he did that he was the village busy body. He had been a patient at the hospital. He said the hospital welcomes people to use the Medi Parc.
- 3.55 He was not on the committee when the hospital allowed them to store the material for the drama club. He suspects that it came about from the secretary appealing to the chief executive. They were asked to move out when Trafalgar House took over. That was when they moved to the old observation wards. In the 1980s they used the north wards for the drama group. They then found alternative accommodation in the hospital itself. They went through the hospital to the ward when they needed equipment.
- 3.56 In about 1989 a fence went in between the hospital and the site. After that he said he used gaps in fence on the Hillingdon Trail. Then he would use the plank across the ditch on Hill End Road.

3.57 During the demolition he confirmed that he did not go on to the application site. He did not go in until they had started building the new road. While they were building that access was available. He said that

"I know that I did not go there during the demolition because I would have remembered"

3.58 When he was pushed about his use in 1992 he said that it was possible that the fence along Hill End Road was moved in early 1992 and he possibly made occasional use of the plank at this time but he cannot remember.

3.59 He said of the kissing gate that it was not fitted straight away when the new gates were put there but later.

3.60 He said he did not remember it in the way it was depicted in Mr Ayres photograph at 589 [dated February 1992] because it must have been a time when he was not going there. There were periods of months that he did not use it at all.

3.61 He did not remember the kissing gate being put in.

3.62 He did not remember any evidence of a fence between Old Park Wood and Medi Parc.

3.63 He did not have a recollection of a stile. He said that even when shown a letter that refused a licence to use the Medi Parc car park because of a fear of 'New Age Travellers' that there was nevertheless unrestricted access.

TRACY RONDEL

- 3.64 She read her statement on page 267. This set out that she played in the North Wards when they were closed down and she even remembered finding body parts.
- 3.65 In her oral evidence she said she remembered a stile before the kissing gate but could not date that.
- 3.66 She said she stopped playing on the Medi Parc when she was 17 in around 1988/9. In 1991 she had no reason to go there because she had her son that year.
- 3.67 However in 1998 her mum bought her son a dog for his 7th birthday and thereafter used it every day.
- 3.68 As a child she had use the main gates of the hospital. She could not remember any fencing in the north west corner you could just step into the playing field.
- 3.69 There were holes in the fence on the Hillingdon Trail. There was fencing along Hill End Road.
- 3.70 From 1998 onwards she said she entered either using the stile or the kissing gate area. She could also use the north west corner from the the Hillingdon Trail at point Y.
- 3.71 As a child she would not see others. As an adult she would always see people over there whatever time she went.
- 3.72 She was never told to get off the land. She did not notice any notice until Comer Homes put notices up. The double gates were open until the travellers got in.

Cross-examination of Tracy Rondel.

- 3.73 She confirmed that the fence along Hill End Road was pre 1988/9. She was born in 1971.
- 3.74 In 1991 she was at home and she stayed at home until 1996.
- 3.75 The fence came to an end along the Hillingdon Trail. There was not fencing along the wood. There was a considerable gap at the end at point Y.
- 3.76 As an adult she used stile in 1998 it was where the kissing gate is shown on photo c on page 42. Cannot remember when the kissing gate put in. It would have been early on. When she got her second dog in 2005 the kissing gate was there.
- 3.77 She did not remember the sign shown on page 367 Blue 1.

MICHELLE ROGERS

Examination-in-chief

- 3.78 She read her statement at page 258 ff. After the access road was put in she used the kissing gate. She used that until 2010.
- 3.79 As a child she came in near the hospital car park. She had a period around September 1983 when she was a nurse in the north wards.
- 3.80 She moved to Newdigate Green in September 1991. She swapped houses with her parents in 1999 and moved to Taylor's meadow.
- 3.81 She said in September 1991 the gates were wide open for years. She would in fact enter through the hospital. She went in through the main hospital.

- 3.82 In 1987 she remembered walking over to the social club. It was the first time she saw her son walk.
- 3.83 By 1991 she said the gates to the car park along Hill End Road were closed and there was no other access point on Hill End Road.
- 3.84 She used the The Hillingdon Trail but did not access the site from there.
- 3.85 She did not recall the wards being demolished.
- 3.86 She recalled a particular time in May 1992 when she visited the site and made daisy chains. This was just before her son spent a period of time in a wheelchair. She did not use the application site for 18 months after that.
- 3.87 In 1999 she used the main entrance. She said they were open and only became closed when there was a problem with travellers. She said she used the site regularly from 1999 after she swapped houses. She described her routes.

Cross-examination

- 3.88 She remembered in 1987 she was able to get into the car park. Apart from those gates there was a continuous fence along Hill End Road.
- 3.89 There was a right of way for hospital staff to go to Old Park Wood. You could walk in freely at point R. She said that even before she was a member of staff she had always had access. She was never told the access to the woods was for staff only. She believed they did erect a fence from x to y.
- 3.90 She was in north Wales between 1986 and 1991.

- 3.91 From 1999 onwards she came into the site from Hill End Road. She said the gates were wide open in 1999 before that she did not remember.
- 3.92 In answer to me she could not remember in 1992, on the occasion of making the daisy chain, whether there was anyone else there apart from her family.
- 3.93 She did remember the sign at page 367 she used to stand opposite it. She did not remember the sign in the hospital grounds.

NICK BENNETT

Examination-in-chief

- 3.94 He read his statement at page 134. He gave evidence that he had used the site at least weekly since 1995 and more frequently in Bluebell time. He would enter from the woods or by the old car park. It may have been a hole in the fence. He sometimes used point Y but not regularly and he had not seen the restrictive signs.
- 3.95 He said when he used the kissing gate it was not locked and he was not challenged until Comer Homes owned it.
- 3.96 He thought the photos at page 145 were between 1995 and 2000. Photo 1 with the twins on page 144 was June 2002. Photo 3 and 4 were in 2006.

Cross-examination

- 3.97 When he was asked to compare the photo of the kissing gate at photograph 3 on page 145 with the picture of the kissing gate on page E76 he accepted that his photo could have been a different gate. However he still thought he used a kissing gate from 1995.

- 3.98 He thought the area that he went in through holes in the fence was between D and G on page 615 of Blue 4. He would then end up in the car park. He said he did not use this gap or the gap between F and D all that often and thought he used the kissing gates.
- 3.99 He looked at his questionnaire and thought that he used the kissing gate 98% of the time that is what he was referring to in box 13. He did not agree that it was only in around 1988 that the kissing gate went in. He discussed this with his wife.
- 3.100 He was put his various letters written by himself and his wife in the planning process at Blue 1 page 179, 290, 135 and 175 and said that it was not odd that he did not mention the recreational use. He accepted that he believed it was common land which is what he said at page 135 of his statement but did not think it odd that he did not mention the recreational use. He said he was not legally astute.

Re-examination

- 3.101 He said he did not see the travellers on the application site. When the gates were welded he went through the kissing gate.

BRIAN LINDSAY

Examination-in-chief

- 3.102 He read his statement at page 226. He worked in the hospital in the Estates department since 1980.

- 3.103 In around 1990 when the demolition was in progress he said he did not go on to the site because of asbestos trouble. He did not go on when the demolition was in progress. He avoided it when there was demolition. After about 2-3 months after the demolition he resumed his usual use of the site of walking wherever he wanted.
- 3.104 When he was at work at the hospital he went through the gates at R1. He would then walk across the field from x to y. He did not have any recollection of chestnut paling fencing to the west of the wards. He would walk once a month in fine weather.
- 3.105 He recalled the new gates being completed looking at 589 Blue 4. He said it was unlocked for a long time. It was padlocked following trouble with the gypsies. He said he did not go through often.
- 3.106 He looked at page 595 which shows the construction of the new driveway and said he did not recall seeing any of that. He walked along Hill End Road but did not notice any of the works.
- 3.107 He explained the buildings on the site. He said that he picked blackberries at the north end of the application site beside the Hillingdon Trail.
- 3.108 He explained that the fence along the Hillingdon Trail was not in brilliant condition. There was damage. There was a gap close to ward 24 which was building closest to that.
- 3.109 All the north wards were disused by 1980. Top 2 or 3 spokes empty in 1980.
- 3.110 Post demolition. The fence was more vandalised post demolition along the the Hillingdon Trail.

- 3.111 Old Park Wood boundary. This was not fenced before 2010.
- 3.112 He explained the purpose of the fence shown on page 389². The gate was put in so that access could be achieved to the playing fields where helicopters landed with hearts for transplant. The gate could be locked to stop joy riders. Mr Timms installed the gate in the 1980s.
- 3.113 He did not recall keep out signs or the sign on Hill End Road. He was never told to leave. He saw children playing in North Wards. There was no security fencing to stop people getting into the old wards.
- 3.114 There was a 3 bar fence at point Q. It was the sort of fence shown in 604a. You could go in through R or Q.

Cross-examination of Brian Lindsay

- 3.115 He was put the documents relating to the obligation on Trafalgar House to fence between points x and y on transfer plan on page 42 of Blue 1. He accepted this was fenced but said he could have walked between R and P before on BS4 before 1989. Afterwards he went up to the woods by R.
- 3.116 He did not remember the fence along Hill End Road from 1980 to 1991. He remembered going through the car park. He said he climbed over but not in a legal way. He did not know if there was a time that one could get in off Hill End Road.
- 3.117 He remembered a few construction vehicles during the demolition between September 1991 and November 1991.

² Blue Bundle 2

- 3.118 He did not recall seeing the chestnut paling fence along dotted line in BS4.
- 3.119 He did not remember the fencing shown on page 593-599³.
- 3.120 He did not know if the gate at point Q was closed off at the time of the work.
- 3.121 There was always a barrier at this time from R to P. He did not know when the gate was put in at point Q. He did not remember the construction of the road. There was a time when he noticed the gates but could not say exactly when. He did not use Hill End Road because of dog mess.
- 3.122 He said there was a gap when he did not use the application site land and that is what he was indicating on page 228 of his form. He said the relevant gap was from the start of the demolition until 2 months after it was cleared. He said he knew that when they started to demolish he decided not to go on. He did not know the date.
- 3.123 He did not remember the chain link fence shown in 594(a)⁴. The signs at 380J and K were put up because people were bringing in dogs.
- 3.124 He said the gate at point D on the page 42 plan⁵ has gone. He said that the Hospital estates removed it because people were using the hospital car park.

³ Blue Bundle 4

⁴ Blue Bundle 4

⁵ Red Bundle E

Re-examination

- 3.125 In re-examination he confirmed that the did not recollect the chestnut paling fence. The signs about dogs were put up after he had left working for the hospital.

JULIE HALL

Examination-in-chief

- 3.126 She read her statement on page 190. She started working at Harefield in April 2004. She has been there 8 years.
- 3.127 Between 1988 and 1996 she said she only used the Medi Parc twice a year. She always had dogs.
- 3.128 Post the demolition she came through the wood. She has been through the fence on the Hillingdon Trail. At the top she used point Y.
- 3.129 In 1996-7 she remembered a stile on the left hand side of the gates soon after a kissing gate was fitted. In more recent times she always saw people there. She always saw around 6 people in more recent times. She was never told not to go on land. She said that she never noticed any fencing until 2010.

Cross-examination

- 3.130 Between 1990 and 1993 she said that there were only a few occasions that she went to Medi Parc; it was maybe once or twice a year. She remembered the wards being derelict.
- 3.131 In 1997 she used it every day. She thought there was a kissing gate in 1997. The large double gates were open in 1997 but she then remembered a time when there was trouble with travellers.

3.132 In re-examination she was shown on page 244⁶ a reference to Mrs Phillips diary entry showing there were travellers on Medi Parc on 23 September 1998. She thought the double gates were welded then and could be opened before.

MRS CRAWLEY.

Examination-in-chief

3.133 She read her statement at page 153⁷.

3.134 She has lived in Sanctuary Close since 1977.

3.135 She recalls that the wards were demolished in 1989.

3.136 When the wards were being demolished she said that she went there at the entrance near point B on plan at page 42. She did not use the access near to the car park. She would have gone through the hospital main gate.

3.137 She was shown the picture at page 593 (a)⁸ and she said that was what she recalled. She was shown page 596 and that was her route to the demolition site. She noticed the compound where vehicles were. She was not greeted.

3.138 She stood there and watched the demolition. She said she saw them taking sheeting from the top of the apex roof and throwing it on to open trucks. She said she knew this should not be done. She had done a project for the residents association on asbestos and knew that even the white asbestos was dangerous when inhaled.

3.139 She did not recall people working on the access when she was there.

⁶ Red Bundle A

⁷ Red Bundle A

⁸ Blue Bundle 4

- 3.140 She said she did not recall any security fencing. She did not recall the fence on 611A and 612A⁹. She recalled the fence around trees and bushes. She thought that the fencing on page 610a¹⁰ was for the protection of shrubs.
- 3.141 She said she was more concerned about the works and that she did not use the Medi Parc site for recreation while the demolition was going on, but it was accessible. She said she did not recall seeing anyone else on the site at that time.
- 3.142 She never noticed any signs she was never told to get off. After the demolition the easiest point of access was up the new drive and whilst on the drive she kept to concrete path.
- 3.143 She said that she visited the application site around 3 or 4 times during the period when demolition was occurring.
- 3.144 She said that there was only one kissing gate. She said the stile which was there previously may have been nearer the main gate and was just a wooden plank with a step.
- 3.145 The stile was at the end of the last pillar shown on page 76 Red E. Probably in the same place as the kissing gate. It was replaced by the kissing gate.

Cross-examination Mrs Crawley

- 3.146 She was asked about her husband's letter at Red B page 373 and confirmed that the reservation of the right of way was between R to U when Trafalgar bought the site.

⁹ Blue Bundle 4

¹⁰ Blue Bundle 4

- 3.147 She said that she thought the stile was put in when the new entrance was completed. It was provided as soon as it was finished. She said she never had any problems getting into the site.
- 3.148 She was put the letter of 16 November 1992 from Trafalgar House which showed that even at that time there had been ‘problems with new age travellers’.
- 3.149 She was asked about her letter of April 1994 in which she resisted the extending of time of the permission for Medi Parc.
- 3.150 She accepted that if the fence was left in position shown on 614 blue 4 she would not have been able to gain access.
- 3.151 Looking at the photograph at B4 page 585 she did not think that the fence was over the road. There was not a chestnut paling fence over the road. She said more generally that she did not recall the fencing shown but thought it was around the bushes and trees but you could still walk on the site.
- 3.152 She accepted that it was difficult to use while the works were going on. She said that you could still access it through the hospital by taking the road northwards. She described going on to the site at point R. She said she was not working at the hospital then. She said the fence was not erected Y 1 to R1.

Re-examination

- 3.153 She said that photograph 585C she could not see any fence across the road. The road was not fenced off.

PAULINE FOSTER

Examination in chief

- 3.154 She read her statement at p170 Red 1.
- 3.155 Since 2004 she has lived in Ickenham outside Harefield in Hillingdon borough.
- 3.156 Between 1993 -2004 she lived at 3 addresses in Newdigate Road. She got married and moved to 67. She said she bought 67 in 1967.
- 3.157 She said the north wards were derelict by 1987. She stopped using the application site in 2000 when her dog died. At this point she said she did not bother going into Medi Parc but still used the woods.
- 3.158 She had a dog prior to 1990 and she said her father walked dog. He died in 1988 and then she had to walk the dog. It was 1990 when she said she stopped smoking.
- 3.159 She said she recalled the new access road being built. She did not walk on it during the construction. She described her route. She went into the hospital past the mini roundabout and proper walkway to the north wards and then she would veer off to the woods. She said that there were never fences in the Medi Parc during all the time that she used it. She said she never stuck to one route but zig zagged in no defined way. Sometimes it would depend on the amount of time she had.
- 3.160 She said that she did not remember the demolition. She said she went to the Medi Parc one day and saw a lorry already loaded up with rubble. It was about to leave the site. She said she could have been on holiday. She remembered the wards being there and the next time the lorry was going out with rubble. She assumed she was on holiday.
- 3.161 She said that she recognised the picture at Point D on the Plan at Page 42¹¹. and she used to climb over the fence.

¹¹ Red Bundle E

- 3.162 She recalled that the lorry went out at side of Tannery Cottages. She was stood on the path near Old Park Wood it was overgrown close to Old Park Wood. Some would not know it was a path. She recollected being very surprised not to see wards.
- 3.163 She explained that she went through hospital main road that was used by patients when the north wards were open.
- 3.164 BS1 veer off west of the north wards. She said she went on the edge of the wood at J on green plan on page 42.
- 3.165 She said that there were no buildings on the application site only rubble on the ground. There was one lorry loaded with rubble. She said she did not walk on the rubble when they were clearing. She only walked on that area after it was cleared.
- 3.166 Plan on wall appendix 14 of the evidence of Barrie Stanley. She said she did not recall a chestnut paling fence in the place shown on that plan. If there was ever a chestnut paling fence it would not have stayed there long she thought but rather it would have ended up in someone's garden. She said she knew what Harefield people are like.
- 3.167 She said that there has never been fencing that has stopped her going in.
- 3.168 She said that when she walked through hospital main entrance she went up the existing road and did not have to climb over a fence.
- 3.169 She did not recall using the gate at Point D. She said she used the kissing gate and also used the stile.
- 3.170 She said that she remembered after the gates were put in for a while she did not gain access in that way but went through hospital.
- 3.171 They put up a notice which said no dogs in hospital in 1993 and then she started going in the medi parc. There were some people going in the gates. There was fencing was at the side of the pillar. She said that

at page 604 a. blue 4. there is a three bar fence and she used to climb over there.

- 3.172 That is a fence but it was easy to climb when it was not wet. She remembered climbing over that fence but not until the whole of the gates were constructed about 1993.
- 3.173 The stile was there for about a year after she started using that entrance. The stile was there until about 1994.
- 3.174 She recalled that she stood by the kissing gate on August 31 1997. It was the day Diana died. She met a fellow walker at the gates and stood there talking. The fellow walker has she thought passed on. She said that they were coming out as she was going in.
- 3.175 She was not aware of any keep out signs. The only sign she ever saw there was a marble sign which said Medi Parc on the right of entrance and remains there. She said she thought it was broken 6 months after it went down. The only other sign was along the Hill End Road where they blocked off the car park. It was related to the gas. No unauthorised person. She said she did not look for signs. It was already fenced off. She said she could gain access to car park.
- 3.176 She said that there was a plank of wood going through the bushes. But that she did not know if the hole is still there today. When she started using the kissing gate there was no way to go in there. It was part of the British Gas part shown on plan at page 42¹².
- 3.177 She said she cannot remember the sign above mans back on p 604a¹³. [this was a picture showing the construction site at the new access drive which was being constructed] She was never asked to leave the Medi Parc site.

¹² Red Bundle E

¹³ Blue Bundle 4

3.178 Near point Y on the plan on page 42¹⁴ which is in the north west corner she said that there was a chain link fence with spiked railings. She said that in around 1986/87 the chain link fence was put up but she was not sure. She said that there were spiked railings and that someone pulled the spikes apart. She said that when the chain link fence was put up someone had cut a hole so could it was possible to get into the application site from the Hillingdon trail.

3.179 She said that she did not know but she thought that was in about 1986 or 87. She said that there had been no attempt to close off the site between 1986-2000

Cross-examination Pauline Foster

3.180 She was taken to page 178 Red Bundle 1. She said in her letter that when the double gates were put in they locked the gates. She did not know why they were then welded and did not know if fire brigade broke the lock but she knew there was a fire.

3.181 She confirmed that she could climb over the fence.

3.182 Everyday that she used the park she confirmed that she climbed over. She said she is a Harefield person so did not think she was excluded.

3.183 She was asked about the picture of a sign on page 367 Blue Bundle 1. She said that was not the sign that she was talking about it. It was not that one.

3.184 She walked the dog after her father died in 1988. She said she started walking in around 1990. He died on 6 June 1988.

3.185 She recalled that in about March 1990 the north wards were demolished. She saw a vehicle driving loaded with rubble and was surprised that all the wards were gone.

3.186 She said she remembered seeing the roofs taken down but did not remember them actually knocking them down. She said she used to go

¹⁴ Red Bundle E

to the application site every day before work. She said she may have gone on holiday for 2 weeks and she did not think it could have taken 2 months to demolish the north wards.

3.187 She said that she did not think there was a fence preventing someone going from the hospital. There was a gap in the north west at point Y ¹⁵ after the new fence had been put up on the Hillingdon Trail.

3.188 She said that a fence was built on the Hillingdon Trail. She said she was sure there was a chain link fence. It was the railings with the spikes that the hospital put up.

3.189 She was aware of attempts to develop the Medi Parc. She thought it was for medical use as people were talking about it. She thought this was probably around 1989, within a few months of the purchase of the site by Trafalgar.

3.190 She said that it was quite possible that for a while Trafalgar did fence the application site off.

3.191 When Trafalgar bought the land they had a bar blocking the car park.

3.192 She was taken to the letter at Red Bundle E p 72 letter from Trafalgar House. She said the security fencing around the perimeter all made sense.

3.193 They had experienced problems it is possible that is why locked the gates.

3.194 In 1993 she said that there was a sign on the main hospital gates that said no dogs.

3.195 Then she said that she and Penny, her dog, investigated a new way in and that was when she first used the Hillingdon Trail. She said that she did not know if others were using the new access gates.

3.196 It was probably later in 1993 that she started using the entrance beside the new access gate.

- 3.197 She said that she thought that the stile was put there in about 1994.
- 3.198 She said that she did not know the circumstances in which the new stile came to be put up. It just appeared and she said she did not know why it was put up. She thought that perhaps it was put up as a good will gesture. She said it was a stile that you can climb over. It may have been Harefield people that put it there. She assumed it was put there by Trafalgar.
- 3.199 She said that she did not regard myself as trespassing.
- 3.200 She said that she did not see signs and therefore did think that she was trespassing. The stile got slippery and Penny [her dog] went through but she went over the stile. She said it was a good 2 years later that the kissing gate appeared. It could have been later. She said the stile was in the same position as the kissing gate. She thought the fire was in 1996.
- 3.201 She did not recall any chestnut paling fencing at all.
- 3.202 She did not go on to the rubble of the demolition.
- 3.203 She said she did not go onto the building of the new road. Others did not do that.
- 3.204 She said she did not remember anyone going down the road when it was being built. But she was not there in day.
- 3.205 She said she had a recollection of it being built. She remembered the construction going on. She would not have gone while the work was going on.
- 3.206 She cannot say whether temporary fence while work going on.
- 3.207 She said it was quite possible there was a fence. It did not come to her knowledge.

¹⁵ Barrie Stanley Barrie Stanley\$

Re-examination

- 3.208 They locked the gates. If you tried to use the gate you could see it was locked.
- 3.209 From the time she started to go to the application site after the gate was there it was locked that was why she said she climbed over the fence.
- 3.210 There was a time that it was unlocked and she said that she went through the gate but she could not recall the period. She went through for a small period and then the gates were shut again and then she used the stile and then the kissing gate.
- 3.211 She could not remember when the gates were open but she could remember that later on they were welded shut.
- 3.212 She said that she did not know when it was that the wards were taken down. They took down the roofs at a time that she was going round into the woods through the hospital.
- 3.213 There was a gap in the fence on the Hillingdon Trail which she used for about a 6 months to a 1 year period when the gates were locked.
- 3.214 She said that she sometimes would walk west of Harefield through the woods down Summerhouse Lane. She did not remember any of those holes being blocked up. She recalls that they were always open to her.
- 3.215 She said that there was nothing to stop her going through the fence along the Hillingdon Trail in order to get into the application site.

MARILYN PHILLIPS

Examination-in-chief

- 3.216 She read her statement on page 235¹⁶. She has lived at 18 Rickmansworth Road since 1980.

¹⁶ Red Bundle A

- 3.217 On page 238¹⁷ [which is her original questionnaire] she said that she used the gate in the hospital if she was without her dogs. That access is shown at point D and she pointed this out on the plan at page 42¹⁸.
- 3.218 With the dogs she used the car park on Hill End Road from Taylors' meadow.
- 3.219 In around 1987/ 88 she had a dog called Roxy. If she was walking around Taylors' Meadow she said she sometimes needed to take avoiding action. She said she had to avoid certain dogs and so she went to use the north wards site [ie the application site] and has been using it since. She said that she used Hill End Road to get in and she said she used that until the new gates were there.
- 3.220 She said her recollection was that she first went through the car park height restriction in about 1988. She said nothing prevented her going in. She said that must have changed and so she took to going into the site from the Hillingdon Trail. What she was certain about is where she had diary entries.
- 3.221 Page 243¹⁹ was a copy of her diary which recorded that work started on the Medi Parc on the 20/9/91 and that was the demolition of the north wards.
- 3.222 She was asked about the extracts from her diary which were on pages 244 and 246²⁰. This recorded that there were travellers on the site on the 23/9/98. She recalled that this was gypsies on the Medi Parc site. She said that she chatted to a 'copper' [police officer] but walked as usual.
- 3.223 She said that Bob refused was refused entry to the Medi Parc in the afternoon.

¹⁷ Red Bundle A

¹⁸ Red Bundle E

¹⁹ Red Bundle A

²⁰ Red Bundle A

- 3.224 She said that she was on the site somewhere but not sure where when the work started. She did not recall what she saw but knew work had started.
- 3.225 She walked daily. She went there early in the morning and then later in the afternoon. She said she kept well away from the demolition because of the asbestos. She kept her distance from the works.
- 3.226 She said she avoided the area because of the work. In car par round through playing field in bottom left wandered about. She said she would have reversed the route then.
- 3.227 She said she did not recall any fence between the demolition and Old Park Wood.
- 3.228 She said she cannot recall seeing a fence. She was not saying it was not there just that she cannot recall it.
- 3.229 She said that once the demolition was complete there was a lovely way through the car park and along the made up road to the former playing field. When all the activity had stopped she went there. She said that her 1992 diary was missing.
- 3.230 She said that there did come a time when she was obstructed from going in that way from the car park but that she was not sure when that was.
- 3.231 She was asked about the letter 16 November 1992 Trafalgar House letter²¹. She said if she had not been able to get in she would have continued up Hill End Road up the the Hillingdon Trail. At some stage she would have noticed she could have gone through the car park. Once it was open again she would have used the car park in preference to the the Hillingdon Trail.

²¹ Red Bundle E72

- 3.232 She used the access from the car park for a while then this was closed off. There was then a time some time later when access into the application site from the car park was again possible.
- 3.233 By reference to BS4 she said she used Gate B into the car park when it was accessible. It is pictured at P 111 red e that is point b bottom right that is the route she would have used when.
- 3.234 She cannot recall any chestnut paling fencing.
- 3.235 She has used gate D at hospital, eventually the nice new gates. To the left of pillar there was originally a 3 bar wooden fence. Sometime after erected that became dilapidated. Three bar fence she climbed over the lower rails.
- 3.236 She continued to use that until the kissing gate was fitted. No actual recollection of when it was fitted. I don't recall a stile could be stepping over the fence.
- 3.237 Initially the gates were always shut. I know they became unlocked when the fire brigade gained access on 4 July 1996. Her diary for that day recorded: "policeman over Medi Parc looking at fire had quite a chat. Fire brigade arrived and gave it a good soaking."
- 3.238 She said that it was quite a fire which was where the north wards used to be. There was she said quite a fire. It was quite a serious fire. It was in lower part of where the north wards had been.
- 3.239 She said she went up to the gates and waited out on road to wait for the fire brigade the fire engine went to go into hospital she showed them the entrance the gates were padlocked and the fire officer said he had "a universal key" and he crow barred it open.
- 3.240 It was padlocked and chained. The gates were open thereafter. Children then rode on the gates and the children played on them. She saw kids playing on the gates. The travellers went in 2 years later.

- 3.241 She said she had not seen any warning signs on the site. Her routes varied especially with her non sociable dog. It was a rescue dog and was a bit feisty.
- 3.242 After all the building had been cleared she saw other people on the site. She said there was a regular pattern of users. In the afternoon there were different people on the application site.
- 3.243 Before the demolition she said that there were not so many on the application site.

Cross-examination Mrs Philipps

- 3.244 She was asked about her original questionnaire which was in Red Bundle A at page 238ff. She said she gained access via Hill End Road and the hospital gate but she added to that the Hillingdon Trail.
- 3.245 She had been reading diaries and that is why she wanted to put in further extracts.
- 3.246 She did not at the time of filling in the questionnaire recall the fire brigade coming.
- 3.247 She had not mentioned the point to Mrs Wane. She had not lent her the diaries. It was only while she was leafing through her diaries while she was here at the Inquiry that she noticed that entry in her diary.
- 3.248 She now confirmed that it was likely that until 1996 until the fire brigade came that the gate was locked.
- 3.249 She then said that for the next 2 years it was open to the best of her knowledge.

- 3.250 Then the travellers got access in 1998 to the application site. The travellers left and then the gate was welded shut. She accepted that there had been an attempt to discourage access prior to 1996.
- 3.251 She did not know when kissing gate was put in. It could have been in the mid 1990's .
- 3.252 She said that after then there was no attempt to discourage access to the application site after the kissing gate had been fitted. She said the application site was always open until 2010.
- 3.253 She did not think it was restricted until 2010. She accepted that there might have been an attempt to restrict access but that she did not always go in that way and so may not have seen.
- 3.254 She said that she did use the kissing gate entrance.
- 3.255 She was put the points from Mr Donnellan's evidence²² that the kissing gates were locked and scaffolding tubes were put to block them. She could not remember those events and did not remember the rubbish being put there.
- 3.256 She did not see evidence of gates having been locked. She did not see padlocks.
- 3.257 She did not have any recollection of those events of discouraging the use of the kissing gate.
- 3.258 She could not remember the tree being put there.
- 3.259 For the last 5 years she said that she has had no dogs to walk and that she used other ways into the site. This included going through the hospital and then through the gate at point R on the plan BS4.
- 3.260 She was not taking part in recreational activity where the demolition was taking place but was on the former sports field and in the car park and going to Old Park Wood which she had full access to.

²² Blue Bundle 2 page 384 and page 391 and p385 paragraphs 7-13

- 3.261 She said that she could get access either from Hill End Road or from the Hillingdon Trail.
- 3.262 She accepted that she could be wrong that she was able to access the site through the car park during the demolition. If that was not accessible she would have gone through the Hillingdon Trail.
- 3.263 She was asked directly that between 1991-2 she did not remember going on to the site and responded that she went to site to get to Old Park Wood and she said that she would have gone through the hospital.
- 3.264 She recalled going on to the site after the work was completed
- 3.265 She did not recall any chestnut paling fencing.
- 3.266 She said that she thought that there must have been breaches of the Hill End Road fence because she recalls there being a plank there.
- 3.267 She said that she lived opposite the main hospital gates.
- 3.268 When she started using the Medi Parc there were two gates with height barriers. There then came a time when it was no longer possible to use that entry and then she went into the application site from the Hillingdon trail.
- 3.269 She thought it may have been 1989/90 but did not know which years the application site was not accessible through the car park but after a period she said it was accessible again.
- 3.270 She was asked about the document at page 111 Red Bundle E showing a photograph of the entry at point B. She accepted that access to the car park at point b was shut off. She then went into the application site via the Hillingdon Trail. It was then opened up again and then she went that way.
- 3.271 She was asked about p614 Blue Bundle 4. She said that between Y1 to D she did not recall seeing that fencing shown on that document.
- 3.272 She further said that if there was fencing there was a gap in it.

- 3.273 From point R to P she said there could have been a fence between R and P. It could be that it was initially a chain link and then a wooden fence.
- 3.274 She was asked to consider the photographs of fencing from Blue Bundle 4 pages 594ff where she accepted there were pictures of chestnut paling fence.
- 3.275 She was asked by reference to the letter at Blue Bundle 1 page 334 why she did not object to the planning application on public open space grounds. She said her main concern was traffic. She said that was her sole concern at the time.
- 3.276 She that it possibly others would take other points in their letters. She said others may have expressed other concerns. She was put that no-one in 1994/98 did raise public use of the application site. She could not speak for others but traffic was her main concern.

Re-examination Mrs Phillips

- 3.277 She confirmed that she had no recollection of locks on kissing gates.
- 3.278 Page 77 E used that gate from hospital. Drained from right hospital behind photographer.
- 3.279 She could see that fence 3 bar post and rail fence. She remembered that fence on that boundary. She only went through the gate and did not climb any fence.
- 3.280 After the gate could go straight up or could go to Old Park Wood or you could turn right.
- 3.281 She did not recall that chestnut paling fence at all on rps 14²³ on board.
- 3.282 Immediately following the demolition anywhere was safe. It took a little while before walked dogs over it she would think months then did what we liked.

²³ App 14 of Barrie Stanley

- 3.283 Did not cross any fence. She would like to think she would remember if she did.
- 3.284 No she had not crossed a chestnut paling fence. I don't think it was there.
- 3.285 Hillingdon trail. There was always a gap there by boundary of allotments.
- 3.286 If could get through car park she would. She did not recall chestnut paling fence. She said she could see it on plan but could not see it in situ. She cannot recall it.

MRS KING

Examination in chief

- 3.287 She read her statement at page 215.
- 3.288 She has lived at Edgewood since 1987 which is on Hill End Road just north of Sanctuary Close.
- 3.289 She has used the site daily twice daily in the summer
- 3.290 In 1987 moved to Hill End Road and she had a 3 year old her second son was 9 and her daughter was 10/11.
- 3.291 Her oldest son was born in July 1974 her daughter May 1976 and her son July 1978. Her youngest son born in August 1983.
- 3.292 When she moved to Hill End Road she had a 3-4 year old son, an 8 year old son, a daughter of 12 and her oldest son was 13/14.
- 3.293 The middle 2 played there [on the application site]. The oldest she said that she would not let out then.

- 3.294 She was asked about page 223²⁴. On that page she said she was talking about the new security fencing that was erected in 2010.
- 3.295 Page 93 Red Bundle E was referring to the new gate in 2010. She said that she had a recollection that gate was was originally further into the field.
- 3.296 She read the letter at pages 223/4 of Red Bundle A
- 3.297 She originally thought it was always been a kissing gate but she explained that she had been been reminded by sitting there in the back of the Inquiry and so she now was able to recall a stile. She said that there were so many ways of getting on to the field. She said that prior to all that development her access to the site was from along Hill End Road then the Hillingdon Trail, through the woods right on the fields in any direction. She said she often walked on the application site before work.
- 3.298 She said that she left at 6 and if she was late she would not bother to go to the kissing gate but would instead go to Hill End Road south of Gas area where there was a tree growing through the fence and there was a gap near the tree. She said that she would sometimes come back that way and would often meet someone and so would be late.
- 3.299 She said that sometimes used and could use another way. She could not call it a gate.
- 3.300 She was taken to the Red Bundle at page 111 where there was a photograph of point B and she said that that looks like the situation where she would get out.
- 3.301 She could not be specific because she said she used the site so often that she really cannot recall not being able to access the site where she wanted to.

²⁴ Red Bundle 1

- 3.302 Once a month at least she said that used that. It was an exit I don't recall going on.
- 3.303 There were cans and bottles there and sometimes there were different ones and a different lot of rubbish the next time.
- 3.304 There was no fence between the application site and Old Park Wood.
- 3.305 She said she never used the hospital entrance.
- 3.306 She said that she recalled the demolition period. She said that at the same time they were widening the road outside her house. She had moved in 1987 for peace and tranquillity. The works involved digging up the road and forcing her to put cars on the grass. She said that she had complained about the conditions. She recalls great big lorries were there and there was lots of rain and lots of mud.
- 3.307 She did not recall seeing the demolition even though she has racked her brains. She remembered the road being built the road was not there and she remembered the rubble not the process of demolishing the wards. I note this could be consistent with her not using the application site at the time of the demolition.
- 3.308 She said that there was never a fence stopping her going from Old Park Wood to site.
- 3.309 She said that she could come through the woods to the Hetty Kenward bench. This was her favoured walk to exit by G2 on page 42²⁵. She could have accessed the site by any of those routes.
- 3.310 She said that she was familiar with chestnut paling fencing but had no recollection of any on the site. She said that she did not recall it being put around trees and clumps of trees when road being constructed.
- 3.311 She was asked about the photograph on p593 Blue Bundle 4. She accepted that she could see on that photograph chestnut paling fence in

²⁵ Red Bundle E

the early stages of the road construction. She said that she did not walk down this bit of road by choice but that no-one was stopping her from doing so.

3.312 She said she chose not to because as she put it ‘who wants to walk on a building site?’.

3.313 She was shown the picture on Page 605²⁶ gate.

3.314 She said that before the kissing gate was installed her access had been by going along the Hillingdon Trail or through Old Park Wood.

3.315 She remembers the new access being built. She said that she saw an access way in. She said that she thought she would see if there was an access there. She said that she had a vague recollection of the stile and remembered the kissing gate.

3.316 She did not recall the chestnut paling fence and said she did not think it was not there when she wanted to access the site. She said that when she crossed to go back home in the period after the demolition had occurred that she usually went from the point at G2 on page 42 [Red Bundle E] and exited in the car park or via the kissing gate.

3.317 Before the kissing gate she would go across the field gap by the tree and go out through the car park or sometimes could have gone back to the Hillingdon Trail. She said that it depended who she had met.

3.318 The fencing was the fencing she went through to get to the road and was not chestnut paling fencing. Every time she said that she would see someone on the site.

3.319 She did not notice the keep out signs.

3.320 She was not told to keep off the land.

²⁶ Blue Bundle 4

Cross-examination Mrs Linda King.

- 3.321 She was asked about her response to question 31 on her original questionnaire.[p 220 Red Bundle 1]. She said there was always access by the sides of those gates [ie the new gates that were built in 1991] and then the kissing gate. When the gates appeared she thought the kissing gate appeared.
- 3.322 She tried to rack her brains as to when the kissing gate appeared. The kissing gate was all part of the gate system.
- 3.323 604a blue 4 she said that was a picture that shows there was not a kissing gate. She agreed that “absolutely the kissing gate came later and not what I said”.
- 3.324 That was her recollection and she accepted it was inaccurate.
- 3.325 She cannot say that there were months on end that she did not use land.
- 3.326 In autumn of 1991 and before demolition she would go down Hillingdon trail all the way down. She described how she would get out of the site.
- 3.327 At various points along she could have picked any exit point. She would go up near the allotments.
- 3.328 If correct that there was such a fence as described by Mr Ayres and she regularly used her recollection was wrong. She had never encountered a fence when she left Park Wood.
- 3.329 She was put the evidence that between 2003-2007 locks being purchased from Mr Donnellan were used but responded that every time she wanted to use that she could.
- 3.330 She did not remember poles being put on the site.
- 3.331 Between 2003-7 she was accessing the site twice a day. She had just qualified to teach. She was aware that she needed to keep fit and was accessing it twice a day.

- 3.332 Whenever she wanted to access there was nothing to stop that. She was able to access that through the kissing gate at no time ever stopping me.
- 3.333 Whenever she wanted to access it she was able to do so without ever tripping over padlocks.
- 3.334 She was pushed but did not recall any evidence of padlocks.
- 3.335 She said she has used that field always on a very regular basis. She said her children made a nuisance of themselves there.
- 3.336 Daughter 13 son 11 in 1989 never played together. Separately played and she thought may have played on demolition because people on site told me they saw Ryan there.
- 3.337 She said that she told them not to play there because it was dangerous and you could see unpleasant things cans, bottles and syringes she said she did not want her children there.
- 3.338 She said that children don't listen. She said she came from an urban area and was happy for them to have freedom. She said her son has written a letter.
- 3.339 She walked from park woods to car park while demolition was going. This appeared to be hard to reconcile with earlier answers that she did not walk on the demolition site.
- 3.340 She said she had never been stopped.
- 3.341 When demolition going on playing fields used that other access to the right on car park.
- 3.342 She said she did not go on road way.
- 3.343 People did not go on to the area of demolition and new road works. I have to give that to you.

- 3.344 She pointed out where she was able to get in on page 607 file 4 and BS4 in a little way north east. That was kind of the fence erected along Hill End Road. But she said she did not recall having a fence stopping her.
- 3.345 She did not know it as the car park. Not broken it was end of the fence that she got in at and she had meant to mark place of photograph B on page 111.

KAREN CARR

Examination-in-chief

- 3.346 She read her questionnaire page 3 bundle E.
- 3.347 She explained her analysis at page E107. This was not her day job but she tried to represent those completed questionnaire taking years that used the land
- 3.348 No extras were added when people said they were walking with friends. The final number should be should be 235. It is a combination of long and short forms. It does not differentiate between occasional and every day use.
- 3.349 Friends were not included and families not included. Representation of how many used in any particular year.
- 3.350 She said she started using in August 1988. She walked her dog Misty between 1987-96. Between 1996-2002 she did not walk much because she had no dog.

- 3.351 Para 6 amended to be new sentence the effect of which is that access was not free when construction was going on. It now read; "Later on access was always available".
- 3.352 Para 7 amended to 1989-99.
- 3.353 She said she did not see the demolition but saw the rubble at the end.
- 3.354 Page 42 she said her access point was off the Hillingdon trail. She used it on and off as she lived down the canal. She said she did a lot of miles of the Hillingdon Trail. She came in near Y could also come in at Old Park Wood. She could also come out of woods near G.
- 3.355 She said that she would occasionally have parked in the hospital or in Hill End Road. She then walked through the hospital past the police station.
- 3.356 She said she either used the Point D gate or there was another gate south east going on to the roadway
- 3.357 She said she walked on the new road as it was being built. She was being nosy. It was an unmade road. Lampposts were still going up.
- 3.358 At this time it was more likely to be the winter. She said that because of her work it would have been one weekend in 2 that she was using the site.
- 3.359 In evenings she said it would be dusk that she went there. She would do circuit through the woods. There were no barriers at the entrance. There was nothing at the far end of the new road. There was some fencing but no fencing across the road. Having come from the hospital end she could come from either side. The experience did not change. She was never stopped by any fence.

- 3.360 She was not there frequently but about once every 2 weeks in winter. In spring she said she visited twice a week and she could walk safely with her dog there.
- 3.361 She suggested that the application site was better lit and her German Shepherd dogs she said liked to see their owner. She said that the lamps down the new driveway road were lit.
- 3.362 At most times on site she said that she saw people you could choose to avoid them. There were very few occasions when did not see someone.
- 3.363 She said that she could only recall the remnants of the demolition they left remnants of rubble. Initially she said she avoided the rubble but by spring could walk on that area.
- 3.364 She said she did not walk around the wards but instead walked beside the wards not through them and she avoided them when they were.
- 3.365 I walked wherever I wanted they did a good job apart from a few piles of rubble. I was never told to get off the land. I remember chestnut pale fencing. There was no permanent fencing.
- 3.366 There was fencing along the Hillingdon Trail. She did not remember fencing between Old Park Wood and Medi Parc. There was chestnut pale fence near J on page 42 beside the wood. It was tight to the wood.
- 3.367 She did not remember how long it was there. She said she did not have significant memories. Did not have to change routes. She could still do a circular walk. Mrs Ion was walking on hard concrete. The chestnut paling fence was between her and old park wood. She did not recall crossing over that fence. There was some around the car park and down the edges of the car park. There were diggers etc in that car park.

- 3.368 She was shown the picture at Blue Bundle 4 page 585 Photo 3. She said that there was a gap to the car park. She said she would go for a walk with her partner but these walks came to an end in 1999. She said that he would also walk their dog. She said that when family or friends came to visit she would also go for a walk.
- 3.369 She said that she did not see any warning signs

Cross-examination Mrs Carr

- 3.370 Edges of car park chestnut paling fence. She said there was not any on the Medi Parc side, no fencing on the front that she could clearly remember.
- 3.371 There was fencing at the back on Hill End Road but she did not recall whether chestnut paling fence. She could also remember on Old Park Wood strip near J on page 42.
- 3.372 There was also chestnut paling fence near Tanrey cottages.
- 3.373 Peerless Drive is right in the south of Harefield. The canal is there.
- 3.374 There are lots of other pieces of open space there. She was born 1959 in 1989 she was 30 years old. She manages outreach support workers with disabilities and mental health difficulties. She had been in that that position 1 year before moving to Harefield.
- 3.375 She said she would walk 10 miles at weekend a min of 5 miles each day regardless of weather.

- 3.376 She explained her routes in 1989 before the works. She would walk down the Grand Union Canal. She would come off at Black Jacks and go to Park Lane from where she could walk up Jacks Lane.
- 3.377 She marked her walk on a map. She illustrated that she went north beside the canal to Black Jacks Lock. She would then take a route across to Park Lane or alternatively up Jacks Lane and pick up Park Lane. Alternatively she went up Summerhouse Lane. She would end up at Old Park Wood.
- 3.378 She explained that she would come into Old Park Wood at Y or G on page 42 [Red Bundle E] and sometimes south of that.
- 3.379 She would come in to the Medi Parc site at point Y or another place close to that and she said that she sometimes stopped to play ball on the playing field. She said if that she would sometimes then take the path from R-U on BS4.
- 3.380 She said there are footpaths through the woods she did not know if they are marked.
- 3.381 The Hillingdon trail comes through where the path is to Old Park Woods.
- 3.382 She said that that there were other distinct paths to the Medi Parc site.
- 3.383 She was shown Tab 40 of Barrie Stanley's appendices and plan BS4A . She said that she accessed Old Park Woods before Y ie to the West. It was off the Hillingdon trail she did not recall where but she followed natural paths not signs.

- 3.384 In 1989 the application site was acquired by Trafalgar and in March 1989 she said that they erected a fence from R to P. She said she was aware of that because she had seen it on the plan.
- 3.385 She can remember chain link fence and wooden 3 strut fence in place of the chain link fence. She could remember that at some point but cannot say exactly when. She did not recall time when there was no fence R to P.
- 3.386 If in wood could walk to Medi Parc below Y. By mid 1989 fence R-P would not have been getting in her way. Her long walk would have been once every 2 or 3 months.
- 3.387 Predominantly she parked on Hill End Road.
- 3.388 She would do long walk every 8 weeks she did not think less than that for long circuit. She did not recall anything changing with Trafalgar.
- 3.389 She did not recall anything stopping her going from R to U and out again. I note this is a footpath type use.
- 3.390 She continued to be able to take that walk in 1991, 92 and 93 but did it less from 1993. She walked less after that because in 1993 her dog had an injury. She said that she had looked up when her dog was put to sleep on the death certificate. She did not have a diary.
- 3.391 From 1987 she would always go to different places with car.
- 3.392 There was asbestos in wards, she said that she did not go through them and she thought that there were also people taking drugs there.

- 3.393 She said that in early spring or February 1989 she came to the car park on Hill End Road and parked close to the entrance to the hospital on the opposite side of road. She would sometimes park at the hospital.
- 3.394 She did sometimes walk straight into woods but also remembered going into the playing fields.
- 3.395 She would go once per fortnight in spring and in summer 2-3 nights per week.
- 3.396 Demolished autumn 1991 and said that she did not remember that. She remembered the road building taking a lot longer.
- 3.397 She said that the demolition was not something she recalled although she did walk with regularity.
- 3.398 She said it was feasible that she did not walk there for a third week.
- 3.399 She did not recall chestnut paling fence in autumn 1991 or 1992 from Y1 to R1.
- 3.400 She could only recall the fencing she had mentioned closest to southern bit of old wards. She was asked about paragraph 6 of her statement. She said that it was only after the diggers and construction vehicles finished that she accessed the application site by the stile or gate.
- 3.401 She described the main gates and side gates. She said sometimes the main gates were open.
- 3.402 The double gates were opened at some stage. There was a kissing gate. The main gates were at some point padlocked. The big gates were at some point padlocked. She said that she did not know when stile went there.

- 3.403 She thought the double gates were open. They were padlocked at some time but don't know exactly when or how long they were locked for.
- 3.404 When walking on new road she can remember using it for access. She remembered walking down it while it was constructed. The main gates kept locked after travellers including pedestrian gates.
- 3.405 Since 2002 resumed use 2 or 3 time per week in spring and summer
- 3.406 She was put the evidence that Comer Homes were trying to stop use from Mr Donnellan's evidence.
- 3.407 She said she did not remember paraphernalia and saw no remnants of that. She did not remember times when there were poles.
- 3.408 She never saw anything. She did not have a "key"[meaning a crow bar]
- 3.409 I recall the padlock and chain on the big gate but every time she was up there it was accessible.
- 3.410 When she walked down the road curved slightly and could walk down to the Medi Parc. The rubble and demolition was finished and the road was being built as I was going down.
- 3.411 It would link on to old road way. I can only recall a particular route I would have done. There were bits of rubble left.

Inspector's Questions

- 3.412 595 blue. She said she did recall walking down it when it looked like a building site it was clear in her mind when lampposts went up
- 3.413 She said she didn't recall if she met anyone on the road. She could not see anyone.

Re-examination

- 3.414 She said she had been up since security fence.
- 3.415 The gap that she used up at there it would have moved about 5 metres. She said the way in at Y when she used it was nearer Tanrey cottages.
- 3.416 It is possible that the demolition occurred quite quickly it does not take long it could have been shorter.
- 3.417 There was chestnut paling fence near Old Park Wood. There was not a fence there. When buildings were gone I went down roadway I would not have needed to cross that line where fence shown.
- 3.418 By spring 92 you could walk anywhere. She only recalled the chestnut paling fence that she mentioned. She was not certain when fencing came down.

MIKE PICTON PAGE 247

Examination-in-chief

- 3.419 He read his statement on page 247 and 248. The salient points were that since the abandonment of the buildings on the Medi Parc he said that he and his family had gained access from the main gate on Hill End Road or from the Old Park Wood. His statement also said that he had walked his dogs nearly every day and his son played in the empty buildings until they were demolished.
- 3.420 He said he went more frequently in later period from 1982.

- 3.421 He added to point 1 of his statement at page 255 that there was one other piece of work that was being done which was the installation of the new access road.
- 3.422 He said he thought that the Gymkhana and football events on the application site was when the hospital owned it.
- 3.423 He said he used to walk through his plot through nature reserve he owned 14 acres which had one boundary with the nature reserve. He said that he could walk through his woods into the nature reserve where there is a circular track. From there he could go into the Medi Parc from the top end of the track.
- 3.424 He could go through to the Medi Parc at F2 or G2 [a42 plan] and in addition he could also get in around Y or he came out that way. He could not give a specific time for the gap at Y he did not know if it was there in 1982 but did not think so. He doubted whether there was that gap when the wards were in use. He said he did not use the Medi Parc when the wards were in use except when the Gymkhanas were on. He remembered the football when hospital owned the land. His earliest memory of using the land was when wards were empty and dilapidated but not being used.
- 3.425 He said he could not actually remember the demolition taking place.
- 3.426 He said he could remember after the buildings were demolished two guys with a tractor picking up rubble. He said he could remember a large machine in the Old Park Wood opening up the pond which he assumed was borrowed from the demolition it was about the same time.
- 3.427 He said he was sort of watching them where it says playing fields on page 42 plan and he said they were actually in playing fields going up

and down making sure they picked things up. He said he was walking through the playing fields.

3.428 He confirmed that he was standing where it says playing fields they were also in the playing fields and he was standing in the centre of playing fields watching them. He said he could not remember seeing the chestnut paling fence from Y1 to R1 [14 and 15 blue 5] but that is not to say there was not one. My memory is not perfect does not stick out in my mind at all.

3.429 From this it would appear that he was not there during the demolition but during the clear up period when it was fenced.

3.430 He said that it was just after the demolition but he could not give a time period I am assuming but he could not remember a few weeks after. He said he may have been away while the demolition was going on. He had not seen any signs telling him to keep out. He had never been told to get off the land. He said he cannot recall a boundary fence between Old Park Woods and the Medi Parc even going way back.

3.431 Route that he walked to the site he confirmed as being through nature reserve. He said he would go into Medi Parc site at F2 round the site out at G2 or Y or the reverse order. This was after the buildings were gone.

3.432 He said he had used the new access road but only to go to the village. He also used the track along side of meadow to go up through the hospital. He only did either of those occasionally when walking to the village. He said there was nearly always someone there when I was there. [this was clearly speaking of a time after the demolition]

3.433 He said he took his own dogs and did not keep on a lead they had a sniff and a run around and were well behaved. He said some of his

woodland is a Site of Special Scientific Interest [SSSI]. He said that it was all one wood.

3.434 He said that he had secured the site and replaced a lot of the fencing especially on the footpath with the Hillingdon Trail. He said he had replaced the fence. There was no fence abutting the rugby pitch.

3.435 He explained that he owned the triangle due west of the Medi Parc [marked on blue 4 679]. He said he put some signs on the base of the woodland which said private woodland and since he had done that it has been a lot better. He said that since signs have gone up he had not seen anyone. He did not get the trespassers there were one or 2 people occasionally someone with a dog.

Cross-examination Mike Picton

3.436 He was asked about page 679 Blue Bundle 4. He said that he had a fence on his side and there is one the other side of the footpath. He said if you went to the north along that footpath you would go to the Hillingdon Trail.

3.437 People walked down that footpath south he said he spoke as to who owned footpath to a solicitor. The solicitor thought I owned it but I turned a blind eye. To get into Old Park Wood he said you can go down the Hillingdon Trail down path south and then in to Old Park Woods through gap or they could go from rugby field down path. Now there is a sign welcoming to Old Park Woods.

3.438 He said the Hillingdon Trail fence has always been the same fence.

3.439 He said he did not walk around because it belonged to the hospital and he respected land. He could not remember when the hospital sold it. There were articles in the paper about a potential Medi Parc. He said

he thought it had to be medical research. He found it difficult to give a date when it was sold. There was a time when he became aware it had been sold.

- 3.440 He said that it was sold after quite a period when Trafalgar House had not carried out for some reason the Medi Parc. He said he was made aware that they were not proceeding with the construction of the Medi Parc from a local paper.
- 3.441 The time he said he started using the Medi Parc was before the North Wards were demolished when they were derelict.
- 3.442 He said he knew the buildings were demolished but he was not sure who demolished them. He said there were occasions when he walked on the application site when the wards were demolished. He was not there watching demolition. He said that afterwards there was a time that he used again. He said he did not go down the new road but he did remember them doing the road. He said he could not recall chestnut pale fencing being put up. He said there could have been chestnut pale fence but he did not remember it.
- 3.443 He said that he said could not remember a chestnut pale fence between Y1 to R1 but that it may have been put up during the demolition and taken down.
- 3.444 He said he would exit through the kissing gate by the new main gate of the Medi Parc.
- 3.445 He could not remember the gates being constructed but could describe them. He did not know if the kissing gate was fitted at the same time as the gates were built.

- 3.446 Looking at Blue 4 pages 609 and 605 he said the kissing gate was not part of the original structure. He did not know when that kissing gate was put there. He said he seems to remember a stile but he never used that very often. He did not use that regularly he vaguely remembered a stile.
- 3.447 He said he did a circuit of the Medi Parc. In the early years he did not use that exit down new access drive. He said he had used the kissing gate in the 2000s. It could have been before that when he used that exit and the entrance through that gate.
- 3.448 He said he was not aware of it being locked off on any of the occasions he went there post 2003.
- 3.449 He said between September 1991 and March 1992 he wouldn't have been walking when construction going on. He said at this time he definitely would have gone through the hospital. He said he thought he saw workmen picking up some rubble from the football pitch and that they also did this from the whole area where wards were but he did not stand and watch them. He confirmed that he would not have been going to the application site when the demolition was going on. He said he cannot remember seeing any sign until a couple of years ago when the new fence was put up.

GRAHAM KENWOOD

Examination-in-chief

- 3.450 He read parts of his witness statement on page 207ff²⁷.
- 3.451 He explained about the bench at Old Park Wood. He explained where he had lived which was at 21 Newdigate Road since 1997. Previously he had lived at Jacks Lane between 1990-7. He said he used the

²⁷ Red Bundle A

application site between 1990 and 2010. He was aware that there were paths there and he used them as well.

3.452 When he lived at Jacks Lane he came in near to Tina's cottage. He walked up the canal until Tina's house then into the hospital wards then back on the Hillingdon trail and back to Jack's Lane. From August 1997 when he moved he would access the application site by the main gate or when that was shut via the kissing gate. He would go any time over the weekends twice on a Saturday and twice on Sunday. During the weekdays it would depend on work.

3.453 The bench was put there on 4 April 2003. He remembered walking on the application site when the north wards were there. He said his wife had been disappointed by the demolition of the wards because she liked walking round them. He said he used the application site straight after the demolition. He was never told to leave the Medi Parc.

3.454 Before 2010 there was no fencing between Old Park Woods and the Medi Parc.

3.455 Up to 1997 he had not seen the new access road because he had entered from Jacks End Lane. He said that when wards were still there he came in via Tanrey Cottages and out at point Y.

Cross-examination Mr Kenward

3.456 April 1990 moved to Jacks Lane.

3.457 His level of use increased after 1997 after moved he confirmed that he did not remember the road. He did not remember the demolition.

3.458 Pre 1997 his use of the site was much less frequent. It was at least once on Saturday/Sunday that he enjoyed walking up the canal to Springwell lock and then went to Tanrey cottages then up the footpath.

- 3.459 He said that the walk took about 1.5 hours to Springwell Lock in the north and he would then turn right down the Hillingdon Trail public footpath.
- 3.460 He said he went through a gap on to the application site but no one else was there. He said that he and his wife went because of their dog and he said his wife had an interest because she worked at another hospital.
- 3.461 He said in 1991/2 he said he was visiting every Saturday and Sunday when we walked the dog at the weekend we went that way it just seemed like one day the buildings were there and one day they had gone.
- 3.462 He did not recall the building of the new road. He did not walk down there to get the village.
- 3.463 He said he could not remember the chestnut paling fence shown on Blue 4 585, Photo 3.
- 3.464 He said he walked in this time only by using the Hillingdon Trail.
- 3.465 The path was probably muddy following so he would go close to path on Medi Parc and come out near Y.
- 3.466 He was show Appendix 14 of Barrie Stanley's evidence [Blue Bundle 5] he said he could not remember that chestnut pale fence shown on that plan. It was possible that he did not walk for a while and it came down by the next time.
- 3.467 [214 blue 1] He said in 1998 he did not really understand the application site was used that much by community he had seen one or 2 other people walking dogs.

3.468 He said he moved in to his new house in August 1997. By March 1998 not detected that not got involved people at that stage we just walked dog quickly and don't get involved.

3.469 He said he was not involved in this letter his wife would have done it.

3.470 He was shown the sign shown on blue volume 1 page 367. He said it must have been cleaned well he did remember seeing it. He walked past it every day.

3.471 He said he walked past it but it has been there so long he would not continue to pay it any regard.

3.472 He could not remember poles or tree trunks being put in the kissing gate to disable it.

LINDA KING RESUMED

Cross-examination continued.

3.473 She was asked where she exited on Hill End Road.

3.474 She responded that it was shown on Red E 111, Point b on that photo which was between the car park and British gas compound. That was one point she said she used but she said there were other holes in the fence.

3.475 She said that she could categorically say that there was nothing to stop her going in to Old Park Woods. She said it was always the way it is today.

3.476 South of the stream on path going north and south from Hillingdon trail there has always been large gap. From 1989 onwards that has been the way into Old Park Woods. She said she did not know route to rugby field. She did not go to rugby field sometimes she would go to Old

Park Woods and go another way. She said that there is now a stonking great sign up there I can't tell you when it went up.

3.477 She said that her children played in the Medi Parc. Ryan walked there. Other parents were quite concerned about that known as dangerous. She said girls were playing in wards. She said she confronted her children who admitted that they were playing there.

3.478 She said there was machinery and diggers and according to her son he was able to climb. She did not know whether it was bravado.

Re-examination

3.479 [A 390] Statement of Ryan King used even during demolition. She said there must have been an occasional child there.

3.480 Blue 4 612 a shows chestnut paling fence. She said that did not ring any bells with me fencing never impeded my walk through that field.

3.481 She was shown the chestnut paling fence on page 585. She said it does not help her and she did not remember negotiating that or it being there. I note that this must point, unsurprisingly given the passage of time, to her recollection not being perfect.

3.482 She said she did not recall that gap south of the British gas company on Hill End Road being closed off.

3.483 She said on that bit you had to be careful of bottles and she did not bump into people using it.

3.484 She said she did not see any evidence of locks being fitted. She did not recall any notices at the kissing gate. She said she noticed others using that kissing gate.

- 3.485 She recalls new sign into Old Park Woods but cannot recall a previous sign there.

WRITTEN EVIDENCE.

- 3.486 I recommend that very little weight is given to the written evidence in this case. This is not just because the witnesses were not subject to cross-examination but also because the level of detail provided in the written material was not sufficient to cover in any detail an interruption of the use for the demolition and construction. Thus there was generally a mismatch between what was put in the questionnaires and the evidence of those that came to the Inquiry. I do not find that this was because there was any attempt in the questionnaires to mislead. In addition the written evidence does not give a very accurate account of how frequently a particular use was occurring in the critically relevant periods to this case prior to 1998. Nor does the written evidence give much impression as to how many other people a respondent saw on any particular occasion.
- 3.487 I have read and considered the written evidence but do not think in view of this that it needs to be summarised in any detail in this report.

4 THE OBJECTOR'S EVIDENCE

DAVID LANDER

Examination-in-chief

- 4.1 Mr Lander gave evidence about two matters.
- i) Firstly about the locality
 - ii) Secondly that the neighbourhood selected lacks cohesiveness.

- 4.2 I deal with my conclusions on this topic below. However it was apparent on the first point that Mr Lander accepted that the Harefield Ward had not had any boundary change in the last 20 years. [paragraph 3 of his supplementary proof]. This was the preferred case of the applicant to rely on the locality of this ward and for the reasons set out below I advise that this is a qualifying locality in agreement with DEFRA and so the second point on the neighbourhood does not arise.
- 4.3 The neighbourhood was shown as that area included in the yellow line on page 132 of the Applicant's bundle. However to summarise very briefly Mr Lander said that the claimed neighbourhood lacked cohesiveness because within the yellow line claimed as the neighbourhood there were physically separate areas. Functionally while all the area in the yellow line did use Harefield facilities there were people outside of that who also used those facilities. He also made some criticisms about the amount of built development in the area and outside. He estimated inside the yellow line there was 158 hectares but outside within the Parish there was 107 hectares of developed land.
- 4.4 In cross-examination and answer to my questions he accepted the following proposition.
- i) He accepted that the people in the yellow line would view themselves as from Harefield.
 - ii) He accepted that all the properties in the yellow line would be marketed as Harefield.
 - iii) He accepted that the water which is the western boundary is a defensible boundary.

iv) He accepted that all the people in the yellow line would use Harefield facilities.

v) He had no doubt that there was such a thing as Harefield village.

4.5 Mr Lander thought that there was such a thing as Harefield village but although he had criticism of the precise boundaries and how they were drawn did not offer any better version.

ANTHONY EDWARDS

Examination-in-chief

4.6 He is a qualified architect, landscape architect. He was involved as a landscape architect in the Medi Parc scheme between 1988 and March 1992.

4.7 He set out his evidence quite fully in his witness statement at 694ff so I only summarise the key points.

4.8 He explained that the site was fenced along Hill End Road to the east of the application site. This was also referenced to a contemporaneous document which showed the existing fence was concrete post and wire mesh. [708]

4.9 He explained the new boundary fence that Trafalgar House had put up around point Q which he recalled was timber and rail fence.

4.10 He explained the new gates that were fitted at Hill End Road which he photographed in March 1992 at page 720. He said no kissing gate was erected when he was there.

- 4.11 He said the fence along Hill End Road was moved slightly further into the site when he was there. That is also shown on page 708. He said that the gates were secured when built.
- 4.12 He said that protective fencing was one of the conditions and he could not start before the fencing was put up. This was up between Y1 and R1. [witness statement at 5.5] He produced the original drawings that related to the condition.
- 4.13 There would have come a time when they were working on the bellmouth of the new access when the fence would have had to come down but he said the site would have been secured.
- 4.14 When he finished on site he said the gates were locked.
- 4.15 In his conclusions he said that:

“There was no evidence of public use and I believe that I would have noticed if there had been. It would have been an important piece of information for the work for which I was responsible” 6.1

“I do not believe that it would have been possible for anyone not authorised as part of the Medi Parc scheme to have accessed the land unless they knowingly broke through or clambered over the perimeter fencing.”6.3

Cross-examination

- 4.16 In cross-examination he accepted that he visited the site about 6 times in total. He said he was never aware of anyone walking on the site.
- 4.17 He said he had to fence before the demolition because of the condition on page 722.
- 4.18 He accepted that he could not guarantee there was no gap along the Hillingdon Trail footpath in fence.

- 4.19 He accepted that he did not remember any fence with the boundary of the application site and Old Park Wood. He said the road construction was pre CDM Regulations. He accepted that he did not look at the chestnut paling fence carefully but could recollect it was there. He has seen it on the photographs. He could see chestnut paling fence on photograph at 610a and it was a continuous fence.

PHILIP AYRES

Examination-in-chief

- 4.20 He produced several witness statements. The first at page 570ff and supplementary ones at 723L and 723Q.
- 4.21 Mr Ayres was the project manager responsible for overseeing and administering the landscape project from mid September 1991 until practical completion in January 1992 and then he carried out monthly inspections until January 1993.
- 4.22 He explained his recollection of the fencing. He said the site was fenced from J-Z and Z-Y on BS4. He said the Y to Z fence along the Hillingdon Trail was in tact.
- 4.23 He explained that during the demolition he would have been responsible for the alignment of the chestnut paling fence which was from Y1 to R1 and it was 1500mm high. He said it could be seen on page 585. He explained that the site had been fenced by reference to his drawing at 614B.
- 4.24 He produced some extremely helpful photographs of the construction site. These are very revealing and show that large parts of the application site were a construction site during the 20 year period.

- i) The first set he was able to date by the end of the inquiry as late November 1991. page 593ff
- ii) The second set were taken in December 1991 at page 598ff
- iii) The third set were taken in January 1992.
- iv) The fourth set were taken in March 1992.

4.25 He looked at the photographs of the bellmouth and when that was being constructed at page 594 and explained that there would have been a temporary fence on the bellmouth.

4.26 He looked at many of the photographs of the construction site and explained them.

4.27 He said the main gates were locked at practical completion and afterwards. He said he continued until March 1993. He said the fence was left longer than February 1992 but could not confirm that it was definitely in place right to January 1993. He looked at the aerial photo at 519 and thought that it showed that the temporary fence was there.

4.28 His conclusions were that the temporary fence was always in good condition and he said: "I recall no occasions when I found the fencing to have been damaged after say a week-end or first thing in the morning". He said the site was not open to public access. He said:

"My memory of the site is that it was always fenced during the construction period and not available for general access at the time I was involved"

4.29 About the construction period he said:

"Over that autumn to winter period the working day on the site occupied practically all the daylight hours and use of the site for public recreation would hardly have been attractive either in the evenings or

at night. I cannot believe that anyone used the land for such activities during those months.” 4.7

Cross-examination

- 4.30 He accepted that the Medi Parc site was reasonably early on in his career and his main concern was the landscape elements not keeping the site secure. However he said if he had seen the odd walker going through the site he would have let the contractors know. He said he did not notice anyone in the site. He did not see Mrs Crawley. He accepted that he would not have seen someone if they were there when he was not but he would have expected to see evidence that they had been there if they were.
- 4.31 He accepted it was not his only job at the time.
- 4.32 He said he could not remember any gaps along the Hillingdon Trail when he was there.
- 4.33 He said the Y1 to R1 fence shown on appendix 14 of Barrie Stanley’s evidence would have been there and would have been checked.
- 4.34 He did not recollect a gap between gas compound and car park.
- 4.35 He said he did not remember the gap at Y but his primary responsibility was the Y1 to R1 fence.
- 4.36 He thought the original condition of the fence along Hill End Road was not in great condition.
- 4.37 He said he could not remember a pedestrian gate at point Q.
- 4.38 He said he cannot recall whether gate was replaced with fence.

WLODEK BORZYSLAWSKI

Examination-in-chief

- 4.39 He read his statement at page 447ff²⁸.
- 4.40 He was an engineer in the firm that was engaged by Trafalgar House. He was not personally involved in the project but has spoken to people who were and has studied the drawings.
- 4.41 He worked out the amount of lorry movements which he said was in excess of 340 for the earthworks associated with the construction of the road. This did not make any allowance for the demolition.
- 4.42 He reached the conclusion that

The area of the Medi Parc site that was developed by the construction of the access road and the associated works were undoubtedly a busy building site. There is no doubt that the site would have been protected by fencing throughout the course of the works. The measures that I have described above were completely standard practice in the early 1990s...

In my professional opinion is not possible that the public could have enjoyed the use of this part of the medi parc site during that construction period.

Cross-examination

- 4.43 He re-iterated in cross-examination that he was not personally involved.
- 4.44 He was asked questions about whether photograph 594 showed the site to be open and possible to access. He was not able to comment on what actually was on site just what the photograph showed.

²⁸ Blue Bundle 4

- 4.45 He confirmed that the drawing on page 452 was the drainage, 451 was the survey plan and 456 was as built.

MARK STANTON

Examination-in-chief

- 4.46 He produced a short witness statement at page 466 ff. He was an engineer who visited the site on one or two occasions. He confirmed that the site of the road works was fenced with chestnut paling fence. He said he clearly recalls seeing such a fence in place.
- 4.47 He was shown 593 which does not show fencing at the Hill End Road side. However he said if it was not there in the day it would have been in the night and he stood by his view that there was fencing.
- 4.48 He said he was responsible for the plans on page 456 and 457. He said there would have been a trench 450mm deep and there would have been a hole 1.1m deep.

Cross-examination

- 4.49 He confirmed that he had only. In cross-examination he stood by the material points of his evidence. He was clear that he had seen chestnut paling fencing on the site.

TOM DONNELLAN

Examination-in-chief

- 4.50 He works for Comer Group who currently own the site, through its company Brookstream.

- 4.51 He said that between 2003 and 2007 he attempted to secure the site by locking the gates with chains and padlocks.
- 4.52 He said the kissing gates were there when they acquired the site in 2003.
- 4.53 He said they welded the gates in 2004/5. He went back to secure the site every 6 weeks following fly tipping in 2007. They re-welded the main gate in 2007. He put scaffolding tubes in the kissing gates driven into ground. He said between 2004 and 2007 he secured the kissing gate 6 or 7 times.
- 4.54 He produced invoices for locks but nothing related them to this site on the face of the document.

Cross-examination

- 4.55 He said he went about 3 or 4 times per year. He did not know about the Nato walk. The document for that is at 118 Red E and was held on 29 June 2008 and went through the Medi Parc site.
- 4.56 He accepted that the locks could have been fitted elsewhere he could not prove it.
- 4.57 He accepted that he did not do anything about the gap at Y until 2010 and that had been there for donkey's years. He accepted that there was no fence with Old Park Wood. He was taken to the aerial photo at page 521 Blue Bundle 4 which shows lots of use of the site in July 2006 and plenty around Old Park Wood. He accepted there was a sign on the company land inviting to go to Old Park Wood. He said he was mainly worried about access from main roads.

ROBERT SHEPPARD.

Examination-in-chief

- 4.58 He produced a witness statement at page 349ff and at 418ff.
- 4.59 He works for Comer Group. He became personally involved in the site in July 2009 when he was asked to survey the site.
- 4.60 He arranged for the survey and the fencing of the site.
- 4.61 In examination-in-chief he confirmed that the sign on page 1125 and 1133 are the same signs as is shown on pages 610a and 611a. Thus there was the same sign at point q between the hospital and the Medi Parc and on Hill End Road.
- 4.62 He gave further evidence about the fence that was put up in March 2010 and the repeated attempts and vandalism of that fence.
- 4.63 He did a drawing [445A] which explained how the site was fenced even when they were doing work on the Hill End Road bell mouth from his experience and study of the documents.
- 4.64 He explained that it would have been fenced because of the engineering and other drawings.

Cross-examination

- 4.65 He explained that he could not comment on many site matters before July 2009 when he was first on site.
- 4.66 He was taken to the aerial photographs but it was before he had personal knowledge of the site.

4.67 He confirmed that it was before he put the security fencing up there.

ANDREW MACK

Examination-in-chief

4.68 Andrew Mack did a witness statement on page 723G ff.

4.69 He was the project manager for the Medi Parc scheme at Harefield. He started work on the Medi Parc project in August 1991 and left the project in March 1992.

4.70 He said that he used the old car park as his contractor's compound. He had a good view of the entire site from his cabin.

4.71 He confirmed that there as a chestnut paling fence from Y1 to R1 for the duration of the project.

4.72 Critically at paragraph 18 he said that

I therefore was on site for at least 7 months between August 1991 and April 1992. I was there regularly .. between 8 am to 6pm and sometimes later. I never saw any member of the public on site during that entire period. If I had seen any such person they would have been escorted from site. paragraph 18

4.73 He agreed with Mr Sheppard's drawing at 445A as to how the bell mouth fencing worked. He agreed with Barrie Stanley as to the drawings which depicted the fencing on the site during construction in BS2 and BS3.

4.74 He explained in examination-in-chief the trenches which were 1 metre wide and 1 metre deep that meant it had to be fenced. He confirmed that chestnut paling fence was up before work started.

Cross-examination

- 4.75 He confirmed that Hill End Road fence not in perfect condition. He did not recall any access gaps though. He said there was chestnut paling fence around individual trees as well.
- 4.76 He confirmed there was a building control demolition notice at page 869. There was not a plan under that demolition notice of chestnut paling fence.
- 4.77 He said the trees at Hill End Road came out first. He explained the construction of the road.
- 4.78 He explained the construction of the bellmouth by reference to 593, 598 603 and 723. He said that would be sealed at night with roll of chestnut paling fence.
- 4.79 He said this was not a site where he had great safety concerns.
- 4.80 He confirmed that people did not come in and out during the working day and there was no issue of vandalism and damage to plant.
- 4.81 He said he could not comment on the recent gap photo on Hill End Road on page E111.

Re-examination

- 4.82 In re-examination he confirmed that the site was very difficult to use for recreation before he finished.

PAUL SHELDRIK

Examination-in-chief

- 4.83 He produced a witness statement at page 645ff
- 4.84 He was a director of Trafalgar House Business Parks Limited.
- 4.85 He was involved in the project from 1988 to March 1990 and a little time afterwards.
- 4.86 He attended various public meetings in 1989 and 1990. At those meetings he said:
- “The issue of public use simply did not arise.”*
- 4.87 He said he would have remembered if there had have been any issue of public use because his company had bought the site for £8.9m.
- 4.88 He left Trafalgar House in mid 1990.
- 4.89 He said the Old Park Wood was not a public boundary.
- 4.90 He said he erected the fence from R to P and that the hospital was keen to see that fence.
- 4.91 He said that a medical park was a very sensitive use and he would not have contemplated allowing people and dog walkers on site.

Cross-examination

- 4.92 He said he did not erect a fence with Old Park Wood but that was because he did not think public access to Old Park Wood and it was not on his radar.
- 4.93 He was not aware of access point at Y. He did not recall whether gate from car park that was not issue for him but pay grade below.
- 4.94 He did not recall if there was access on the Hillingdon Trail.

Re-examination

- 4.95 In re-examination he confirmed that no-one raised access to the site as an issue and there was ample opportunity to raise that. He said it was pretty standard to make enquiries about public access.

BARRIE STANLEY

- 4.96 Mr Barrie Stanley produced a comprehensive witness statement at page 724ff with many critical documents as appendices.
- 4.97 He did not give first hand evidence as to what was occurring on site but rather assembled very helpfully lots of original documents and gave conclusions from those documents. Barrie Stanley is a chartered Architect.
- 4.98 The critical topics of his evidence were as follows.
- 4.99 In topic 3 he showed that between 1986 – 1998 there was numerous public consultations for planning processes and there was not mention of any public use of the site throughout all those processes.
- 4.100 In topic 4 he tried to show that there was not lawful access from Old Park Wood.
- 4.101 Section 5 dealt with his analysis of where the fences were in the period 1989 to 1992. He produced very helpful plans BS1 -4 that summarise this.
- 4.102 In Section 6 he summarises the documentary evidence about the protective fencing.
- 4.103 In section 7 he explained the works after 1992.

- 4.104 It is not necessary to summarise the helpful evidence or cross-examination any further because it was mostly on inferences from documents and evidence which I deal with in the analysis below.

5 THE LAW

- 5.1 This is an application made under section 15 the Commons Act 2006 which provides:

15(1) 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.

...

(3) This subsection applies where—

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

- 5.2 The critical issues for this case are the following.

- i) The meaning of a significant number and the test for the quality of user.
- ii) The meaning of ‘as of right’.
- iii) What is sufficient to be an interruption.
- iv) The meaning of locality and neighbourhood within a locality.

Significant Number

- 5.3 In *R(McAlpine) v Staffs CC* [2002] EWHC 76 (Admin) Sullivan J set out the following guidance on the meaning of the significant in the context of section 22(1) as amended of the Commons Registration Act 1965.

71 *Dealing firstly with the question of a significant number, I do not accept the proposition that significant in the context of section 22(1) as amended means a considerable or a substantial number. A neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to be properly described as a considerable or a substantial number. In my judgment the inspector approached the matter correctly in saying that “significant”, although imprecise, is an ordinary word in the English language and little help is to be gained from trying to define it in other language. In addition, the inspector correctly concluded that, whether the evidence showed that a significant number of the inhabitants of any locality or of any neighbourhood within a locality had used the meadow for informal recreation was very much a matter of impression. It is necessary to ask the question: significant for what purpose? In my judgment the correct answer is provided by Mr Mynors on behalf of the council, when he submits that 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.*

5.4 Thus the key question is whether the use is sufficient to indicate that it is in general use by the local community for informal recreation rather than occasional use by trespassers. In the same case the court approved the Inspector’s approach that in deciding whether a significant number of locals had used an area for recreation this ‘*was very much a matter of impression*’. It is relevant to this task to look at the size of the neighbourhood or locality claimed.

5.5 Further, there is the interrelated issue of the ‘quality of user’ as discussed by the Court of Appeal in ***Leeds Group PLC v Leeds City Council*** [2010] EWCA Civ 1438 (at paras 28-32). This set out the test on quality of user from ***R (on the application of Lewis) v Redcar and Cleveland Borough Council*** [2010] 2 AC 70 which is whether:

“the user was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right (see R (Beresford)

*v Sunderland City Council [2004] 1 AC 889, paras 6 and 77), the owner will be taken to have acquiesced in it –.*²⁹

..

“The question is whether the user by the public was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right” [para 75]

As of Right

- 5.6 The law on “as of right” has been summarised conveniently in the case of *Betterment Taylor v Betterment Properties* (Weymouth) Ltd [2012] EWCA Civ 250 [2012] 2 P. & C.R. 3.
- 5.7 Critically in terms of notices and how to interpret notices the Court approved of the guidance given by HHJ Waksman QC in *R. (on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire CC* [2010] B.L.G.R. 631
- 5.8 Patten LJ said the following in *Betterment*:

43 In R. (on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire CC [2010] B.L.G.R. 631 , H.H. Judge Waksman QC (sitting as a Judge of the High Court) considered Pumfrey J.’s dictum in Smith v Brudenell-Bruce in the context of an application to register a meadow adjoining the Warneford Hospital in Oxford as a town or village green. The land in question was crossed by a public footpath alongside which was a notice stating: “No public right of way”. This was said to have prevented any public use of the meadow itself from being as of right.

44 The judge held that the notice had not rendered such use contentious because, reasonably read, it had to be taken to refer to the user of the footpath rather than the meadow land generally. He was not therefore concerned with a case where the notice had been placed in an inaccessible position or where (as in the present case) the notices had been removed. But in his judgment he set out some general principles. Having referred to Smith v Brudenell-Bruce and to Redcar (No.2) he said this:

“22. From those cases I derive the following principles:

²⁹ see Redcar per Lord Hope at paragraph 67

(1) The fundamental question is what the notice conveyed to the user. If the user knew or ought to have known that the owner was objecting to and contesting his use of the land, the notice is effective to render it contentious; absence of actual knowledge is therefore no answer if the reasonable user standing in the position of the actual user, and with his information, would have so known;

(2) Evidence of the actual response to the notice by the actual users is thus relevant to the question of actual knowledge and may also be relevant as to the putative knowledge of the reasonable user;

(3) The nature and content of the notice, and its effect, must be examined in context;

(4) The notice should be read in a common sense and not legalistic way;

(5) If it is suggested that the owner should have done something more than erect the actual notice, whether in terms of a different notice or some other act, the court should consider whether anything more would be proportionate to the user in question. Accordingly it will not always be necessary, for example, to fence off the area concerned or take legal proceedings against those who use it. The aim is to let the reasonable user know that the owner objects to and contests his user.

Accordingly, if a sign does not obviously contest the user in question or is ambiguous a relevant question will always be why the owner did not erect a sign or signs which did. I have not here incorporated the reference by Pumfrey J in Brudenell-Bruce 's case to 'consistent with his means'. That is simply because, for my part, if what is actually necessary to put the user on notice happens to be beyond the means of an impoverished landowner, for example, it is hard to see why that should absolve him without more. As it happens, in this case, no point on means was taken by the authority in any event so it does not arise on the facts here."

5.9 The Court of Appeal went on to quote the test that Morgan J formulated as regards whether a notice had to come to the attention of the users. The short point is that they would have to either have come to the attention of the users or be sufficient to bring it to the attention of the reasonable user and they need to be proportionate to the user.

"48 The test formulated by Morgan J. in [121] of his judgment specifies two alternative approaches to the question of notice. If the landowner erects suitably worded signs and they are seen by would-be peaceable users of the land then it follows that their user will be contentious and not as of right. That is the easy case. The alternative is an objective test based on knowledge being attributed to a reasonable user of the land from what the landowner did in order to make his opposition known. If the steps taken to manifest that opposition are

sufficient to bring it to the attention of any reasonable user of the land then it is irrelevant that particular users may not have been aware of it. The steps to be taken do not have to be fail safe in that regard. But they must be proportionate to the user which the landowner wishes to prevent.”

- 5.10 The Court of Appeal upheld the decision of the High Court and did not suggest that this was a wrong formulation.

Interruption of Use.

- 5.11 The Court of Appeal considered directly the finding that Mr Justice Morgan made about interruption in ***Betterment Taylor v Betterment Properties*** (Weymouth) Ltd [2012] EWCA Civ 250 [2012] 2 P. & C.R. 3 at paragraph 67ff. Patten LJ found as follows.

“67 Both Mr Garman and Mr Males gave evidence and were cross-examined before Morgan J. The judge also had evidence of a footpath diversion order being made in respect of footpath 79 and (perhaps most crucially) of a drawing of the site prepared by the consulting engineers dated April 1980 which indicates a continuous line of fencing along the boundary of the works site. The judge analysed this evidence as follows:

“147. Along the northern end of the site starting at Markham Avenue in the east and continuing for some 110 metres there was a concrete post and close boarded fence. There was considerable controversy as to the presence of a fence on the western boundary of the works site. I find that, in December 1979, there was erected a fence comprising wooden posts and strained wire. The northern end of this fence was at the western end of the concrete post and close boarded fence. The southern end of this fence was the field boundary. When the engineers drew their plan in April 1980, this western fence was described as an ‘existing fence’. Indeed, one of the purposes of the plan was to show that that existing fence was to be removed, not for the entirety of its length but a section of it would be removed towards the southern end of the works site. The April 1980 plan also showed an intention to erect a new fence from the southern end of the remaining posts and strained wire fence. The new fence would run in an easterly direction and then turn generally northwards until it reached the northern boundary of the field. This new fence was to be constructed of concrete posts and strained barbed wire. I am not able to make a finding as to whether the new fence was ever constructed, in or after April 1980. However, I do find that for a period of time the western fence ran from the northern point where it joined

concrete post and close boarded fence to a southern point at the field boundary. I find that that western fence remained in position for several months after December 1979. The plan would suggest that it remained until, at least, April 1980. I accept the evidence given on behalf of Betterment that this western fence was cut or interfered with from time to time and was repaired. I also find that the presence of this western fence for that period prevented use of, certainly non-contentious use of, that part of the registered land which lay to the east of the western fence.

148. In case it matters, I can also say that I accept the evidence of the witnesses on behalf of Betterment that this western fence remained in position from its original northern point to where it joined the original footpath for virtually all of the time that the works site was in use. I also find that throughout the period from December 1979 to the Spring of 1982, a substantial part of the works site was not available for use for sports and pastime because a part was used for the residents car park (not a use for sports and pastimes), as the site of active construction works, for use as a spoil heap and for use for storing or parking plant and vehicles.

149. It follows from the above findings that for a period from December 1979 until at least April 1980, the entirety of the application site which was to the east of what I have described as the western fence of the works site was cut off and not available for use for sports and pastimes, alternatively not available for non-contentious use for sports and pastimes.”

68 As originally formulated, there was no challenge in the notice of appeal to these findings of fact. But Mr George has now produced an amendment to the notice to the effect that the judge was wrong to find that the western fence remained in position subject to repair from December 1979 until April 1980. This finding is said to have been against the weight of the evidence and involved rejecting the evidence of Mr Males which the inquiry panel had relied on for their own finding that there had been no significant disruption of user caused by the drainage scheme.

69 Mr Laurence makes the point that Mr Males’ evidence to the inquiry was given without the benefit of the plan but the short answer to this ground of appeal is that the question of whether the works site was completely fenced off between 1979 and 1980 was a straightforward question of fact for the judge on which he heard all the relevant evidence and reached a conclusion. It cannot be said that his decision on this point was based on no evidence or was perverse and, in my view, there is no basis for this Court to interfere with the finding which he made.

70 The only real issue about the works site is whether the physical disruption to public use caused by the fencing off of the site for about four months was sufficient to interrupt user of that land for the purposes of s.22 . We were referred by Mr George to a transcript of the decision of the Court of Appeal in Goodey v Everett (1880) which was an appeal from an order of Fry J. declaring that land in the village of Chappel was a village green. At some point part of the land was occupied by a railway company for a period of four years but thereafter use of the land as a village green resumed. The report contains no indication of how long the recreational use of the land continued either before or after such disruption or of what effect the use by the railway had upon it. The report does not therefore assist on the issue which the judge had to decide.

71 It seems to me that for the actions of a third party to be taken into account there must be a physical ouster of local inhabitants from the land and the disruption must be inconsistent with the continued use of the land as a village green. If the two competing uses can accommodate each other (as they did in Redcar (No.2)) then time does not cease to run. But here the exclusion was complete and the use of the land for the drainage scheme was not compatible with it remaining in use as a village green. The judge was therefore correct in my view to hold that there had not been twenty years' user of the works site."

- 5.12 The Court of Appeal thus upheld the judge's finding that where a site was fenced so that its use was incompatible with being used as a village green for four months this was an effective interruption of the twenty year period.

6 IS THERE A QUALIFYING LOCALITY OR NEIGHBOURHOOD.

- 6.1 The case of the Applicant is that they rely upon the locality of the electoral ward of Harefield. [page 2 of closing submissions].
- 6.2 Factually it is not disputed that the boundaries of the Harefield Ward have not changed during the 20 year period. [500B para 3 of David Lander Supplementary proof].
- 6.3 The question that arises is whether an electoral ward can be locality for the purposes of the Commons Act 2006.

- 6.4 The advice from DEFRA in the Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation of September 2011 is that it can. They say:

“In the Laing Homes case³⁰, Sullivan J cast some doubt in passing on whether an electoral ward constitutes a locality within the meaning of the statute. There is no judicial decision one way or the other on that question, and the law cannot be taken as settled. But paragraph 9(c)(i) of Schedule 4 to the Regulations requires that an application under Section 15(1) “must...(c) contain a description of the locality or the neighbourhood...by reference to— (i) the name of any parish, electoral ward or other local administrative area with which it is coextensive”, and therefore³¹ Defra’s view is that an electoral ward will qualify.”

- 6.5 Thus DEFRA’s view is that an electoral ward will qualify. This is so whether the application site is in or out of a pioneer implementation area. The footnote makes it clear that their view applies to both because that is set out after the word therefore. Whilst it is true that the Regulations referred to apply only in the pioneer implementation areas there is no reason why a qualifying area should be different for the purposes of section 15 the Commons Act 2006 outside those areas.

- 6.6 Mr Laurence QC and Mr Lewis for the Objector argued that because in *Adamson v Paddico and others* [2012] EWCA Civ 262 a conservation area was found not to be a qualifying area the same should be true for a ward area. Sullivan LJ said:

“I would respectfully disagree with the judge's view that the Edgerton Conservation Area could be regarded as a locality for the purpose of section 22(1) of the 1965 Act. It is true that its boundaries are legally significant, but they are legally significant for a particular statutory purpose, and those boundaries would have been defined by reference to its characteristics as an area "of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance" (see section 69(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990) - rather than by reference to any community of interest on the part of its inhabitants.”

³⁰ Fn 271 At paragraph 138.

³¹Fn 272 These words (from the start of the sentence to ‘therefore’) are not relevant to applications under Section 15 outside the pioneer implementation areas — see paragraph 8.10.12

6.7 However there are very real differences between a conservation area which is defined on account of its physical characteristics of special architectural or historic interest and a ward which is defined for the purposes of local democracy. There is certainly a community element to a ward. All those members of that community will share elected members of the local authority and be able to vote for those. If they seek to see an elected member of their Council they would contact their local ward councillor. It is a subdivision of the local authority area which is clearly a locality.

6.8 I was provided with Schedule 11 of the Local Government Act 1972. The version that was in force between 1972 and 1995 on Westlaw provides as follows:

(2) Having regard to any change in the number or distribution of the local government electors of the district or borough likely to take place within the period of five years immediately following the consideration—

(a) the ratio of the number of local government electors to the number of councillors to be elected shall be, as nearly as may be, the same in every ward of the district or borough;

(b) in a district every ward of a parish or community having a parish or community council (whether separate or common) shall lie wholly within a single ward of the district;

(c) in a district every parish or community which is not divided into parish or community wards shall lie wholly within a single ward of the district.

(3) Subject to sub-paragraph (2) above, in considering the electoral arrangements referred to in sub-paragraph (1) above, regard shall be had to—

(a) the desirability of fixing boundaries which are and will remain easily identifiable; and

(b) any local ties which would be broken by the fixing of any particular boundary.

6.9 The version in force right up to 2010 was materially the same. Thus the way that local government ward boundaries have been fixed since at

least 1972 has been by reference to easily identifiable boundaries and local ties. Thus they have been drawn up by reference to community matters.

6.10 For all these reasons I would advise that the ward boundary of Harefield is a qualifying locality within the meaning of the Commons Act 2006.

6.11 Mr Lander provided some helpful population statistics for the Harefield Ward at page 500h. The Harefield Ward had a population of 7,090 in the 2001 census. The mid 2010 estimate was 7,562.

6.12 It is not necessary to go on to consider the case on the basis of neighbourhood because that was not the basis on which the applicant put their case. If the ward boundary was a locality they did not seek to rely on a neighbourhood. My clear advice is that the ward boundary is a locality and so it is not necessary to go on and consider the alternative way that the case is put.

6.13 However were it necessary to consider the neighbourhood which is shown on the plan at the Applicant's bundle at page 132 I would advise that this is a qualifying neighbourhood. Whilst Mr Lander did make various criticisms of the way that the boundary had been drawn for the neighbourhood on that plan in his oral evidence he was clear that the people within the yellow line would all use the facilities of Harefield and he was in no doubt that there was such a thing as the village of Harefield. His criticisms really amounted to saying that the line around the village of Harefield may have been able to be drawn with more precision. However I have considered the guidance in *Oxfordshire v Oxford City Council* [2006] 2AC 674 where Lord Hoffmann said :

"27 Any neighbourhood within a locality" is obviously drafted with a deliberate imprecision which contrasts with the insistence of the old

law upon a locality defined by legally significant boundaries. I should say at this point that I cannot agree with Sullivan J in R (Cheltenham Builders Ltd) v South Gloucestershire District Council [2004] JPL 975 that the neighbourhood must be wholly within a single locality. That would introduce the kind of technicality which the amendment was clearly intended to abolish. The fact that the word “locality” when it first appears in subsection (1A) must mean a single locality is no reason why the context of “neighbourhood within a locality” should not lead to the conclusion that it means “within a locality or localities”.

- 6.14 In addition I have considered the judgment in **Cheltenham Builders**³² in which Sullivan J considered that:

85. It is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood. For the reasons set out above under “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 has 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.

- 6.15 I have also considered the guidance in the **Leeds Group PLC v Leeds City Council** [2010] EWHC 810 at first instance.

- 6.16 However it is common ground that the neighbourhood area claimed if the locality does not qualify is around Harefield village. There is no doubt that there is such a thing as Harefield village. It has its own facilities which people use. It is a concept and something that has sufficient cohesiveness to be a neighbourhood in what is a deliberately imprecise concept. The boundaries that have been drawn on the applicant's plan depicted by a yellow line on the plan have only been criticised in relatively minor ways by Mr Lander. I am satisfied that the yellow line is a reasonably accurate depiction of Harefield and would

³² **R (On Application of Cheltenham Builders Limited) v South Gloucestershire DC** [2003] EWHC 2803 Tab 3 of Blue 6

be a neighbourhood if it were necessary for the Applicant's to rely on a neighbourhood which it is not.

7 ANALYSIS OF PERIODS OF USE

7.1 The most helpful way of analysing this is in terms of the distinct periods of use.

THE PERIOD FEBRUARY 1990 TO SEPTEMBER 1990.

7.2 I do not advise that the use that was made in this period was by a significant number of people. I say that for a number of reasons.

- i) Firstly it is clear from the documents that the site was fenced from the hospital site and the route was laid out to encourage people from the hospital to go into Old Park Wood.
- ii) Secondly Mr Sheldrick's evidence which was entirely credible was that no-one raised that it was being used by people for public recreation in public consultation in 1989 and 1990.
- iii) Thirdly no-one raised that it was being used to the planning committee which sat on 26 March 1990. There were 439 standard replies and 20 individual letters. The planning officer did not mention it in the report. [see 3.2 of Barrie Stanley]
- iv) Public access for recreation was not mentioned in the revised proposals that went to committee in September 1990 despite 69 standard replies and 9 individual letters.

- v) No-one mentioned public access for recreation in the public inquiry in October 1990. Neither the Secretary of State nor Inspector mention it.
- vi) Some of the people who did use it in this period suggested that it was used very little at this time for example Mrs Philipps and Mr Kennard.
- vii) The closest aerial photographs to his period do not show great evidence of use.
- viii) Some of the use by people if they used gaps in the fence on the Hillingdon Trail or Hill End Road would have been by force.

7.3 In the circumstances I do not need to go on to advise as to whether it is possible to have a village green registration of buildings. However if I did I would advise that it was not for the reasons in the Objector's closing submissions.

THE PERIOD SEPTEMBER 1991-JANUARY 1992

7.4 During this period the North Wards were demolished and the access road was built.

Generally

7.5 Looking firstly at the broad evidence in this period. None of the Objector's witnesses who were involved in the construction and demolition project saw anyone within the area being used for the construction of the Road and demolition of the wards. This was effectively the whole of the site up to the line where the objector said there was a chestnut paling fence between Y1 and R1.

- 7.6 In addition on none of the photographs that the Objector's witnesses found or showed at the Inquiry was there any evidence of recreational use of the land. In addition the general tenor of the photographs depicts a construction site during this period wholly unsuitable and uninviting for recreational activity.
- 7.7 The period of demolition was established by reference to very good evidence as being 20 September 1991 to 27 November 1991.
- 7.8 Virtually all of the Applicant's witnesses who knew the site at this time gave evidence that they did not use it for recreation during the demolition. The following is clear evidence of that.
- i) Mr Chapman said that he did not go on the site during demolition. He said that he did not go on to the application site during demolition because he would have remembered.
 - ii) Michelle Rogers said that she did not recall the ward being demolished despite the fact that she had been to the Social Club in 1987.
 - iii) Brian Lindsay said he did not go on when the demolition was in progress. He clarified in cross-examination that he had decided not to go on.
 - iv) Mrs Crawley when she went to visit the demolition site said that she was not herself going for recreational purposes but in order to help ensure that the asbestos treatment was being done properly. She did not recall anyone else being on the site at the time she was there.
 - v) Pauline Foster did not remember the demolition occurring although she remembered seeing a lorry with rubble. In cross-

examination she said she did not go on to the rubble of the demolition. She said that she did not go on the new access road when it was being built and others did not do that.

- vi) Marilyn Phillips said that she kept away during the demolition because of the asbestos. She also said that before the demolition not so many were using the site. She said in re-examination that it took a little while after the demolition for dogs to walk on the demolition site.
- vii) Mrs King said that she did not recall seeing the demolition. She also said colourfully that she chose not to walk on the construction site because she said “who would want to walk on a building site”. This is compelling evidence about the unattractiveness of the entry of the site for recreation at this time.
- viii) Mrs Carr said she initially avoided the rubble but by spring could walk on the area.

7.9 One of the very few exceptions was the son of Mrs King. However this is certainly not evidence of a significant number of users or a sufficient manner or amount to be the assertion of a right. It is also second hand evidence from someone who had just heard that her son had been there. Her son’s evidence was not tested nor was it detailed as to the number of trips he made or the period of his use.

7.10 In addition there is very good evidence that the site was fenced for all of this period and probably a little longer. This is set out in the documents and the evidence of the Objector’s witnesses involved in the project.

7.11 Many of the applicant’s witnesses remembered the chestnut paling fence. However I am not surprised nor to I place too much weight on

many not remembering the chestnut paling fence. It does not suggest to me that the clear evidence from the documents is wrong but merely that recollections have faded.

7.12 I take the view that the chestnut paling fence would have been very likely to have sealed the site of the works off during the demolition and construction of the road. From studying the various photograph I do not see that they show there to be a gap in the fencing.....

7.13 Thus on the basis of the general point that I have mentioned, the photographs, the documentary evidence and the basis of the evidence from both the Applicant witnesses and the objector witnesses I take the view that during this period there was not use by a significant number of qualifying residents for lawful sports and pastimes. Thus the user of the land to the East of the chestnut paling fence in the Application site failed the *McAlpine* test mentioned above and was not a quality of user sufficient to pass the test approved in *Redcar* of being such amount and in such manner as would reasonably be regarded as being the assertion of a public right

The North Western Area.

7.14 There was an area outside the area which was fenced with chestnut paling fence but still in the application site. I will refer to this area as the North Western Area. I include within this all the land outside the chestnut paling fence to the west of the line from R1 to Y1 on BS4.

7.15 During this period I find as a fact that there were not a significant number of people using the north western area. I do this for the following principles reasons.

7.16 First this is the area which is furthest from the centre of population of Harefield.

7.17 Secondly in this period during much of the week the site inside the chestnut paling fence was being used for demolition and construction. This would naturally have an effect on how pleasant it would be to use the north west corner. If a user were to come from the hospital the temptation would be to use the route layed out by Trafalgar House to go into Old Park Wood rather than go on the north west part of the application site.

7.18 Thirdly and most significantly there was no witness who gave compelling evidence of using this part when the demolition was going on. Most of the applicant's witnesses who knew the site at this time gave compelling evidence that they did not use the site at this time.

- i) Mr Chapman said that he did not go on the site during demolition. He said that he did not go on to the application site during demolition because he would have remembered. This is a point that is quite compelling and makes the lack of any recollection of use during the demolition very telling.
- ii) Michelle Rogers said that she did not recall the ward being demolished despite the fact that she had been to the Social Club in 1987.
- iii) Brian Lindsay said he did not go on when the demolition was in progress. He clarified in cross-examination that he had decided not to go on. He did not claim to have still used the north west corner.
- iv) Mrs Crawley when she went to visit the demolition site said that she was not herself going for recreational purposes but in order to help ensure that the asbestos treatment was being done properly.

She did not recall anyone else being on the site at the time she was there.

- v) Pauline Foster did not remember the demolition occurring although she remembered seeing a lorry with rubble. In cross-examination she said she did not go on to the rubble of the demolition. She said that she did not go on the new access road when it was being built and others did not do that.
- vi) Marilyn Phillips said that she kept away during the demolition because of the asbestos. She also said that before the demolition not so many were using the site. She said in re-examination that it took a little while after the demolition for dogs to walk on the demolition site.
- vii) Mrs King said that she did not recall seeing the demolition. She also said colourfully that she chose not to walk on the construction site because she said “who would want to walk on a building site”. This is compelling evidence about the unattractiveness of the entry of the site for recreation at this time. She did not suggest that she used the north west corner at this time. Her late suggestion in cross-examination that she walked from Old Park Wood to car park on Hill End Road does not suggest using the north west part for lawful sports and pastimes.
- viii) Mrs Carr again did not give evidence of walking in north west area when the demolition was occurring. She said she initially avoided the rubble but by spring could walk on the area.

7.19 Mr Agg gave evidence by way of a witness statement dated 28 May 2012. I give that witness statement more weight than other written evidence because it was written after Mr Agg had acted as advocate at

the Inquiry and so was very familiar with the issues. In addition Mr Agg conducted himself as an advocate with the highest possible standards and was clearly at all times trying to assist the Inquiry. In that characteristically fair statement he said that he would go from his home in Mount Pleasant from 1988 to the Church. This would involve “going via the hospital or going via the Medi Parc access gates (from a few months after they were in). It was often muddy going through the Hospital gate(point “R” Plan BS4) and I discovered that many people went via the new Medi-parc gates”. This is of course consistent with the pattern that emerges from the other users that the north west corner was not used during the demolition and construction period but rather became used later.

7.20 Fourthly at this time the access route which became widely used later was the site of the construction of the new gates. The photographs and the evidence of the objector’s witness leave me with no doubt that during the time of construction it would have been obvious to any reasonable user that the applicant was disputing and making use by this entrance contentious. There were in any event only two of the witnesses who claimed to have used this route Mrs Crawley who was visiting to check on the construction and so not recreational and Mrs Carr who’s use was like a footpath use and was not that frequent.

7.21 Fifthly the aerial photographs are consistent with the use of the application site for lawful sports and pastimes building up after the demolition and construction of the new access and not being by a significant number during this period. The aerial photograph taken on 10 July 1991³³ does not show evidence of significant use for recreation in the north west corner. The north west area is enlarged on page 517A. It is very noticeable how different this is from later aerial photographs when there is clear evidence of use and very obvious track. For

example the aerial photographs at 104 and 105 of the Red E2 are from 1999 and show very clear tracks in the north west corner. The aerial photograph from 1991 is similarly markedly different from the position in the aerial photographs from 2003³⁴ and 2006³⁵. It is true that the Aerial photograph from 1991 is very shortly before the demolition started. However no witness gave any evidence that the use picked up during the demolition and construction. In fact the opposite is likely of course to have been the case consistent with the evidence. Thus the photograph from July 1991 which is consistent with insignificant amount of use and in stark contrast to later periods supports the account given by witnesses that during the demolition/construction period there was an insignificant amount of use.

7.22 Sixthly the letters submitted as part of the planning process do not mention recreational use of the site as covered extensively in the evidence of Barrie Stanley which was not challenged factually at the Inquiry.

7.23 I do not find it necessary to make any conclusions about the signs in order to conclude that there was not user by a significant number in the period of demolition and construction in the area to the north west of the chestnut paling fence and the remainder of the application site not within the chestnut paling fence. Thus the extremely limited if any user of this part of the application site failed the *McAlpine* test mentioned above and was not a quality of user sufficient to pass the test approved in *Redcar* of being such amount and in such manner as would reasonably be regarded as being the assertion of a public right.

7.24 However there is one further point that makes the user even more limited and that is that I am satisfied on the evidence that on the

³³ Blue 517

³⁴ Red E2 97

balance of probabilities that there was a sign in the position shown on page 1133³⁶. This was on the route coming from the hospital to point R and into the site. I am satisfied from the evidence of Mr Sheppard and Mr Stanley that sign was in place by September 1991. I am also satisfied that the wording of it was as Mr Sheppard remembered as identical to the other sign close to Hill End Road. It accordingly said

“Anyone illegally entering or removing materials from this site will be prosecuted.”

- 7.25 A user of the site coming from the hospital to the application site ought to have known that the owner was objecting to and contesting his use of the site. That comes from a common sense reading of the words of this notice as recommended in ***Betterment*** in the Court of Appeal quoted above. Whilst there were not many notices in this period the user as I have found was limited and I find that this was proportionate to the user. Thus even if there was any use for recreation in this period some of it was contentious because it would have involved going past this sign which made it clear that the landowner was contesting the use. It is not necessary to rely on this use being contentious because even without this point there was not use by a significant number or a sufficient quality of use in this period September 1991 to January 1992

Interruption of user

- 7.26 Even if which I doubt there was a significant number using the site immediately before this period the period of demolition and construction was certainly an interruption of this user.
- 7.27 I recommend that this significant and substantial period of interruption is sufficient in itself to mean that the land cannot be registered.

³⁵ Ibid 96

³⁶ Blue

7.28 I am bolstered in this conclusion by the view reached by the High Court and upheld in the Court of Appeal in *Betterment*³⁷ when a 4 month interruption was found to be sufficient to stop the clock running. I have quoted the judgment of Patten LJ on this issue above. The length of time here is very similar being at least 4 months when the site was subject to demolition and construction of the new roadway. I am satisfied that for whole of that period, at the very least, that the statutory test was not being complied with and any recreational use was effectively interrupted. Thus any differences with the facts of *Betterment* are not material and it is highly persuasive that a very similar gap in this case should be found to be an interruption.

7.29 I give very little weight to the written evidence in this case. This is not just because the witnesses were not available for cross-examination but also because the level of detail provided in the written material was not sufficient to cover in any detail an interruption of the use for the construction. Thus there was generally a mismatch between what was put in the questionnaires and the evidence of those that can to the Inquiry. I do not find that this was because there was any attempt in the questionnaires to mislead.

THE PERIOD FEBRUARY 1992- JANUARY 1993

7.30 During this period I am satisfied that there was not use by a significant number of people from the locality or neighbourhood within the locality. It was not a sufficient quality of user to pass the statutory test.

7.31 I come to this view for the following reasons.

7.32 Firstly during this period there was a duty to maintain all the planted areas. This is set out in the approved specification for landscape soft

³⁷ *Betterment Taylor v Betterment Properties* (Weymouth) Ltd [2012] EWCA Civ 250 [2012] 2 P. & C.R. 3

works infrastructure.³⁸ This duty ran up to 12 months from practical completion which was up to January 1993. During this period Mr Ayres made monthly visits to the site. [§2.3 of witness statement] He expressly stated that during his site visits including in this period from practical completion to January 1993 that he did not see any unauthorised person on the site or any evidence of that. [paragraph 4.3] He said that he “never saw any evidence, for example after a week-end or first thing in the morning, that a trespass had occurred ..”. This was powerful evidence which stood up to cross-examination. It is also specifically related to this precise period because after January 1993 he did not visit the site. The difficulty with much of the evidence for the Applicant was that it was impossible for people to be precise as to when their use started.

7.33 Secondly during some of this period the temporary fencing between Y1 and R1 was in place. It is clearly possible to see temporary chestnut paling fencing in Mr Ayres set 4 photographs which he dated to March 1992. [witness statement 3.2 and 608-612] It is also clearly possible to see chestnut paling fencing in the photos on page 585 which was from the Development strategy submitted to the local planning authority in February 1992. I was provided helpfully with an enlarged copy of those photographs from the development strategy. I see those photographs as consistent with the fence from Y1 to R1 having remained in place. I accept the second witness statement of Mr Ayres [723M ff] in which he shows that photograph 1 on page 585 is consistent with the R1 Y1 fence being to the left of the photographer. On photograph 3 one would not expect to see the R1/Y1 fence because that would be to the right of the photograph.

7.34 Thus all those photographs are consistent with the R1/Y1 fence remaining in February/ March 1992. What they undoubtedly show is

³⁸ See paragraph 7.1 of B.Stanley and Appendix 43.

that the chestnut paling fencing generally was still there at this time. It is difficult to see why the fence that I have found was up between R1 and Y1 for the construction period would have been moved. It was part of the reserved matters application that it should have been erected in that location from R1 to Y1 as is set out in Mr Stanley's evidence at paragraph 6.3 and Appendix 14.

- 7.35 The chestnut paling fence from R1 to Y1 came down at some time during this period although it is impossible to be precise as to the exact time of this.
- 7.36 There is also evidence that in this period the gates were locked. The letter of 16 November 1992 at E 72 is evidence that the Hill End Road entrance was closed. The evidence of Mr Edwards orally was that at his last visit to the site in March 1992 the new gates were locked. Mr Mack also gave evidence that on his last visit to the site in March 1992 he also saw that the gates had been erected and locked [paragraph 23]
- 7.37 Thirdly the use that is revealed by the aerial photograph from March 1994 [blue 519] is extremely limited. This is by comparison with for example the aerial photograph from July 2006 where there are very obvious tracks all over the application site. It is true that the season is different but even in the winter had there been a significant use I would have expected to see tracks. It is quite clear on the aerial photograph of March 1994 where the fence had been. I take the view that the fence is not up then but where the fence was is revealed.
- 7.38 Fourthly the evidence of the applicants was that the use became greater over time. This is reflected in the closing submissions on behalf of the applicant for the period post March 1992 which say:

"..the use became greater as time went on. The land gradually became a wildlife haven and so new people became aware of it,"

- 7.39 Thus while a few of the witnesses for the applicant did mention that they used the application site during this period for example Mr Lindsey and Michelle Rogers. Michelle Rogers was able to date her use reasonably accurately as being in May 1992 by reference to it being the last outing before her son was unable to walk for 18 months.
- 7.40 Thus in totality during this period of February 1992 to January 1993 bearing in mind the persuasive evidence of Mr Ayres, the evidence of fencing for part of the period, the evidence of limited use in the March 1994 Aerial photograph and the general evidence that use built up from what I have found as a very low base in the period after 1992 I find that there was not use by a significant number of people in this period and an insufficient quality of user to pass the test in Redcar cited above.

JANUARY 1993 TO SEPTEMBER 1999

- 7.41 At some point in this period the use had built up to such a level that it was by a significant number of the inhabitants of the qualifying locality or neighbourhood. By the time of the aerial photograph said to have been taken on 9 September 1999³⁹ it is clear that there are very distinct paths consistent with the site being well used. This points to the use of the site being great and it being likely that as well as circular routes there were lawful sports and pastimes on the application site at this time.

³⁹ Page 104 Red E

7.42 It is clearly difficult to say exactly when the use built up to such a level as it was by a significant number of the qualifying locality or neighbourhood or be of such an amount and in such manner as would reasonably be regarded as being the assertion of a public right.

7.43 However on balance I find that the use by a significant number of such and amount and manner as could be reasonably regarded as the assertion of a right did not start until around the middle of 1998. I fully accept that there were some people who used the application site before but the picture from the witnesses that emerged was a use that built up over time.

7.44 The reason why find that it was not being used by the quality and number of users was not sufficient to pass the statutory test is for several reasons.

7.45 First in 1998 there was a full application to vary the main permission for the Medi Parc which is explained in the evidence of Barrie Stanley. There were 167 letters of response submitted as part of that planning application. Many of those letters are contained in the appendix 8 of blue bundle 1 at pages 169ff. Barrie Stanley wrote in his witness statement that:

“it appears that no-one suggested at any time that they enjoyed using the land or had access to it for recreation..”⁴⁰

7.46 The main issue that people raised was connected with the green belt and traffic. There was already a long planning history to the site and people may have felt that a recreational use of a private site was not a point of enormous significance in the context of this planning application. However the absence of any reference to people using the site in all of those letters does indicate that there was not a very

⁴⁰ Paragraph 3.12 page 737

widespread use. If a significant number of people were using the site for recreation I would have expected at least one resident to suggest that this was of value and there should be some recreational use on the site. I would not go as far as Barrie Stanley in saying it would be likely to be a matter of major significance in the planning process that people were using the site for what would be trespassory recreational use however it is a sufficiently reasonable point that I would have expected in so many letters to have references to such a use if it was by a significant number and in such a manner and amount as to be asserting a right. The absence of any reference at all in these letters in this context is powerful evidence that the build up had not been sufficient to amount to a significant number of user by spring of 1998 when those letters were written.

- 7.47 Secondly the aerial photograph of 25 January 1997 [blue 520] does not demonstrate anything like the use and level of paths that was apparent in later years. This by comparison with the later photograph of 1 July 2006 albeit in a different season shows markedly less use.
- 7.48 Thirdly there was conflicting evidence in this period as to exactly how people were entering the site. Some said that they used a stile and some said it was a kissing gate beside the main vehicular gate. The evidence of Mrs Foster was that it was a plank of wood that could have been put up by local people. The examination of the aerial photograph of January 1997 [1130-2] by Mr Stanley was that there was neither a stile or a kissing gate at that time. Mr Kenward thought there was a kissing gate when he moved to his present address in 1997. However Mrs Wane did not think that there was a kissing gate when she moved to Harefield in the same year but that it was put in soon afterwards. It is difficult to be precise about when the kissing gate was put in. It may have been around the time the main gates were welded in September 1998. This occurred according to Mrs Phillips' diary on 24 September

1998.[246G] Thus my conclusion is that it is highly unlikely that there was a very welcoming pedestrian access in January 1997 and the kissing was probably not in before 1998 although it is hard to be precise about that. This is consistent with their not being a significant number of users during this period until 1998.

THE PERIOD BETWEEN 2003-2007

7.49 The claim that is made by the Objector largely on the basis of Mr Donnellan's evidence is that there were repeated efforts to lock the site so use was by force in this period.

7.50 I do not advise rejecting on this basis. There may well have been some attempts to secure parts of the site. However I do not advise refusal on this basis for the following reasons.

- i) There were very many users of the site that used it without seeing any evidence of such attempts. For example Linda King, Mrs Carr and Tina Wade all used at this time without noticing any evidence of such attempts. In fact no witness who gave evidence did notice such attempts.
- ii) There was no effort to fence off the boundary with Old Park Wood which I have found at this time had numerous members of the public using it whether or not they actually had a right to use it.
- iii) Mr Donnellan and Mr Sheppard accepted that there was no effort to fence at point Y from the the Hillingdon Trail.

iv) There was clearly a considerable number of people using the site in July 2006 as can be seen on the aerial photograph on page 521.

7.51 Thus I do not think the user for this period was by force and I do not recommend the application is refused on this basis.

Richard Ground

30 November 2012

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