COMMONS ACT 2006, Section 15

CITY OF PLYMOUTH
(Registration Authority)

RE: LAND KNOWN AS NEWTON PLAYING FIELD,
KINGS TAMERTON,
PLYMOUTH

REPORT OF THE INSPECTOR
MR ALUN ALESBURY, M.A., Barrister at Law

into

AN APPLICATION TO REGISTER THE
ABOVE-NAMED AREA OF LAND

as a

TOWN OR VILLAGE GREEN

CONTENTS:

1. INTRODUCTION

1.1. I have been appointed by Plymouth City Council ("the Council"), in its capacity as Registration Authority, to consider and report on an application, officially noted as received by the Council on 26th August 2014, for the registration of an area of land known as the Newton Playing Field, Kings Tamerton (situated to the north of Newton Avenue, and south of Kings Tamerton Road), as a Town or Village Green under ***Section 15(3)*** of the ***Commons Act 2006***; and also on the objections which were submitted to that application. The application site is within the administrative area for which the Council is responsible, and is also, I understand, entirely within the freehold ownership of the Council.

1.2. The Council itself, in its capacity as registered freehold owner of the site concerned, made an objection to the application in this case, as did the Marine Academy Plymouth, which operates the school situated to the south of the application site, and Mr Derek Blade, the parent of a child at the Marine Academy. In addition, and as was discussed at the Inquiry which I held, a very large number of parents of pupils at the school had signed textually identical letters of objection to the application [which were also in fact identical to the text of Mr Blade's letter], which were presented as an Annex to the Objection from Marine Academy Plymouth.

1.3. It is important to record at this point that my instructions in relation to this matter have come from the City Council solely and exclusively in its capacity as Registration Authority under the ***Commons Act***. I have had no involvement with the Council in relation to this matter in its capacity as landowner, as local education authority, or indeed in any of its other capacities, other than by way of receiving evidence and submissions on the Council's behalf as an Objector to the application.

1.4. From the application and the material lodged in support of it, and from the objections received, it was clear that there appeared to be unresolved issues of fact, and quite possibly of law also, as between the positions of the parties on either side, which needed to be examined and considered further, before a decision on the application could properly be taken by the Registration Authority.

1.5. Accordingly I was appointed by the Registration Authority to hold a non-statutory Public Local Inquiry into the application generally, and to hear and consider all relevant existing and further evidence and submissions in support of the application, and on behalf of the Objectors. I had in the circumstances briefly outlined above already been provided with copies of the original application and the material which had been produced in support of it, the objections which had been made to it, and such further correspondence and exchanges as had taken place in writing to and from the parties. Save to the extent that any aspects of that early material may have been modified by the relevant parties in later material, or in the

context of the Public Inquiry, I have had regard to all of it in compiling my Report and recommendations.

2. THE APPLICANT AND APPLICATION

2.1. The Application Form itself appears to be dated (in handwriting) 6th April 2014; however the Statutory Declaration in support of it was dated 26th August 2014, and the Application Form was stamped as validly received by the Registration Authority on that same day (26th August 2014); this latter date is therefore the effective date of the application. It was made by Mrs Carole Ann Cook, of 267 Kings Tamerton Road, St Budeaux, Plymouth. Mrs Cook is therefore "the Applicant" for the purposes of this Report.

2.2. The application form indicated that the application was based on ***subsection (3)*** of ***Section 15*** of the ***Commons Act 2006***. It was said that the field (the application site) had been closed to use suddenly on 17th April 2014, and this was the reason given for the application being made under ***subsection (3)***. The application was supported by a number of letters, statements and documents (including photographs). A significant quantity of further written/documentary material was subsequently also provided by the Applicant, with a view to clarifying or supporting the application. The material to which I now refer was provided well before the issue of Directions for the Inquiry in this case, and indeed before the date of the publicity being given to the application, which led to the lodging of the objections which were made to it.

2.3. The Application Form as originally submitted was not clear as to the 'neighbourhood' or 'locality' on behalf of whose inhabitants the claim was being made. However the Applicant made it clear, in the material which she provided later (as mentioned in the previous paragraph), that the claim was made in respect of use by the inhabitants of the neighbourhood of Kings Tamerton, and she provided a map showing reasonably clearly the boundaries of that suggested neighbourhood.

2.4. As far as the application site itself was concerned, its intended boundaries were clearly shown on a map which accompanied the application. It is not quite rectangular in shape, and is in a somewhat elevated position in relation to its surroundings. It is not immediately adjacent to any public roads, being effectively 'behind' other property (including residential on two sides), although it is to an extent visible from various paths and other places to which the public appear to have access on foot.

2.5. I myself saw the site in November/December 2017. It is a flat, almost entirely grassy area, with some trees and bushes around parts of its perimeter. At the times when I saw it, it was almost wholly surrounded by wire 'lattice'-type fencing, but with a number of gaps through that fencing through which it could be easily accessed from outside – notably at a point in roughly the centre of its northern

boundary, in its south-east corner, and at various points along the western boundary.

3. THE OBJECTORS

3.1. I have already noted that Plymouth City Council, in its capacity as freehold owner of the application site, registered an objection to the application, as did Marine Academy Plymouth, who have a licence from the City Council to occupy the site. In the event, the City Council (as Objector) and Marine Academy Plymouth were jointly represented at the Inquiry which I held. They will be referred to by me as "***the Principal Objectors***".

3.2. I have already noted also that effectively identical written objections to the application were also submitted by Mr Derek Blade, and (via the school) several hundreds of other parents (I was told the number was 383) with children at Marine Academy Plymouth. I have read and considered the content of this multiple written objection, and (insofar as it raises matters relevant to ***Section 15*** of the ***Commons Act 2006***) have had regard to it (and the fact that large numbers of people have subscribed to the views expressed in it), in reaching my overall conclusions and recommendations. It does not however raise any substantial points relevant to the ***Commons Act*** which add anything to the case made on behalf of the Council and Marine Academy Plymouth, and I do not consider these objections separately in this Report. In the event none of these other objectors (than the Council as Objector, and Marine Academy Plymouth) participated in the Inquiry which I was appointed to hold.

4. DIRECTIONS

4.1. As already briefly noted above, once the Registration Authority had decided that a local Inquiry should be held into the application, and the objection(s) to it, it duly issued Directions to the parties, drafted by me, as to procedural matters. Matters raised in the Directions included the exchange before the Inquiry of additional written and documentary material, such as any further statements of evidence, case summaries, legal authorities, etc. The spirit of these procedural Directions was broadly speaking observed by the parties, and no material issues arose from them, so it is unnecessary to comment on them any further.

4.2. I note briefly at this point that, as well as dealing with procedural matters, the Directions in this case also asked the parties to consider addressing certain specific questions which appeared likely to arise at the Inquiry (as well as presenting their own intended evidence and submissions in the normal way). I consider the parties' evidence and submissions in relation to these particular matters (along with all the other evidence and submissions) in the appropriate later sections of this Report.

5. SITE VISITS

5.1. As I informed parties at the Inquiry, I had the opportunity on the day before the Inquiry commenced, 27th November 2017, to see to the application site, unaccompanied, and in fine weather, from several of the gaps in its fencing which I have referred to earlier. I also observed the surrounding area generally.

5.2. After all the evidence to the Inquiry had been heard, I made a formal site visit to the site on 1st December 2017, accompanied by representatives of the Applicant's and the Principal Objectors' sides. In the course of doing so, I was again able to observe some of the surrounding area more generally, and we walked around some of the boundary of the area which the Applicant had suggested should be regarded as the "neighbourhood" for the purposes of the application.

6. THE INQUIRY

6.1. The Inquiry was held at the Council House, Armada Way, Plymouth, over four days, on 28th, 29th, and 30th November, and 1st December 2017.

6.2. At the Inquiry submissions were made on behalf of both the Applicant and the Principal Objectors, and oral evidence was heard from witnesses on behalf of both sides, and subjected to cross-examination, and questions from me as appropriate. With the agreement of the parties participating in the Inquiry, all of the oral evidence was heard on oath, or solemn affirmation.

Post-Inquiry Submissions

6.3. The normal expectation, after a public local Inquiry such as the one I held in this case, would of course be that once the Inquiry has finished, I as Inspector would receive no further evidence or submissions from the parties, other than in exceptional or unusual circumstances.

6.4. However in this particular case a great deal of weight was placed by the Principal Objectors, in their joint case as presented to the Inquiry, on the principle of 'statutory incompatibility', which (for reasons which will be considered substantively later in this Report) it was argued lent very great force to those objections. The position as at the time when the Inquiry was held in this case was that there were 'in the public domain' two (apparently) somewhat inconsistent High Court judgments (in completely separate cases) which had been handed down as to the application of this principle to ***Commons Act (Section 15)*** cases. Appeals in both of those cases had been heard together in the Court of Appeal, in early October 2017, but the judgment following that joint hearing had been reserved, and not yet handed down by the time my Inquiry in Plymouth ended.

6.5. The principal parties to this present (Newton Playing Field) dispute, and I myself, agreed that the Court of Appeal's impending judgment was likely to be highly

relevant to the resolution of at least this particular aspect of the case here. Accordingly it was agreed by me as Inspector with the representatives of the principal parties in this case that I would not issue my Report and recommendations until after the Court of Appeal's judgment had been delivered, and the opportunity given (in a manner which would be fair and just to all parties) to the parties in this dispute to make submissions or representations as to the effect of the Judgment on their cases and arguments, and on those of their opponents.

6.6. Therefore (and as discussed with the parties on the last day of the Inquiry here) resolution of these proceedings has needed to await the Court of Appeal's judgment. In the event that judgment was handed down on 12th April 2018, as ***R(Lancashire County Council) v Secretary of State; R(NHS Property Services Ltd), and Surrey County Council v Timothy Jones*** [2018] EWCA Civ 721.

6.7. Upon receipt of a copy of that judgment, I took immediate steps to circulate it to the principal parties in this present case, with some Supplementary Directions as to the order and procedure by which any further submissions or representations, in the light of that judgment, should be made. In this Report, therefore, I take into account the recent Court of Appeal judgment which I have just referred to, and the post-inquiry submissions etc. in the light of it which have been duly received from the principal parties.

6.8. In the event, during the period when submissions were being exchanged pursuant to the Supplementary Directions, another High Court judgment was handed down, in another completely separate case, which again dealt with the topic of 'statutory incompatibility', and also concerned facts which included open land (with a history of playing field use) wanted for exclusive use by a school. That case was ***R (Cotham School) v Bristol City Council*** [2018] EWHC 1022 (Admin). In the circumstances, I invited the principal parties in the present (Newton Field, Plymouth) case to add to their new submissions anything they might wish to in relation to the significance (if any) of this latest judgment to the issues in the present dispute. This the principal parties duly did, and I note those further submissions also, later in this Report.

6.9. Reverting now (briefly) to the material (evidence and argument) which had emerged in the normal way, before the end of the Inquiry, I would say this: as well as the oral evidence, and matters specifically raised at the Inquiry, I have had regard in producing my Report to all of the written and documentary material submitted by the parties, including the material submitted in the earlier stages of the process, some of which I have referred to already above. I report on the evidence given to the Inquiry, and the submissions of the parties, in the following sections of this Report, before setting out my conclusions and recommendation.

7. THE CASE FOR THE APPLICANT – EVIDENCE

Approach to the Evidence

7.1. As I have noted above, the original Application in this case was supported and supplemented by a number of documents, including statements from individuals.

7.2. Additional written or documentary material was then submitted to the Registration Authority on behalf of the Applicant [and also the Principal and other Objectors], and then further such material was submitted in the run-up to the Inquiry, in accordance with the Directions which had been issued. Some of this consisted of written statements from witnesses who would in due course give evidence at the Inquiry itself.

7.3. I have read all of this material, including documents and photographs, with which I was provided, and have taken it all into account in forming the views which I have come to on the totality of the evidence.

7.4. To the extent that there were factual matters in dispute, and as was mentioned in the pre-Inquiry Directions, and at the Inquiry itself, more weight will inevitably be accorded to evidence which is given in person by a witness, who is then subject to cross-examination and questions from me, than will be the case for mere written statements, etc., where there is no opportunity for challenge or questioning of the author.

7.5. With all of these considerations in mind, I do not think it is generally necessary for me specifically to summarise in this Report such evidence as was contained in the statements, etc. by individuals who gave no oral evidence.

7.6. In any event all of the written and documentary material I have referred to is available to the Registration Authority as supplementary background material to this Report, and may be referred to as necessary.

The Oral Evidence for the Applicant

7.7. ***Mrs Jill Atwill*** lives at 49 Telford Crescent, Kings Tamerton, Plymouth. She moved there in November 1987; she then had one child aged 3. When he started school in 1991 at Plaistow Hill, and later at St Budeaux Foundation School, they used to walk across the field (the application site) if it was not raining, as her son could safely run about. She had two more children, born in 1989 and 1991, and did the same with them.

7.8. As her two boys got older they used to go up to the field and play football with their school friends who lived locally. She would often take her daughter up to the field to meet them when it was time for them to come home. As the children got older the boys played for the local football teams. She could remember one son

playing up there on Sunday mornings for a local team in his early 20s. They would go and watch him, along with lots of other local people.

7.9. More recently she has taken her grandson up there for a kick around with a ball. It is lovely to see another generation using the field.

7.10. She has never had to ask permission to use the field, but they were unable to use the field for a short time when it was fenced off.

7.11. The years she would have used the field for her own children were mainly between 1991 and 2001. Then she would be using the field for her grandchild between 2010 and 2014.

7.12. There are always other people about when she goes to the field. They would be playing or walking dogs.

7.13. *In cross-examination* Mrs Atwill agreed that she cannot see the field from her house. She only sees it when she gets there. Between the main periods of use with her own children, and the later period of use with her grandchildren, she did not use the field herself much, other than to cross it from time to time. She would also use the field herself on nice sunny days when it was not muddy.

7.14. She would normally go into the field from an access point in its south-east corner (generally referred to at the Inquiry as 'point B') and then she would typically cross to a way out towards the north of the western side ('point E') when her children were going to Plaistow school, or an exit in the northern boundary ('point A') when her children were at St Budeaux Foundation. When she was on those journeys to school she would be on the field in order to cross it.

7.15. When shown a photograph of a defaced sign affixed to one of the fences round the site, she said she had never seen this sign, at point B, or E or A. She had never seen any signs around the site.

7.16. She did not walk a dog on the site; she does not have a dog. She had a general understanding that the field was for the benefit of the community. That understanding came just because of the people who are up there, neighbours and so forth. It was just a place that local people could go to. It had been like that ever since she moved into the area in 1987.

7.17. She did not recall any ground works taking place on the land in around 1990 or 1991. She did not recall any access ways being made into the field, nor that the land had had prefab houses on it at one stage, nor its having been very rough at one time.

7.18. Her son had played football for several different, teams but she could not say which. The pitch on the field had been his home pitch. They used to play organised matches on Sunday mornings.

7.19. She agreed that she had not mentioned in her statement any fetes or fireworks or bonfires on the site.

7.20. Her grandson has now moved away, but when he was living in her house she would take him up there about once a week. Or she would take him via the land when he went to Plaistow School and the nursery there. Her son still lives in the area but he is in the Navy, so he is away a good deal.

7.21. When the field was fenced off in 2014 she did see some signs, and never went into the site at that time. At that time she would have seen signs saying that the grounds are private property, and that there was no unauthorised entry, and no dog walking to take place there. She knew that the ground had been fenced off at that time, and did not go there.

7.22. *In re-examination* Mrs Atwill agreed that two signs are visible in a photograph taken from the bottom of the steps just outside the access at point B. However those signs were not very clear, and she did not stop to read them. She did remember seeing the later signs which were put up when the field was fenced off in 2014. Those were new signs and were clear and *"in your face"*, especially when not vandalised.

7.23. ***Mrs Leah Symons*** lives as 79 Cayley Way, Kings Tamerton, Plymouth. She had lived in her present home for 10 years. Newton Playing Field is immediately behind her back garden.

7.24. She has three children, who were aged 10, 8 and 5. Her youngest child is autistic.

7.25. She uses the field regularly, as it is a safe place for her youngest child to play, and for the rest of her children because it is the only flat field around, and is surrounded by a hedge. They play ball, play in the sandpit, run around and generally do what children enjoy most, which is playing. She has always used the field since she has lived at her address, and had never asked to use it. She saw other people using the field, and did the same as they did.

7.26. She would see most of the children playing up there who her own children go to school with. They would all play up there. There would also be dog walkers up there. She can see the sandpit from her back garden. When school children are using the field she has to bring her own children in, because quite often there is smoking or swearing going on.

7.27. She can see the whole field from her daughter's bedroom. She can also see it from her kitchen and her conservatory, and can hear the children on the field.

7.28. *In cross-examination* Mrs Symons said that she would typically go into the site via the northern access (point A), and would also normally leave that way.

7.29. She confirmed that she had lived in her present home since 2007. If there were any un-vandalised signs around the site in 2007, she did not see them. They might have been there, but she never saw them. She used the field regularly, most weekends if they were not playing football there. Her own back garden is relatively small. She and her family saw people out there using the field, and they used the field in a similar way. Access A was a convenient and safe access to the field.

7.30. ***Mrs Rachel Maunder*** lives at 5 Hargreaves Close, Kings Tamerton, Plymouth.

7.31. She and her family moved into 10 Hargreaves Place in April 1998. At that time they had a dog that they walked on the field, and they also used the field as a short cut to the main road. In January 2004 they moved to 5 Hargreaves Close, and still used the field daily to exercise their dog. Their first son was born in January 2005. When he was a toddler they used the field to play football with him. He could run safely around, and they also used the field for their second dog.

7.32. She still uses the field to this day for dog walking, playing football with her three boys, now aged 12, 11 and 5. The youngest one had ADHD autism, so the field is perfect for him because he can run, jump, play football and be safe in this enclosed flat field. The field is a lifeline as they have a very small garden of their own, with not enough space for her son to run around in.

7.33. Her two older boys go up to the field a lot, to visit their friends for a kick around. They cannot play on the estate as there are too many cars around.

7.34. They have never asked permission to use the field or been told they had to. Her children attend either the secondary or primary parts of the Marine Academy.

7.35. The field is used a lot by dog walkers, children and families. It is a great service to the community. Children are safe in the field and cause no harm to anyone. The field is also used for running by adults, and for picnics by families in the summer.

7.36. *In cross-examination* Mrs Maunder said that she would generally access the field in the south-east corner (point B), but would also enter at either points A or E (in the north side, or towards the north of the west side).

7.37. She accepted that a photograph (produced by Mr Gillhespy) from just outside access point B had been taken in 2010, and did show that there were some signs near the access. However she had never noticed that there were any signs there. Neither had she noticed any signs, similar or otherwise, near access points A or E. She had never seen any vandalised signs either.

7.38. She used to see people using the field regularly. It was not gated off. Indeed it was because she had seen people there that she had started using the field for her own family. There was fencing around the field, but open entries to it.

7.39. She had not been around in the area in 1990/91. She and her family used the field for dog walking for the whole time that they have lived in the area. They have always had a dog. She would use the field every day, except when it was too muddy or splashy. However she would not use the field when the school was up there using it for games, or when it was being used for organised football.

7.40. The field is used a lot by other dog walkers, and by children, and by families. She sees the field when she uses it. One might go up there and see half a dozen dog walkers, or one might be on one's own. Access to the field has always been free, and in her view for the benefit of the community. She did not consider that she was trespassing. No-one had ever stopped her, nor had the field been locked or gated.

7.41. She and her family had had picnics up there in the summer period. They might do that once or maybe twice a week at a push, during the summer holiday period.

7.42. ***Mr Andrew Batten*** lives at 67 Kings Tamerton Road, Kings Tamerton, Plymouth. He had been a resident of Kings Tamerton for more than 50 years, and a regular user of the application site.

7.43. When the field was first laid out, he represented the Kings Tamerton Community Association Football Club, who regularly used the field on a Saturday afternoon. First there was one team and then two. They used to rent facilities within the school for changing and showering, in accordance with arrangements between the Plymouth & District League and the County Association. That was for several years, up until about 1998. He personally had belonged to both a football and a cricket team. As far as the cricket team's use was concerned, he was not aware of that team having to pay anything to the school. The cricket team used the field during the summer evenings, and played within the Plymouth & District Cricket League.

7.44. The local Community Centre then gave up playing football on a Saturday, and began to use the playing field regularly on a Sunday morning. That use was continual up to about 2014.

7.45. His family and he also used the field to take some daily exercise, such as casual walks around the perimeter fence within the field. His son had also learned to ride a bicycle up there. In 1999 he and many other local residents witnessed a total eclipse of the sun from there. It was a fantastic viewpoint. He has not got a large garden with his own house.

7.46. He had never knowingly seen any signs up there, except that possibly there might have been a sign somewhere near the Community Centre.

7.47. He had never asked for permission to access the field, and was always under the impression that it belonged to the school, firstly Tamarside School and then Marine Academy. Access was always taken through the many open access points within the boundary fence, until it was fenced off in 2014 to prevent access. Until that point he had never been denied access.

7.48. He had believed that the land was part of a deal or swap between Devon County Council and Plymouth City Council. He was still unsure as to who now owns the land.

7.49. *In cross-examination* Mr Batten said that the football team had started in 1989, playing on a rented pitch belonging to the Council. But when the field on the application site became available, it was ideal so they asked to use this field. The Vice-Chairman of Devon County Council at the time had been the Chairman of the local football league. He (Mr Batten) had started off playing for that team, and then became the General Secretary, and the person who put up nets, and washed the kit and so forth. He had been a member of the Community Association Football Club until 2007. That he had felt personally was the time for him to stop his involvement with football, so he had not been involved since then.

7.50. His understanding was that the club had been paying for changing facilities and showers etc., *not* for use of the pitch on the application site itself.

7.51. He accepted that a letter of 23rd August 2014, written on behalf of the Kings Tamerton Community Association, had stated that every entrance to the site was originally accompanied by a sign saying that the playing field was for the benefit of the community, and asking people not to let their dogs foul it. That letter had also asserted that an agreement had been reached in the past which enabled football matches to be played on the field in exchange for pitch rents, which helped the school with the upkeep of the pitch. He accepted that this letter appeared to be from proper officers of the Association. However he personally had been under the impression that the payment had been for the use of the facilities, not the pitch.

7.52. As far as he was aware, the pitch was never used by local people as a rugby pitch, although he accepted that the school did use it during the week for rugby. He

thought that the rugby posts had come down when the school changed its name from Kings Tamerton to Tamarside.

7.53. The sign which he thought he had seen near the Community Centre was a very faded one.

7.54. When he was shown a photograph of a heavily vandalised blue sign, he thought he knew where the sign was, but very seldom uses the relevant entrance point. On reflection, he said that he thought there had been signs at the other entrances. but saying that the land was for community use. Indeed he personally had written a letter to the Plymouth Herald in May 2014, mentioning that there had been signs around the site, indicating that the site was not only for school use, but for use by members of the community such as local school children to play on.

7.55. The normal gate that he and fellow footballers would use to get into the field from the changing facilities was the one in the south-west corner (point C), but they also used point E, further up the western side. The gateway at point B was also used quite a lot to retrieve the ball when it went out there. He did see signs around the site, and knew that they were there.

7.56. He thought that the site had been used for cricket up to about 1998 or so. Then local children set fire to the cricket strip, and it was not further used after that. The cricketing equipment had been stored at the Community Centre.

7.57. The eclipse in 1999 was a one-off occasion. The site is just about the highest point in Plymouth, and there were fireworks and the likes on that occasion. He had gone up there for the celebrations.

7.58. At other times they would walk daily around the inside perimeter in a loop, except when the weather was inclement.

7.59. *In re-examination* Mr Batten said that he had seen a neighbour of his jogging around the land, and lots of local residents would come up and watch games being played there. Local families would also go up there together, as it was the only local open space really.

7.60. ***Mrs Pat Oram*** lives at 9 Newton Gardens, Kings Tamerton, Plymouth. She had lived there for 17 years.

7.61. She had not been well when she first came to live in her house. The doctor had said she needed to exercise gently, so Newton Playing Field was perfect, being flat and close to where she lives. Virtually everywhere else around is hilly.

7.62. She used to go up there twice a day. She stopped using the field for that exercise 8 years ago, but she still often uses it as a short cut, about twice a week, to catch the bus.

7.63. When she used the field she would always see youngsters playing football. Some used to race up to the long jump and land on the sand there, and others would be throwing balls around. She had never asked permission to use the field. She saw many other people using it, and so automatically used it as well.

7.64. *In cross-examination* Mrs Oram said that she had moved to this area in 2000, and had stopped using the field herself for exercise in about 2009. Her house is to the south-east of the application site, and she now only uses the field for a short cut. She would go in at point B and walk around the edge of the field and then out at point B again, at the time when she was using it for exercise. Her short cut is now from point B (south-east) to point A (north).

7.65. When shown a photograph of point B with some signs visible in it, she said that she never took notice of the signs. She could not recall if she had seen them. Most likely she did see them, but decided not to take any notice.

7.66. When using the field she would always see youngsters there, playing football or just playing. However she never used to go there when the school was playing football. She would tend to go up there either early or late in the day.

7.67. *In re-examination* she confirmed that on her visits to the field she would normally see youngsters playing there, and sometimes see them in the sandpit playing.

7.68. ***Mrs Christine Blair*** lives at 19 Telford Crescent, Plymouth. She had moved back into the area in August 2005, at her present address. Previously she had lived at 95 Kings Tamerton Road with her parents, from 1973 to 1974, when she got married.

7.69. Even when she lived away, she constantly visited her parents, and her son and daughter went to Plaistow Hill and St Budeaux Foundation Schools, and then on to Tamarside School. In other words, they went to various schools within Kings Tamerton. Thus she and her children were always in the area. Her children had used the field between 1979 and 1996. They would cut across it to go to school, and to meet their friends.

7.70. Nowadays she has two rescue dogs which she walks and plays ball games with. She does that in the Newton Playing Field, mostly in the evenings out of school hours. She always cleans up after her dogs.

7.71. She witnesses many activities by others during those times, such as parents teaching children to ride a bike, fathers and children practising cricket or football,

people with young children playing in the sandpit, boys and girls sitting on the grass just chatting etc. She also sees older people walking their dogs, some of them with walking aids, and all in a safe environment free from traffic. She has never asked permission to use the field.

7.72. *In cross-examination* Mrs Blair said that in 2000 she had moved to her present address from the top of Victoria Road. She had to move then because of divorce. She accepted that Victoria Road, which is some distance away to the west, is outside the neighbourhood being claimed in respect of this application. In Victoria Road she had lived with her son and daughter and her then husband. She personally had started to use the field in March 2015.

7.73. ***Mrs Sarah Buckley-May*** lives at 21 Telford Crescent, Kings Tamerton, Plymouth. She moved to Telford Crescent in June 1990 with her daughter aged 8½, who attended Plaistow Hill Primary School. To take her to school she would cross the field near the Community Centre.

7.74. In 1991 her daughter moved to St Budeaux Foundation School, and they would take the same route to that school. After picking her daughter up from school they would spend time in Newton Field, playing racing, football, cricket or rounders, or other games, with other children. They never asked permission to use the field.

7.75. After her daughter left that school, her grandson who is now aged 21 went to Plaistow Hill Primary School, and then St Budeaux Foundation School. She would take him on the same route across the field, as both his parents were working. He was followed by his younger sister, and it was again Mrs Buckley-May's duty to take and collect her from school up until September 2017.

7.76. Mrs Buckley-May's other duties during that time were as a steward at the Kings Tamerton Community Centre. While she was employed there they had two football teams and a cricket team, and after matches they used the Community Centre for changing facilities and socialising.

7.77. From 1985 through to 1999 the Community Centre also used the playing field for fetes and table-top sales. From 1992 to 2012 local residents had used the field to view fireworks let off at the Royal Citadel further down into the city. There were also firework competitions held off Plymouth Hoe in August every year, and local residents would use the viewpoint in the field to watch them as well. No permission was ever asked for any of these activities.

7.78. In 2014 the field was fenced off with no notification, which meant treble the distance for pupils attending the infant and junior schools. The community sports teams also lost the facilities of the field. This affected the Community Centre, and the supporters of those teams who lived locally. The Community Centre's use of

the field for fetes and fun days was also lost. Prior to that the field had been a safe place for children to play, being enclosed and away from traffic.

7.79. *In cross-examination* Mrs Buckley-May said that her shortcut route across the site with her children or grandchildren had generally been from point B (south-east) to point A (north side), or she would go from point B to point E (north-west) when the children were at Plaistow School. She had never had a dog.

7.80. She thought she had seen signs at entry point B, many years ago, but they became so overgrown that none of the signs registered with her. She would first have seen signs there back in 1991, she thought. Prior to 1990 she had lived in another part of Plymouth, but her daughter had been looked after by a child-minder in Kings Tamerton Road. She herself had worked in the Kings Tamerton Community Centre at that time. That meant that she did recall the time when works had taken place on the site.

7.81. She could recall seeing signs at point B (south-east) and point A (north side). She did not tend to use the steps or the ramp in the south-western corner of the site (point C). Her recollection was that the signs had been headed *"Devon County Council"*. They did not say that people could not use the field. They had said that it was for community use, according to her recollection. The land there was for the local people's benefit. She had not considered that she was trespassing when she used the site, and hundreds of other local people used it in the same way.

7.82. Back in the early days the Association used to have football teams. They used to allow them to park in the Community Association carpark. No-one ever said that teams should not use the field. People were generally allowed to use the field.

7.83. She thought that the fetes and table-top sales on the site had taken place up to about 1993 or 1994. They were run by the Community Association. She believed that they were stopped because the Head Teacher at the time said that the school car park would be open on Saturdays and Sundays, and so the Association car park was then used to hold the fetes on, while people visiting it could use the school car park. The table-top sales were held in seasons when the weather was likely to be satisfactory.

7.84. *In re-examination* Mrs Buckley-May said that she had last seen any signs around the site many years ago, because they all became overgrown. She thought she had last seen a readable sign some 12 years or more ago. She had been amazed to see photographs of signs with graffiti on them, because she had never seen any graffiti on the signs she recalled. A sign mentioning the name of *"Tamarside School"* must be very old, she thought, because the name of the school changed years ago.

7.85. She had once been told by workmen on the site that the entrances into the site had been put there to enable local people to use the site, and the sandpit.

7.86. ***Mr Adrian Down*** lives at 51 Cayley Way, Kings Tamerton, Plymouth. He had moved into the Kings Tamerton area with his family in the mid 1960s. They had lived in a prefab at the top of Weston Mill Road. Then in the early 1970s his family moved to a house in Trevithick Road, directly opposite the entrance to Kings Tamerton Secondary Modern School, as it was known at that time. The buildings of the school were much smaller then than now, but it was the school that has now become the Marine Academy.

7.87. He has fond memories of growing up in the area. There was plenty of room to play, a park with swings and a slide, and derelict land to explore, which had previously been a prefab estate. By that he was referring to the present application site.

7.88. He was educated at Plaistow Hill Primary School, followed by St Budeaux Foundation and then Kings Tamerton Secondary School, which he left in 1979.

7.89. Over the years since the late 1980s the area has changed, with new housing estates, one of which he currently lives in. The Kings Tamerton Community Centre had also opened. The biggest development had been the expansion of Marine Academy.

7.90. As for the field on the application site, the football playing field there is now the only area with space for children to play. Since moving to their current address in 2000, he had used the field regularly for his children to play, and has enjoyed spending time with his family there. He had also previously played football there for the Kings Tamerton Community football team, in the early 1990s.

7.91. His family currently have access to the field, and he believes that needs to continue. His own property backs onto the field. There had been a recent issue with some trees there which were overgrowing his land, and there was some question as to the responsibility for them, as between the school and Plymouth Council.

7.92. He had on previous occasions challenged notices about proposed changes on the present application site. There had been for example a proposal for a floodlit all-weather pitch, which was opposed because it was too close to people's houses. There had not been proper information given out about the proposals.

7.93. He had used the field ever since 2000, when he moved into Cayley Way with his own young children. The family had never had dogs or cats. They used the field for football, and his children played that and other games there. They had seen other people having picnics or walking dogs or playing games on the field. He can see the field from his own house, but had not noticed the vandalised sign over on

the west side of the site. He might have seen a sign mentioning the name Tamarside over near the Community Centre, but he was not sure.

7.94. *In cross-examination* Mr Down said that before 2000 he had moved away from his parents' home in 1991. However he had always lived fairly locally. Kings Tamerton had always been home for him.

7.95. He would typically enter into the site via point B in order to play football. As for signs near that access, he could not say that he had ever taken any notice of them. There had always been open access, and no-one to tell him or his family not to use the land. He had played football there with his two sons. He is a shift worker at the dockyard, and goes onto the application site field a lot. It is basically their back yard. When leaves are on the trees his house is a bit more secluded from the field than during the winter.

7.96. ***Mr Tom Martyn*** lives at 40 Peters Park Close, St Budeaux, Plymouth. He said that the present application site has always been a community field, and is separate from the Marine Academy grounds, with a concrete road running between. It has always been like that since he had moved to his present address in 1992, having left the armed forces in that year. In 1992 he joined as a member of the Kings Tamerton Community Centre.

7.97. Plymouth Council had never stopped the residents of Kings Tamerton from using the application site, and it was his belief that this was a community field for the use of Kings Tamerton residents, and those from the surrounding areas. He had never sought permission to use it, and is unaware of anyone who had. This field was and always had been used for recreational activities such as football, charity fundraising, table-top sales, parties etc. He and his late wife used to go to the field for fetes organised by the Community Centre, and they also watched the community football club play most Sunday mornings, from the time they moved to their address until the field was closed off in 2014.

7.98. Their son played for Kings Tamerton Community Association Football Club on and off between 1996 and 2004. When they watched him play there, there were always many children and parents using the field for play and recreation. Kings Tamerton Community Centre has lost a great deal of revenue due to the loss of its football club, and recreational activities and opportunities of many types.

7.99. The football teams had left and given up because they were stopped from using this field. The football team use had mostly been at weekends, but occasionally on Wednesdays as well. Since the football had stopped and the teams been disbanded, he personally hardly ever goes to the site.

7.100. He did not recall seeing signs around the site, except for a Tamarside Community College sign, although he had not seen that for 5 to 10 years.

7.101. *In cross-examination* Mr Martyn confirmed that he had been in his present house since 1992. Peters Park Close is outside the boundary that had been shown on the 'neighbourhood' map accompanying the application. However there is no such boundary in reality. People could certainly be members of the Club and the Community Association from where he lived. For example his wife's mother lived considerably further away, but they were still members of the Community Association.

7.102. He would typically enter the site either in the south-west corner (point C), or at point D in the western boundary. He did not recall seeing a sign along the western side which had been covered in graffiti.

7.103. He and is family went to fetes held by the Community Centre. The Centre would use whatever space was available. They would sometimes use their own car park for the tables and chairs. He did not think that they had used the application site field for such events after about 1994.

7.104. ***Mr Robert Cain*** lives at 41 Telford Crescent, Kings Tamerton, Plymouth. He had moved there in 1998 with his current partner, along with her two daughters.

7.105. They all regularly use the playing field for family games such as rounders, cricket and football, as well as walking their dog. They always pick up any excrement after their dog. The field is important for local children's health and wellbeing. He and his family had never needed permission or consent to enter the field, and they have never been asked to leave it. They have never been refused access. They as a family have used the playing field from 1998 right through to the time of the Inquiry. When using the field he saw other people using it as well, people with dogs, children playing and general activities.

7.106. As for when the field was closed off, he could remember that happening, and some signs in association with that. That happened in 2014. However since 2014 he has still accessed the site.

7.107. More people would use the site during the summer holidays period. He had not seen the heavily graffitied blue signs which people had referred to. He had seen a sign which mentioned Tamarside Community College.

7.108. *In cross-examination* Mr Cain said that he would typically go into the site and out again at point B (the south-east corner). He had not noticed any sign near that access. He had lived there for 19 years, but he had never paid any attention to or noticed any such sign. He believed that the field belonged to Plymouth City Council, and he never needed consent to enter the field. He had understood that

the Council's field was for everyone's use. This was partly because he saw everyone else there using it.

7.109. His assumption was that the Council had put the site there for the use of local people, and therefore he would never have bothered to look for any signs. He understood that he already had permission from the Council to use the site, which was in the middle of many houses.

7.110. He had inherited a dog in 2014, but had not had a dog before that.

7.111. When he had first moved in, he went up to the field with his partner's daughters. He had done that for about 2 years. He also used to run around the field himself about twice a week for exercise.

7.112. *In re-examination* Mr Cain said that he had used the field because he saw other people using the field, and assumed he could use it as well. He had never seen the blue sign that had been referred to. He had seen another sign, but it was not in such good condition. That was the sign which mentioned Tamarside Community College, and said that the area was used by children, and asked people not to let their dogs foul the field.

7.113. *To me* Mr Cain said that he most commonly used to use the field with the girls during the summer months, but his own personal use had been throughout the year. He would tend to go there either early or late in the day, in other words before or after work. He would not typically use the field on Saturdays when lads were there playing football, and he would never interfere with school activities on the land. In his view between Monday and Friday it is a school ground, but after the school is out it is open to use.

7.114. ***Miss Tracy Ruffles*** lives at 261 Kings Tamerton Road, Plymouth. She had started using the field 14 years ago for walking her dogs. It was good for her mental health and for exercise. At that time her parents had lived at 261 Kings Tamerton Road. It was convenient for her to use the field then, straight from work. She would see other dog walkers, and children practising cricket and riding bikes.

7.115. The Church of England Primary School across the road from her used to walk the schoolchildren across Kings Tamerton Road and then through a car park and into this field. What they did from then on she did not know, but a class full of children with their teacher would regularly walk into the field, until the field was shut off in 2014.

7.116. The Community Centre used to organise fetes in the field, with races for children and fun things, like an old fashioned village green fete.

7.117. She personally moved into 261 Kings Tamerton Road as her own house 6 years ago, from another address in the town. She had stopped walking dogs on the field when the last dog died shortly after she moved in, but living next to the field she still knows what goes on there. All the time she has used the field she has never asked anyone for permission to use it. She had seen other people using it, and so did the same.

7.118. Her property backs onto the field. She is a keen gardener, so she is out in her garden a lot. She sees and hears children playing on the site, riding bikes, parents pushing buggies etc. She has seen teachers come into the field with groups of children. The land had been blocked off in 2014, with no consideration for anyone.

7.119. *In cross-examination* Miss Ruffles confirmed that she had moved to her present house 6 years ago, and that her dog had died shortly afterwards. Her parents had walked her dogs on the land before that because she was out working. It was a few months after she moved in that her last dog died. Her house is very close to the access point known as A (north side of site).

7.120. She had never seen a blue sign on the fencing of the site with graffiti on it. She had never seen any sign near entrance A.

7.121. The field used to be used for fetes and table-top sales and the like, and then more recently those events had been held in the Community Association carpark. She thought that move had happened in about 1995. She had gone onto the application site to a fete on one occasion, she thought.

7.122. As for children playing cricket or riding bikes on the site, she would tend to see that in the evenings or at weekends, while visiting her parents' house. One would typically see more than one person up there at any one time. She still does walk across the site in order to go and see friends. She had seen people flying kites on the site on one occasion.

7.123. *In re-examination* Miss Ruffles said that the person who she recalled seeing flying a kite there was Mrs Cook the Applicant. She also recalled an occasion when she had gone out to help a dog which had been hurt on the site. It is possible to see some of the field from her house.

7.124. ***Mrs Mary Hard*** lives at 23 Telford Crescent, Kings Tamerton, Plymouth. She has lived in Telford Crescent since 1987. She had walked across the disputed land before it was a playing field, taking her children to Plaistow Hill Infants School and the St Budeaux Foundation in the early 1990s. Over the past few years she had been crossing the field nearly every day to visit her elderly parents.

7.125. She could remember when the field was first there like it is now, about 27 years ago. Before that it had been very rough land. Since then she had walked across the field, using an entrance behind Newton Gardens, in order to take her children to

nursery school and then junior school. No-one had ever stopped her to say she could not walk across the field, and she has never asked for permission. She had always thought of the field as an open space for everyone.

7.126. Over the past 30 years her children had used the field for various activities, such as football with friends, skateboarding, learning to ride bicycles and so forth. As a family they have very happy memories of playing with Frisbees and kites, and occasionally their neighbours' children and their own children have played in the sandpit. They had even had a few picnics there.

7.127. They had also had several dogs, and she and the children had taken the dogs for a run on the field. A few years ago she had had mental health problems, and it was on this field where she found walking with her dog a great help.

7.128. Over the years she has seen many other people using the field for jogging, exercising their dogs, the local social club's football team and cricket team etc. During summer holidays children use the field for meeting, having fun and playing football etc. She walks her dog early in the morning on the field, before any schoolchildren are there, and then in the evening when the schoolchildren have finished with the field. She is a considerate dog walker who picks up after her pet. She never goes on the field if there is a football match or any large gathering of people.

7.129. She now has grandchildren, and from approximately 2011 to 2015 she had to walk her granddaughter to Plaistow Hill Nursery and then infant school. They would cross the field every day; her granddaughter would love to run on the way to school and back home. It was safer to run on the field than running next to a road. Now she walks across the field with her granddaughter in order to go to Brownies, which is at the St Budeaux Foundation School. They usually take a football and have a kick around on the land before Brownies if the weather permits it. She also plays on the field and in the sandpit with her youngest granddaughter.

7.130. The field has been an open space for the last 27 years, and should stay that way. Her 9 year old granddaughter had written a letter saying that everyone loves the field, and that she walks across the field and plays there.

7.131. Mrs Hard has seen many other people on the field playing football or Frisbee etc. Children are always up there when the weather is good, at weekends or during the summer. There are always people up there playing or chatting. All the houses on the estate have very small gardens.

7.132. She did not recognise a blue sign with red writing on it that had been referred to. She thought that over 30 years she would have read any signs that she had seen. She thought that there might have been a Tamarside Community College sign on

the right hand side of entrance B. She would have read such a sign over the years, but it did not say anything about no entry or no dogs.

7.133. *In cross-examination* Mrs Hard said she would typically enter the site at point B, and cut across from there either to A (through the northern boundary) or E (near the north-west corner), in order to get to school or Brownies. In 2010 she thought it would have been difficult to read any sign at point B. In any event a sign there did not prevent her from entering the land. The land was not gated and there were no 'No Entry' signs. She had used the land and assumed it was owned and provided by the Council. She had assumed it was for the benefit of the Council housing area.

7.134. She did remember the site when it was rough ground, and she would push a pushchair up there even at that stage.

7.135. Her son was born in 1990, and he certainly used to play up there on the field with his friends, probably in the period around 2000. Her daughter had been born in 1987, and she was taught by Mrs Hard's nephew to ride a bicycle up there on the field. As a family they had played in the sandpit, and they had used the site generally on dozens or possibly hundreds of occasions over 30 years. They had been up on the site frequently with their greyhounds, who sadly had now all died. She would also let her present dog loose on the land, unless there were people in the field, in which case she would turn back.

7.136. If she sees children's' activities going on on the field, for example from the school, she would keep off the land. It would be all right if just a few people or children were playing there; she would go on the field in those circumstances. One does encounter groups of teenagers playing on the field. The field can accommodate quite a few children playing there. She agreed that one cannot tell where people come from when one sees people on a field. She did not go onto the field when there were children there in football shirts.

7.137. *In re-examination* Mrs Hand said that as for the sign on the right hand side at entrance point B, she could not recall when she had last looked at it. There were lots of trees there now, and the sign was quite dirty.

7.138. Her assumption would be, when she sees children aged around 6 or 8 or thereabouts on the site, they would be from the local area. She would also see other children playing football or with skateboards, who also must be from the local area.

7.139. ***Mr Miles Bidgood*** lives at 14 Byard Close, Kings Tamerton, Plymouth. He was born in 1965, and his family moved to the Kings Tamerton area in 1967. They had lived in a prefab in Priestley Avenue, on the site of the current St Budeaux Foundation School. In approximately 1971 they moved to a new house in Kings

Tamerton Road, where his parents still live. In about 1992 he left his parents' home and moved into his first property at 5 Hargreaves Close, Kings Tamerton, where he remained until about 1999. Then as a married man with children he moved to a larger property in Byard Close.

7.140. His education had been at Plaistow Hill Infant School, St Budeaux Foundation School and Kings Tamerton Secondary Modern. As a child he had used the application site for recreation.

7.141. He had been involved with many fundraising events as a child, in order to help build the Kings Tamerton Community Centre. At 18 he became a full member of the Community Association, taking an active role. He was a player, manager and treasurer of the Association's football club. He had served on the social committee of the Association several times. He had been liaison officer of the Association also.

7.142. As a child he had played on the area of the application site, which was then an old prefab housing estate that had been demolished. Even then it was an area away from traffic that was safe to play on. In terms of ball games, they used then to play on a very small cultivated area within the land. There was then a plan for Kings Tamerton Secondary Modern school to become a comprehensive, and a land swap deal was brokered between Plymouth City Council and Devon County Council, which led to Devon County Council having the playing field area. They levelled the area (the application site) to create a playing field, and the community continued using the area as they had always done. The area was then marked by several signs at entrances saying that it was a community playing field, and asking people not to allow dogs to foul it.

7.143. People would use the land as and when they saw fit. At no point did anyone ever ask permission to use the field, and until Marine Academy came along nobody had ever told them they could not use the field.

7.144. In about 1991 Tamarside School built a sports complex which provided the school with new facilities. In about 1994 the Community Association football club approached the school with a view to the football club using the pitch on the site to play league matches, with use of the school's changing facilities. The club had already been training up on the site pre-season, without any permission. At that time the club had two teams.

7.145. After Marine Academy closed off the area and told the association they could no longer play there, they had to move to a Council pitch elsewhere. That led to the football club folding in 2016.

7.146. Mr Bidgood's understanding was that money paid to Tamarside School had not been for use of the pitch, but had been for use of the school's changing facilities.

The school provided these facilities, and a member of staff was there to open them up. A team must provide adequate changing and washing facilities before it can affiliate to the Devon Football Association. He did not dispute that some of that money might well have been put towards the upkeep of the field as well. A receipt for pitch rent is a generic term, and might encompass various items. People who had been associated with the sporting activities on the site had signed letters, which he produced.

7.147. Further to all of that, countless pre-season training evenings for both football and cricket had taken place on the site, without any permission being sought. Also for as long as he could remember children from the large council estate would play in safety, away from the road, on this flat and secure area. Before the development of the playing field the area was used for three community bonfires every year, and there were months of preparation for these. Many people used the field to watch the solar eclipse in 1999.

7.148. Residents have always walked their dogs and played on the land with their children, or practised golf, or flown kites, or had picnics, or indulged in many other pastimes, until Marine Academy closed them out.

7.149. At first the school insisted that that was a safety precaution because of machinery etc., while the school was undergoing major rebuilding work, but latterly it became clear that the school were trying to establish this area as private. Nobody had ever been asked to leave the area before, or prevented from using it, until the area was barricaded by Marine Academy.

7.150. As for who uses the field, it is typically used by youngsters from within the local area, the local estate.

7.151. Mr Bidgood's recollection was that all the entrances to the site did have signs. But he had never seen a sign attached to two posts. He imagined that trees had probably made some of the signs less easy to see. The area around the boundaries was completely overgrown for a long time. That was why people did not see the signs, he thought. He did acknowledge that there had existed a number of blue signs around the field.

7.152. He did not dispute that money had been paid by the football club to Tamarside College, but "Pitch Fees" is a very generic term.

7.153. Kings Tamerton is a large community area or neighbourhood of Plymouth. He did not consider that he personally lives outside Kings Tamerton.

7.154. *In cross-examination* Mr Bidgood said that the signs he recalled seeing were bolted to little wooden plaques which themselves were attached to the wire mesh fence.

His recollection was that there had been such signs at all the accesses he used, and he thought they were at every entrance. The signs he had seen had mentioned that it was a community playing field. He did not recall seeing a sign that used the word 'school' in particular. He could not be 100 percent sure of the precise wordings of those signs, but they did not say it was a school playing field. The signs he recalled gave the message that the land was for the benefit of everyone, and that people should not allow their dogs to foul the land. Those were the signs that were on every entrance.

7.155. As for the playing of club football on the site, he thought that the first home game had been played in the 1993/94 season. The club would never have used the pitch to play on unless they had hot water and showers available. They also needed somewhere to change. He accepted that contemporary documents about the money paid for use of the facilities did mention rental of pitches. However his understanding was that the main reason they were paying a fee was in order to use the facilities he had mentioned.

7.156. The cricket team played on the land for about 7 years. He thought that the club had only played officially in a league for about 2 seasons, but there had been a longer period when friendly games were played. The cricket ended because someone set light to the cricket pitch, in about 1996 or 1997.

7.157. He had lived in Byard Close since 1999. Before that he had been at 5 Hargreaves Close, which is within the Applicant's neighbourhood area.

7.158. He had been up on the field very frequently at all sorts of times. He had forgotten to include his own personal activities in his proof because he had been concentrating on the community activities. The bonfires he had referred to were while the land was rough land, before it became a playing field.

7.159. One cannot necessarily tell where people using the field come from. Nevertheless children do not come from far away to play here. They are local.

7.160. He does not own a dog, but plays with his own children on the field, as his parents did with him. He used to play pitch and putt up there into the sandpit, practically every evening. However he has not done that for 20 years. He also used to kick a rugby ball around up there.

7.161. He had taken an active role in the management of the current application. The Kings Tamerton Action Group's address is his own address. However that Group had not held any meetings. He had spoken to various witnesses over the last few months. They had raised some funds, and joined the Open Spaces Society in order to get access to the Society's solicitors. They were told what points have to be satisfied in order to make a village green application.

7.162. He had never said that the Community Association has a *right* to use the field. The headmaster of the school had offered use of the field and facilities to the Association. His belief is that the *community* has a right to use the field. He did not think that it was the signs which *conveyed* that right. The blue signs he had seen were more about stopping dog fouling, in other words they were about public health. His belief is that anyone can use the land for any lawful activity. The signs he had seen had said nothing about using the land, as far as he could recall. They basically said that one should not allow dogs to foul the area. He acknowledged that in his written proof he had said the signs read '*This is a community playing field*'. However he could not now be 100% sure of the precise wording of the signs.

7.163. *In re-examination* Mr Bidgood said that the people in the football and cricket teams of the Community Association were all from Kings Tamerton. Later on there may have been a few other people as well, but still they were all predominantly Kings Tamerton people.

7.164. The team had to move from the field in 2014, and went to a park called West Park, but then folded in the next season. It had been the oldest team in the local league. There had been an offer to let the team carry on playing on the Newton Field if it would support a planning application. In his view Marine Academy is not a good member of the local community.

7.165. He himself has children, and had used the field with them for football and generally messing around. The field in his view had been used 52 weeks a year by the local community, the whole community.

7.166. *To me* Mr Bidgood said that he understood that there had been a meeting in either 1992 or 1993 with a gentleman called Darren Stewart, about the moving of the community football team *to* the present application site, which belonged to the school. Latterly in 2014 there had been a meeting with Mr Ward, the Principal of the present school, about closing the site.

7.167. ***Mr Kevin Jackson*** lives at 6 Normandy Way, St Budeaux, Plymouth. He was born in 1958.

7.168. In 1975 he joined the Royal Navy, moving to Plymouth from Mansfield, Nottinghamshire. He met his wife in 1977, and spent much time in her family home in Flamsteed Crescent, Kings Tamerton. They married in 1981, and set up home first at Coldrenick Street, St Budeaux, before moving to their current address in Normandy Way.

7.169. Ever since he met his wife he had used the land now known as the Newton Playing Field, when it was waste land, and later when it was developed into community playing land. He has been a member of the Kings Tamerton Community Centre

since it was built, and had supported the sporting activities of the Club, as well as using the area for his own recreation. As far as he was aware, at no time had he ever had to seek authority to use the area, and he believes that this is borne out by the number of other people he has seen using the land over the years. The land is a valuable community asset.

7.170. His recollection was that the prefabs which used to be on the site had been demolished in the early 1970s, so the land was waste ground when he began to use it. The family had dogs, and he used to take the dogs up there.

7.171. It was in 1983 that the Community Centre was built, and Mr Jackson still used the ground at that time. They had a daughter born in 1990, and he still used the ground there, when it became the playing field. Between 1993 and 1997 he became a supporter of the football club and the cricket team of the Association. He himself played some knock-about cricket for the team.

7.172. His father-in-law died in 1993 and he still walked the dogs up there. He remembered the levelling off of the ground in the early 1990s. He personally stopped using the ground in about 2005, because the family's dogs had died, and their daughter was older. That daughter had gone to Plaistow and St Budeaux schools.

7.173. He had not played football for the Community Association football team. Lots of people used to watch that football, and lots of people also watched when the cricket team played.

7.174. As for any signs around the field, he had never seen any with wording along the lines of no access or no trespass. He had seen a sign which mentioned dog mess.

7.175. He used to take his daughter up there, and there were always lots of people up there. He would go up in the summer holidays, and the ground was busier then, people were picnicking or flying kites or playing in the sandpit. He would not even know who to ask permission from, were permission to be necessary. There were rumours he had heard that there had been some kind of land swap between Devon County Council and Plymouth City Council.

7.176. *In cross-examination* Mr Jackson said that it had been in 1981 that he and his wife moved from Flamsteed Crescent to Coldrenick Street. But they still visited the area more or less every day. However their daughter did not cross the field in order to get to school.

7.177. On his visits he would typically have entered the field by the access at point C, in the south-western corner. There was always an assumption that dogs were allowed onto the field, because there were notices there saying clear up dog mess. As for a

photograph of a defaced blue sign on the field's fencing, that was not by the entrance at point C, he thought.

7.178. Although he had played cricket, he had never played that game in the league; he had only played for charity, fundraising or knock-about events. However he did that quite regularly until 1997, when the team stopped playing.

7.179. He used to recognise some people on the site when he went there as being from the local area, for example from Kings Tamerton Road. He would describe where he lives as being in Higher St Budeaux, up near the A38 (not for example Ernesettle).

7.180. *In re-examination* Mr Jackson said that he last recalled having seen a sign at the time when it was initially put up, in about 1993. He saw it then, and later took no notice of it, or indeed of whether it was there or not. His view was that children he saw using the field were local children from the surrounding area.

7.181. *To me* Mr Jackson explained that Kings Tamerton was always regarded as being the area that is on top of the hill, and St Budeaux was always regarded as being generally lower down than Kings Tamerton. Kings Tamerton is really the area that is around what had been Kings Tamerton Secondary School, which later became called Tamarside Community College and now the Marine Academy. In his view there is a slightly blurry line between what people regard as Kings Tamerton, and what would be thought of as St Budeaux, somewhere around Trevithick Road and the side roads off that road.

7.182. ***Mr Keith Hall*** lives at 14A Byard Close, Kings Tamerton, Plymouth. He regards himself as living in Kings Tamerton; indeed where he lives is the oldest part of Kings Tamerton.

7.183. He used to work for the Post Office, dealing with parcels, and his recollection is that the boundary line for Post Office purposes is really the line of Trevithick Road. However that is not 100% the boundary in reality between Kings Tamerton and St Budeaux. For example Byard Close and other roads near him would be seen as being in Kings Tamerton.

7.184. He had been a resident of Kings Tamerton since 1968, and had lived in three properties over those years that have all been very close to the Newton Playing Field. Since it was right next to the Community Centre and social club, he had used the recreational piece of land at Newton Field for his personal and leisure time uses on many occasions. He had played various sporting activities, as well as watching many more. These included football, baseball and cricket. He had also used the field regularly to play pitch and putt with his elderly father. They often wander up to the field for a knock-about game when he goes to visit. There had never been any problem with using the field, and no-one had ever challenged them or blocked their use. It has only been in recent years that there seems to have been

a problem with access, after nearly two decades of using it as and when people liked.

7.185. The field had also assisted him as a young parent, when his children were small. He would walk circuits of the field in the early evenings to try to get the children off to sleep in their prams or pushchairs. It was a quiet place, and ideal being away from main roads. In later years both his children would play there at weekends and after school. Again it was a safe place for that.

7.186. As a family they used the field in summer months for games and picnics. The children loved it and it was very convenient. They regularly met friends there to play. The field also came in handy when he taught his children to ride their bicycles. Again he was never challenged from carrying out those activities. He had been under the impression, as had other people, that the field was for public use.

7.187. Historically this area of land used to be overgrown and desolate, having been left over after the demise of the prefab housing estate of the 1950s and 1960s. It was then known as the wasteland, and that is where he and others had played as children. In the early 1990s the land was filled, and a much more even and greener place to play appeared. This has been used for that purpose by his family and neighbours ever since. It is used by just about everyone in the local area, including dog walkers and the elderly, but more importantly the children.

7.188. He himself had not played for the local football team. Maybe he would join in occasionally for a friendly or a charity match. In earlier years he did help with fetes and musical events. For example he put out some speakers and microphones, and indeed compered a charity match. He never asked anyone for permission.

7.189. For many years it has been a very co-operative and good local community. He would tend to know over 50% of the people he would see on the field, or at the Community Centre. There are some other people there who he might not know. He himself is not a dog walker. As for signs, he did not recall seeing any there.

7.190. *In cross-examination* Mr Hall said that he had moved to Byard Close in 2007. He is a neighbour and friend of Mr Miles Bidgood. He had lived in Higher St Budeaux between 2000 and 2007. Between 1993 and 2000 he had lived in Church Way, Weston Mill. He had lived in the area even before that.

7.191. The knock-about cricket which he had played was something which he did over a period of 5 or 6 years or so. He had always been involved with the local team though, ever since it started. Thus he was involved with the cricket, when it took place, between 1990 and 1997, when the pitch was vandalised.

7.192. He had helped with an activity day on the field at some point in the 1990s. He thought it was when the field was relatively new. It had been in about 1992 or 1993 that it was laid out as an improved space, so the activity day would have been about 1996. His role on that occasion was up there on the field, using electricity leads taken from the Community Centre. That particular event happened on just that one occasion.

7.193. His children, with whom he had used the field, were at the time of the Inquiry aged 17 and 10. In fact it was his parents who had mostly brought up both of his children. He had used this field from 2002 for about 10 years with his daughter Molly. With his son (currently aged 10) he had not used the field so much, because it had been closed up for much of the relevant period. However he had played on there from about the age of 2 to about 6 to 7 years old.

7.194. He (Mr Hall) had over the years watched a lot of sport on the field. If there was a game on he would go and watch it. Those were mainly on Sundays, but sometimes on Saturdays.

7.195. He usually went into the field by access points C or B, depending on where he was coming from. He might enter at point D if he came from the Community Centre. He did not recall having seen any signs on the fence near the entrance at point B (the south-east corner).

7.196. ***Mr Brian Bidgood*** lives at 189 Kings Tamerton Road, Plymouth. He had been born in 1943. In 1967 with his wife and baby son he moved to Priestley Avenue, Kings Tamerton, and then to his present house in Kings Tamerton Road in 1971.

7.197. When they first moved to the area, the Newton Field land was the site of a mainly demolished prefabricated housing estate that lay barren for many years. It was used by everybody in the area for a host of activities, but mainly as a playground by the many children on the housing estate. In about 1991 the area was developed to provide a large playing field that allowed the growing new comprehensive school more area for sport, as well as serving as a common area for the local residents to use generally out of school hours. Nevertheless to the best of his knowledge nobody was precluded from using the area at any time.

7.198. He had himself used the area for recreation, and many times as a follower of local football and cricket teams. He watched matches there, and there was always a healthy crowd of people gathered to watch them. In addition there were plenty of children and other people using other areas of the playing field for play and exercise, even while those matches were on. The field had always been accessible to the public, and there had never been an issue or any mention of that being prohibited in any way, until the recent formation of the Marine Academy.

7.199. He strongly believes that this land is a community asset which has been used for a very long time. He had used the land over many years, and seen many other people doing it. Those using it are mostly neighbours and children that he knew or recognised. He had never seen a sign up on the land, or asked permission in relation to using it.

7.200. *In cross-examination* Mr Bidgood said that if he walked to the site he would usually go in at point C, (in the south-western corner). If he had driven there he would normally go in at point A (on the north side). His own house is to the east of the field. If he walked there he would walk not on the main road but on a back route. He had not been up to the site for a couple of years. He had been to the Community Association club a couple of months previously. He had been to the field with his son Miles during the time when the latter has been an adult. He could not recall seeing any signs on the field.

7.201. As for the football matches he went to, he mainly supported the games in the Sunday league. The cricket he played was mainly in charity matches there. He did remember a cricket game with another side which was not from Kings Tamerton, and that must have been a league side.

7.202. He had taken his own children up there, but that was before the field had been developed into the condition it is in now. He had not used the field recreationally in recent years, since he had been in bad health since about 2000. Back in the 1990s he followed the Sunday football team, and they were very successful.

7.203. ***Mr John Hurrell*** lives at 230 Kings Tamerton Road, Plymouth. He personally would say that the whole of Kings Tamerton is in Higher St Budeaux. He had moved there 28 years ago when his daughter was 2 years old. That daughter is now aged 30. When he first moved in, the post used to say 'Higher St Budeaux'.

7.204. He had had three children. They had been glad to use the field in question, which is almost across the road from his house. The gardens of the houses are not that large, whereas the field is safe and bordered by hedges, and flat.

7.205. They used the field to play football and cricket, and had tried out kite flying. The children had loved playing in the sandpit. That includes his grandchildren today. The youngest of those is 9 years old. Thus his family had had a good many years of use of the field. They would see plenty of other children playing football and rounders up there when they were there. They had never asked anyone permission to use the field, and plenty of other people had always used it.

7.206. From his front gate it is less than 150 yards to the Newton Playing Field. He is in the higher part of Kings Tamerton Road. When he first knew the site, it was all mounds of earth from the former prefabs. He would walk there with his children and dogs. He could not remember when it became a flat field, but he had heard

people say it was in 1991 or 1992. Thereafter he had used the field until it was fenced off in 2014, and indeed he had used the field since. He has been there when both his own children and his grandchildren were younger. He had been to the field with them for sporting activities and games. He had seen many other people doing the same things, such as playing football or cricket, flying kites or riding bikes.

7.207. As for signs, he had never seen the ones in the photographs which had been produced by the Objectors. He thought he had seen some blue signs which were about 1ft square. They said something along the lines of 'Devon County Council – Community Field – Do Not Allow Your Dogs to Mess'. He last saw a sign like that in about 2014, when the field was shut off. He had not seen any new sign up on the field.

7.208. He had never asked anyone's permission to go on the field. It was just an area of open grass until 2014. He and his family had used it openly, and seen others using it. He knows a few of those people, but could not say that he knows everyone he sees there. A lot would be very young children. He himself had never played in the local teams, nor really been a supporter as such.

7.209. *In cross-examination* Mr Hurrell said that when he entered the site it would sometimes be at point E, or sometimes at point A. Where he lives is really in between those two entrances. He thought he could recall having seen at least four signs. One of those was by entrance point E. Another one was halfway along to point A. Then there was a sign on the eastern side between A and B, and another one between C and D, he thought. The sign near point A (the northern entrance) was facing out towards people coming in. The other signs he remembered had been on the inside and facing in. He thought he had noticed those signs from about 1993 or so. They had said Devon County Council at the top.

7.210. Up to about 1991 or 1992 he had used the site, but as waste ground. He then started to use it after it had been redeveloped. He accepted that signs had been there between 1993 up to 2014, but in the latter years they had been illegible. White letters on a blue background had faded, and there was vegetation in the way. He thought people may not have seen the signs. He did not recognise a vandalised blue sign of which there was a photograph as one that he recalled seeing. The signs he recalled seeing had definitely said Devon County Council, Community Field, Do Not Allow Dogs to Foul, or words to that effect. He had not seen signs with the wording that was being suggested by the Objectors.

7.211. The kite flying and other games he had seen taking place on the site had mainly been at evenings and weekends. As well as the other things that he had referred to, he had walked dogs on the field by himself or with his grandchildren.

7.212. ***Mrs Martina Philips*** lives at 232 Kings Tamerton Road, Plymouth. She had lived there for 36 years. She had had two children and seven grandchildren. They all

used the Newton Field regularly, up until 15 years ago. She also uses the field with her great grandchildren now.

7.213. They have used the field as a recreational area. It is safe and self-contained, and flat. They play and have played football, rounders, cricket, running competitions among family and friends. They also used the sandpit. They would see others there most of the time, children playing with their neighbours. It was lovely to see children making friends. They had never asked permission to use the field. They saw others using it and did the same.

7.214. When she first moved to her house, the area was generally called Higher St Budeaux. Latterly the name St Budeaux tends to be used in official letters addressed to the area. She herself lives about 200 yards from the field.

7.215. When she moved to her house in the 1980s her children were aged 11 and 12. They used the waste ground on the application site to ride their bicycles. In 1988 her first grandchild was born, and the children used to meet on the field. Then when the field was first made like it is now the children again used to meet their friends there.

7.216. She herself used to use the field to keep fit by running round it, usually twice on most evenings. She saw plenty of other people there; many were her own children's friends, or the neighbours. The children were definitely local, although the adults might have been from slightly further afield. She had used the field actively until about 15 years ago, but she has also used it more recently.

7.217. She could not recall seeing signs around the field. She had never asked permission to use the field, and had always used it openly. She personally umpires hockey games nowadays.

7.218. *In cross-examination* Mrs Philips said that she would normally enter the field by entrance point A, on the northern side of it. She used to run a hockey team elsewhere, away from Kings Tamerton, until 15 years ago. She used this land regularly with children until 15 years ago. But if children come to visit then they would still go to the field, during the more recent periods of time.

7.219. Her own personal running on the land would be after work. The football, rounders and cricket she had referred to on the field were family games, not team games. They also used to make sandcastles in the sandpit.

7.220. When she moved into the area in 1980, her step-children were aged 11 and 12, and they used the field as it then was. When her first grandchild was born in 1988, and thereafter, she used the land with her grandchildren. One of her own children had moved into Telford Crescent. Children would move around the area.

7.221. She and her husband worked during the week, so they would look after their grandchildren at the weekends.

7.222. She could not honestly say that she had seen signs round the field. When she used to run around the field, that was not necessarily around the perimeter.

7.223. ***Mr Brian Shelmerdine*** lives at 37 Cayley Way, Kings Tamerton, Plymouth. He had lived there since 1993, and has always used the field next to his home.

7.224. He used to take his boy up there to play football, and he learned to cycle his bike on that field when he was young. They had also used the field to fly kites and played other sports such as cricket and rounders.

7.225. His wife used to walk their son across the field to take him to school at Plaistow Hill. He had never asked anyone for permission to use the field, and did not think he needed to. He just entered the field through the gateway beside his home.

7.226. He had once rung the Council because of rubbish along the side of his home, and they had said that the school owned the land. He had then rung the school, but they said the Council owned the land. That had happened around 2010, and to this day Mr Shelmerdine does not know who owns the land. He personally had used the field from 1993 through to 2013.

7.227. He had stopped using the field in 2013 when his son was grown up and left home. That son had been about 1 year old when they moved in, and he had played with him on the field as he was growing up. The son used to play there with his friends as well. There used to be lots of others up on the field too, including dog walkers. He recognised most of them as neighbours.

7.228. On his way to school his son would go in at the entrance point B and out at point A. His son would have stopped using the field in 2013.

7.229. He Mr Shelmerdine had watched the football team play on the site. There used to be lots of people watching the football. Then that stopped; he did not know why.

7.230. At entrance point B, in the south-east corner of the site, he remembered seeing the back of a sign. He had probably seen that about 12 or 13 years ago, or possibly 5 or 6 years ago. In any event that sign was never easy to read. Children would kick footballs at it.

7.231. He had never sought permission to use the land and no-one had ever told him who owned the site, even though he had asked the Council about it.

7.232. *In cross-examination* Mr Shelmerdine said that his son had moved away in 2013. Although he had used the field regularly with his son, he had also run around the field by himself until a couple of years ago. He had done that about twice a week. However he did not do it for very long, because of a heart murmur. Therefore most of his use of the land had been for family things with his son and friends. That was mostly at weekends, although his son would sometimes want to cycle on the field on weekday evenings.

7.233. There are steps at entrance point B, which is next to his home. He did remember seeing a sign in that area, to the left of a lamppost which was visible in one of the photographs. He had not seen a second sign at that entrance.

7.234. *In re-examination* Mr Shelmerdine said that although he remembered seeing a sign, he could not remember reading it. He had only noticed it because children kicked their footballs at it. He thought on reflection that he had last noticed the sign about 5 or 6 years ago.

7.235. ***Mrs Carole Cook***, the Applicant, lives at 267 Kings Tamerton Road, Plymouth. She has lived at Kings Tamerton since 2012, but her husband had lived there since 2006. Most daytimes since 2006 she had visited Kings Tamerton, until she actually moved there in 2012.

7.236. She lives immediately adjacent to the field, with her garden hedge forming part of the field's boundary. She is therefore very well aware of the popular use of the field by the community. The community obviously gain great pleasure from open use of the field for sport, picnics, walking dogs, meeting up with friends etc.

7.237. The field was suddenly closed off by the Principal of Marine Academy on the Thursday before Good Friday 2014.

7.238. She understood that the local community from the neighbourhood have used this field for more than 20 years. No-one seems to have asked permission. One or two people had mentioned something about a sign from many years ago, which they thought had said something about it being both a school and community field. There is a great deal of difference between thinking you can use a field, and knowing for sure that legally you can use it. The local community only thought that they could use this field, and never asked the school or owner if they could have permission to use it. Most people say that they saw other people using the field, and so thought it was all right to do the same.

7.239. A letter of 2016 from the Head Teacher of Marine Academy School, urging people to object to the village green application, had said that the community have *no* right to use the field.

7.240. From many neighbours she had understood that the field had been used by the local community football team, a local cricket team, and also for fetes, all of these being organised by the Kings Tamerton Community Centre next to the field. Children would also play football in the field with their friends, as well as many other games etc., all without asking any permission.

7.241. She understood that more than 50 local people had witnessed the eclipse of the sun from this field. People have engaged in all sorts of other leisure activities on the field. When the field was closed off she had witnessed the same children playing in the busy streets, which are dangerous. This is the only flat piece of land in the area.

7.242. She and her husband liked to take their grandchildren into the field to fly kites. This field is one of the highest points in Plymouth, so the kites have plenty of wind to soar up high.

7.243. There are many entrances around the field, and no-one has ever asked or thought of asking the owner why they are there. It therefore seems to her that the field had been continually used by local people since its instigation, and for a period of over 20 years.

7.244. In relation to the neighbourhood which had been put forward for the purpose of the application, she had marked a neighbourhood on a plan under the influence of a local ward councillor called Mr Wheeler, who had formerly been a planning officer. She had asked him what to put on a map. He had been clear that the right area to put forward was what she marked on the map as the Kings Tamerton neighbourhood, with a line down Trevithick Road. She understood that had been because the buildings were rather different on the opposite side.

7.245. She regarded any suggestion that there had not been a significant number of local people using the field as plainly wrong. There are two schools at the top of Kings Tamerton Road, and lots of children had used the route between entrance points B and A, in order to cut through the field to get to St Budeaux School. For the Plaistow School they used the route from point B to point E. Those are both good schools.

7.246. Reverting to the question of neighbourhood, Mrs Cook said that, having re-looked at the map, she and her associates would like to add a small section to the area being suggested as the neighbourhood, consisting of an area to the west of Trevithick Road, which was originally part of Kings Tamerton and is just across

the road from the school. She and her associates feel that this should be incorporated within the neighbourhood boundary.

7.247. *In cross-examination* Mrs Cook confirmed that the original application had been made by her, and had various documents annexed to it. The neighbourhood plan, called Map A, had shown the suggested neighbourhood at that time, marked by a blue line. She herself had drawn that suggested boundary, having checked with Councillor Wheeler. She had left out some areas of woodland to the south which had no houses on them. Thus the south-east boundary of the suggested neighbourhood had been drawn across woodland.

7.248. She had not known about the old parts of Kings Tamerton, or the old Kings Tamerton village boundary, at the time she did the plan for the application. She would have expected that Councillor Wheeler to know about that. She had not in fact realised until the day she was giving evidence that that area to the west of Trevithick Road was the original Kings Tamerton village.

7.249. She had not known that Plymouth City Council uses the concept of neighbourhoods throughout the city for various locally based activities. Her own case summary, which had made reference to that point, was something which Councillor Wheeler had produced the draft for. The text was provided in its entirety by Councillor Wheeler, who was no longer able to assist her case. Mrs Cook explained various discussions she had had with Councillor Wheeler about the preparation of her case. She also referred to a planning appeal which had been pursued by the Marine Academy. She herself had met the planning inspector on that occasion, and walked around the site. The Academy's appeal had been rejected. Councillor Wheeler had recommended to her that she and local residents apply for the registration of rights of way across the site. Mrs Cook had felt that that was not good enough, because the community had used it a lot for all sorts of purposes. Mrs Cook thought that she had been at all the meetings that had been held about this.

7.250. She acknowledged that her own residence in the area close to the application site was only since 2012. She had lived elsewhere in Plymouth, about 2 miles or so away, before that. However her direct knowledge of this field was from 2006, when she met her future husband. Nevertheless she accepted that much of what she personally had said about use of the field had been hearsay.

7.251. As for use of the field with kites, her husband in fact builds box kites. Her grandchildren visit nearly every Saturday. They had flown kites on the land from summer 2012 onwards. In the summer holidays they see their grandchildren twice a week, and those children love kite flying.

7.252. She herself is not a dog walker, but she does walk in the field. It is her little piece of countryside. She has seen rabbits and foxes there. From her house she looks

completely into this field. She also uses it to cross from point A to point B, and also occasionally from point A to point E if she is visiting the Community Centre.

7.253. On one occasions children were playing musical instruments very loud on the field, and an entrance to the field was blocked. On the question of signs, the photographs brought to the Inquiry are the first time she has seen any such signs. The reason could be that the trees and vegetation were virtually never maintained. She suspected that any signs that were there were unreadable. The only sign she had ever seen was when the access to the site was blocked in 2014.

7.254. She wished to make it clear that she was making an application to amend the suggested neighbourhood boundary in the way which she had suggested a little earlier in her evidence.

8. THE SUBMISSIONS FOR THE APPLICANT

8.1. The original application in this case was made under ***Section 15(3)*** of the ***Commons Act 2006***, and the application included observations explaining why that particular sub-section had been referred to, in the light of the fact that the land of the application site had been shut off from public use on 17th April 2014 by the management of Marine Academy, Plymouth. It was asserted that up until that closure in 2014 the land had been used for well over 20 years by local people for lawful sports and pastimes. It was noted that the field had never been for school use only, or else the openings into it would never have been built all around the field, allowing easy access to all the residents, until it was blocked off in 2014. The residents had never sought permission from any of the schools to use the field, and were not challenged in their use of it. All of this history fully met the criteria for registration as a town or village green.

8.2. In a response to the original objections to the application, it was argued that signs around the field which had been referred to, envisaging the field was for the use of the local community, but asking people not to allow their dogs to foul it, did not amount to permission to use the land. They were a recognition by the owner of the land that the community were using the field, but not a permission to use it. The request to people not to allow their dogs to use the field was simply the action of a responsible education authority, which would be expected to take steps to prevent dog fouling on sports pitches used by children.

8.3. It was noteworthy that in a pro-forma letter written by Marine Academy Plymouth in 2016, which was to be sent to parents of children at the school, it was stated that the Applicant was fully aware that local people do *not* have a right to use the land for recreation or other purposes, and had been using the land without permission or right.

8.4. The fact that the community would generally defer to the use of the field by the children during the school hours, for school-related sports, does not assist the Objectors. This was exactly the sort of situation which was considered by the Supreme Court in the well-known ***Lewis v Redcar & Cleveland Borough Council*** case in 2010. The use of the field by the local community here occurred without the explicit or implied permission of Devon County Council, the then education authority. The fact that the school continued to use the field does not prevent the application to register it as a town green.

8.5. This is not a case like the well-known ***Barkas v North Yorkshire County Council*** case. This was not land provided for recreational use under the Housing Acts, and it is not clear on what basis it might be suggested that the local education authority could have been dedicating this field to the public for recreational use. If it is beyond the lawful power of a local education authority to dedicate land for public use, then any such dedication cannot be legitimately given.

8.6. The types of use which have taken place here by the local community, and the extent of it, are quite wide enough to constitute use by a significant number of the local inhabitants for lawful sports and pastimes. The fact that fees were paid in respect of use by local football teams did not produce the result that the use of the field was not as of right. Those fees had related to staff opening up the school facilities to enable use of the changing rooms, and the reasonable cost of pitch marking. Those fees were not a pitch rental. For example the cricket team that played on the field did not make any such payment.

8.7. This is exactly the type of community resource that ***Section 15*** of the ***Commons Act 2006*** is designed to protect. At no point had there been permission, implied or express, to the local community to use the land. Nevertheless it would have been abundantly clear to the landowner that such an application was a possibility, and no steps were ever taken to suggest that this was not a community resource. The field had therefore been used *as of right*, not *"by right"*.

8.8. In a summary of the Applicant's case produced for the purpose of the Inquiry, it was asserted that the criteria relevant to ***Section 15(3)*** of the ***2006 Act*** are clearly met in this case. Although it was acknowledged that some local people had thought at one time that they had some kind of *right* to use the field, and had expressed that in some of their documentation, no such right had been found. Those witnesses were mistaken in their belief that they had permission to use the field. All the time they were in reality trespassing.

8.9. The understanding was that the field was put into its present form as a flat field around autumn 1991, and that therefore the period during which the field in its present form had been used by local people had exceeded 22 years before the closure in April 2014.

8.10. The history of the land forming the application site was analysed. It had been purchased by Plymouth City Council after the war in around 1946/7, for housing. Prefabs were erected on the site and elsewhere in the vicinity. When permanent housing was built in the larger area surrounding, which became known as Kings Tamerton, the prefabs were demolished and this field was left vacant and used by the community for informal leisure use.

8.11. In 1991 approximately, Devon County Council reorganised secondary education in the west of Plymouth, and the site of what had been the Kings Tamerton Secondary School became the site for a new larger Community College. The application site was sold to Devon County Council by Plymouth Council for use as a sports field by the expanded school. The land was levelled, grassed and fenced off, but with four access points. Management of the field became the responsibility of the school and its successors.

8.12. Further local government reorganisation in 1998 resulted in Plymouth City Council becoming a unitary council, responsible for all local government matters including education. The land held by Devon County Council was therefore transferred back to Plymouth City Council. Ownership of this field, as with all education land, rested with the council's education committee, but management of the field remained the responsibility of the school.

8.13. In 2009 Tamarside Community College had applied for planning permission to erect combined security fencing around two sites, being its main campus plus the Newton playing field. However permission was refused. Then in 2010 the Community College applied for permission to erect security fencing around the two sites separately. Both those permissions were granted, but the permission for the field was not implemented. Then in 2010 the Community College became Marine Academy Plymouth. The City Council became obliged to lease the field to Marine Academy for a 125 year period, but it was understood that such a lease had yet to be signed.

8.14. In 2013/14 the Marine Academy had applied for planning permission to build a multi-use games area on the application field. Three such applications were made, and all were refused. An appeal was made against the last refusal, but was dismissed in August 2014.

8.15. As this land has clearly been held by Plymouth City Council for education purposes, it can be registered as a town green, in the way that had happened and been upheld (at that stage by the High Court) in relation to an area known as Moorside Fields in Lancaster. This case is more analogous to that situation than it was to the housing land used for recreation purposes in the ***Barkas*** case.

8.16. As for the suggestion that local people's use of this field had been the result of permission given by Devon County Council when it was education authority, a number of points could be made. It had been suggested that the openings which

had been left in the fencing around the field meant that Devon County Council had given implied permission for leisure and recreational use. However the Objectors had offered no evidence that that was the intention. There were more likely reasons for Devon County Council's provision of those openings, which are relevant to that Council's areas of responsibility. The County Council had had no responsibility or authority for the provision or funding of leisure services for the general public. The most compelling reason for those openings having been left open was in order to facilitate safer journeys to this and various local schools across the field.

8.17. Openings had been provided at four locations on the perimeter of the field. Some of them were obviously convenient for children getting to and from school, but others did not appear to serve use by the schools. However some expense was involved in providing those openings, and they were put there for a purpose. At the time they were put there in 1991, the County Council had responsibility for education and transport functions of local government, but not for provision of leisure services. Spending money to allow access to the public for leisure purposes would have been unlawful. If the purpose had been to facilitate safer journeys to school, then the expenditure would have been a proper use of Devon County Council's funds. It is more likely that the County Council would have acted lawfully in providing the access to facilitate safer journeys, rather than for an unlawful purpose.

8.18. As for the question of signs on and around the land, it was denied that the landowners had ever given permission to members of the public to use the field. Such signs as there had been had asserted that the playing field was for the benefit of the community, and asked people not to allow their dogs to foul it. The Objectors had not at that stage advanced any evidence as to who erected those signs.

8.19. To be relevant as an alleged grant of permission to use the field, any signs would need to have been placed by the landowner. At the relevant time that was Devon County Council. However it was more likely that the signs were placed there by either concerned community members or Plymouth City Council. Plymouth City Council was the council responsible for environmental protection, including the prevention of dog fouling in public spaces. Even if the signs had been placed by Devon County Council, by the time that council took ownership of the field, use by the local community was well established. The discouragement of dog fouling was merely the prudent management by a responsible education authority.

8.20. The fact that the school continued to use this field during school hours does not have any effect on the validity of the application, for reasons which flow sensibly from the ***Lewis v Redcar*** case. The only sensible view was that there had been no permission given to members of the public to use this field at any time between its establishment in more or less its present form in 1991, and the closure of the field by the Academy in 2014. There had been no permission either express or implied. The more recent stance taken by Marine Academy Plymouth that the public must be kept out of the playing field suggests that this objector at least takes the view

that there is no question of the local public having been given a right or permission to use the land concerned.

8.21. On the question of neighbourhoods and localities, it was noted at that stage that Plymouth City Council itself used a system of neighbourhoods for various locality-based activities. That had been introduced in 2003, and the boundaries were revised in 2011. In that context Kings Tamerton had not been regarded as a neighbourhood on its own. In 2003 it had been regarded as about half of the Kings Tamerton and Weston Mill neighbourhood. Then in 2011 the boundaries had been redrawn, principally to align the neighbourhood boundaries to Council Ward boundaries, so the arrangement was re-jigged to put Kings Tamerton in with the rest of the St Budeaux Ward area as constituting a neighbourhood.

8.22. In submissions at the start of the Inquiry Mrs Cook said that the community had used the field ever since the days when there were prefabs built on the land after the war. The use continued after those buildings were demolished in the 1970s. Local children continued to use the field even though it was a derelict site. That use continued while the site was levelled and grassed and became the field that can be seen today. There had been continued use of the field by the community, until its abrupt closure in 2014 by Marine Academy. Signs were then put up on the entrances, saying that the grounds were private property, no unauthorised entry etc.

8.23. That field had been local people's open space recreation area. Evidence would be called as to the extensive use of the land by local people. That included use by the community football team, who paid the school to use their changing facilities and to help line the field, and use by the cricket team who did not pay anything to the school. The field was openly and well used by the community for more than 20 years, without anyone thinking of asking for permission. Indeed no-one would know who to ask permission from, not knowing who owns it.

8.24. Currently the field outside of school hours is heavily used on Saturdays and Sundays, and on many evenings, by different football teams and runners from Plymouth and from outside areas. It appears that the school make a lot of money by charging all those teams. All of that is to the detriment of the local community. Since April 2014 the community have had great difficulty accessing the field.

8.25. The new Academy school seems to choose not to be part of the community. There is nowhere else in Kings Tamerton like the Newton Playing Field. The Academy school, in the letter it asked parents to sign, made it clear that local people according to them did not have any right to use the land for recreation or other purposes, and that people had been using the land without permission or right. That had been backed up by a written conclusion of the City Council's Estates Surveyor in November 2017, to the effect that the Council's corporate property team had confirmed that there were no documented or recorded rights acquired to use the land for recreational purposes. Therefore it was suggested in that document that the application should be considered on the basis that there are no public rights

of access on the land. Thus the representatives of both main Objectors had admitted that the community had no permission to use the field. Therefore the community which had in fact used the field must have been using it *"as of right"*.

8.26. In closing submissions at the end of the Inquiry, Mrs Cook was strongly critical of the model objection letter which the Head Teacher of Marine Academy had sought to persuade parents of children at the school to send. It was drafted in a way that children's parents would not necessarily understand the full meaning or significance of the terms used. It further made points, for example in relation to vandalism, which painted the local community in a bad light. Parents were plainly being cajoled or misled into sending a letter which contained many points that were inappropriate. Most of the parents who did sign the letter would not know what they were signing, because the main letter did not explain the consequences. Many of the letters which were returned were from addresses well outside the local area. On top of that it appeared that less than 10% of the letters which were sent out by the school were in fact returned.

8.27. The genuine local community of Kings Tamerton feel that they have demonstrated and proved that the statutory criteria have been met for registration of the field as a town or village green. It was accepted that not all of those who had given evidence had used the land for the whole of the 20 year period. The matter is somewhat like a jigsaw puzzle, where different evidence given by different people has to be combined together to give the whole picture.

8.28. It is clear that the land was used for a variety of lawful sports and activities, of which many examples had been given. This was all done as of right, in other words without permission. The community used the field openly, without stealth. No-one ever asked permission to use the field.

8.29. As for the signs which it is suggested were there all the time, it is clear from various general pictures of the field which had been taken that there were no signs evident. Only the photographs which had been taken especially of the signs showed any of those signs. Many of the signs photographed were totally unreadable. Unreadable signs did not get like that overnight. If it had been important to have readable signs, then those signs should have been replaced a long time before they came to be in the condition that they obviously had been in. Many of the signs were clearly also unreadable because of dense hedgerow growth. Signs were not maintained. In fact one of the Objectors' witnesses had stated that City Council budgets did not allow for the upkeep of the signs. All of this explains why most of the local residents had not noticed any signs or read them. Illegible signs are as good as no signs at all.

8.30. The local community do not know what contracts are drawn up between schools and the City Council or Devon County Council. The community have simply used the field without permission since its instigation, no matter who it belonged to. That has happened for so long that the field has become an important part of local

people's recreation and open space. There is no reason why use of this field by local people should be incompatible with use by school people also playing there or using it. The field had been successfully shared between local people and all the schools which had used it, and there was no reason why that sort of arrangement could not continue.

8.31. Mrs Cook also reiterated her request that the application should be treated on the basis of a slightly amended map of the Kings Tamerton neighbourhood. This was so that the neighbourhood would now include the old village of Kings Tamerton, involving a slight amendment mid-way along the western perimeter.

8.32. Further submissions were made after the Inquiry in the light of the judgment of the Court of Appeal in the conjoined ***Lancashire County Council v Secretary of State*** and ***NHS Properties v Surrey County Council*** cases. These cases had principally related to the question of *"statutory incompatibility"*. In the ***Lancashire*** case it had been noted that there was no evidence to suggest that the school concerned there had wished to use the area concerned other than for outdoor activities and sports, and that such use is not necessarily incompatible with use by the inhabitants of the locality for lawful sports and pastimes. That statement by the Inspector in the ***Lancashire*** case is highly relevant to Newton Playing Field. Use for school sports can still be compatible with use by local residents for lawful games and pastimes.

8.33. In the ***Lancashire*** case it had been noted that there was no clear incompatibility between the county council's statutory functions and registration of the application land as a town or village green. That again applies in this present case.

8.34. If Newton Playing Field became a village green, Marine Academy could still use it for open air classes, and some organised and supervised recreation. The local community would be pleased to engage in 'give and take' on this issue.

8.35. Even if the Marine Academy could not perform all the duties it wished to carry out on Newton Playing Field, its educational duties could be performed on other land, even if that was less convenient to the school. That should not prevent Newton Playing Field from being registered as a town or village green. There is no blanket exemption for land held by public bodies for the purposes of their statutory powers and duties being registered as a town or village green. Parliament had never enacted anything which suggested that land held for educational purposes is exempt from town or village green status. The Court of Appeal judgment in the ***Lancashire*** case is therefore very encouraging to the Applicant's side in the present proceedings.

8.36. The Applicant was given further opportunity to comment on the publication after the Inquiry of the High Court judgment in the case of ***R (Cotham School) v Bristol City Council***. It seemed that the majority of the judgment in that case concerned the question of the public using the field 'by right' as opposed to as of right,

because the school had signs in places stating *"Members of the Public are warned not to trespass on the playing field"*. The public use of the land, by going against the landowner's wishes displayed on those particular signs, was contentious and therefore not as of right. That is a totally different situation from that at Newton Playing Field, where there never were any signs saying that the field was private property, until the day when the local inhabitants were physically prevented from entering the area in 2014. The ***Bristol*** case did not add anything to the previous ***Lancashire*** judgment on the question of statutory incompatibility.

8.37. In final post-Inquiry submissions on these points, in response to submissions from the Objector's side, the Applicant reiterated the point that the ***Lancashire*** judgment had made it clear that outdoor activities and sports use by a school are not necessarily incompatible with use by the inhabitants of a locality or neighbourhood for lawful sports and pastimes. The school already knows that use of the field for anything like a 3G pitch is not acceptable. That had already been turned down on a planning appeal. There is nothing about local people's use of this field which is necessarily incompatible with its use by Marine Academy Plymouth. The Applicant's view therefore is that there is nothing about the new case-law which in anyway assists the Objector's cases. The Applicant's view is that the local community have fulfilled all the statutory criteria to allow Newton Playing Field to be registered as a town or village green.

9. THE CASE FOR THE PRINCIPAL OBJECTORS – Evidence

9.1. ***Mr Darren Stewart*** lives at 123 Bridwell Road, Weston Mill, Plymouth. He has been the Community Sports Manager for the schools on the land next to the application site since July 1991, having worked for Tamarside Community College, and then transferring to Marine Academy Plymouth when it opened in 2010.

9.2. In his role as Community Sports Manager he used to be on or around the playing field (the application site) every day. While he could not remember the exact wording of the signage which had been installed at every entrance to that playing field, to the best of the knowledge there had been signs saying *"Tamarside Community College, these playing fields are used by the community – no dogs allowed"*.

9.3. Since commencing work in 1991, up to the present day, he had managed the community sports programme for the schools. As part of that he was in charge of management of the football clubs' usage of the playing field, including timetabling of games; managing of booking forms (known as LET1 forms - these being booking forms for the use of pitches etc.); collection of the charges for use of the sports facilities; ensuring the community sports programme is organised and regulated; and management of the playing fields maintenance contract. No official sports games would have taken place without proper booking and charging for use of the facilities, and the relevant paperwork would have been generated.

9.4. Responsibility for maintenance of the Newton playing field came within his duties. The grounds maintenance contractor had always been Plymouth City Council. When he first started working in his role, the grounds maintenance arrangement was more informal, and the City Council just got on and did it. However since the conversion of the school to an Academy, the responsibility for maintenance transferred to the Academy. As a result of that he was tasked with organising and agreeing the contract with the City Council, and he continues to manage the works which they undertake in relation to that.

9.5. Storage containers were placed on the site, at one side, by Tamarside Community College. Both those containers were in place when he started work in 1991. They were there to store the sports equipment such as goal posts. They were on the western side of the site, near the middle of the western boundary.

9.6. Unfortunately it is becoming more frequent that the Academy's property is being vandalised. This damage includes such things as damages to football goal sockets, breaking into the storage containers, motorbikes being used on the site, damaging the surface of the pitch, and burns to the playing fields by disposable barbecues. The constant damage to the playing field, and safeguarding concerns for the children, and the cost of repairs and inconvenience caused to PE lessons and clubs paying to use the field, led to the school wanting to fence in and enclose the playing field in its entirety. In fact Tamarside Community College back in 2009/10 had wished to enclose the field.

9.7. However at about that time Tamarside College was closed and transferred to Marine Academy Plymouth. The Governors of the old school thought the Academy should decide whether to go ahead with the fencing work. When the Academy took over it put together a masterplan for its entire site. That had included the installation of a 3G artificial playing surface pitch on the playing field. That pitch would have had new fencing as well. There was a lengthy planning process in relation to it, and it was finally rejected on appeal. He had understood that the Academy was thinking of re-applying for planning consent at the time when the village green application was made.

9.8. In his role within the community sports team, he usually works hours when people are undertaking their leisure activities, such as at evenings or weekends. He coordinates the community programme. Football on the site was at its peak in 2014; there was a community football side. These were local children, girls and boys from the local area. Those are the ones who he and his colleagues ideally seek to attract to the club.

9.9. The Community Association did have a football side when he first started his job. Nevertheless no sports game, even back in those days, took place without the correct paperwork being done. That included the Kings Tamerton Community Association team when it was playing. They paid a hire charge to use the pitch and changing rooms as part of their agreement.

9.10. As a result of his working hours on the site, Mr Stewart often encounters various members of the public walking their dogs there. He knew from the previous signage that dogs are not supposed to be walked on the playing field. All paid employees of the Academy, and voluntary football club coaches and managers, regularly challenge unauthorised people on the playing field, and inform them that they are not permitted to walk dogs there. However he knows from personal experience that when he tries to approach the public about this he is either ignored or subjected to verbal abuse, which is unpleasant, as well as being a major concern from a safeguarding and health and wellbeing point of view.

9.11. On the matter of the signs, his recollection is that they were of a blue colour, with wording on them along the lines he had mentioned earlier, that the site was for the use of the community, but that no dogs were allowed. That was his recollection. He believed that the signs had disappeared over the years. The signs had been by the access points to the field.

9.12. *In cross-examination* Mr Stewart said that he lives half a mile away from the site, but does visit the field regularly. 99% of those visits would be job-related. That includes the times when there is maintenance, or holiday clubs going on during the summer. There is only a 3 week period when he does not go there during the summer holidays.

9.13. When he goes to the site he does see dog walkers there, or people kicking a football around. He has also seen quadbikes used on the field, and people playing in the sandpit.

9.14. The school does have football teams who play on this field. They use it, weather permitting, from Monday to Friday. There are associated teams which play there on Saturdays sometimes. Other teams do not use the pitch, other than the opposition visiting to play a match. The opposition teams would not pay a fee.

9.15. The Marine Academy football club has its own structure, separate from the school. That club does pay to use the field. However the money received is peanuts compared with the maintenance cost.

9.16. It was not correct to claim that he had said that the Kings Tamerton Association football club could not use the site because of over-use. In fact he had made the changing facilities available to that community club. A member of staff would open the facilities for them. Originally the posts on the field were fixed ones, and Kings Tamerton Community Association had provided its own flags and nets. Then later on the school invested in new portable posts, and provided nets for the Kings Tamerton community club to use.

9.17. He could remember the Kings Tamerton community cricket club playing spasmodic friendly games on the site. He could not recall hearing of any cricket being played in league matches.

9.18. His view was that the percentage of players using the facilities on the site who came from the local area, the PL5 postcode, would be about 65%.

9.19. On the question of the signs on the site, his view was that the school would be proactive in removing graffiti from them, but he accepted that they were not maintaining signs to a high specification. If people cannot read a sign it is not very helpful.

9.20. His view of the sort of people on site who he would regard as unauthorised would be people using the land for an inappropriate purpose, for example people there on bicycles when there is a game going on. He accepted however that the general position had been that the gates were always open for people to come in. Nevertheless his understanding had been that the field was primarily there for the school to use. There does need to be some regulation of how it is used.

9.21. *In re-examination* Mr Stewart said that the Kings Tamerton Community Association football club had played on the field on Sundays. The school teams would generally play from Mondays to Fridays. The community team which is run in connection with the Academy school plays on Saturday. That is the Marine Academy Football Club.

9.22. *To me* Mr Stewart explained that there had been a similar club back in the days of the Tamarside Community College, from about 1992 onwards, the second year of Mr Stewart's employment. That had nearly always played on Saturdays.

9.23. He accepted that it had been some time since he had seen a legible sign on the site. The key words of those signs, in his recollection, had been about the community using the land, and no dogs allowed.

9.24. ***Mr Ian Gillhespy*** is a Chartered Surveyor, who is employed as an Estates Surveyor in the Land and Property team of the Economic Development Service of the Department of Place for the City of Plymouth. He has worked for the city council since 2000, and has been involved with the land at Newton Playing Field since that time. He had also been born and bred in Plymouth, and did in fact in his youth play some rugby and the like at the Kings Tamerton site.

9.25. He confirmed that the City Council is the freehold owner of the application site, and that it had been acquired by the City under two conveyances in 1946 and 1947. However those acquisitions had been pursuant to a compulsory purchase order of

1945, which had authorised acquisition of the land for the purposes of ***Part V*** of the ***Housing Act 1936***.

9.26. Records indicated that the land was used after the Second World War for prefabricated housing. He produced a plan showing how that housing had been laid out. Records showed that the prefabs were removed from the land in the early 1970s. Minutes of the Planning etc. Committee of the City Council from 1971 showed that the Council's education committee had made a planning application for the provision of playing fields on the old prefab site, with dual recreational use outside of school hours. It was noted that no objections had been received to the advertising of that application.

9.27. However discussions appeared to have continued, because there were records from 1980 referring to discussions between Devon County Council (which by that date was the education authority) and the City Council regarding dual use of this land, between use for recreational facilities in the City of Plymouth, and as playing fields for Kings Tamerton Secondary School. The land was noted as still being held by the Housing Committee of the City Council, pending transfer to the County Council.

9.28. Later records from 1987 still refer to discussion of joint provision and dual use of sports facilities there. There was a resolution to ask the Housing Committee of the City Council to consider appropriating land required for the school playing fields to the City's leisure services committee.

9.29. Later minutes from 1988 indicate that this suggested appropriation did not take place, as there was a resolution recorded that the Housing Committee of the City Council be asked to consider sympathetically any application from Devon County Council concerning acquisition of land at Kings Tamerton. Later papers from 1989 referred to a proposed exchange of land between the City and County Councils, where the County Council would give some other land elsewhere to the City Council, in return for land being given to the County Council as playing fields for Kings Tamerton Comprehensive School. Then later records from 1990 reported that the County Council had received consent from the Department for the Environment to the proposed land exchange, and that provisional terms had been agreed.

9.30. That transfer of the land to the County Council took place in March 1990. Thus between the 1940s and 1990 the land had been held by the City Council under Housing Act powers. Indeed there was a certificate of title from March 1990 in which the City Council certified that the land was being transferred under provisions in the housing legislation.

9.31. The conveyance of the land to Devon County Council for educational purposes contained positive covenants by the County Council, including an obligation to

erect an adequate fence round the boundaries of the land prior to its use as playing fields, and that such fencing would thereafter be maintained in good condition.

9.32. It was clear that there was a significant engineering operation, involving major earthworks, in order to create a level plateau for the present playing field. In Mr Gillhespy's experience, once that had been done the playing surface would have needed to be protected in order for the grass seeding to 'take', prior to any re-use of the land. In such circumstances it would have been normal for the public to have been excluded for a period of at least 12 months, in his view. He had been involved in similar situations himself personally.

9.33. Nevertheless, from visits he had undertaken to this particular land at Newton Playing Field, since taking up employment with the Council, he had observed fencing to the boundaries of the land, but with deliberately left openings designed for pedestrian access at three points, and another point where lockable gates were provided. The provision of pedestrian access points enabled permitted public use, which was supported by express permission signs at all those four points (points A, B, C and E). On his own visits to the site since 2000 those signs had been blue signs with white lettering. They had been present at all of those four points at some time during the decade 2000 to 2010.

9.34. He produced a record of a number of visits he had made to the site between 2001 and 2016, and a set of photographs which he personally had taken generally around the access points to the field on a visit in February 2010. Some of the photographs showed the posts to which signage had previously been attached, and one of the photographs at point B in the south-east corner showed the presence of two signs, one of which appeared to have legible wording on it.

9.35. He added that in that period he had also taken his children to a roller disco at the Tamarside College sports hall, which he did quite regularly, and did not recall seeing any activity on the application site in that period.

9.36. During the time when Devon County Council owned the land and was education authority, prior to the grounds maintenance budget being devolved directly to schools, it entered into a contract with the City Council for the latter to maintain school playing fields within the City. Newton Playing Field came within that.

9.37. As a result of further local government reorganisation in 1996, Plymouth City Council became education authority again, and land used as school playing fields as part of Tamarside Community College vested back in the City Council in April 1998. Since 1998 the governing bodies of first the Tamarside Community College and then the Marine Academy Plymouth had acted as agent and licensee for the local authority in the management of the school site, including the application site land.

9.38. Mr Gillhespy was aware that the Community College in 2009 had submitted a planning application for the erection of security fencing around the entire school campus, including the Newton Playing Field, and that that permission had been refused on grounds which included reference to potential cessation of permitted community use of the site. However a later planning application was made in March 2010 for the erection of security fencing around just the application land specifically, and permission was granted which included a condition that the fence could not be erected until a plan for use of the land for community sports and recreation purposes was approved. Mr Gillhespy's view was that this reinforced the claim that there was permitted community use of the land.

9.39. Tamarside Community College obtained academy status from September 2010. As a consequence the Council is obliged to grant a 125 year lease of the school site, including the application site, to the Academy. The Council is contractually committed to doing that, following completion of the redevelopment of the school site.

9.40. As a consequence of his involvement with the land over a considerable period, Mr Gillhespy was aware that a town planner (not Mr Gillhespy himself) had taken some photographs at some time prior to July 2013 of signage in situ around Newton Playing Field. He produced a copy of one of those photographs, including an enlargement of it, being a photograph of a sign at access point E on the west side of the land. That sign had been heavily painted over with graffiti, but it was possible to read and confirm what the original wording of the sign, in white lettering on a blue background, had been. It had said: *"Devon County Council: These school playing fields are for the benefit of the Community. Please do not allow your dog to foul the area as this poses a serious health risk particularly to children."*

9.41. That wording was consistent with Mr Gillhespy's personal recollection of the wording he had seen, on signs with white lettering on a blue background, during his own earlier visits from the year 2000 onwards. In Mr Gillhespy's view that signage had given express permission to the community to use the land when not in education or other expressly permitted use. Indeed in July 2013 a member of the staff of Marine Academy had asked him if the signs around the field could be removed, because they were not helpful, and mentioned that the community could use the site. Some meetings had taken place at the school in consequence of that. Another photograph (which Mr Gillhespy produced a copy of) was taken in 2013, showed a sign attached to the fencing, headed 'Tamarside Community College' [rather than 'Devon County Council'], with somewhat different (but easily legible) wording from the blue and white ones, which still envisaged that people would be on the field with dogs, and told them not to allow their dogs to foul the area.

9.42. Mr Gillhespy was aware that in April 2014 the Principal of Marine Academy wrote an open letter delivered to residents, withdrawing permission to the community to use the land, with effect from April 2014. It was Mr Gillhespy's understanding that this withdrawal of permission was implemented by the erection of some Heras

fencing. Mr Gillhespy's understanding was that (contrary to what some had believed to be the case) this closure of the field had not been because it was needed for contractor's plant; it had been because of the need for somewhere safe for children to go at break-times and lunchtimes, while work was being carried out on other parts of the Academy's site. That Heras fencing had on it a sign or signs put there by the Marine Academy, which Mr Gillhespy understood to have been vandalised.

9.43. In addition to the permissive signs which Mr Gillhespy had referred to earlier, he also recalled seeing blue signs with white lettering, particularly on the Cayley way side of the field, asking children not to kick balls against the fence, because it was annoying to the neighbours.

9.44. Thus Mr Gillhespy's overall view of the matter was as follows: for the period between the original acquisition of the land, through to 1990, any rights exercised by the local community over the land would have been pursuant to statutory provisions in the housing legislation. Use by local people during that period would therefore have been by right, not as of right.

9.45. Then from 1990, or rather the recommencement of use of land after the school playing fields had been formed, up until April 2014, use by the local community would have been with the express permission of the school, and so was again 'by right' rather than 'as of right'.

9.46. He confirmed however that in a representation made in 2009/10, in relation to planning applications on the land, he had indicated that the Council was not aware of any documented or recorded rights that had been acquired to use of the land for recreational purposes, and expressed the view that the planning applications concerned should be considered on the basis that there are no public rights of access on the land.

9.47. From the date in about 1990 when the school playing field was constructed, until the end of August 2010, the school in beneficial occupation of the application land was Tamarside Community College, and indeed photographs had been produced to the Inquiry showing signs on the land which made clear reference to the Community College.

9.48. He understood that in conjunction with the planning application made by Tamarside Community College in 2010, it had been envisaged at the time that gates to the field would be locked when the field was not in use, but that some community use of the field would have been provided for, by governors of the school who were local residents holding keys, and an anticipated arrangement which would be made with the local Community Centre nearby. That was envisaged as enabling the field to be opened at times when no college staff were present, but that this would exclude use for golf practice and the exercise of animals.

9.49. He also explained that in Plymouth *"*neighbourhoods*"* are used as descriptions of areas within the city for various administrative purposes. He produced some plans in relation to this.

9.50. He pointed out that the Applicant, in putting forward a suggested neighbourhood or locality, had (in his view) deliberately excluded significant wooded and open areas. However the existence of those areas showed that there was a good standard of open space and green space in the area. In his view there was no shortage of accessible green space in the Kings Tamerton area. It was difficult to get exact population numbers living in the neighbourhood which had been put forward by the Applicant. The Office for National Statistics kept data based on areas with about 1,500 people in them, to aid comparison. The area in that context which most closely related to the suggested neighbourhood had a population of 1,548.

9.51. He confirmed that he with colleagues had thoroughly researched the records available to the City Council for all the relevant periods. No minutes had been obtained from the Devon County Council period, although the County Council had been asked for any relevant minutes they might possess. There had been no positive response to that request. Devon County Council when it was in charge of the school had in fact had its relevant officers for this part of Devon based in the City Council's civic centre building in Plymouth. Some of the records kept by that part of the County Council had come to Plymouth City Council, but no records relevant to the present case had been found.

9.52. The land had reverted to Plymouth City Council in 1998. From 2004 onwards the minutes of Plymouth City Council are all available electronically. Mr Gillhespy had researched those records, and indeed some reports came up through those searches, for example in relation to the conversion to an Academy school. However those records had been more to do with the conversion of the school's status than with anything relevant to the present issue or the application site.

9.53. *In cross-examination* Mr Gillhespy said that he personally lives several miles away from this site. Outside of his employment with the Council, his only real involvement with this land had been when his children attended roller discos and a roller hockey club at this site in the period 2008 to 2010, when he visited the site about once a month. He took advantage on those occasions of the opportunity to look at the present application site, and saw no evidence of significant use by the public. However those were only fleeting visits, and had been during school holidays or at weekends. It is in practice easier to look at sites if they are open at weekends.

9.54. He confirmed that Marine Academy has a new primary school on its site, but nevertheless the school has more green land now than it had before its building works were carried out. He had done a calculation in respect of that matter, which

he explained. He should not be taken as necessarily agreeing with everything said by witnesses appearing on behalf of Marine Academy Plymouth.

9.55. In relation to his comments about the closure of the playing field by Marine Academy in 2014, he had not intended to imply that his view was that the closing off of the playing field then was temporary. His view is that this school does need the Newton Playing Field as part of its grounds, in order to meet the relevant national playing field standards. The letter circulated to local residents by Marine Academy in April 2014 certainly appeared to be talking about a permanent closure of the field.

9.56. Although there might be some photographs showing that there were trees near some of the signs around the site, on the occasions when he had visited the trees were away from the outside of the fence, and the signs could be read. He accepted that no sign was visible at entrance point A at the time when he took his photograph at that location in February 2010. He believed there had however been a sign which he had seen at that point during the previous decade. He could see damaged fencing at that location, and his understanding was that it kept being broken down. That damage was adjacent to the permitted access point. Nevertheless there was signage in 2010 at the other access points. He reminded the Inquiry that the present application relates to a 20 year period before 2014.

9.57. The responsibility for education came back to Plymouth City Council in 1998, so in his view the Devon County Council signs around the field by 2010 would have been there for at least 12 years by then, and therefore they were there within the 20 year period which the Inquiry is interested in. Even the sign which was defaced by red paint in 2013 was still readable, in his view, if one tried to read it.

9.58. The photograph which he had produced of a sign headed *"Tamarside Community College"*, with writing in red on a white background, had been taken in July 2013. The blue signs put up by Devon County Council had plainly been put up prior to 1998.

9.59. As for his photograph taken at entrance point B in 2010, his view was that people would have been able to read the sign visible there on the left side of the entrance.

9.60. At the time when Tamarside Community College applied for permission for new fencing around its land, there were not gates keeping people out. What the college was putting forward was an application to be able to have a fence with gates in it. Those were gates which would be lockable, and were the gates in respect of which it was suggested that there would be school governors who would have keys to enable them to be opened.

9.61. ***Mrs Anita Martin*** lives at 12 St Bridget Avenue, Plymouth. She is the Director of Business and Finance of Marine Academy Plymouth, and has been in that role since November 2013.

9.62. Before she started working at the Academy she was employed by Plymouth City Council from 1998 (as a move from Devon County Council) as the group accountant for schools. In February 2010, when the decision was made to close Tamarside Community College and create a new sponsored academy, she was appointed onto the interim governing body of Tamarside Community College, in order to ensure the smooth closure of that school. She attended meetings of the governing body in 2010, and the planning application for the fencing around the playing field was regularly discussed. She had understood that a previous application had been rejected, and the governors were desperate to obtain the permission before they as a body were disbanded. Permission was granted for the fencing in June 2010, which was just before the Community College closed. In the light of that the governors thought it better to leave if for the Academy to decide whether the fencing should be installed, taking into account the redevelopment of the school site and the financial position. It was her understanding that the redevelopment, which would include a 3G pitch on the playing field inclusive of new fencing, meant that the originally proposed fencing would not be required. Unfortunately by the time the planning application for the 3G pitch was rejected in 2014, the original planning approval for fencing around the site had expired.

9.63. The application for fencing around the application site in 2010 had in fact been strongly supported by Councillor Wheeler, who was very aware of anti-social behaviour on the site, and the problems it caused. People would complain to the school about inappropriate or anti-social activities by people on the land.

9.64. In April 2014 the Academy entered into the final phase of the redevelopment of its site, including the demolition of old buildings there. As a result, access needed to be restricted to areas subject to building works, and the school had to relocate pupils to the playing field for break and lunchtimes. In order to support that move, the school asked their building contractor to secure the playing field by enclosing the whole area. That meant fencing to fill any gaps in the existing fence. The school also needed to restrict access, which it did by only allowing one access via a locked gate, at the end of the ramped entrance in the south-west corner. The Principal of the school let local residents know that this was going to happen, by sending a letter around. It was Mrs Martin's understanding that although the fencing used at that time was temporary, it was always intended that the field would be permanently fenced.

9.65. At the same time as that letter was sent round to residents, signage was installed which pointed out that these school playing fields were private property, and went on to say *"No unauthorised entry, no dog walking"*. There are clear photographs of these signs.

9.66. Unfortunately, despite the Academy's best efforts, the new fencing and signage were continually vandalised. The damage had to be made good on a daily basis. This was reported to the police. The local PCSO wrote a letter which was distributed to local residents.

9.67. That letter did not have the desired effect, and further vandalism was suffered. Constant repair of the fencing was not economically sustainable, so the Academy stopped doing it. The fencing had been put up in April 2014, and maintained to the end of that year. However local dog walkers had used bolt cutters to get in. That fencing is no longer there at all, although the school itself had not actively removed it.

9.68. The Academy offers a significant number of facilities and services to the local community, as well as it being a place of education. There is an extensive range of breakfast and after school clubs, and over 1000 children and adults engage in activities on the Academy's site every week. The community sports manager role had been created in 1991 to develop the sport offer outside of the school day. That usage had been built up over the years to create an extensive programme, 7 days a week. Those activities can only continue through the effective management and use of the Newton Playing Field.

9.69. A shortage had been identified in terms of community sport provision in the north-west of Plymouth. That would be worsened if this land were granted village green status.

9.70. The Department for Education produces guidance for schools as to the areas required for various facilities at schools, including outdoor play areas and sports facilities, according to the size of the school concerned. These were considered in some detail. Viewed against this guidance, especially with the rejection of the application for an artificial surface pitch area on the application site, the Academy is already short of space.

9.71. If the village green application is successful, the Academy would more than likely be unable to use Newton Playing Field, due to safeguarding concerns and their inability to organise and regulate the use of the area. The Academy would therefore be unable to meet the educational needs of its pupils in relation to PE. Without the use of the playing field, they would need to significantly reduce PE lessons, and pupils would be restricted to inside games with a small number of team games able to take place on the much smaller lower playing field. However that lower playing field is already used, so this would not represent alternative space which is available. The reduction of physical education lessons would put the Academy in breach of its funding agreement. The Academy would therefore need to bus pupils to alternative provision, which would be costly and disruptive.

9.72. All of the football clubs using the playing field pay for the use of the area. The school's sports community manager runs that facility, and manages the timetable

of all use outside school hours. The clubs have to complete LET1 Forms for such bookings, and that then generates the charges which are levied.

9.73. Kings Tamerton Community Association football club is a club which has used the playing field. It had done so as part of a formal booking and in exchange for payment. The club had not used the area without the school's permission. However, from September 2013 the school was unable to accommodate the Community Association football club's booking request, due to demand from an increasing number of children's and youth teams. She understood that the club now plays elsewhere.

9.74. As far as she was aware the school had charged for the use of the playing field since at least 1991. The pricing structure for community use of these educational premises had been agreed in the year 2000, and included a price for hiring of football pitches.

9.75. *In cross-examination* Mrs Martin said that she personally lives about 4km from this site. Her primary focus for being at this site would be due to her employment, starting with when she worked for Plymouth City Council. However as a matter of fact her own grandparents had always lived at the top of Peters Park Lane, close to the site, and she had often visited them. However she never went to the playing field while staying with her grandparents, which she had done often.

9.76. She had however quite often seen dog walkers on the application site. She works all year round, including the school holidays, so she would go there in connection with her work, both during the school holiday periods and during term times.

9.77. During the Inquiry she had heard that the Community Association football club had ceased to exist. The teams which use the site now are all based on the Academy's own football club. She accepted that the Government want people of all ages to keep fit and healthy, and indeed the Academy encourages this. They would like all age groups to be able to use their facilities in order to keep fit. Nevertheless their priority as a charity is towards children and education. Therefore the school prioritises this over adult use of the pitches. She entirely accepted that the school had lost the planning appeal for a 3G pitch on the site.

9.78. *In re-examination* Mrs Martin explained that the types of team which use the playing field nowadays include children and youth teams, school youth teams etc. They are all affiliated to the National Football Association. The school would work with those teams, and indeed to create those teams in the local area. It is Mr Stewart who oversees that, in order to be satisfied that all the teams are appropriate to use the school's land. Nevertheless the school's governors have to approve the teams which are allowed to use the land, in accordance with appropriate safeguarding provisions. There are in fact 22 football teams which use this land, but many of them relate to different age groups.

9.79. Her view was that the statutory responsibilities of schools have changed in more recent times. Security is greater. There are significant concerns around safeguarding of children while they are in the school environment. The old situation which might have prevailed on the site is not the world in which one lives nowadays. That is something which has changed quite significantly over time.

9.80. She accepted that the evidence showed that there had been quite a lot of community use of this land in the past. However not all of that use had represented good behaviour on the land. There had been anti-social activity there which had had an impact. If the village green application were granted, she personally did not know what the impact would be on the school's use of the land. She did not know how the school would be able to regulate the use of the land in those circumstances.

9.81. ***Mr Nick Ward*** lives in Polyphant, Cornwall. He is the current Principal of the Marine Academy Plymouth, having been employed there since September 2010. As such he has a legal and moral responsibility for keeping the children safe in education and on the school's site. He also has responsibility for providing a balanced curriculum, including the appropriate expectation for physical education.

9.82. As Principal he is immensely proud of the community sports programme which the Academy offers. That includes 22 football teams based at the Academy site. The Community Sports Manager handles all the bookings and timetables for that usage, and arranges the invoicing for that use.

9.83. In April 2014 he (Mr Ward) had sent a letter to local residents explaining that the fencing of the playing field was being secured during the Easter holiday. That was because school students would need to use the playing field during breaks and at lunchtime. He also explained the signage, and informed local residents that the playing field was covered by a city wide dog control order that strictly prohibits the walking of dogs. That had been based on information provided to the Academy by the local authority. Although this particular field had not been expressly referred to in any such order, his understanding had been that where dogs were excluded by signage, then both walking dogs and failing to pick up dog mess would be in breach of the relevant legislation. People would therefore be potentially subject to being fined, although it was acknowledged that it would be difficult to identify particular offenders in order to bring about prosecutions.

9.84. After the fencing and signage were installed, he received a number of communications from local people, checking on the legality of the action which had been taken. Mr Gillhespy from the City Council had helped to formulate the responses to that, confirming that the Academy had control of the use of the playing field, and that the field was held for education and not community use.

9.85. The school has a responsibility to provide a safe environment in which children can learn. That includes preventing intruders from entering the school site and having

contact with pupils which could put them at risk. It also includes protecting pupils from dangers associated with equipment and substances. This is the interpretation which schools in general put upon Statutory Guidance from the Department for Education about keeping children safe in education, although he would accept that this view of the matter is not something which is specifically there in the Guidance.

9.86. The presence of unauthorised adults on Newton Playing Field when pupils are using them, and the increasing amount of dog faeces left on the field which pupils are exposed to, has been a problem. He understood from PE staff that they regularly report encounters with dog walkers during PE lessons, or report that lessons have had to be brought inside or moved elsewhere, due either to the presence of unauthorised adults or dogs, or dog faeces on the playing Field. He had records of numerous events which had been reported to him along these lines.

9.87. The playing field is essential to the Academy, and without it the school would not be able to meet the educational needs of its students. If the village green application is successful they would not continue to use the playing field. It would be impossible to safeguard pupils. They would not be able to timetable the usage of the playing field. It would therefore be difficult to use it as a curriculum resource. Without being able to take the necessary steps to ensure that the area is free from intruders and dogs or dog faeces, he did not believe the school would be able to fulfil their safeguarding responsibilities.

9.88. He acknowledged that in his career of over 22 years the matter of safeguarding had increased in importance in education. Hence there had been the Statutory Guidance of 2016. Schools and the sites of schools had changed markedly in the way they managed their perimeters.

9.89. In the case of Marine Academy everyone has to wear an identity badge. People have to be vetted if they are to be in contact with young people. Ofsted would put the school into a lower category if it failed its safeguarding duties. Everyone on the staff has to read the Statutory Guidance document about safeguarding, annually. In addition to the identity badge, the school has points where there is controlled access, e.g. through the use of fobs. Newton Playing Field however is outside the school's fob controls. The rest of the school is in a fenced area controlled by gates which are closed during the day.

9.90. *In cross-examination* Mr Ward said that he personally lives about 22 miles from the school. He visits Newton Playing Field about once or twice a week, but sometimes more frequently.

9.91. On his last visit he had seen other young people playing football there, when he went up to watch a school match. He had also seen dog walkers there. Signs in the field are currently maintained by the school's own site staff. The site staff would when they saw fit (but this would not be very often) clean those signs, to make sure that they were readable.

9.92. He personally did not know how well the signs which had been originally put up by Tamarside College would have been maintained. If they were maintained, that would have been done by the site staff.

9.93. He had produced a model letter for parents to sign, objecting to the village green application. He had drafted it. A considerable number of parents had in fact sent it to him. No parents had come back to him raising issues around that letter. He did not know how many were actually sent in by people on their own behalf.

9.94. *In re-examination* Mr Ward said that before 2010 he had not been employed at the Academy or by Tamarside College. He accepted that beyond the Academy's southern playing field (not the application site) there is a boundary there that pre-dates the Marine Academy, which is not as well maintained as other boundaries. It is a fence with a gate in it.

9.95. ***Mrs Lorna Vickery*** lives at 16 Telford Crescent, Kings Tamerton, Plymouth. She had been initially employed as estate manager at Kings Tamerton School in 1988. She was then transferred and employed by Tamarside Community College, and latterly by Marine Academy Plymouth up to August 2014.

9.96. During her employment at Tamarside Community College, and latterly the Academy, she could remember there being signage around Newton Playing Feld. From memory she recalled that one of the signs was a Devon County Council sign, at the top of the steps at the far end of Newton Avenue (point B). Although she could not accurately recollect the exact wording of the signage, she recalled that this had included reference to the community. She could also recall being tasked with installing relevant signage around the playing field on a number of occasions.

9.97. Those signs were installed by Tamarside Community College. Latterly there had been signs installed by the Academy, which prohibited access entirely. That prohibition of access had been around April 2014. She understood that this was in order to improve the safety of students.

9.98. Sadly the signage which she installed was subject to vandalism on a number of occasions, along with the fencing that both the Community College and latterly the Academy had installed. She referred to a photograph of such vandalism, to one of the Academy's signs. That sort of thing required maintenance from members of her team on a daily basis.

9.99. The signage which she could recall being tasked to put up could be either small or large. Most of the signs she could recall were blue with white lettering.

9.100. Access to and egress from the playing field has changed with the development of the Academy site. When she first started working for the Community College, the site was much more open and there was an option for the students to access the playing field in its south-eastern corner, via another gate out of the main part of the school's grounds to the south of that. However since the development and building of the primary school, that access gate was removed, and it is no longer possible to get from the school's main grounds into that south-east corner of the playing field.

9.101. During her time as estate manager of the site, she was in control of and oversaw the maintenance and upkeep of the playing field. She recalled several complaints during that time from the public concerning the playing field and its boundaries. Those complaints had prompted her to ask the City Council where the school's boundary actually was, and what the school was responsible for. Following her enquiry the City Council sent a map which outlined the playing field boundaries. That map also showed that as well as the playing field itself, the school was also responsible for some land beyond the boundary fence of the field, i.e. an area between the playing field and neighbouring properties, in particular down the eastern side of the playing field.

9.102. The complaints she received related to such matters as trees overhanging into neighbouring gardens (she had to ask the caretakers to cut those branches back); a broken fence along the side of the path where the public walk to the housing estate; removal of rubbish near neighbouring properties; removal of large items of rubbish dumped on the playing field; bonfires lit on the playing field; damage to cricket nets, making their use and existence unsafe. The school had to spend money dealing with all of these problems. Together with dealing with those various complaints and expenses, the school also paid Plymouth City Council to maintain the playing field, which included cutting the grass, reseeding the field, and line marking the football pitches. She understood the school generated a small income from letting others use those pitches.

9.103. She personally had lived in Kings Tamerton for the past 30 years. To the best of her knowledge, there had not been any public events held on the playing field during that time. There had been football events organised by the school's sports complex, but she had no recollection of any organised community events taking place there, contrary to what has been asserted on behalf of the Applicant.

9.104. *In cross-examination* Mrs Vickery said that the playing field is not visible from her home. She has no connection with the playing field, outside her employment. She had never used the field herself, but she had known the field ever since she moved in. She had however crossed it as a short cut, and seen people using it with dogs, or walking across in the same way as she did.

9.105. If she saw football taking place at weekends on the field, she would not walk across. She would assume that Mr Darren Stewart would have arranged the

matches taking place. She would not visit the site during the school holidays, unless there was a problem there.

9.106. As for the signs, she would not go and check them on a daily basis, but only if damage was reported to her. She herself had reported one sign being vandalised. She recalled the old Devon County Council signs, and thought that they were generally readable, although some were really old.

9.107. She remembered being asked that her staff should take the Devon County Council signs down after Plymouth City Council took over, but she was not sure to what extent that actually happened. If it was drawn to her attention that the signs needed to be cleaned, then they would be cleaned.

9.108. She personally had never been to the Kings Tamerton Community Centre, therefore she did not go to any fetes held by them on the land. She herself had not heard of any event going on up there on the field. She felt that surely as a local resident she would have known about it.

9.109. During the building works on the school site, children had to have a break somewhere, and it was this that had caused the school to close all the exits. At that particular time this work was done on a temporary basis.

9.110. *In re-examination* she said that she had noticed one particular sign with a lot of graffiti on it, of which she herself had produced a photograph. That however was one of the more recent signs, saying that there should be no unauthorised entry onto the site, and no dog walking.

9.111. ***Mr Leslie Wells*** lives at 66A Shaldon Crescent, West Park, Plymouth. He had been the Tamarside Junior Football Club treasurer from 1995 to 2005. As part of that role he was principally tasked with the Football Club's finances.

9.112. During that time he was also in charge of Tamarside Kings Football Club (now known as Marine Academy FC), and was responsible for their finances as well. The football teams ranged from under 11s right through to under 18s. Those age groups played on both Saturdays and Sundays, and all home games were played on the playing field (the application site). This playing field can accommodate two football pitches.

9.113. The playing field was used regularly by the Football Club for both league and cup competitions, and also for training and playing friendlies before the start of the season. Each of the teams were members of the relevant Devon league, and affiliated to Devon County Football Association. The season runs from 1st September to 1st May, and the normal playing schedule would be all teams playing once per week on either a Saturday or a Sunday during the season.

9.114. All of the league and cup fixtures were generated by league meetings which were held monthly. The club secretary would then distribute the fixtures between the individual managers at monthly meetings, and copies of the fixtures were also provided to Tamarside Community College, who then enabled them to book the pitches on the playing field for the fixtures. Following the booking of the pitches on the playing field, the City Council would generate invoices on behalf of the school, which were forwarded to Mr Wells for payment on behalf of the respective football clubs. He would arrange for that payment to be made every 12 weeks.

9.115. *In cross-examination* Mr Wells said he lives about 2 miles from the site. He had no connection with Newton Playing Field outside his employment. He had not seen people using the field other than for the football which he had described. There would be spectators coming out of Kings Tamerton Social Club to watch some matches. Teams would typically play on both Saturdays and Sundays, although sometimes during weekday evenings in summer time.

9.116. For training on the field, fees were paid at about £2 per person. It was necessary to make sure that enough money was generated. It had proved necessary to introduce a subscription fee of about £70 or £80 per person. He personally had been a team manager for 4 to 5 years, and then acted as treasurer. It was more accurate to say that he was a volunteer, rather than being an employee. In fact an honorarium was introduced for his role a few months after he personally had left. He had not had any involvement with the school as such. His involvement was really as part of a completely separate identity from the school itself.

9.117. ***Mrs Louise Frost*** lives at 43 Hilltop Crest, St Budeaux, Plymouth. She had lived there for 12 years. She had previously lived in Kings Tamerton Road for 10 years, only about five minutes' walk from the site. Where she lives now is also less than five minutes' walk from the site.

9.118. She had been the treasurer for the Marine Academy Plymouth Juniors Football Club, and was the mother of three children who currently play football for their respective age groups. She had undertaken the role of treasurer at the Academy Junior Football Club between 2009 and 2016. During her time as treasurer she was responsible for the payment of invoices generated in the running of the football club. She could remember that they had to pay £20 per match for the use of the playing field.

9.119. The fixtures were allocated by the league in respect of the various age groups, and were passed to the Academy's sports complex, who in turn scheduled games for the weekend. It was in respect of those games that they had to book the pitches and pay £20 for use of them. They were invoiced at the end of the football season for the games that were played. She then made payment of those invoices. She produced examples of the booking forms and invoices.

9.120. Her children had all gone to the school whose playing field it is, and she has lived nearby. She personally had not seen the community using the field. She herself had gone to that school too. It was true that her children had used that field other than for football, for example to meet friends, or to watch other teams playing.

9.121. Her recollection was that at the bottom of the steps by the community car park (point C) there had always been a sign. The colour of signs would have been whatever colour the school used.

9.122. ***Mr Huw Morgan*** lives in Bodmin, Cornwall. He is currently employed by Marine Academy Plymouth as Assistant Vice-Principal. He had been employed by the Academy and its predecessors since 2008, with his teaching specialism being physical education.

9.123. During his time as a physical education teacher, he remembered that there used to be signs surrounding Newton Playing Field, at the time when the Academy was known as Tamarside Community College. His recollection was of signs which had a white background with writing upon them. He remembered the signs being in place when he started teaching at the school in 2008, and for a number of years thereafter. He could not remember exactly when the signs were removed, but they were certainly situated next to the playing field between September 2008 and September 2010, perhaps even longer. He personally did not recall the blue signs with white writing upon them.

9.124. Although he could not accurately recall the wording on the signage he saw, he could remember that it made reference to the area being part of the Tamarside School, and that the pupils of the school used the playing field regularly, and so dogs should not be exercised on the playing field.

9.125. Although his recollection was that the signage around the playing field stated that the area was not to be used for the exercising of dogs, they frequently had issues with dog walkers on the playing field. Throughout his time as a teacher taking lessons on the playing field, he frequently had dogs disrupting PE lessons as they were not under the control of their owners, and simply ran across the area that the lesson was using (usually chasing a ball that had been thrown by the dog's owner).

9.126. On a few occasions he approached the dog owners during the lessons and stated that dogs should not be on the playing field, particularly during lessons. When approached, such owners were frequently rude and even aggressive towards him. That would materially impact on the children's learning during the lesson.

9.127. As an Assistant Vice-Principal at the Academy, he has huge concerns as to the safety of the children when lessons are being undertaken on the playing field. Firstly this is in relation to aggressive dogs, and the physical impact they may have on the students, and secondly in relation to dog faeces which are left as a result of

dog walkers being on the playing field. He recalled that there were also occasions when dogs would be on the playing field when they used the area for unstructured time a couple of years ago, and the same problematical issues would occur.

9.128. *In cross-examination* Mr Morgan said that he lives about 25 or 30 miles from the school. He has no connection with the field outside his school employment. Nevertheless he has known the field for about 15 years. He personally does not use Newton Playing Field for pleasure.

9.129. He had seen an annual football festival on the land, which the school sports organisation had run. He had not been on the field in school holidays. Signs on the site were maintained by estate staff.

9.130. *In re-examination* Mr Morgan said that the football festival which he had mentioned had been run by the Marine Academy Football Club.

10. THE SUBMISSIONS FOR THE OBJECTORS

10.1. As noted earlier, there were a very considerable number, running into the hundreds, of written initial objections to the application in this case. Very many of them were in a standard form, sent in by parents of children at the Marine Academy, responding to promptings to do so from the Marine Academy itself. Those objections do not contain any material points of submission which add anything to the arguments made on behalf of the Principal Objectors.

10.2. The two Principal Objectors, Marine Academy Plymouth, and Plymouth City Council in its capacity as landowner, made a number of submissions within their original written objections. In large part these submissions will have been subsumed into the arguments raised and addressed in the context of the Inquiry which I held considerably later in the process. However it is appropriate that I take note here, at least briefly, of some of those points originally made.

10.3. In its original objection, Marine Academy Plymouth pointed out the historic timeline in respect of the ownership of the field on the application site, including the point that when the field was transferred to Devon County Council in 1990, it was subject to a covenant by the County Council to erect and maintain an adequate fence around the land. Nevertheless Marine Academy accepted that at least to some extent the field had been used by members of the public for over 20 years. However they argued that that should not give rise to a successful application. It was suggested that any use by local people had been by permission of the landowner, rather than as of right. In the alternative it was argued that much of the use which had been claimed did not meet the criteria of being lawful sports and pastimes.

10.4. It was pointed out that many of the arguments which had been raised by the Applicant and her supporters were to the effect that this was land which, as well as being a school playing field, had actually been designated to provide community recreational land. There had been signs up, according to the Applicant's supporters, saying that the playing field was for the benefit of the local community. At all material times the field had been held by one or other public authority. That amounted at least to implied and possibly to express permission for the field to be used by local people. The well-known case of ***Barkas*** was referred to.

10.5. Marine Academy also accepted that the Community Association football club had used the field to play league matches in the local football league. That use was plainly not as of right, but by permission of the school.

10.6. The school whose playing field the land had been had in fact quite regularly excluded the public in general from the field, so that it could be safely and exclusively used for school purposes. Exclusion like that demonstrates to those who use the field at other times that their ability to do so can be restricted during certain periods. This supports the argument that there was implied permission for the residents to use the field at other times, when the school was not using it.

10.7. Furthermore, much of the evidence supporting the application suggested that people used the field as part of a short-cut route to get to various places. That did not amount to use of the land for lawful sports and pastimes. Uses for cricket or for holding fetes plainly would have been use by right or with permission, rather than as of right use. Only a small proportion of the use claimed by local people could have been as of right use for lawful sports and pastimes, on any view of the matter, and that did not cross the threshold of being something which a significant number of the local inhabitants had indulged in.

10.8. In its original objections, Plymouth City Council as landowner also explained the ownership and use history of the land. It was acknowledged that when in 2009 the old Tamarside Community College sought planning permission for the erection of security fencing around the school campus, including this playing field, that application was refused on the basis that the then proposed development would not ensure access and use for all sections of the community. The refusal also appeared to suggest that dual use of the land (meaning by both the school and the local community) was something to be encouraged.

10.9. Nevertheless a later planning application for security fencing around the application site land alone was in fact given planning permission, although that planning permission had included a condition that the fencing should not be erected until a detailed management plan allowing for the use of the land for community sports, and/or formal recreation had been lodged and approved by the planning authority. All of this indicated that there had been permission from the City Council for the community's use of the land.

10.10. Both Marine Academy Plymouth and before it Tamarside Community College had actively supported significant community programmes, resulting in extensive use of the land for out of school hours formal recreation.

10.11. By the time that preparation was taking place for the Public Inquiry which I eventually held, the two Principal Objectors, Marine Academy and Plymouth City Council as landowner, had become jointly represented. In the remainder of this section therefore I shall refer to the two objectors together as the Principal Objectors.

10.12. In submissions advanced in the run-up to the Inquiry, it was argued for the Principal Objectors that the use relied on by the Applicant and her supporters was shown by the evidence to be use by permission either of Plymouth City Council, or Devon County Council during its period of ownership. This is evidenced by the fact that the public had paid for the use of the football pitches on the land. There had also been, consistently even if not totally throughout the 20 year period, signs on various of the entry points to the field, which established that the use by the public was with the permission of the owner.

10.13. It was further argued that on the facts here the doctrine of statutory incompatibility should apply, so as to prevent the registration of this particular field as a town and village green. Such registration would prevent the City Council and Marine Academy from fulfilling their statutory obligations regarding the provision of outside recreation areas for the students of the Academy, as well as causing safeguarding issues.

10.14. It was still argued that if there had been any as of right use of the land, the evidence suggested that that had been minimal, and of insufficient quality to pass the threshold of the test of significant use under ***Section 15*** of the ***2006 Act***.

10.15. The ownership history of the land was again recited. It was pointed out that in the period before 1990 the field had clearly been held under Plymouth City Council's powers under the Housing Acts then in force. The field was then transferred to Devon County Council, which was the education authority at the time. The City Council had been unable to locate any resolution specifically appropriating the field to educational purposes when it was transferred back to the City Council in 1998. However it was argued that, without further evidence, what had taken place in the 1990s led to the inference that from 1990 onwards the field had been held pursuant to the relevant local authority's education powers.

10.16. The transfer back from Devon County Council to the City Council in 1998 was an administrative transfer, arising out of Plymouth being made once again into a unitary authority, so regaining its education functions, which it had not had immediately before that took place.

10.17. It was pointed out in more detail that the public had paid over the years for the use of the football pitches. The signs at various entry points to the field also established that any use by the public was by permission of the owner. It was clear that the football use had been by permission from the owning authority, or at least from someone managing the field on behalf of the owning authority, or through the relevant school which was managing the land. Signs around the land had asserted on behalf of Devon County Council that the playing fields were for the benefit of the community. They also clearly envisaged that local people might walk their dogs on the field, because they asked them not to allow their dogs to foul the area.

10.18. Various of the supporters of the Applicant had made reference in their letters of representations to signing around the site, with more or less the same wording. The fundamental question is what those signs and notices conveyed to the users of the land. It was necessary to interpret the signs in a common-sense and not in a legalistic way. The common-sense interpretation of the signs in this case was that, in talking about community use of the field, they were conveying a permission to local people to use the field.

10.19. It was further argued at that stage that the doctrine of statutory incompatibility made it inappropriate and legally wrong to envisage the registration of this land as a town or village green. In view of later developments in relation to this matter, I shall not record any detail of the submissions made at that relatively early stage in the proceedings, because they were superseded by the later developments in this field, to which I refer below.

10.20. Reference was made to the various statutory and regulatory requirements placed on schools and education authorities, to offer sufficient and satisfactory education facilities to the children attending schools. This applies both to academic and recreational facilities. Marine Academy Plymouth has a statutory duty to provide suitable outdoor space.

10.21. By the time of the application in this case Plymouth City Council had contractually agreed with Marine Academy Plymouth to grant a 125 year lease of this land, so that the land was specifically required in order to fulfil the requirements of that school's conversion to an Academy. The Academy already has insufficient outdoor space to meet Department for Education guidelines. The inability to use this field at all, or indeed to develop it further by installing a 3G pitch, would worsen that position. There are no other alternatives available in this part of Plymouth.

10.22. It was further argued in opening that it was obvious that there had been express or implied permission for local people to use this land, at least since it had been developed into its present state in 1990. There had been signage which envisaged local people's use, and also the fence around the field was constructed with gaps in it for people to access it in the period after 1990. The context of the way in which the owning local authority had left those gaps etc. indicated that it was always intended that there would be some public use. These present proceedings

effectively result from the revocation of that permission by Marine Academy in 2014.

10.23. The payment of fees by clubs using the land for sporting purposes is again an absolutely clear indication of permissive use. Such matters as use for short cuts or for lighting bonfires are not lawful sports and pastimes. Any evidence of use which actually constituted lawful sports and pastimes use as of right (as opposed to with permission) was so slight as not to constitute significant use.

10.24. In closing submissions at the Inquiry, it was accepted for the Principal Objectors that the application in this case had been made at a time which would allow it to be validly made under ***Subsection (3)*** of ***Section 15*** of the ***Commons Act 2006***. The application had put the date of cessation of the claimed as of right use as 17th April 2014. That meant that the relevant 20 year period to be considered is from April 1994 to April 2014.

10.25. The principal submission was that use by local people had been with permission, which defeats the claim that use had been made 'as of right' for the purposes of the Act. The Objectors have not argued this case on the basis that the use which took place was 'by right', as derived from the statutory basis under which the land was held. There had been no direct evidence as to the provisions under which the field had been held by either Devon County Council or Plymouth City Council in the period since 1990. However the overwhelming inference had to be that it had been held for education purposes. The well-known ***Barkas*** case, in relation to recreation land held under the housing legislation, was therefore not totally in point in this particular case.

10.26. It is clear from other case-law that permission for the use of land can be either express or implied. Notices are the classic way of giving permission; however in other situations it can be appropriate to imply or infer permission from the circumstances.

10.27. As to the notices which had been set up around this site, it was clear from the ***Betterment Properties*** case that the right approach is to consider what a notice conveyed to a reasonable user of the land who would have seen it, and that such interpretation must be done in a common-sense way, in the relevant context. That case had been dealing with prohibitory signs, but logically the principle should apply to permissive signs as well.

10.28. In this case there were a number of questions to be considered, in the light of the evidence which had been given, such as whether there were any signs, and where they were and for what periods. There was also the question of what the signs had actually said, and what meaning they conveyed. It then needed to be considered whether any other aspect of the context was relevant. It was evident from what Mr Gillhespy explained about the use of the land in the period before 1990 that what Plymouth City Council had envisaged was dual use of the land (this being the site

after the prefab housing had gone, but before 1990), to provide both recreational and education facilities. When the land was conveyed to Devon County Council in 1990, it was accompanied by a covenant to erect a fence prior to use as playing fields. Devon County Council had in fact put up the inner perimeter fence around the field, somewhere between 1990 and 1993. More exact dating was not possible. However the fencing erected at that point created the various access points A to E around the site which had been identified. The proper inference was that Devon County Council wished to make this land available for public use, as well as use by the school. The context is relevant, because they had a contractual obligation to fence off the land, and therefore had to carry out some fencing. Therefore the leaving of the gaps within the fencing has a real practical meaning in this case.

10.29. Furthermore Mrs Buckley-May, one of the Applicant's witnesses, had specifically said that workmen cutting the grass on the site had told her that the land was Council land, and that local people were allowed to use it. The land clearly had, from the evidence, been maintained by Devon County Council and/or Plymouth County Council.

10.30. It was also telling that at the time planning applications for fencing were being considered in 2009 and 2010, it was considered to be a matter of importance to allow for the continuation of community use of the land to take place.

10.31. The next important matter to be considered is the signs on the land. One needed to establish whether the signs had existed at all. Mr Gillhespy's evidence had been important to that. He was the only person who had provided clear, direct evidence of the signs being in place at a relevant time, supported by contemporary documentation, and in particular photographs. Furthermore his oral evidence about this was entirely credible, and not undermined or challenged effectively by anyone. Mr Gillhespy had explained that from 2000 to 2010 signs with a blue background and white lettering had been present at four accesses (A, B, C and E). His photographs from February 2010 showed that, although he had seen a sign there earlier, it was no longer at point A at that time. At point B (south-east corner) in 2010 there was a sign present, in an ungraffitied state. On the right of that there was internal signage of the type used by Tamarside Community College. There was also clearly a sign at point E in 2010. It was accepted that photographic evidence showed that by 2013 at least one of the signs had been very heavily covered in painted graffiti. The other signs that remained were taken down in mid-2013. That the signs had existed is clear from the evidence of many of the witnesses on all sides.

10.32. There were other signs on the field as well, which were directed at school children to remind them to be considerate to neighbours with their kicking of footballs etc.

10.33. The original application itself at box 7 had specifically referred to the land as a school/community field, with signs saying as much. A letter from Mr Batten which had accompanied the original application referred to the fact that there were signs on the site, which indicated that it was not only for school use, but also for use of members of the community i.e. local children to play on.

10.34. Several other witnesses for the Applicant had made express reference to the signs, and to the fact that they indicated that they showed the land was for the benefit of the community. A letter from the Kings Tamerton Community Association in 2014 (which also accompanied the application) had specifically said that every entrance to the site was originally signed, saying that "*This playing field is for the benefit of the community, please do not allow your dogs to foul it*".

10.35. Evidence from the individual witnesses for the Objectors also supported the presence on the land of the signs. The evidence overall places the existence of signage at every entrance of the field at times during the relevant period as a matter beyond any reasonable doubt. It is clear that many of these signs were there for a substantial part of the relevant period. Some of the signs were definitely still present in 2013, at which point multiple signs were apparently taken down. The blue and white signs, which had apparently mentioned Devon County Council, must have pre-dated the 1998 transfer of the land to Plymouth City Council.

10.36. As to what the signs had said, there was clear photographic evidence of what the signs put up by Tamarside Community College had said. They had mentioned that the sports area is used by children, and asked people not to allow their dogs to foul the area. The Devon County Council signs on the blue background had begun by pointing out that these were school playing fields which were for the benefit of the community, and again asked people not to allow their dogs to foul the area. Thus it is clear that there was extensive signage referring to community use, or use for the benefit of the community. Dogs were mentioned on the signs, but referring to dog mess. There was not the slightest suggestion that any of these signs were prohibitory signs, in terms of keeping people off the land generally.

10.37. It was also worthwhile considering the particular way in which the vandalised sign in 2014, of which there was photograph evidence, had been vandalised. It had been done in a very precise way, pointing out that the land concerned was owned by Plymouth City Council, that these were playing fields, and the fencing which had been erected was illegal. The 'vandaliser' was contended that these grounds are not private property, but that entry to them, and dog walking, were allowed. It can be seen from this that the local community had clearly understood what the position had been before the revocation of the permission; i.e. that they had been allowed, in other words permitted, to enter and use the land.

10.38. As to the question of what the signs would mean to a reasonable user or reasonable reader, the only sustainable answer is that those signs conveyed permission to the public at large. They did not prohibit any activity except for dog fouling. The implication of that clearly is that dogs are otherwise allowed to go onto the field. The reference in the signs to community use is a positive reference, suggesting that the field was being provided with a purpose that could be taken advantage of. The reference to benefit means that the community were expressly being given something they would not otherwise have had.

10.39. In all these circumstances the reasonable conclusions are that signs had been put up by Devon County Council at the time they redeveloped the field as a playing field in the early 1990s. Those signs were affixed to every entry point of the field, in such a way as to make them plainly available to be seen by a reasonable user of the field. It was clear that they had in fact been seen by many users. The contents of those signs were either the same or not materially different from the contents of the Devon County Council sign which could still be seen through the painted vandalism on one of the signs which had been photographed. There had been other signs, notably those erected by Tamarside Community College on a white background. Those signs were clearly present on the field prior to 2010. While the Devon County Council signs and the Tamarside Community College signs may not have been regularly maintained throughout their entire existence, there was no direct evidence that the signs had become illegible or covered in trees. Even if something like that had happened, the proper inference would be that any such deterioration would have happened over time, and that the signs would have been at their most legible at the start of their lives. Mr Gillhespy's evidence was that he could both see them and read them in the year 2000. Therefore for at least part, but in reality nearly all, of the 20 year period running from April 1994, the signs would have been both in position, and in a condition to be legible. They clearly meant that the landowner was giving permission for the field to be used. The signs indeed would have been at their most legible when the field was first created by Devon County Council, in part for use by the local public. This is an important point.

10.40. In addition to all the evidence about the signs, it was quite clear that the community football use on which reliance had been placed was a use by permission, indeed a use on the basis that the pitches and facilities were hired for use. The evidence was quite clear that no official games would have taken place on the land without both the correct paperwork being undertaken, and a charge being levied. There was no real dispute that charges were levied, although there had been some dispute as to what the charges were actually for. On the balance of probabilities it is much more likely that the Community Association paid for the hire of the pitch and the associated facilities, and not for *"everything but the pitch"*, as had been contended for by the witness Mr Bidgood. The forms used for renting the use of the pitch clearly suggested that the hire was a hiring of the pitch; the ordinary understanding of that would be that a fee was being paid for the pitch itself, rather than the associated facilities. As a matter of common-sense it is most unlikely that there would have been negotiations with the School or the City Council about payment, if the reality had been that the Community Association could use the pitch itself without paying anything for it.

10.41. Taking an overall view, the evidence showed clearly that during the relevant 20 year period there had either been express or at least implied permission to the community to use the field here, so that their use was plainly not 'as of right'. Even if the signs were not present for the whole period, or if the condition of some of them had deteriorated, that still does not assist the Applicant. It is sufficient for the signs to have been both present and readable at any material point during the relevant 20 year period; the evidence had clearly established that.

10.42. On the question of statutory incompatibility, the decision of the Court of Appeal in the conjoined cases of ***R (Lancashire County Council) v Secretary of State*** and ***R (NHS Properties Limited) v Surrey County Council*** was still pending. As far as the potentially relevant evidence was concerned, it was suggested that this had shown clearly that the school is already below its expected provision of soft outdoor PE space. The evidence was also that there was no alternative land that the school can use in the local area. It is also apparent from the evidence that there are obligations arising out of guidelines to schools which suggest that safeguarding of pupils requires the public to be kept out of the use of playing fields. A safeguarding risk is something which a school is under obligation to protect its pupils from. The open space of the application site field is an anomaly. It was accepted that the position in relation to pieces of land like this is something which has changed over time.

10.43. Plymouth City Council is obliged, following the ***Academies Act 2010***, to grant a lease of this field to the Academy. If this field is declared to be a town or village green, it would mean the Council could not grant what it is obliged to grant, in order to comply with the statutory process for the conversion to an Academy.

10.44. As for the evidence about the use of the land by local people, there were various activities which people had referred to which clearly cannot count for the purposes of the application. First any activities outside the boundary are irrelevant. Second, short cuts across the land are not relevant. The reference to the use of the land for holding of fetes clearly indicated that that had stopped before the 20 year period concerned. Organised football of the land was by payment, and therefore with permission. Cricket on the land had stopped in 1997 or 1998, when the pitch was destroyed. The bonfires referred to had all been before 1990. The reference to people being on the land to celebrate the solar eclipse was a one off, not a pastime. It was accepted nevertheless that the evidence did demonstrate use for dog walking and for unorganised football, etc. The evidence suggested that this was more outside of school hours and at weekends, although there had been some evidence of clashes and abuse and so forth.

10.45. As for evidence as to whether that usage had been by a significant number of the inhabitants, it was suggested that it had not been. The weight to be given to uses of the land should place emphasis on live witnesses. It became clear during the Inquiry that the evidence was a lot more nuanced than the bulk of the letters had originally suggested. There was really very little clear evidence as to the quality and genuine extent of lawful sports and pastimes use by local people of this land.

10.46. On the question of locality, and the proposed amendment to the area being put forward as a neighbourhood by the Applicant, it was observed that a locality needs to be an administrative district or area with legally significant boundaries. In this case that would suggest the St Budeaux Ward. 'Neighbourhood' in contrast is an ordinary English word, and merely needs to be an area with a sufficient degree of cohesiveness. It was suggested that there is a lack of cohesion here. It was accepted that there is the obvious existence of the Kings Tamerton Community

Centre. On the other hand there is no reason why the boundary line of the claimed neighbourhood should be drawn either down Trevithick Road, or along the lines of the proposed amendment.

10.47. It was argued that the proposed amendment to the neighbourhood area should not be permitted. It both could and should have been done much earlier. The Applicant had already had an opportunity to put the application in order. The proposed change here seemed to have been prompted merely by a wish to get the use of the land by Mr Bidgood into the scope of the application.

10.48. Further pot-Inquiry written submissions were made on behalf of the Principal Objectors, after judgments had been handed down by the Court of Appeal in the conjoined ***Lancashire*** and ***Surrey*** cases, and by the High Court in the ***Cotham School (Bristol)*** case. These submissions related largely, if not entirely, to the topic of 'Statutory Incompatibility', which had figured substantially in both those judgments.

10.49. It was said (for the Principal Objectors here) that what followed from the ***Lancashire/Surrey*** judgment was that a number of particular circumstances had to apply, in order for there to be a finding of 'statutory incompatibility' in a case of this kind. First, there had to be a specific statutory purpose attaching to the particular land subject to the application for registration under the ***Commons Act***. Second, Parliament needs to have conferred powers on the landowner to use the land for specific statutory purposes with which registration as a town or village green would be incompatible. Third, whether there is an incompatibility or not is a matter of fact and degree.

10.50. Both the ***Lancashire*** and ***Cotham*** cases had dealt with applications where the issue was in the context of the provision of education. However neither of those cases is on all fours with the site being considered in Plymouth. In the ***Lancashire*** case there was no school on the land concerned, and no plan for there to be one in the immediate future. Furthermore the Court of Appeal considered that the local authority there held the land subject to its general powers and duties under the Education Acts, not for a specific purpose. The contrast with the present case is clear. Following the creation of Marine Academy under the ***Academies Act*** in 2010, the City Council does not simply hold the field as part of its general education powers, but is obliged by statute to cease to maintain the previous community school, and to transfer its assets to Marine Academy Plymouth, in accordance with the academy application that had been approved by the Secretary of State for Education.

10.51. As such the City Council cannot either use the field as part of its educational stock, nor can it transfer other land to Marine Academy Plymouth in replacement for this field. The obligations on the City Council can only be fulfilled by transferring this field to Marine Academy Plymouth.

10.52. It also needs to be considered however whether there is an actual incompatibility in practice. The Principal Objectors submit that there is. The ***Cotham*** case had concerned a considerably larger area of land than the present application site. In that case the relevant school had become an Academy, and the local authority had in fact granted the relevant lease to the Academy, including over the land which was the subject of the application. However the issue of statutory incompatibility in the ***Cotham*** case was not determinative of the claim for judicial review in that case. The court in the ***Cotham*** case found that the Inspector there had been correct in taking the view that there had been no statutory incompatibility, even though the land was claimed to be required for open space provision for use by the Academy school. However the present Principal Objectors argue that the conclusion of the Inspector in that case had been rather more nuanced than the brief summary of it given in the learned Judge's judgment suggested. The Inspector had only concluded narrowly that there was no statutory incompatibility in that case. In the present case at Newton Playing Field, Marine Academy Plymouth does not have alternative facilities available to it, as ***Cotham School*** had had in the Bristol case. Further evidence has been given in the present case that the availability of the application site, and in particular a 3G pitch upon it, is essential to the school. Allowing this land to be a town or village green would clearly impede, restrict or otherwise prevent use of the field in compliance with, or for, the statutory purposes for which it is held.

11. DISCUSSION AND RECOMMENDATION

11.1. The application in this case was made under ***Subsection (3)*** of ***Section 15*** of the ***Commons Act 2006***. That subsection (as amended in its application to sites in England) 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."*

and

> *"(b) they ceased to do so before the time of the application but after the commencement of this section; and*
> *(c) the application is made within the relevant period "*

The *"relevant period"* is defined in ***subsection (3A)*** as meaning, in the case of an application relating to land in England, *"the period of one year beginning with the cessation mentioned in subsection (3)(b)"*.

The application in this case was stamped as received by the Council as Registration Authority on 26th August 2014; the application referred in part 4 to the relevant date of cessation having been 17th April 2014. The application therefore was clearly made in time, as far as ***subsection 15(3A)*** is concerned, and indeed there was no dispute about this point between the parties in this case. It follows

therefore that 17th April 2014 is the date from which the relevant 20 year period needs to be measured (backwards).

11.2. Resolution of a case of this kind also needs to take proper account (at least where, as here, the issue has been raised) of the question whether there exists any "*statutory incompatibility*" which might prevent the particular land concerned from being registered under ***Section 15*** of the ***Commons Act***, even if the various criteria under that section might otherwise appear to have been met. Analysis of how this principle might apply in a case will require careful consideration of what the Supreme Court said on the topic in ***R (Newhaven Port & Properties Ltd) v East Sussex County Council*** [2015] UKSC 7, as clarified by the Court of Appeal's recent judgment in ***R (Lancashire County Council) v Secretary of State; R (NHS Property Services Ltd) v Surrey County Council*** [2018] EWCA Civ 721

Assessing the Facts

11.3. In this case there was dispute in relation to some aspects of the underlying factual background as to the history and extent of the use of this site over the relevant years, the presence and legibility of signage, etc. The law in this field puts the onus on an applicant to prove and therefore justify his/her case that all of the various aspects of the statutory criteria set out in ***Section 15(3)*** have in reality been met on the piece of land concerned. Where a 'defence', or more accurately an objection, is raised by an objector on the basis of 'statutory incompatibility', the logic of the situation suggests to me that there must be an onus on that objector to establish any facts necessary to justify that objection. However I should say that in this particular case the underlying *facts* in relation to the 'statutory incompatibility' arguments did not appear to be in material dispute between the parties.

11.4. To the extent that any of the facts in the case were in dispute, it is necessary to reach a judgment as to the disputed aspects of the evidence given, insofar as that evidence was relevant to the determination whether the statutory criteria for registration have been met or not.

11.5. Where there were any material differences, or questions over points of fact, the legal position is quite clear that they must be resolved by myself and the Registration Authority on the balance of probabilities from the totality of the evidence available. In doing this one must also bear in mind the point canvassed briefly at the Inquiry itself (and mentioned by me earlier in this Report) that more weight will (in principle) generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements, completed 'evidence questionnaire' forms and the like, which have not been subjected to any such opportunity for challenge.

11.6. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of 'findings of fact'. Rather, what I propose to do, before expressing my overall conclusions, is to consider in turn the various particular aspects of the statutory test under ***Section 15(3)*** of the ***2006 Act***, and to comment on how my conclusions (on the balance of

probabilities) on the facts of this case relate to those aspects. It should not however be assumed that any facts I mention under one heading are only relevant to that heading. I have taken into account the totality of the underlying facts in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.

11.7. I shall then consider the question which arose in this case as to whether the principle or doctrine of 'statutory incompatibility' has application here, and if so whether it affects my overall conclusions and recommendations in respect of how the matter should be determined.

"Locality"* or *"Neighbourhood within a locality"

11.8. The original application form in this case did not contain any wording in part 6 of the standard form which specifically named the locality or neighbourhood on whose behalf the application was made. However it was clear form Part 7 of the form that the application was made in respect of use of the field in question by the 'community' of Kings Tamerton, and the evidence statements lodged with the application were fully supportive of that view.

11.9. At a slightly later stage, in response to requests for clarification of some aspects of the application, the Applicant produced a map ("Map A") showing the boundaries of what she envisaged to be the *"locality and neighbourhood"* of Kings Tamerton. She also produced a considerable number of completed evidence questionnaires, in a form provided by the Open Spaces Society, which were each (as far as I can see) accompanied by a copy of the same map, which was said to show the relevant area of the 'Kings Tamerton Community'.

11.10. For the most part (I observe) the boundary suggested on that map was a fairly obviously sensible one (even to someone hitherto unfamiliar with the area), being drawn through mostly open ground to the south of the A38 road, and to the south-east, where there is a substantial gap between the residential area of Kings Tamerton and 'anywhere else'.

11.11. The western boundary of the proposed 'locality and neighbourhood' area was however drawn along the line of the relatively important local distributor road known variously along its length (from N to S) as Roman Way, Trevithick Road, and Weston Mill Road. This is a road which for the most part has urban development on both sides, and indeed more or less continuous urban development stretches away westwards from that road. Many maps (including those of the Ordnance Survey) tend to suggest that the local name 'St Budeaux' is (in a very approximate way) applicable to that more westerly developed area, although oral evidence to the Inquiry suggested that the name 'St Budeaux' had at times not that far back into the past been commonly regarded as covering the whole Kings Tamerton area as well.

11.12. The word *"locality"*, as it appears in the commons legislation, has been given a rather particular and narrow interpretation by the courts which have considered it, relating to area with legally significant boundaries such as parishes (civil or ecclesiastical), boroughs, or (possibly) electoral wards. It became clear at the Inquiry here (and was not in dispute) that there is no such legally defined area of Kings Tamerton that would satisfy the tests for what the courts say can be a 'locality'.

11.13. However town or village greens can also be registered under the ***Commons Act 2006*** in respect of use of a piece of land by the inhabitants of a *"neighbourhood within a locality"*, and case-law at the very highest level has established both that such a 'neighbourhood' can be situated across the borders of more than one locality, and also that 'neighbourhood' in the Act is a deliberately imprecise term – an ordinary English word which should be interpreted in a common-sense way.

11.14. The evidence must therefore be considered insofar as it relates to a claimed 'neighbourhood' of Kings Tamerton. Other case-law suggests that even a 'neighbourhood' must have an element of 'cohesiveness' about it, rather than (say) just resulting from arbitrary lines being drawn on a map, for the purpose of an application.

11.15. In this case, it became apparent from some of the evidence given at the Inquiry that, in drawing her suggested western neighbourhood boundary, the Applicant had (perhaps inadvertently) excluded from her Kings Tamerton 'neighbourhood' a small area west of Trevithick Road which some local people say was historically the original nucleus of the former village or hamlet of Kings Tamerton. Indeed some of the Applicant's witnesses, claiming to have used the application site, lived in that part of Kings Tamerton.

11.16. In consequence the Applicant, on the second day of the Inquiry, applied to make an amendment to the boundaries of her proposed relevant 'neighbourhood' of Kings Tamerton, by including a fairly small (but built up) area to the west of Trevithick Road, so that the new western boundary would now run (in part at least) along the roads known as Byard Close and Mount Tamar Close. She also produced a very clear plan, on a large scale Ordnance Survey base, showing what she proposed.

11.17. Objection to this proposed amendment was however made on behalf of the Principal Objectors, who argued that it should not be allowed or accepted. It was argued that any such amendment could and should have been made much earlier, and also that the area suggested (with or without the additional small area) lacked the requisite 'cohesion'.

11.18. The test for the acceptability of amendments in these cases is whether they cause unfairness or hardship to opposing parties. My own considered view (and advice to the Registration Authority) is that the requested amendment here caused no

material unfairness to the Objectors at all – indeed it made very little practical difference to the case overall.

11.19. The amendment proposed by the Applicant seemed to me to be an entirely sensible and reasonable one, which was logically justified in terms of the evidence which had been given. It is often difficult, in urban areas where there is continuous development, to put forward boundaries which everyone can agree on, as to the precise line along which one 'neighbourhood' ends and another begins. The Applicant, in her amended proposals, has adopted a reasonable and justified approach, in my view. I would accept her amendment.

11.20. Furthermore the evidence overall, combined with my own observation, led me to the view that Kings Tamerton, as defined by the Applicant's amended proposal, is fully possessed of the requisite 'cohesiveness' for it to be sensibly regarded as a 'neighbourhood'. In fact, although it is situated within the suburbs of Plymouth, it appeared to me to be a most obviously cohesive 'neighbourhood'. People were in general conscious of living in Kings Tamerton; there was an apparently thriving and successful Kings Tamerton Community Association, with its own Community Centre adjacent to the application site.

11.21. It is indisputable, in my view that a neighbourhood of Kings Tamerton exists, and the Applicant has put forward (in her amended proposal) a reasonable and appropriate definition of it.

"A significant number of the inhabitants"
"Lawful sports and pastimes"

11.22. The law is quite clear that a *"significant number"* does not mean any particular number, or any particular percentage or proportion of the total number of the inhabitants of the relevant area. It does not even necessarily mean a large number. It just has to have been an amount of use, by a sufficiently large number of people, to have conveyed to a reasonably observant landowner that local people in general were asserting a ***right*** to use the land regularly for lawful sports and pastimes, as opposed to merely being sporadic or isolated instances of trespass on the owner's land.

11.23. And 'lawful sports and pastimes' does not mean two separate classes of activity. The courts have clearly indicated that it should be understood in a composite sense, covering any normal forms of recreational use of a piece of land, ranging from conventional 'team' sports to walking the dog, playing with children, sitting having picnics, etc etc. It does not however include walking across a piece of land on a more or less fixed route, to get from A to B, e.g. to get to a particular school, or bus stop, or shop (by way of example). Such use is more to be associated with establishing a public right of way on a fixed route, under the highways legislation. Walking on a piece of land *can* help to establish a 'village green' claim though, if it

is more in the nature or wandering around the surface of a piece of land generally (with or without dogs) for the purposes of recreation.

11.24. In this present case there was a certain amount of evidence that some people's main use of this land, at least at certain periods in their lives, had been mainly for crossing it on fairly fixed 'A to B' type routes. There were after all some five fixed access points to this field, a number of which led to potentially useful destinations.

11.25. However there was much evidence, it seemed to me, that over many years considerable numbers of local people had regularly used this field, and/or seen others using it, for activities which would fall within a reasonable understanding of 'lawful sports and pastimes', at least at times of the day or week when the school on whose behalf the field was being maintained was not itself using the land for sports and games, or other activities for the school's pupils. There was in fact evidence that, even at those times, a few local people would 'insist' on still coming on to the land to walk their dogs etc., or to pass through. However the evidence as a whole suggested that instances of this were only rather sporadic and isolated, and many witnesses acknowledged that they would keep off the field when school-organised activities involving the school's pupils were taking place. Some also would keep off the field when organised, non-school football matches were taking place, although it was also clear that other local people would go to the land to watch such matches, or would continue indulging in other informal recreational activities on the parts of the land not comprised in the relevant pitch(es).

11.26. The evidence as a whole strongly suggested that this fairly widespread recreational use of this land, outside school hours, had taken place regularly, right through from Devon County Council's reconfiguring of the surface of the land into more or less its present flat, grassy state, in the very early 1990s, to its initial fencing off by Marine Academy Plymouth, to prevent such use, in April 2014. [There was evidence also of some use for informal recreation even in the period before about 1990, when it had been rough open land, the site of previously demolished 'pre-fab' houses. However that it not really relevant to the period principally under consideration in this case].

11.27. There is nothing in the least surprising about this fairly wide use of the land for informal recreation, outside school hours, given the undisputed evidence that Devon County Council, the then education authority and owner, who fenced the field in the early 1990s, had deliberately left open more or less the present easily usable set of accesses to the field. The setting up of these accesses had in some cases involved quite considerable further construction work, with the installation of concrete flights of steps, handrails, etc.

11.28. Indeed it was accepted in closing submissions for the Principal Objectors that the evidence showed that there had been usage over the years for dog walking, 'unorganised football', etc. It is also of some interest to note from the documentary evidence from the 1980s, unearthed by Mr Gillhespy (and which was

effectively unchallenged), that Plymouth City Council had been recorded as discussing the desirability of this land being put to a dual use, both for the local school and for use by the local community outside school hours.

11.29. Certainly Devon County Council, during its period of ownership, appears *de facto* to have laid out the field, and then managed it (either itself or through the school) in manner which was wholly consistent with this sort of dual use. More or less the same *de facto* situation on the land then continued more or less unchanged when the land reverted to Plymouth City Council, on its once again becoming a unitary authority (and hence also education authority) in the late 1990s.

11.30. I shall consider the legal significance of the *way* in which the land was actually managed from the early 1990s, the signs which were erected, etc., when I come to the sub-heading 'As of right', later in this section of my Report.

11.31. All that needs to be said under this sub-heading is that on the balance of probabilities I found the evidence entirely convincing that from the early 1990s (well before 1994), through to April 2014, significant numbers of local inhabitants had made regular use of this land, at certain times, for "lawful sports and pastimes'. The suggestion that some local people had at times engaged in *un*lawful, or anti-social, act or activities on the land does not in my judgment alter this overall conclusion on the evidence.

On the land"
"for a period of at least 20 years"

11.32. It follows from what I have just said in the last paragraph that I conclude that these lawful sports and pastimes were indeed indulged in 'on the land' of the application site, and that such use took place regularly over a period of more than 20 years. The Applicant therefore succeeds, in my judgment, on these aspects of the statutory criteria of ***Section 15*** of the ***Commons Act***.

"As of right"

11.33. This aspect of the statutory criteria is, it seems to me, one of the two major issues which have been in dispute in this case. The courts, including the Supreme Court on a number of occasions, have made it clear that there is no general legal principle which prevents the registration as a town or village green of open land which belongs to public authorities, and in particular local authorities. The land in the well-known *'Trap Grounds'* case in the House of Lords [***Oxfordshire County Council v Oxford City Council*** [2006] UKHL 25], where it was held that the land *could* be registered, was (by way of example) in the ownership of Oxford City Council.

11.34. The *'as of right'* test in ***Section 15*** of the ***Commons Act*** is often discussed by reference to the Latin maxim *"nec vi, nec clam, nec precario"*. This means that, to meet the test, use of the land concerned by local people has to have been *'without force'* (e.g. not by breaking down fences to get in, or by ignoring clearly visible 'Keep out – no trespassing' signs), *'without secrecy'* (e.g. not by sneaking into land at night), and *'without permission'*.

11.35. There is not the slightest suggestion in this case that regular use of the Newton Playing Field up to 2014 had been 'by force', or by sneaking onto the land in secret. Indeed quite the contrary was clearly the case.

11.36. Thus the part of the test which is in issue in this case is the '*nec precario*' aspect. Case-law has clearly established that what this means is that use of a piece of land cannot be 'as of right' if it was with the *permission* of the landowner (express or implied), or where for some reason members of the (local) public have enjoyed an actual *right* to be on the land concerned.

11.37. Use of the land is only 'as of right' where local people have behaved ***as if*** they had the right to use a piece of land, when in reality they did *not* have any such right or permission. In other words, there is something of a 'trespassory' element to 'as of right' use.

11.38. It is important however to note that there is a distinction between, on the one hand, *implied* permission, and on the other hand *acquiescence* or *tolerance* on the part of a landowner. Where a landowner is aware (or should be aware) that local people are using his/its land for recreational purposes, and merely acquiesces, taking no steps to do anything about it, or warn people off, such use *would* be 'as of right', and not by implied permission. Careful judgment is sometimes required, in order to distinguish between these two types of situation.

11.39. It is in my view clear, in the light of all these considerations, that the use which was made over many years of the football pitches on Newton Playing Field by organised local, non-school football teams, generally paying a 'rent' or pitch fee to the school or the owning local authority (the City Council or its predecessor), could not possibly 'count' towards any assessment of 'as of right' use by local people. Such use would undoubtedly have been 'by permission'. I am afraid I found unconvincing the argument from the Applicant's side that the charges paid by local (non-school) football teams had been merely for use of changing and washing facilities, etc., and not for use of the pitches. The evidence of the Objectors' witnesses was much more convincing and credible in this particular regard.

11.40. That is far from being the end of the matter however. I have already expressed already my conclusion that there was, during the relevant years, a significant level of *informal* recreational use of this land by local people, generally outside school hours.

11.41. In other words, this informal recreational use generally 'fitted around' the more formal use of the land as playing fields etc., by the school, and the reasonably regular 'formal' use of one or more pitches on the land by local football clubs, pursuant to arrangements made with those managing the land.

11.42. It seems to me however, especially in the light of the important Supreme Court decision in ***R (Lewis) v Redcar and Cleveland Borough Council*** [2010] UKSC 11, that it is still necessary to consider whether all the other informal use of this land by local people, which was compatible with and 'fitted around' the school use and the 'organised' football matches, was itself 'as of right' use.

11.43. But on the other hand, where open land belonging to a local authority in particular has been available for (local) public use, there are other, additional factors which need to be considered, and these various considerations then need to be reconciled, having regard to the facts of each particular case.

11.44. It has for example been reasonably clear for more than a century, from case-law unrelated to town or village greens, that there are certain categories of open land, owned or managed by local authorities, where members of the public have an actual statutory ***right*** to be on the land concerned, subject only to compliance with any applicable byelaws. The most obvious example of this is land held by local authorities as parks and pleasure grounds, or recreation grounds, under ***Section 164*** of the ***Public Health Act 1875***, as amended. This would logically also apply to land held as Public Open Space under the ***Open Spaces Act 1906***.

11.45. It took some time for it to become clear to what extent this principle would be applied in 'town or village green' cases, but that clarification eventually came in the very important Supreme Court decision in ***R (Barkas) v North Yorkshire County Council*** [2014] UKSC 31. The land in the ***Barkas*** case had been a recreation ground originally provided by the local authority under statutory powers contained in the housing legislation, and was situated within what had originally been a municipal housing estate.

11.46. It was eventually held that such land could be (and had been) used by members of the public generally, not just residents of the local estate, as a matter of right, so that the recreational use of the land which had taken place over many years had been '*by right'*, or '*with permission'*. It was not therefore *'as of right*.

11.47. Those were the facts of the case in ***Barkas***, but their Lordships in the Supreme Court ranged more widely in their discussion of local authority land which is deliberately provided by authorities so as to be available for public recreational use. A marked distinction was noted between private landowners, who do not generally have any functions or duties in terms of providing land for the pubic to use freely for recreational purposes, and local authorities, who have many statutory powers and functions which enable them to do just that.

11.48. What seems clear from the ***Barkas*** decision is that the principle applied in that case will also be applied to any land deliberately allocated or provided by a local authority for public recreational purposes, even where there is not a recorded formal acquisition or appropriation of the land concerned under specifically relevant statutory powers. It just does not make sense (their Lordships in effect say) to treat local people using land, deliberately made available by an authority for recreation, as being 'trespassers' who the owning authority must 'warn off', if they are to avoid town or village green rights later being asserted 'as of right'.

11.49. In this particular case at Kings Tamerton there has been no evidence (as far as the available records show) of either of the successive owning local authorities (Devon CC and then the City Council) ever having formally appropriated this land to use (or part-use) for a public recreation ground, or similar. I agree with the conclusion reached by Mr Gillhespy on the evidence, that the land has almost certainly been held by Devon CC, and latterly the City Council, for (or predominantly for) education purposes.

11.50. This is the case, in my view, even though it is clear that up until 1990 Plymouth City Council, in its previous period of ownership, had held the land pursuant to its powers under relevant housing legislation.

11.51. I must begin by acknowledging (at least subject to arguments about 'statutory incompatibility' – for which see later), that on the face of it a piece of open land, held by an education authority for education purposes, but used *de facto* by local inhabitants, without permission, for informal recreation, is exactly the sort of local authority owned land which the law says, in principle, *is* susceptible to being registered under the ***Commons Act***, if the evidence supports that. Indeed that seems in reality to have been the sort of land which was involved in the ***R (Lancashire County Council) v Secretary of State*** case, where the recent decision of the Court of Appeal has upheld the registration of the land concerned there as a town or village green – judgment reference [2018] EWCA Civ 721. [I am of course aware that in that case the Inspector had found that the County Council had *not* proved that it held the land for education purposes, but that is not relevant to the point I am making here].

11.52. However there are significant aspects of the facts in this present case (still leaving entirely aside the argument about 'statutory incompatibility') which seem to me to be very different from anything which had applied in the ***Lancashire*** case.

11.53. Devon County Council, when laying out the field and generally fencing it in the very early 1990s, deliberately left it with several clear, open access points, giving ready access from the surrounding residential areas. Some of these involved considerable construction work, such as the erection of steps, handrails, etc – especially at entrance point B, in the south-eastern corner (albeit I note that the access in the SW corner was apparently provided with lockable gates). Those would have been of some value in relation to use by the neighbouring school (or

'permitted' football teams etc) as well as local residents, so these features by themselves are probably inconclusive on the question whether there was an intention to *permit* local people to use the land informally (as opposed to merely leaving open accesses to a field which enabled trespass to take place, which was later acquiesced in).

11.54. However I have regard also to the records of pre-1990 discussions which had apparently taken place between the County and City Councils about the desirability of this land having dual use, both for Kings Tamerton School (as it was then known) and also for out of hours public usage. The land was then in fact laid out by the County Council, once it had acquired it, in a way which seemed calculated to facilitate such out of hours public usage.

11.55. More tellingly, it seems to me, there was what I found to be clear and compelling evidence, coming from (at least some) witnesses on both sides of the argument, that there had been extensive signage put up, at or close to the access points to the field, precisely relating to such use by the local community. It was clear from the evidence that there had been a number of signs, with white lettering on a blue background, placed on or close to the perimeter fencing at the accesses, by Devon County Council, during its period of managing this land (in the 1990s). I accept as convincing the evidence of Mr Gillhespy that during the period 2000 to 2010, when he visited the site from time to time, most if not all of that signage was still in place, and legible. His own photograph from February 2010 appears to show one such sign, apparently at that time in an undefaced state, and likely to be legible, in a prominent position next to access point B.

11.56. I also accept as credible Mr Gillhespy's evidence that all of the signs of this kind carried a more or less identical (if not absolutely identical) message, which he was able to reproduce accurately from a clear photograph taken apparently in 2013, of one such sign still in place in that year, albeit heavily overpainted with graffiti by that stage. The wording was:

"DEVON COUNTY COUNCIL
These school playing fields are for the benefit of the
Community. Please do not allow your dog to foul the area
as this poses a serious health risk particularly to children."

It is clear that these Devon County Council signs must have been erected in 1998 at the latest (and probably before), as that was when the County Council ceased to have any involvement with the application site (and the adjoining school).

11.57. Another powerful reason why I am persuaded that these signs must in reality have remained in place, and legible, for a prolonged period, is that it was asserted by the Applicant, in the original application form itself, that there had been signs saying that this was a school/community field [indeed the Applicant also asserted in that form that the Kings Tamerton Community "were told" that this was a school playing field "but also designated community land". The application was also supported by accompanying letters which gave a reasonably accurate short

paraphrase of what had actually been on the signs. One of them, signed in August 2014 by four officers of the Kings Tamerton Community Association, had said that "every entrance to the site was originally signed stating '*This playing field is for the benefit of the community, please do not allow your dogs to foul it*'".

11.58. A question which still needs to be considered is whether these signs, and the fact that they clearly were (in my judgment) seen by and well known to the local community, represent evidence that *permission* (express or implied) was being given to local people to use this field recreationally, or whether, on the other hand, they merely signalled (say) a resigned acquiescence to the likelihood that people would trespass on the land in any event, combined with a keenness that at least they should not allow their dogs to foul there.

11.59. I note also that it was clear from the evidence that at some point one or more signs headed 'Tamarside Community College' were added to (or possibly substituted for some of) the seemingly original signs beginning 'Devon County Council'. The Tamarside sign(s) was/were arguably somewhat more ambivalent as to whether permission to use the land was being impliedly conveyed, although they still clearly envisaged that people would be on the land, possibly with dogs, and merely asked them to avoid fouling the area.

11.60. The Devon County Council signs however, which clearly on the evidence seem to have been more numerous, and to have been there longer, in my view carry in their wording at the very least an implied permission to the community to use the land, with or without dogs.

11.61. The question of what message was conveyed to (local Public) users of the field also needs to be evaluated (it seems to me) in the context of the evidence coming from people on the Applicant's side of this dispute. I note, for example, that the original pro-forma evidence statements supporting the application, signed by a considerable number of local people, contained the assertion that in the beginning the Council "gave the residents the belief that this was a community field for the residents of Kings Tamerton as well as for school use". [Those statements in fact referred to Plymouth City Council, but I do not believe that confusion over which 'council' it was that was providing the land, in a place like Plymouth, which has oscillated between unitary and non-unitary status twice in many people's lifetimes, is material in evaluating the permissive message which was (in my view) quite clearly conveyed to local people].

11.62. In any event, in evidence given at the Inquiry itself, there were quite frequent assertions from witnesses from the Applicant's side that they had understood, right from Devon County Council's original creation of the playing field, that local people were 'allowed' or 'permitted' to use the land. Indeed one of the Applicant's witnesses, Mrs Buckley-May (by way of example) was quite clear that she had seen some of the Devon signs; that they did not say that [local people] could not use the field; rather they had said it was 'for the community'; the land was *"there for our benefit"*; *"I didn't consider I was a trespasser"*. Mrs Buckley-May's evidence was not unique, just a particularly clear expression of an obviously

widespread local understanding that this is what the situation was in terms of permission to use the field here.

11.63. The conclusion which I have therefore reached on the evidence is that Devon County Council, when it was owner of the land, did intend to permit the local community to use this land recreationally, when it was not being used for school purposes, and that it did seek to convey that permission by way of signs, which remained generally legible and in position for many years of the period of most concern here (April 1994 to April 2014). The evidence was also persuasive that these signs remained generally legible and in place for many years after Devon was replaced by Plymouth as education authority and landowner, from 1998 onwards.

11.64. In my judgment, the fact that permissive signs bearing the heading 'Devon County Council' continued in place long after the land concerned, and the responsibility for it, had been transferred through an administrative reorganisation process (in 1998) to another council (Plymouth City Council) does not alter the conclusion that what was being conveyed was that the (relevant) Council was permitting local people to use this land.

11.65. Bearing very much in mind the judgment of the Supreme Court in ***R (Barkas) v North Yorkshire County Council*** [2014] UKSC 31, it seems to me that here, even if there had (it seems) been no express appropriation to, or acquisition for, a purpose including public recreation, there was a deliberate allocation or provision of this land for a purpose including part use for public recreation by 'the community', bolstered and evidenced by signs placed by the providing authority, seeking to convey permission for just such use.

11.66. In circumstances such as these, how or why could the County Council, or their successors the City Council, have been expected to defend their interests as landowners in respect of potential 'as of right' claims, by warning off 'trespassers'? That was the exact opposite of what the owning authorities were seeking to do by providing (and signing) the field for local community use.

11.67. In my judgment therefore, there was here, at all material times, *permission* express and/or implied, from the owning local authority for (at least) out of school hours recreational use by the local community. The evidence also strongly supported a conclusion that the local community in general had understood that permission had been given to it for that type of use. Such permission therefore means that use by the local community, which clearly has taken place on the land over the relevant years, was not *"as of right"*, in the way required by ***Section 15*** of the ***Commons Act 2006***, and that this application must therefore fail.

11.68. I ought however to note that in some of the written submissions provided by the Applicant in the early stages of these proceedings, and then in written summary submissions provided before the Inquiry, there was a suggestion that it would have been *ultra vires* (or beyond the statutory powers of) Devon County Council as

education authority to have made its land available (or available outside school hours) for public recreation, and that therefore the land could not have been lawfully permitted to be used (in part) for public recreation. However this was not a point which was actively or effectively pursued by the Applicant at all, in the context of the Inquiry proceedings themselves (or in any subsequent representations received).

11.69. Nevertheless I have given this point some thought. First, as noted above, the County Council as landowner did actively erect signs which, on my view of their meaning, did in fact seek and intend to convey permission to the local community to use this land. Second, it is, in my understanding at least, a matter of common knowledge that County Councils (let alone unitary authorities such as Plymouth City has been since 1998) are very often the owners of areas of land of various kinds which are made available to the public for recreational use. I am not, on the basis of mere assertion in written material, not backed up by more detailed exposition in the context of an Inquiry held to consider what the parties considered to be the main issues, disposed to accept the proposition that the making available of a piece of its land by a County Council for part use for local recreation, was self-evidently beyond the powers of such a council, and therefore unlawful, especially where (as here) the council concerned, in my judgment, went out of its way (through signage etc, and with considerable success) to convey to local people that it *was* permitting such use.

11.70. I will mention also, although this was not a matter raised by any of the parties to the Inquiry I held in Plymouth, that I am conscious of the judgment of Dove J in the 'village green' case of ***R(Goodman) v Secretary of State*** [2016] 1 P&CR 8; [2015] EWHC 2576 (Admin), where the learned judge quashed an Inspector's decision that some land in Exeter should not be registered. It does not seem to me that this present case of Newton Playing Field raises issues analogous to the slightly unusual factual circumstances which had arisen in the ***Goodman*** case.

11.71. I should perhaps say at this point that I recognise that it will be extremely frustrating to the Applicant and her supporters that what they see as a locally important area of publicly accessible, local authority owned, land, which they have been allowed to use over several decades, can be closed to such use by the withdrawal of permission, precisely *because* that use was something that was *permitted*, and that this is something that can happen without there being any possibility of protection of the land under ***Section 15*** of the ***Commons Act 2006***. However that is the current state of the law, and no change to this position can realistically come about, other than through new legislation.

11.72. It is not for me to express any view, one way of another, as to whether such legislation would be desirable. I merely mention this in order to make the point that changing the law (or indeed persuading local authorities not to change the use of public land hitherto devoted to permitted public recreational use) are essentially *political* matters, not something which could be brought about by a person in my position, holding an Inquiry under ***Section 15*** of the ***Commons Act 2006***.

Statutory Incompatibility

11.73. A reasonably signficant amount of time was devoted to this topic, particularly by the Principal Objectors, through evidence and submissions at the Inquiry, and (following agreement reached at the Inquiry) on further submissions well after the Inquiry had ended, in the light of new case-law. I therefore consider it now, even though the conclusion I reached at paragraph 11.67 above is, if accepted by the Registration Authority, sufficient in itself to dispose of the present application

11.74. The context of the debate about 'statutory incompatibility' was the decision of the Supreme Court in ***R (Newhaven Port and Properties Ltd) v East Sussex County Council*** [2015] UKSC 7, in which the Supreme Court held (among other things) that land (a beach) within a working harbour, to which specific statutory duties and powers applied, including in that case powers and duties under local legislation relating to Newhaven Harbour in particular, could not as a matter of principle be registered as 'town or village green'. The principle involved is 'statutory incompatibility', a fundamental incompatibility between the 'general' provisions of ***Section 15*** of the ***Commons Act 2006*** and the specific will of Parliament to be found in the special provisions applying to the particular piece of land concerned. In other words, the statutory position under ***Section 15*** of the ***2006 Act*** is effectively 'trumped' by the powers and duties specifically applying to the claimed land; even if the various criteria under ***Section 15*** appear otherwise to have been met on the land concerned.

11.75. Their Lordships in the ***Newhaven*** decision made it clear that they did not intend their judgment to mean that ownership of land by a public body (including local authorities), possessing powers that could be applied to develop that land, of itself created 'statutory incompatibility'. Nevertheless the emergence of that judgment in 2015 has led to it becoming extremely common for claims of 'statutory incompatibility' to be made in ***Commons Act*** cases by local authority or public body landowners, who of course very frequently own land for some designated statutory purpose (or at least in some category of purpose to which statutory provisions apply).

11.76. It may be justly observed that for some time after 2015 it was not entirely clear how far the principle approved in the ***Newhaven*** case, which seemed so obviously applicable (not least to the Supreme Court itself) to the circumstance of land within a statutory, functioning harbour, would apply to land in more 'ordinary' circumstances which belonged to authorities and bodies with statutory powers. Uncertainty about this (in terms of the practical working of the ***Commons Act***) was then not assisted by apparently rather inconsistent approaches adopted by the High Court in different cases dealing with this topic.

11.77. As already noted, at the time of the Inquiry into this present (Newton Playing Field) case, the Court of Appeal had already held a conjoined hearing into appeals in respect of the two cases most notably seeming to embody the apparent inconsistency at High Court level. However no judgment had emerged. That

judgment was in due course handed down in April 2018 as ***R (Lancashire County Council) v Secretary of State for Environment, Food and Rural Affairs***; ***R (NHS Property Services Ltd), Surrey County Council v Jones*** [2018] EWCA Civ 721.

11.78. Although I heard argument at the Inquiry as to the state of the law as it was then perceived by the parties to be, it was sensibly agreed by all the parties participating in the Inquiry, and myself, that I would not complete my Report, conclusions or recommendation in this present case until after the awaited Court of Appeal decision had emerged, and a period allowed for the parties to put forward submissions in writing as to the significance of the judgment to their arguments, and to the resolution of the Newton Playing Field case. It then transpired that in May 2018 a separate High Court judgment which also dealt with 'statutory incompatibility' was handed down: ***R (Cotham School) v Bristol City Council*** [2018] EWHC 1022 (Admin). The present parties were also allowed to make representations as to the significance (if any) of that judgment.

11.79. Those exchanges of written submissions duly took place in May and June 2018, in accordance with arrangements for which supplementary Directions were issued, with the Applicant being given the right of final reply. As I write this part of this Report, I should perhaps mention that it is my understanding (purely through informal sources - I have no professional involvement at all with either matter) that the losing parties in both of the conjoined cases are seeking leave to appeal further to the Supreme Court. However I must proceed on the basis that the Court of Appeal's unanimous judgment on the conjoined cases represents correctly the current state of the law on this topic. Should any future determination by the Supreme Court, at some point off into the future, came to disturb this position, the parties here will no doubt consider the situation accordingly. It is not appropriate that determination of this present application should be delayed any further.

11.80. I intend therefore largely to ignore arguments made earlier in the Newton Field proceedings, based on what one or other of the High Court judges said in the first instance judgments in the ***Lancashire*** and ***NHS v Surrey*** cases – although I do of course note that what the Court of Appeal has now held is largely supportive of what Ouseley J had concluded in the ***Lancashire*** case.

11.81. In paragraph 36 of the Court of Appeal judgment, 'three general points' (but important ones) are made. They are first that the court's role of involving itself in resolving perceived conflict between different statutory regimes must be *"exercised with care and only when the need to do so truly arises"*. Second, the principles concerned are potentially applicable to all cases where a 'statutory incompatibility' is claimed to arise, not just to issues as between a private Act of Parliament and ***Section 15*** of the ***Commons Act***, or just to the activities of 'statutory undertakers'. The principles are potentially applicable to other public bodies as well. Thirdly, however, there is no general or 'blanket' exemption for public bodies from ***Section 15*** of the ***2006 Act***.

11.82. As the Court of Appeal considered the issues further, in the context of the ***Lancashire*** and ***Surrey*** cases, in paragraphs 37ff, it made it clear that the important distinction is between land held for general functions which might be performed elsewhere, and situations where there is a statutory obligation to use the particular land in question in a particular way, or carry out particular activities upon it.

11.83. It seems reasonably clear from the evidence that the land here (at Newton Field) has been held, at least mainly, for 'education purposes' right through from its acquisition by Devon County Council in 1990, to the present time. What is very plain however, is that being held 'for education purposes' does not per se produce a statutory incompatibility which exempts a piece of land from ***Section 15*** of the ***Commons Act***.

11.84. The Principal Objectors in this case seek to rely in particular on the circumstances of the school here (formerly Tamarside Community College) being converted to an Academy, pursuant to the ***Academies Act 2010***. Because Newton Field is a playing field that had been used by the previous school, guidance from the Department for Education is that there is an obligation on Plymouth City Council, as landowner and former education authority for the school, to transfer this land to the new Academy Trust. A 125 year lease is what is advised as being the expectation, and in this case the evidence is that in July 2012 Plymouth City Council entered into a contractual arrangement with Marine Academy Plymouth for the grant by the former to the latter of just such a 125 year lease of the land, once certain building works on the Academy's other land have been completed.

11.85. It is further submitted that the availability of the present application site as open recreation land is necessary to Marine Academy Plymouth, in order that the school can meet the relevant quantitative guidance for the extent of such facilities that should be provided, as issued by the Department for Education. It was additionally argued that allowing members of the 'local public' to have access to the field as a 'town or village green' would be incompatible with the safeguarding duties (to pupils) which nowadays apply to schools, and that this would be such a problem as to make the land virtually unusable by the school. Yet there was no readily available suitable other land to replace it, so the school would be caused insuperable problems.

11.86. There are, it seems to me, several difficulties with the Principal Objectors' case in respect of these matters. First, as the ***Lancashire*** case clearly indicates (it seems to me), there is nothing about the mere fact of land being held for education purposes, whether by an education authority or an academy trust, which is automatically inconsistent with that land having 'town or village green' status. It therefore seems to me that the fact of the intended lease to Marine Academy makes no difference to the position.

11.87. It may be that important guidance from the relevant Government department indicates how much open recreational land it would be desirable for the Academy

to have, and that the Academy would not meet that guidance without this land. But that is, in the end, only guidance, and cannot in my judgment be seen as creating a 'statutory incompatibility'. There is no actual statutory *duty* to provide a particular amount of open recreational land, still less this land in particular. Likewise the fact (even if correct) that it would be very convenient to the school to have exclusive use of this land, and inconvenient or impossible to find a satisfactory alternative, does not (in my judgment) come close to creating a 'statutory incompatibility'.

11.88. What the Court of Appeal's judgment in the ***Lancashire/Surrey*** case does, it seems to me, is to confirm the point that it is a major and serious thing to do, for decision-makers to take the view that an important piece of general legislation like ***Section 15*** of the ***Commons Act*** simply does not apply in a given case. There needs to be a very clear, statute-based alternative piece of law which points to a parliamentary intention to exclude that particular piece of land (or land in those very particular factual circumstances) from the workings of ***Section 15***. Nothing at all like that applies here, in my judgment, on the basis of the law as it stands at present.

11.89. I note that the Principal Objectors did address some argument specifically to the significance of the more recent ***R (Cotham School) v Bristol City Council*** judgment in the High Court. However the point was correctly noted that the *ratio* of that judgment did not in the event actually turn on the 'statutory incompatibility' argument; indeed the otherwise successful claimants lost the argument on that point. There is nothing about the ***Cotham*** judgment which alters the view which I have reached on 'statutory incompatibility' in this present case, which is essentially based on the Court of Appeal's very fully reasoned judgment in the conjoined ***Lancashire/Surrey*** cases. This is not in my view one of those special cases where the need for the decision-maker to take the view that one statutorily based 'situation' overcomes another clearly worded general statute truly and properly arises.

Final conclusions and recommendation

11.90. As I indicated earlier, my fairly lengthy discussion, above, of 'statutory incompatibility', was in a sense unnecessary, because I had already formed the conclusion, based on the evidence as it came forward in this case, that the Applicant had ***not*** discharged the burden of showing that the statutory criteria under ***Section 15(3)*** of the ***Commons Act*** had been met here, in particular in relation to the need to demonstrate that use "as of right" (as distinct from 'by permission') took place during the relevant 20 year period. However, I have nevertheless expressed my conclusions on 'statutory incompatibility', partly because of the amount of time and effort devoted by the parties (particularly the Principal Objectors) to this topic, and partly because of the observable phenomenon that a not inconsiderable number of 'town or village green' disputes end up proceeding further through the legal system than their 'initial' determination by the Registration Authority. I do not however make this last

observation because of any view of mine that the present case either should be, or is likely to be, one of those.

11.91. In the light of all the considerations which I have discussed above, my conclusion is that the Applicant has ***not*** succeeded in making out the case that the application site, or any part of it, should be registered pursuant to ***Section 15*** of the ***Commons Act 2006***, because I was not satisfied on the evidence that local inhabitants had made the requisite "as of right" use of this land (even though they had in fact used if for 'lawful sports and pastimes') during the relevant period of 20 years.

11.92. Accordingly, my recommendation to the Council as Registration Authority is that ***no part*** of the land of the application site should be added to the statutory Register of Town or Village Greens maintained under the ***Commons Act 2006***, pursuant to the Applicant's application, for the reasons given in my Report.

ALUN ALESBURY
17th August 2018

Cornerstone Barristers
2-3 Gray's Inn Square
London WC1R 5JH

APPENDIX I

APPEARANCES AT THE INQUIRY

FOR THE APPLICANT: **Mrs Carole Cook**, of 267 Kings Tamerton Road, St Budeaux, Plymouth

She gave evidence herself, and called:

Mrs Jill Atwill, of 49 Telford Crescent, Kings Tamerton, Plymouth.

Mrs Leah Symons, of 79 Cayley Way, Kings Tamerton, Plymouth.

Mrs Rachel Maunder, of 5 Hargreaves Close, Kings Tamerton, Plymouth

Mr Andrew Batten, of 67 Kings Tamerton Road, Kings Tamerton, Plymouth.

Mrs Pat Oram, of 9 Newton Gardens, Kings Tamerton, Plymouth.

Mrs Christine Blair, of 19 Telford Crescent, Kings Tamerton, Plymouth.

Mrs Sarah Buckley-May, of 21 Telford Crescent, Kings Tamerton, Plymouth.

Mr Adrian Down, of 51 Cayley Way, Kings Tamerton, Plymouth.

Mr Thomas Martyn, of 40 Peters Park Close, St Budeaux, Plymouth.

Mr Robert Cain, of 41 Telford Crescent, Kings Tamerton, Plymouth.

Miss Tracy Ruffles, of 261 Kings Tamerton Road, Plymouth.

Mrs Mary Hard, of 23 Telford Crescent, Kings Tamerton, Plymouth.

Mr Miles Bidgood, of 14 Byard Close, Kings Tamerton, Plymouth.

Mr Kevin Jackson, of 6 Normandy Way, St Budeaux, Plymouth.

Mr Keith Hall, of 14A Byard Close, Kings Tamerton, Plymouth.

Mr Brian Bidgood, of 189 Kings Tamerton Road, Plymouth.

Mr John Hurrell, of 230 Kings Tamerton Road, Plymouth.

Mrs Martina Philips, of 232 Kings Tamerton Road, Plymouth.

Mr Brian Shelmerdine, of 37 Cayley Way, Kings Tamerton, Plymouth.

FOR THE PRINCIPAL OBJECTORS: (**Marine Academy Plymouth**, and **Plymouth City Council**, as landowner local authority):

Mr Oliver Wooding, of Counsel – instructed by:

Messrs Wolferstans, Deptford Chambers
60/66 North Hill, Plymouth

He called:

Mr Darren Stewart, of 123 Bridwell Road, Weston Mill, Plymouth.
(Community Sports Manager, Marine Academy Plymouth)
Mr Ian Gillhespy MRICS, Estates Surveyor, City of Plymouth.
Mrs Anita Martin, Director of Business and Finance, Marine Academy Plymouth
Mr Nick Ward, Principal, Marine Academy Plymouth
Mrs Lorna Vickery, of 16 Telford Crescent, Kings Tamerton, Plymouth.
Mr Leslie Wells, of 66A Shaldon Crescent, West Park, Plymouth.
Mrs Louise Frost, of 43 Hilltop Crest, St Budeaux, Plymouth.
Mr Huw Morgan, Assistant Vice-Principal, Marine Academy Plymouth

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED AT AND AFTER INQUIRY

NB: This (intentionally brief) list does ***not*** include the original application and supporting documentation, the original objection, or any of the further material submitted by the parties or others prior to the issue of Directions for the Inquiry. It also excludes the material contained in the prepared, paginated bundles of documents produced for the purpose of the Inquiry on behalf of the Applicants and the Principal Objectors, which were provided to the Registration Authority (and me) as complete bundles; and the additional paginated material added to the Principal Objectors' Bundles during the Inquiry, as Mr Gillhespy's Supplementary Proof and Exhibits.

FOR THE APPLICANT:

Letter from Mrs Cook to the Inquiry, 19th July 2017

Letter from Mrs Cook to the Inquiry, 31st October 2017

Letter from Mrs Cook to the Inquiry, 14th November 2017

Written Note of Opening Statement to Inquiry

Amended Plan of Kings Tamerton Neighbourhood, with accompanying written explanation

Analysis of Objection Letters from School Parents

Written Note of Closing Statement

Post-Inquiry

Observations on ***'Lancashire/Surrey'*** Court of Appeal Judgment

Observations on ***'Cotham School'*** (Bristol) High Court Judgment

Final Response on 'Statutory Incompatibility' (etc) issues

FOR THE PRINCIPAL OBJECTORS:

Letter from Mr Gillhespy to the Inquiry, 20th November 2017

Internet Printouts re 'Neighbourhoods' in Plymouth

Plan of St Budeaux Electoral Ward, October 2003

Plan of ONS Output Areas

Table, Mid 2018 Population Estimates for Output Areas

Mr Gillhespy's table of Changes in Playing Field Space since 2000 with accompanying plans

Plan of Existing and Proposed Playing Field areas, Marine Academy

Bundle of common-form objection letters from parents of Marine Academy pupils

Written Note of Mr Wooding's Closing Submissions

Post-Inquiry

Further Submissions in respect of Statutory Incompatibility