

In the Matter of
An Application to Register
Thrupp and Bullfield Lakes, Radley, Abingdon, Oxfordshire
As a New Town or Village Green

REPORT
of Mr. VIVIAN CHAPMAN Q.C.
13th. October 2007

Oxfordshire County Council,
Chief Executive's Office,
Legal Services,
County Hall,
Oxford OX1 1ND
Ref RDG/27347

59725/VRC/07/195/wp/254/Radley Lakes Report v3

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EXECUTIVE SUMMARY

The Report concludes that the applicant has failed to establish that any part of the application land qualifies for registration as a new town or village green and recommends that the registration authority should reject the application.

CONTENTS

Section	Title	Paras.
1.	Radley Lakes	[1] – [6]
2.	The TVG application	[7] – [9]
3.	Evidence for applicant	[10] – [203]
4.	Evidence for objectors	[204] - [235]
5.	Findings of fact	[236] – [261]
6.	New greens: law and procedure	[262] – [298]
7.	Applying the law to the facts	[299] – [320]
8.	Conclusion	[321] – [322]

1. Radley Lakes

[1] To the east of the town of Abingdon, to the south of the village of Radley and to the north of the River Thames, there is a large expanse of low-lying river valley which has been extensively quarried for gravel. This has left numerous disused gravel pits. Over the years, these gravel pits have filled with water, have become encircled with vegetation and have attracted much wildlife, especially water fowl. These water-filled gravel pits are generally known as Radley Lakes.

[2] Didcot power station lies a few miles to the south of Radley Lakes. It is a coal fired power station which generates as a waste product large quantities of pulverised

fuel ash (“PFA”). Much of the PFA cannot be recycled and must be disposed of to landfill. For some years, the successive owners of the power station have disposed of surplus PFA into the Radley Lakes. The PFA is piped from the power station to the lakes in the form of slurry and poured into the lakes. A number of the Radley Lakes are now completely filled with PFA. Others are in the process of being filled.

[3] The present owner of Didcot power station is a company called RWE npower plc (“npower”). This company was previously called (a) Central Electricity Generating Board (“CEGB”), (b) National Power and (c) Innogy. It has applied for planning permission to fill two more of the Radley Lakes with PFA. These lakes are called Thrupp Lake and Bullfield Lake. Thrupp Lake lies immediately adjacent and to the north of Bullfield Lake. The proposal to fill Thrupp and Bullfield Lakes with PFA has generated much opposition from residents of Abingdon and Radley who view the lakes as valuable local amenities.

[4] Thrupp Lake is by far the larger of the two lakes. It is about 10.2 hectares in size. It is roughly rectangular in shape. There are over 20 islands in the lake. Most of the islands are small but there is a large elongated island at the south end of the lake. At the NE corner of the lake, the grounds of a disused house called Sandles project into the lake. As for the banks of the lake:

- Along the N bank of the lake there runs a metalled private road known as Thrupp Road which serves as access from Radley Road to the works of J. Curtis & Sons Ltd (“Curtis”). At the W end of this road there is a large metal gate which is the entrance to the Curtis works. Between the road and the lake there is a strip of wooded land of variable width (26 metres at the widest point).
- Along the E bank of the lake there runs a metalled public byway open to all traffic (“BOAT”). The BOAT runs behind Sandles and then closely skirts the lake. To the S of Sandles, a very narrow strip of bank drops down from the BOAT to the lake. This BOAT is part of a Sustrans route from Abingdon towards Radley.
- Along the W bank of the lake there is a wide grassy track lined by an avenue of trees. To the W of the avenue there is another track at the edge of a large area of open land which largely consists of derelict infilled gravel workings. This land belongs to Curtis. I will call this land “the Curtis Land”. A gravel grading plant is situated at the N end of the Curtis land
- The S end of the lake adjoins the site of Bullfield Lake.

[5] Bullfield Lake is much smaller than Thrupp Lake. It is about 1.7 hectares in area. It is roughly rectangular in shape. It extends along about 2/3rds of the SE end of Thrupp Lake. The other 1/3rd, at the SW end of Thrupp Lake is an area of rough scrubby land which abuts Thrupp Lake to the N, Bullfield Lake to the E and the Curtis land to the W. The banks of Bullfield Lake can be described as follows:

- The N bank is a narrow isthmus of land lying between Bullfield Lake and Thrupp Lake. There is a muddy track along the isthmus.
- The E bank consists of a narrow strip of scrubby land lying between the lake and the S continuation of the BOAT/Sustrans route which runs alongside Thrupp Lake. A track skirts the E side of Bullfield Lake
- The W bank adjoins the area of rough scrubby land mentioned above

- The S bank consists of a narrow strip of scrubby land lying between the lake and the BOAT, which turns W at the SE corner of Bullfield Lake and runs along the S end of Bullfield Lake. A track skirts the S edge of the lake and a branch leads from this track to an opening to the BOAT near the SE corner of the lake. The S section of the BOAT is not metalled and is very muddy. Immediately to the S of the BOAT is the track of the disused railway line to Abingdon which was surfaced in about 1999 to form a cycleway. The cycleway is also part of the Sustrans route.

[6] Ownership of Thrupp and Bullfield Lakes and their banks is divided:

- Thrupp Lake itself, Sandles, and the N and E banks of Thrupp Lake are now owned by npower.
- The W bank of Thrupp Lake with its track running between an avenue of trees is owned by Mr Charles Dockar-Drysdale
- Bullfield Lake and the land surrounding it S of Thrupp Lake is owned by Curtis, which has leased the filling rights of the lake to npower.

2. The TVG Application

[7] On 19th October 2006, Mrs Jo Cartmell, a resident of Abingdon, applied¹ under s. 13 of the Commons Registration Act 1965 (“CRA 1965”) to register Thrupp and Bullfield Lakes and the surrounding land (excluding Sandles) as a new town or village green (“TVG”). The application was made to Oxfordshire County Council as the relevant registration authority for the purposes of the CRA 1965. The application was made on the prescribed form CR Form 10 and contained the following material provisions:

- Part 3 gave particulars of the land to be registered. It stated that the name by which it was usually known was Thrupp Lake and Bullfield Lake, Radley. The locality was stated to be Abingdon, Oxfordshire. The application land was shown edged red on an annexed plan². The plan is on a rather small scale and the colouring is not very distinct. However, the general effect is to exclude Sandles and its grounds from the application but to include within the application (a) the two lakes (except for a small inlet within the grounds of Sandles), (b) the N Bank of Thrupp Lake to the S edge of Thrupp Lane, (c) the E bank of Thrupp Lake to the W edge of the BOAT, (d) the W bank of Thrupp Lake including the track with its avenue of trees, and (e) all the land surrounding Bullfield Lake to the S of Thrupp Lake. Mrs Cartmell later produced a larger scale map of the application land³ which more accurately delineated the boundaries of the application land. The main difference is that the new map includes the BOAT to the S of Bullfield Lake as part of the application land. The area of the application land is said to be 15.5 or 18 hectares, so that about 65-75% of the application land consist of the lakes themselves. It is a striking feature of the application land that, with the exception of (a) the BOAT along the S boundary and (b) the area of land at the SW corner, all the dry land consists of a fairly narrow strip of land around the banks of the lakes.

1 R2
2 R10
3 R170

- Part 4 stated that the application land became a new green on 19th October 2006
- Part 5 stated that the application land became a new green by the actual use of the land by local inhabitants for lawful sports and pastimes as of right for not less than 20 years. The local inhabitants were identified as the inhabitants of Abingdon.
- Part 6 identified the owners of the application land as npower, Curtis and Mr and Mrs Dockar-Drysdale
- The application was supported by the prescribed statutory declaration made by Mrs Cartmell⁴.

[8] The application was publicised by the registration authority and three written objections were received:

- Two objection letters dated 24th December 2006 and 16th February 2007 from Mr Dockar-Drysdale⁵
- An objection by Curtis contained in a letter dated 14th February 2007⁶
- An objection statement on behalf of npower, Curtis and Mr Dockar Drysdale also dated 14th February 2007⁷.

[9] I was instructed by the registration authority to hold a non-statutory public inquiry and to report to the authority with my recommendation whether the application should be accepted or rejected. At the request of the applicant, I attended an accompanied site view on 19th March 2007. I held the public inquiry in Radley College over 7 days on 2nd to 5th April and 20th to 22nd June 2007. Mr Petchey of counsel appeared for the applicant and Mr Mynors of counsel appeared for the objectors. At the public inquiry, I heard a very substantial number of witnesses (39 in all). A large quantity of written evidence was also submitted to the public inquiry. At the request of counsel, closing submissions were subsequently made consecutively in writing. The very detailed written closing submissions of the objectors and of the applicant were dated 8th and 24th July 2007 respectively. I am very grateful for the assistance of both counsel, who are both highly experienced in this area of the law. I was also given invaluable administrative support by the registration authority team of Mr Richard Goodlad, Mr David Brown and Mrs Christine Rodgers, to all three of whom I would like to express my sincere gratitude.

3. Evidence for Applicant

[10] I begin with the numerous witnesses who gave oral evidence in support of the application. For convenience, I will consider these witnesses in alphabetical order rather than in the order in which they gave evidence.

(1) Mr. Steve Betts

[11] Mr Betts produced a written statement⁸ and an evidence questionnaire⁹ and gave oral evidence to the public inquiry.

⁴ R8

⁵ B13 & 15

⁶ B32

⁷ B1

[12] Mr Betts was born in 1953 and lived until the end of the 1970s in his family home at Wootton Road (on the W side of Abingdon). He lived in The Holt (just W of Oxford Road) from 1980 to 1984. He lived in Oxford from 1984 to 1988. He then lived away from the area until he returned to live in Abingdon in 1999. Since 1999, he has lived at various addresses on the E side of Abingdon. His evidence about use of the lakes fell into three sections:

- His use as a child and young man before 1984
- His use while living in Oxford from 1984-1988
- His use since returning to Abingdon in 1999.

[13] As for the years before 1984, Mr Betts gave evidence of walking and cycling round both lakes, mostly to watch birds. He saw fishermen and water-skiers. He fished himself sometimes. He swam in Thrupp Lake a few times as a child although it was not his favourite place to swim because there was a lot of vegetation in the water. He has not seen anyone swim in the lakes for many years. He was never asked to leave. He recalls a straggly post and wire fence along the E bank of Thrupp Lake. When questioned about these early years, his recollection was understandably rather vague.

[14] Mr Betts said that while he lived in Oxford he occasionally cycled from Oxford to watch birds around the lakes. He said that he walked all round the lakes, including the W and N banks of Thrupp Lake. Mr Betts's recollection of these visits was also rather vague and I got the impression that they were not very frequent.

[15] Since returning to Abingdon in 1999, he tends to drive to Thrupp Lane or to the Abingdon end of the Sustrans route, park his car and then walk. Sometimes he walks down to the Thames towpath. Sometimes he watches birds around Thrupp and Bullfield Lakes. He estimated that he visits once a week in winter and twice a week in summer. He tended to walk from the BOAT on the E side of Bullfield Lake, along the isthmus between the lakes and then around Thrupp Lake. Sometimes he found the Curtis works gate at the NW corner of Thrupp Lake closed and locked. He remembers at some stage seeing a builders' compound to the W of Bullfield Lake. He avoided that area while the compound was there. While the compound was in place, he did not walk the W shore of Thrupp Lake as it would involve passing the compound.

[16] In his evidence questionnaire, Mr Betts claimed to use the application land weekly from 1964-1989 and from 1999-present. This is hard to reconcile with his oral evidence.

[17] I have to say that I had some reservations about Mr Betts's evidence. I thought that too much of his evidence was reconstruction rather than recollection and that he exaggerated to some extent the frequency of his use of the application land. However, I do not doubt that he did walk around the lakes on numerous occasions both before 1989 and since 1999.

(2) Mr. Andy Bonnington

[18] Mr Bonnington produced a written statement¹⁰ and gave oral evidence. He expressed general support for the application on behalf of the CPRE. However, he had no relevant personal evidence to put forward regarding the history of use of the application land.

(3) Mrs. Caroline Bullock

[19] Mrs Bullock produced a written statement¹¹ and gave oral evidence. She has lived at various addresses on the E side of Abingdon since 1961. She is a part-time swimming and lifesaving instructor. Her main recreation is swimming. Thrupp and Bullfield Lakes are about 20 minutes walk from her home.

[20] Her use of the lakes falls into three distinct classes:

- Use for life-saving tests
- Use for casual swimming
- Use for walking

[21] As for the first class of use, Mrs Bullock belongs to the Better Keep Swimming Club which hosted and organised Open Water examinations for the Royal Life-Saving Society in Bullfield Lake from 1979 to 1997. The examinations were open to swimming clubs affiliated to the Thames Valley Royal Life-Saving Society. Permission was obtained from Mr Curtis to bring the equipment needed for the examinations to the lake and she borrowed from Mr Curtis a key to open the gate at the SW corner of the application land to bring in cars for that purpose. She and some colleagues used to swim in both lakes a few times before the examination to test how cold the water was. Rather oddly, Mrs Bullock gave evidence that although Mr Curtis gave permission to bring in equipment for the life saving examinations, he did not actually give permission to swim in the lake. I would have thought that was a necessary implication of allowing Bullfield Lake to be used for the tests. It does appear from this part of Mrs Bullock's evidence that between 1979 and 1997, Curtis generally kept the gate at the SW corner of the application land closed and locked.

[22] As for the second class of use, Mrs Bullock gave evidence that, in addition to swimming in the lakes in connection with the life-saving examinations, from about 1970 to 1998, she use to swim casually in both lakes a couple of times a year in July/August. She did not seek permission to swim. She never saw any other casual swimmers in the lakes, except possibly people swimming from Sandles. The water was cold and it would not be safe for children to swim in the lakes.

[23] As for the third class of use, until about 1998, she sometimes walked onto the application land with her family. They usually entered from the E of Bullfield Lake or from the SW corner of the application land. They wandered in the area S and W of Bullfield Lake and did not walk on the N or W banks of Thrupp Lake. On weekdays, Thrupp Lane was very busy with gravel lorries. She remembers seeing the land W of Bullfield Lake being flattened and Portacabins being installed there. Since 1998, her

¹⁰ R33

¹¹ R34

husband has been ill and she although she has continued to walk and cycle around the lakes on her own, she has kept to the public rights of way and has not entered the application land. There may have been a post and wire fence along the E bank of Thrupp Lake but, if so, it was not very substantial. In any event, she did not go onto the E bank of Thrupp Lake.

[24] She never saw anyone fishing in either lake. For a period, there was fairly consistent use of Thrupp Lake for water-skiing. The only boats she saw on the lakes were motor boats for water-skiing. She does not remember jet-skiing on the lakes. She does not remember Thrupp Lake being drained.

[25] Apart from her evidence concerning Mr Curtis's permission to swim in Bullfield Lake in connection with the life-saving examinations, Mrs Bullock struck me as a credible witness and I accept her evidence. Mrs Bullock is obviously a very keen and strong swimmer and I think that she would have remembered if she had seen any very material use of either of the lakes for recreational swimming.

(4) Mrs Jo Cartmell

[26] Mrs Cartmell produced a written statement¹² for the public inquiry which amplified an earlier statement¹³ submitted in support of her application. She gave oral evidence to the public inquiry.

[27] Mrs Cartmell said that she moved with her husband and two young children to Norris Close (on the E side of Abingdon) in 1982. She discovered Thrupp and Bullfield Lakes in 1983 when walking with her family. They are about 20 minutes walk from her house (10 minutes by bicycle). She was immediately captivated by the natural beauty of the lakes and by their abundance of wildlife, particularly birds.

[28] Her opportunities to visit the lakes were limited by the fact that she was in part time work at Oxford University until 2004 and by her children's extra-curricular activities while they were at school. However, she estimated that she visited the lakes at least once a month between 1983 and 1995 both with her family and on her own. Between 1990 and 1993, she looked after a dog for a friend for 3 weeks each summer and used to take the dog most days to the lakes, where it launched itself into Thrupp Lake. Between 1995 and 2001 she suffered a series of family bereavements and was helped to come to terms with them by visiting the lakes on her own 2 or 3 times a week in the early morning or late afternoon. Since 2003, she has visited the lakes at least twice a week, usually in the early morning. She particularly enjoys observing and photographing wildlife. She picks blackberries on the W side of Thrupp Lake in the autumn.

[29] Mrs Cartmell's usual route to the lakes has been by an informal footpath from Abingdon via Wick Hall to join Thrupp Lane N of the lakes. She then normally walks down the BOAT on the E side of Thrupp Lake and enters the application land through gaps in the fencing by Bullfield Lake. She walks around Bullfield Lake and along the W side of Thrupp Lake and then returns to rejoin the BOAT to the E of Bullfield

¹² R15

¹³ R11

Lake. Since the Sustrans route was established in 1999, she has also approached the lakes from the S by way of the Sustrans route. There is a “Private Property” sign on the gate to the Curtis works at the NW corner of Thrupp Lake but local people understand it to refer to the Curtis works and not the lake and its banks. She rarely uses the gate because she finds that area off-putting, but she has only found the gate locked on three occasions since 1983. There are no other such signs on the application land although there are some old signs saying “Private Fishing”

[30] As for use of the lakes themselves, she has waded across to one of the islands in Thrupp Lake on 3 occasions. She has occasionally seen people swimming in Thrupp Lake, and children paddling and pond-dipping in both lakes. She remembers jet-skiing but not water-skiing on Thrupp Lake. She does not remember Thrupp Lake being drained. She has never asked permission to use the application land or been turned off it.

[31] As for the banks of the lakes included within the application land:

- There are tracks on the N bank of Thrupp Lake which are used by fishermen, natural historians and local photographers
- There are bays along the W shore of Thrupp Lake and the S and W shores of Bullfield Lake where she has seen local people take children to paddle or pond-dip
- She sometimes walks the W edge of Thrupp Lake looking for wildlife as it is “a wilder part of the land which is not often walked”. She has picnicked on that bank
- She has seen many people cycling round the Lakes and has done so herself on about 5 occasions. There is evidence that horse-riders use the path through the land south of Bullfield Lake
- Between the BOAT and the E shore of Thrupp Lake there was a fence in a broken state in 1983 and it has not prevented access to the bays along that shore

[32] Mrs Cartmell was a sincere witness. I do, however, have three points to make about her evidence:

- The first point arises from her evidence that she did not see Thrupp Lake drained. It seems hard to reconcile her evidence of the frequency of her visits to the lakes at this time (at least once a month) with the evidence of Mr Dockar Drysdale (which I accept) that in 1991/92 he pumped out the lake and that it was about 3-4 months before it refilled. This points to some exaggeration of the frequency of Mrs Cartmell’s visits.
- The second point is that Mrs Cartmell’s evidence consists of a mixture of four classes of evidence. The first class relates to her own activities on the application land. The second class relates to activities that she has personally seen on the application land. The third class consist of activities on the application land of which she has been told by other people. The fourth class consists of activities that she presumes to have occurred on the land. It seems to me that she did not always distinguish very clearly between these four very different classes of evidence.
- The third point is that Mrs Cartmell has dedicated herself to the campaign to save the lakes from the proposed infilling with PFA by registering it as a new TVG. She was, quite understandably, not an entirely objective witness and

tended to emphasise the evidence of recreational use of the lakes by local people and to minimise the evidence of use of the application land by the landowners. Thus, although she mentioned that npower's contractors had used part of the land in 2002, she did not mention the uncontested fact that this part of the land (the area of land owned by Curtis W of Bullfield Lake and S of Thrupp Lake) was used for a period of some 6 months in 2002 as an enclosed builders' compound, by npower in connection with the infilling of another lake to the S of the old railway to the S of Bullfield Lake which now forms part of the Sustrans route.

[33] I think that Mrs Cartmell has exaggerated the frequency of her visits to the lakes before the present campaign to Save Radley Lakes commenced. However, I accept that she has on many occasions walked around the lakes since the early 1980s, that she never asked permission and that her use of the land was never challenged.

(5) Mrs. Elizabeth Clack

[34] Mrs. Clack produced a written statement¹⁴ and gave oral evidence. She has lived on the E side of Abingdon since 1984. Until her children grew up and went to university in the mid to late 1990s, she and her family visited the lakes about once a month in the summer. They usually walked across the Curtis land to the W side of Thrupp Lake, walked around Bullfield Lake and out into the BOAT on the E side of Thrupp Lake from where they would walk home by Thrupp Lane and Wick Hall. From 1999 to 2006 they had a dog which they walked around the two lakes almost daily. They did not go on the N bank of Thrupp Lake but they did walk through the Curtis works gate at the NW corner of the application land. Indeed, on one occasion they asked a member of the Curtis workforce whether she could use the gate and was told that it was fine but to be careful of speeding lorries. The Curtis works gate was not regularly closed at weekends until about 2003 when there was a problem with burned-out cars.

[35] The family occasionally picnicked on the W side of Thrupp Lake and regularly picked blackberries there in the autumn. The dog swam in the lakes. She and her husband have not swum in the lakes but one summer her children took swimming costumes over to the lakes: it was not very often. She has seen about 4 or 5 people swimming in the lakes in total over the years. She has seen sunbathers on the W side of Thrupp Lake. She has seen jet-skiers on Thrupp Lake over the last 3 or 4 years. She does not remember the draining of Thrupp Lake.

[36] Mrs. Clack recalled the builders' compound set up in 2002 but it did not impair her ability to walk around the lakes as it was possible to walk around the compound.

[37] The fact that Mrs. Clack did not remember the draining of Thrupp Lake in 1991/92 suggests that her visits cannot have been as frequent as once a month. However, subject to the qualification that there was a degree of exaggeration as to the frequency of her visits to the application land, I accept Mrs. Clack's evidence.

¹⁴

(6) Dr. Leslie Clyne

[38] Dr. Clyne produced a written statement¹⁵ and gave oral evidence. He has lived in the NE sector of Abingdon since 1980. Over the years, when he has had problems, he has gone to the lakes, either on foot, by bicycle or by car and walked on the footpaths surrounding the lakes to think and relax. He has not walked on the N bank of Thrupp Lake.

[39] Dr. Clyne has fished in Bullfield Lake without a permit but has never caught anything. He has not fished in Thrupp Lake. He has never swum in the lakes or seen anyone swim in the lakes. He has seen dogs swim in the lakes. He does not remember Thrupp Lake being drained. Nor does he remember a builders' compound in the SW corner of the application land. He could not remember whether he had seen boats, water-skiing or jet-skiing on the lakes.

[40] Dr. Clyne struck me as a perfectly honest and genuine witness.

(7) Mr. Paul Cook

[41] Mr. Cook produced a written statement¹⁶ and gave oral evidence. Mr. Cook is aged 38. He lived in NW Abingdon from 1973-1984, in Drayton (a village S of Abingdon) from 1984-1992, in the E part of Abingdon from 1992-2000, and in W Abingdon since 2000.

[42] Mr Cook is an extremely keen fisherman. Between 1983/84 and 1988/89 he held a permit from Mr Dockar-Drysdale to fish Thrupp Lake. Sometimes he fished out of the permitted season. Then, until 1991, he fished Thrupp Lake without a permit.

[43] In 1991, Thrupp Lake was drained. Mr Cook walked down to the N bank to have a look. Someone shouted "P--- off" from the lake and he cleared off quite rapidly. Most of the fish were taken out of the lake in 1991, and from then until 2005 he fished elsewhere. He fished a few times in Bullfield Lake, but most fishermen belonged to the Abingdon and Oxford Angling Alliance which had a licence from Mr Curtis to fish Bullfield Lake. He knew many of the other fishermen and, although most fishermen had a permit, they did not object to his fishing without a licence.

[44] In 2005, Mr Cook discovered that Thrupp Lake had been repopulated by carp and, since then he has often fished for carp in Thrupp Lake. He produced a 2006 photograph¹⁷ of himself standing in Thrupp Lake with a large carp which had caught.

[45] Mr Cook also gave evidence of using the application land for general relaxation weekly in the summer between the early 1990s and 2005. He seemed very vague about this when questioned and I did not find it very convincing. Having heard Mr. Cook give evidence, I got the strong impression that his principal relaxation has been fishing.

¹⁵ 2R113

¹⁶ R38

¹⁷ R40

[46] Mr Cook recalls water skiing on Thrupp Lake in about 1984-1986. It got in the way of fishing. He cannot remember jet-skiing. He cannot remember the builders' compound of 2002. He has not swum in the lakes but, in the summer he has seen quite a lot of people (mostly teenagers) swimming from the E bank of Thrupp Lake. They swam 30-40 yards into the lake. It was not clear from his evidence in what years this took place and I am doubtful about this evidence, which seems out of line with that of most other witnesses. In 2005 and 2006 he took a small boat out on Thrupp Lake looking for good places to fish.

[47] I accept Mr Cook's evidence about fishing. I was not convinced by his evidence of his other use of the application land or his evidence about swimmers in Thrupp Lake.

(8) Dr. Basil John Busteed Crowley

[48] Dr. Crowley produced three written statements¹⁸ and an evidence questionnaire¹⁹ and gave oral evidence. Dr. Crowley has been Chairman of Save Radley Lakes since July 2005. By profession he is a physicist. He lives in Radley. All three of his statements are very substantial and hard adequately to summarise. However, I think that the most important matters are:

- Dr. Crowley's own use of the application land, and
- Dr. Crowley's analysis of the boundaries of the application land.

[49] Dr Crowley first visited Thrupp and Bullfield Lakes in May 2005. Since the, he has visited them most weekends, either by car or on foot (it is a 30 minute walk from his home). He and his partner (Lynda Pasquire) have walked all round both the lakes. If the Curtis gate at the NW corner was shut (which was rare) he simply went another way. He used the land to indulge in his hobby of wildlife photography (of which he produced many examples). They have met and spoken to many local people on the land. People use the land for walking, with or without dogs, fishing, admiring the scenery and wildlife and a variety of informal recreational activities. He has seen children and dogs swimming in both lakes (although he has not swum himself) and he has also seen a local diving club using the lakes. He has seen Thrupp Lake used by power boats belonging to the landowners as well as by fishermen's boats. He usually gains access from the BOAT at the SE corner of Thrupp Lake/NE corner of Bullfield Lake. He never asked permission to use the land and was never told to leave. I accept the factual content of Dr. Crowley's evidence about use of the application land since 2005. However, I do bear in mind that his use has largely been during the currency of the Save Radley Lakes campaign and that this campaign (which was obviously run with great vigour) may itself have generated use of the application land which was not necessary typical of the use back to 1986.

[50] Dr. Crowley also produced a very full analysis of the boundaries of the application land in impressive detail, including a detailed discussion on such matters as the dating of fence wire. He very fairly conceded that he had no pre-existing expertise in such matters, but I accept the broad thrust of his evidence which was that

¹⁸ R41, R52A & 2R40

¹⁹ EQ82

the application land is not now securely fenced and did not appear to have been so for many years. This coincided with the impression that I formed on viewing the site.

(9) Mr. John Dunleavy

[51] Mr Dunleavy produced a written statement²⁰ and gave oral evidence. Mr Dunleavy and his family lived in the E part of Abingdon from 1979 to 2006. They walked their dogs in the Radley Lakes area about once a week from 1989 (when they acquired their first dog, Harry) to 1999 (when their second dog, Bernie, became too difficult to walk in that area).

[52] Although sometimes he walked by way of Wick Hall, he usually drove down Thrupp Lane and parked near Sandles. He had no standard walk but often he walked S down the BOAT on the E side of Thrupp Lake. There was no fence between the BOAT and the bank of the lake. He often entered the application land by Bullfield Lake, walked around the S side of Bullfield Lake and up the W side of Thrupp Lake, through the Curtis works gate and back to his car along Thrupp Lane. Sometimes he went onto the N bank of Thrupp Lake to watch birds, but it was not very often. Sometimes, he did this walk in reverse. The Curtis works gate was not usually closed for the weekend until Saturday lunchtime. If he found it closed, he retraced his steps. Sometimes, he approached from Barton Lane and entered the application land by squeezing around the gate in the SW corner.

[53] There were often other dog walkers on the application land. Mr Dunleavy never saw any people swim in the lakes although dogs swam and paddled in both lakes. He paddled in his Wellington boots with his dogs. He remembers motor boats and jet skiers for a period. He does not fish although there were fishermen by the lakes. He spoke to some of them. Some mentioned the fishing club and none said that they were not members. Occasionally there were cyclists and horse riders on the track S of Bullfield Lake.

[54] Mr Dunleavy recalled the builders' compound at the SW end of the application land. It did not interfere with what he did. He could pass round the side of it although he could not remember which side. Mr Dunleavy's use of the application land was never challenged. He did not know who owned the land.

[55] I accept Mr Dunleavy's evidence.

(10) Dr. Robert Martin George Eeles

[56] Dr. Eeles produced a written statement²¹ and gave oral evidence. He is aged 46 and is an independent ecologist, archaeologist and palaeontologist. He has lived at various addresses in S and N Abingdon (not E of the Oxford Road) since 1961.

[57] Dr. Eeles first discovered Thrupp and Bullfield Lakes in about 1973. He usually followed the BOAT from Barton Lane to the S end of Bullfield Lake and

²⁰ 2R43

²¹ R53

entered the application land at the SE corner. For many years there has been a gate at the SW corner of the application land and he has entered through that gate when it was open. Sometimes he has crossed the Curtis land to the W of the application land, although the Curtis land used to have many more small lakes that it now has. Since the opening of the Sustrans route on the old railway line, he has used that as access. Since 1990 he has occasionally entered from the NW corner of the application land when the Curtis works gate has been open. He comes to the lakes on foot or by bicycle.

[58] Dr. Eeles considered that the configuration of Thrupp Lake had been the same throughout the time he had known it. However, he thought that there had been some infilling of the W side of Bullfield Lake during his time. He produced an aerial photograph of 1985²² which showed more water and less land in the SW sector of the application land.

[59] Dr. Eeles mostly used the S end of the application land around Bullfield Lake. However, he occasionally went on the W and N banks of Thrupp Lake. For example, he went onto the land at the N end of Thrupp Lake to looking for badgers and a kingfisher's nest. In 2005, there was an algae bloom on Thrupp Lake. Dr. Eeles walked along the BOAT on the E bank and walked down the bank into one of the little bays to look at the algae.

[60] Dr. Eeles usually visits the application land to observe wildlife. Since 2003 he has been running a moth catching project in the garden of Thrupp Cottage, which is near the S end of the application land and has visited the application land at least 40 times a year. Before 2003, his visits were less frequent but "regular". He estimated that he visited the lakes 10-15 times a year on average between 1985 and 1999.

[61] For many years, he has seen people fishing Bullfield Lake. More recently, he has seen people fishing the NW and SE corners of Thrupp Lake. In 2004/2005, he waded into the SE corner of Thrupp Lake to release a fish which was stuck in a car tyre. In 2005, he went swimming in Thrupp Lake unsuccessfully looking for an otter holt. He produced a photograph of the swim²³. The water was very cold (as appears from the expression on his face in the photograph). He has a "vague recollection" of seeing people swimming in Bullfield Lake. In the early 1990s he saw children paddling at the edge of Thrupp Lake in the shallow water. In his witness statement, Dr. Eeles said that he also saw people swimming in Thrupp Lake but he retracted that evidence in cross-examination. He has seen other people enjoying informal recreation, such as walking, with or without dogs, on the application land.

[62] Dr. Eeles has heard motor boats on Thrupp Lake but has not seen water-skiing or jet-skiing. Such noisy activities were inconsistent with his nature study and he would avoid them. There were buoys in the water of Thrupp Lake.

[63] Dr. Eeles met Mr John Curtis a few times. He took Mr Curtis a copy of his report on the archaeology of the area and Mr Curtis was very interested. Dr. Eeles said that "Mr Curtis was not aware of my activities around Bullfield and Thrupp

²² R58C

²³ R58B

Lakes”. Shortly afterwards, and somewhat inconsistently, he said “He always let me go round his land.” Mr. Curtis gave evidence (which I accept) that Dr. Eeles asked him for permission to use the Bullfield for nature study purposes and that he readily gave it.

[64] When Thrupp Lake was dewatered in 1991 or 1992, Dr. Eeles met Mr. Dockar-Drysdale and asked him whether he could collect some mussels and release them into the Thames. Mr Dockar-Drysdale said “Not now. I am getting the fish out. Come back later”. Dr. Eeles did return later and collect two bags of mussels.

[65] Dr. Eeles recollects the construction of a builders’ compound in the SW sector of the application land. There was a bund around the compound and a Heras fence. He thought that the fence was within the bund. He is not sure how long the compound was there: it could have been 6 months. It altered his pattern of use of the application land. Although it was possible to walk around the compound, he did not use the SW sector. “There was a general air that I felt uncomfortable in that situation. I tended to avoid that general area. I was concerned that if I went to the compound area I would be challenged by representatives of the landowner”.

[66] Apart from his somewhat inconsistent evidence about seeing other people swimming in Thrupp Lake, I felt that Dr. Eeles’s evidence was reliable.

(11) Ms Rachel Everett

[67] Ms Everett produced a written statement²⁴ and gave oral evidence. She is a history teacher at a school in Oxford. She is the wife of Dr. Eeles.

[68] As a child she lived at her parents’ home in Kennington (which is about 2 miles from Abingdon). That remained her base until she got married in 1999. She discovered Thrupp and Bullfield Lakes in 1979, when she was 15. She cycled down the BOAT on the E side of Thrupp Lake on her way to an archaeological dig. She was attracted by the lakes and stopped to explore around them. She is interested in bird watching and archaeology, and she wrote her undergraduate dissertation on the Iron Age landscape of the area. Thrupp Lake was her favourite area for the annual RSPB sponsored bird watch. It was not clear from her evidence how often she visited the lakes after 1979 and before 1999, nor exactly what parts of the application land she visited in this period.

[69] Ms Everett did not visit the lakes much between 1999 and 2003, because she had twins born in 2000. They took up most of her time.

[70] Since 2003, she has frequently visited the lakes at weekends with her husband and children. Usually, they park in Barton Lane and walk along the Sustrans route on the old railway line. They enter the application land at the gate in the SW corner and either walk around Bullfield Lake or walk up the W side of Thrupp Lake. Normally, the Curtis gate is shut at weekends and so they turn back before reaching that gate. There is a good place to picnic on the W bank of Thrupp Lake. Sometimes they walk along the E side of Thrupp Lake to Sandles and back again. She does not use the N

²⁴

bank of Thrupp Lake. Thrupp Lane is busy with traffic and it is the furthest part of the application land from where they usually enter.

[71] There was no archaeological activity on the application land itself. She has not fished in the lakes although she has often seen people fishing in Bullfield Lake. She has not swum or seen anyone swim in either lake, with the exception of the one occasion when her husband swam in Thrupp Lake (i.e. the time mentioned by Dr. Eeles in his evidence). She has not seen jet-skiing in either lake.

[72] Ms Everett produced some fascinating research into the history of the application land²⁵ going back to 1170. Thrupp Lake and Bullfield Lake were two separate but adjacent enclosed fields from at least the C18. Gravel extraction of Thrupp Lake started in the early 1950s and extraction of both lakes had finished by the early 1970s.

[73] I considered Ms Everett to be an honest and truthful witness and I accept her evidence.

(12) Mr. Raymond Faulkner

[74] Mr. Faulkner produced a written statement²⁶ and an evidence questionnaire²⁷ and gave oral evidence. He has lived in Radley since 1964.

[75] In his witness statement and in his initial oral evidence, he said that he had visited the lakes 5 times a week from 1964 until recently. However, in his evidence questionnaire, he said that he visited the application land weekly since 1950. When the discrepancy was pointed out, he sought to explain it by saying that he had visited the general area of the lakes 5 times a week but the application land itself weekly. If so, his witness statement and oral evidence were highly misleading. He did not explain the discrepancy in the start dates between 1950 and 1964. I was not convinced by this explanation and I think that Mr Faulkner's evidence about the frequency of his visits was unreliable. Also, he did not recollect the draining of Thrupp Lake in the early 1990s, which sits oddly with weekly visits to the application land during that period.

[76] In his witness statement, Mr. Faulkner said that he had many times seen people swimming, boating, canoeing, pond dipping and paddling in the water. In cross-examination he said that he did not see swimming very often. There was more in the 1970s. He has not seen anyone swim in Thrupp Lake since the mid 1980s. But he has seen people swim at weekends in Bullfield Lake "quite a lot" in the last 20 years. Fishermen used to strip off and take a dive into the lake. Mr Faulkner's evidence about swimming seemed rather contradictory. The canoeing was a long time ago, before the mid 1980s. As for pleasure boating, anyone boated on Thrupp Lake before Mr Dockar-Drysdale took it over for water-skiing. Even then, there were a few pleasure boats. The only boats on Bullfield Lake were fishermen's boats. He has seen water skiing on Thrupp Lake. It was mostly in the evenings or at weekends.

²⁵ R61
²⁶ 2R50
²⁷ EQ18

[77] There were always fishermen around both lakes. Mr Dockar-Drysdale had his own fishing club on Thrupp Lake and in the 1980s -1990s, there was a private fishing club called the Abingdon Alliance which fished Bullfield Lake. A number of fishermen came a long way to fish. When the clubs were active most people who fished belonged to one or other of the clubs. When the clubs became inactive, people fished without a licence.

[78] Mr Faulkner cannot remember any fence along the E bank of Thrupp Lake (except behind Sandles), not even a Heath Robinson fence.

[79] Mr Faulkner usually cycled from Radley and left his bicycle in a barn and walked from there. He had no typical route. Sometimes he would enter the application land E of Bullfield Lake and walk around Bullfield Lake and up the W side of Thrupp Lake to the Curtis works gate, which was rarely shut. He went onto the N bank of Thrupp Lake 20-25 times a year to watch badgers.

[80] I found Mr. Faulkner to be a rather unsatisfactory witness, particularly as to the frequency of his visits and as to the amount of recreational use made of the lakes.

(13) Mr. Peter Green

[81] Mr Green gave oral evidence as a member of the public in support of the application. He is a town and district councillor and is the mayor of Abingdon and chair of the parish council. He lives in Ock Street, near the centre of Abingdon. He did not claim to have used the application himself. His evidence fell into three parts:

- Mr Green produced a series of minutes setting out the history of the town council's support for the present TVG application²⁸. One²⁹ said that Radley Lakes were a popular amenity for the residents of Abingdon and surrounding areas. In cross-examination, it appeared that he did not know exactly what surrounding areas were referred to in the minute
- Mr Green said that, as mayor, he had been approached by many people who said that they had used Radley Lakes for recreation. He did not give any details of this evidence.
- Mr Green was questioned about whether Abingdon E of the Oxford Road constituted a separate community. His view was that it did not. It consisted of a collection of separate areas such as Peachcroft and Appleton Drive.

[82] I thought that Mr Green was a perfectly genuine witness although his role was more to give the moral support of the town council to the application than to contribute any useful evidence about use of the application land. However, he had an informed view on the status of E Abingdon.

(14) Mr. Terence Green

[83] Mr Green submitted an evidence questionnaire³⁰. He also gave oral evidence in support of the application. He has lived on the E side of Abingdon since 1985

²⁸ R185-191

²⁹ R185

³⁰ EQ23

(1961 according to his evidence questionnaire). He recalls skimming stones over the ice when the lakes were frozen. He walks around the lakes about once a month (weekly according to his evidence questionnaire), mostly sticking to the Sustrans route. It was not clear from Mr Green's evidence whether he had actually entered the application land. I did not think that Mr. Green's evidence contributed much to the case.

(15) Dr. David Guyoncourt

[84] Dr. Guyoncourt produced a written statement³¹ and an addendum statement³². He gave oral evidence. Dr. Guyoncourt has lived in SW Abingdon since 1974. Between 1986 and 1997, he used to run to the Radley lakes area. Usually he ran past Thrupp and Bullfield Lakes on the BOAT although sometimes he entered the site and ran along the isthmus between the two lakes.

[85] Dr Guyoncourt gave up running in 1998 and has since usually driven to Barton Lane, parked his car there and walked to the lakes. The gate was usually closed but he was able to get round the side of it if it was closed. In recent years a panel of the gate has been missing and it has been possible to climb through the gate. Sometimes he has walked down the old railway track and entered the application land at the SE corner or to the E of Bullfield Lake. His main interest is bird watching, which he mostly does from the SW end of Thrupp Lake. Until recently he has rarely used the W or N sides of Thrupp Lake. He remembers the builders' compound in the SW part of the application land. It was installed in the autumn of 2001 for about 6 months, but he was able to walk around it to access the W side of Thrupp Lake. In 2005-2006, he visited the N bank of Thrupp Lake 15-20 times to record birds and trees. The Curtis works gate at the NW corner of the application land was usually open, although he once found it closed.

[86] Dr. Guyoncourt has not fished in the lakes or spoken to the fishermen. He has nor swum in the lakes or seen anyone swim in the lakes. He does not remember seeing Thrupp Lake drained. He did not see water-skiing but did once see jet-skiing probably in the late 1990s. There were buoys in the lake which he assumed were markers for jet-skiing.

[87] I accept Dr. Guyoncourt's evidence.

(16) Mr. Robert Halsey

[88] Mr Halsey produced a written statement³³ and gave oral evidence to the public inquiry.

[89] Mr Halsey has lived in Windrush Way (on the E side of Abingdon) since 1984. Shortly afterwards, he began to visit Radley Lakes to watch birds and he recorded over 100 visits in his diary between 1986 and 1990. He said that he visited Thrupp and Bullfield Lakes on each visit. Sometimes, he walked along the E side of Thrupp Lake on the BOAT, going down to the waterside to watch birds. Sometimes

³¹ R62
³² 2R52
³³ R64

he walked along Thrupp Lane on the N side of Thrupp Lake and again went down to the waterside to look at birds. Sometimes he entered the application land from the BOAT at the SE corner of Thrupp Lake and walked a circuit around the two lakes. If the Curtis gate was open, he would walk through that gate. He did not break down or climb any fences, there were no signs forbidding entry and he was never challenged. He has often seen people fishing in the lakes and he remembers water sports, either water skiing or jet-skiing. He has not swum or seen anyone swimming in the lakes. He cannot remember Thrupp Lake being drained or a builders' compound in the SW corner of the application land.

[90] I accept Mr. Halsey's evidence.

(17) Mr. Peter Higgs

[91] Mr. Higgs produced a written statement³⁴ and gave oral evidence. He moved to Abingdon in 1968 at the age of 6. He lived in the central part of Abingdon until 1982. Since 1982 he has lived at various addresses on the E side of Abingdon.

[92] As a child, he used to cycle to the Radley Lakes area to fish and to watch other people fish and water-ski. When he moved to E Abingdon, he acquired a dog and walked it at the lakes at weekends and on summer evenings. He had three sons born in the 1980s and they cycled around the lakes and paddled and skimmed stones on the lakes. Until very recently there was no problem with access to the lakes and he has seen many other people enjoying recreation around the lakes including fishing, water-skiing and jet-skiing. He does not remember Thrupp Lake being drained.

[93] He goes all over the application land including the N bank of Thrupp Lake. He recalls the builders' compound in the SW corner in 2002. The land was cleared and a stone surface laid down. Portacabins were sited in the compound which was surrounded by temporary fencing. He still walked around Thrupp Lake and the SW corner without difficulty.

[94] I accept Mr Higgs's evidence.

(18) Mrs. Lesley Karen Hughes

[95] Mrs Hughes produced a written statement³⁵ and an evidence questionnaire with attached statement³⁶ and gave oral evidence to the public inquiry.

[96] Mrs Hughes moved to Norris Close (in the E sector of Abingdon) in 1986. She was told by a neighbour that the lakes were a good place to walk the dog. At least twice a week, she either drove or got a bus to Hadland Road (near the W end of Barton Lane) and walked along the Thames Path, between the lakes to the S of the railway line and arrived at the SE corner of Bullfield Lake. She then usually entered the application land, walked across to the W side of Thrupp Lake and returned to Abingdon across the Curtis land. Sometimes she entered the application land at the SW gate (which was rarely closed) up to the W side of Thrupp Lake and back across

³⁴ 2R/57

³⁵ R66A

³⁶ EQ72

the Curtis land. In about 1999/2000 joyriding became a problem around the lakes and the SW gate was then kept closed, although it was possible to get through a gap at the side of the gate. That hole was later barred with wood, and, shortly afterwards, a hole appeared in the gate. The dog swam in the lakes and the children paddled, skimmed stones and went pond-dipping. She did not go much to the E side of the lakes. She has not been on the N bank of Thrupp Lake. Sometimes, she has walked through the Curtis works gate at the NW corner of Thrupp Lake. She took her family's cars to a garage in Thrupp Lane for their MOTs and sometimes walked through the Curtis works gate, down the W side of Thrupp Lake and towards home across the Curtis land.

[97] Mrs Hughes said that she did not see Thrupp Lake being drained in 1991. However, she heard the pumps and avoided going there. She cannot remember water-skiing on Thrupp Lake but she can remember that the people at Sandles used Thrupp Lake for jet-skiing about 3 or 4 times a week in the summer. She has never swum in the lakes. Her children have paddled at the edges. The water is very cold. She has seen other people swimming in the lakes only a couple of times. The lakes to the S of the old railway were more popular with swimmers. She and her family have not fished in the lakes although she has seen people fishing in Bullfield Lake, but not Thrupp Lake.

[98] In 1993, Mrs Hughes moved to Lee Avenue, also on the E side of Abingdon, but closer to the lakes. She usually walked from home after 1993. The frequency of her visits to the lakes increased to 4 or 5 times a week. She had a young collie which went with her. She usually walked the lakes to the S of the old railway, and entered the application land at the SE corner, exiting either through the gate at the SW corner or across the Curtis land from the W side of Thrupp Lake.

[99] From about 1992 until 2001, Mrs Hughes was a cub leader and took the cubs at least 4 times a year to the application land to do badge work and play wild games. She took them to the S and W of Thrupp Lake and to the S of Bullfield Lake.

[100] At about Christmas time in 2001, work started on filling in two lakes S of the old railway line. A compound was set up at the SW corner of the application land. Shale was put down on the ground and a fence was erected around the compound consisting of wire mesh panels set in concrete blocks. There were some Portacabins within the compound. The workmen were friendly and it was possible to walk around the outside of the compound. When they took the compound away, the land reverted virtually to what it was before.

[101] She has not seen any infilling of Thrupp or Bullfield Lakes, but she has seen lorries and building equipment in the whole of the SW sector of the application land W of Bullfield Lake and S of Thrupp Lake. It was near where the compound was but was not confined to the compound area.

[102] In her written statement, Mrs Hughes said that she spoke to Mr Curtis but that he did not ask her to leave the land. In cross-examination, she said that this happened off the application land but that she did see Mr Curtis on the application land, although nothing was said.

[103] Mrs Hughes was asked about her evidence questionnaire. In boxes 20 & 21 she indicated that the Abingdon Marathon took place on the application land. In fact, the route went along the Sustrans route. Mrs Hughes said that when she filled in the evidence questionnaire she assumed that the Sustrans route was part of the application land. In her evidence questionnaire she gave the impression that she had used the application land 5 times a week since 1986. In cross-examination she said that was the maximum she had ever used it. She said that the evidence questionnaire was filled in a rush because she had just got back from holiday.

[104] I thought that Mrs Hughes was basically an honest witness but that she had filled in the evidence questionnaire without much care and with a degree of exaggeration.

(19) Mr. Christopher Martin Jones

[105] Mr Christopher Jones produced a written statement³⁷ and an evidence questionnaire³⁸ and gave oral evidence. He is the son of another witness, Mr Godfrey Jones.

[106] Mr Jones was born in 1964. He moved to Abingdon with his parents in 1966 and lived with them in Park Road (on the W side of Abingdon) until 1969. Understandably, his recollection of this period was not clear.

[107] From 1969 to 1982 he lived with his parents in Welford Gardens (on the E side of Abingdon). He was taken by his parents with his brother, sister and friends to picnic and paddle at the SE corner of Thrupp Lake. Later, they swam in the shallows of Thrupp Lake. They went about once a fortnight in the summer holidays. By the late 1970s, water-skiers were using Thrupp Lake. The Joneses were not asked to leave, but it became too dangerous to swim and so they began to swim in a new lake which had been excavated S of the railway line. Sometimes, he visited the lakes to fish, sail model boats and to watch birds.

[108] Mr Jones was away at college from 1982 to 1985, when he returned to Abingdon, living at first with his parents, but moving in 1986 to live with his grandmother in St. Peter's Road (on the E side of Abingdon). He stayed there until 1992. He then rented a flat in the town centre until 1994. Between 1986 and 1992, Mr Jones visited the lakes on average about once a month to watch the wildlife and for peace and quiet. His visits fell to 2 or 3 times a year between 1992 and 1994. He went right to the water's edge on the E side of Thrupp Lake to skim stones and watch wildlife. There were the remains of a post and wire fence between the E bank of Thrupp Lake and the BOAT but Mr Jones cannot remember a time when it was continuous. He walked on the S bank of Thrupp Lake and explored the isthmus between the lakes. He cannot remember seeing water sports on Thrupp Lake and he cannot remember the lake's being drained in 1991. He has not swum or fished in the lakes since at least 1986. He has not seen anyone swim in the lakes since then. On one occasion he walked right round Thrupp Lake but he did not generally go on the N or W bank of the lake.

³⁷ R67
³⁸ EQ28

[109] Mr Jones was away from Abingdon from 1994 until 1998. He and his family live in the E sector of Abingdon. He visits the lakes 4-6 times a year, usually with his children in the summer and on his own in the winter. He walks down the BOAT on the E side of Thrupp Lake and walks down into the little bays to watch wildlife. He sometimes goes a little way into the land S of Bullfield Lake, but not all round the lake. He sees other people on the land but could not say who they are.

[110] In his evidence questionnaire, Mr Jones claimed to have used the application land typically one a month from 1969 to the present day. It is hard to square this with his oral evidence.

[111] I accept that, over the years, Mr Jones has fairly often walked along the BOAT on the E shore of Thrupp Lake and that he has fairly often ventured a little way into the application land S of Bullfield Lake. However, the fact that he does not recollect the lake's being drained in 1991 or mention the builder's compound of 2002 in the SW sector of the application land suggests to me that his visits were less often than he recalled. I think that a degree of exaggeration has crept into his evidence concerning the frequency of his use of the application land.

(20) Mr. Godfrey Jones

[112] Mr. Jones produced a written statement³⁹ and an evidence questionnaire⁴⁰ and gave oral evidence to the public inquiry.

[113] Mr Jones lived with his parents in St. Peter's Road from 1954 to 1964. He then went away to university. He then lived at Welford Gardens from 1968 to 1989, since when he has lived in Worcestershire. Both St. Peter's Road and Welford Gardens are on the E side of Abingdon.

[114] He discovered Thrupp Lake in 1956 while it was still being excavated by Curtis. The water was clear and there were few water weeds. He used to swim in the lake regularly with friends, including his future wife, Gwyneth. He had a face mask and used to explore the bottom. He produced some photographs of Gwyneth and himself in their swimming costumes sitting on a pontoon on Thrupp Lake in 1958⁴¹. He often saw a man sailing a dingy on the lake.

[115] In the 1960s, Mr and Mrs Jones were married and had children. They had no car and used to walk or cycle with the children to Thrupp Lake where the children learned to swim in the shallows at the S end of the lake. He produced a photograph of his children paddling at the edge of Thrupp Lake in 1973⁴².

[116] In the 1960s, Thrupp Lake began to be used for water-skiing, particularly on summer weekends. The water-skiing was noisy and dangerous to swimmers, who began to swim in a new lake which had been excavated S of the railway line. However, children still paddled at the edges of the lake and had bonfires and

³⁹ R69
⁴⁰ EQ51
⁴¹ R71
⁴² R72

barbeques on the banks. He could not say whether people still swam in Thrupp Lake after the 1970s.

[117] As the children grew up in the 1970s, Mr Jones and his family ceased to go to the lakes.

[118] In the 1980s, Mr Jones developed a keen interest in photography and started to go all over Radley Lakes, including Thrupp Lake, taking photographs. He recalls seeing a woman windsurfing topless on Bullfield Lake. He usually went to the S end of Thrupp Lake and the area S of Bullfield Lake. Mr Jones has not been on the N or W banks of Thrupp Lake

[119] After leaving Abingdon in 1989, he returned occasionally (less than once a year) and remembers seeing Thrupp Lake drained in 1991.

[120] I accept Mr Jones as a witness of truth. However, most of his evidence related to a period more than 20 years before the date of the application.

(21) Mr. Gerald Kendall

[121] Mr Kendall was another member of the public who asked to give oral evidence in support of the application. He lives in Oxford and is a keen naturalist. He produced a written summary of 27 visits to the lakes between 1987 and 2004 which had been recorded in his diary⁴³.

[122] He normally drove to the lakes with his family and parked in Thrupp Lane. They then walked down the BOAT on the E side of Thrupp Lake. Much of the access to Thrupp Lake was fenced but there were places you could get through. There was an incomplete post and wire fence between the BOAT and the E shore of Thrupp Lake. They walked down through gaps in this fence to the shore to watch birds. They entered the application land by Bullfield Lake and walked on the grassy land to the S and W of Bullfield Lake as far as the gate at the SW corner of the application land. They walked part of the way along the isthmus between the two lakes but not the whole way. They did not go on the W or N banks of Thrupp Lake. He does not remember the builders' compound to the W of Bullfield Lake, but he visited only three times after 1997.

[123] Mr Kendall did not see anyone swimming in the lakes. He saw fishermen, but could not say whether they belonged to a fishing club and could not recollect which lake they fished. On one occasion he saw jet-skiers. On another occasion he saw a rowing boat.

[124] Mr Kendall was a very impressive witness, being careful and precise, and I accept his evidence without qualification. He is not, of course, a local resident.

⁴³

(22) Mrs Lesley Legge

[125] Mrs Legge produced a written statement⁴⁴ and gave oral evidence. Mrs Legge is a local county councillor and has been chairman of the county council for the last year. She has lived in Oxford Road, Abingdon since 1979.

[126] In her written evidence, Mrs Legge claimed to have “on many occasions enjoyed exploring and walking in this area”. However, on being questioned, she said that she was not a regular visitor and was extremely vague about the frequency and extent of her visits. She could not remember going down to the edge of the lakes. The impression I was left with was that she has sometimes walked or cycled along the Sustrans route, including the BOAT along the E side of Thrupp Lake but that she cannot recall ever actually entering the application land.

[127] Mrs Legge is councillor for the Abingdon East ward although it was not suggested that the ward coincided with that part of Abingdon which lies E of the Oxford Road. Her division includes the town centre. She was cross-examined about the part of Abingdon E of the Oxford Road. She said that it does not form a real community. East Abingdon is not a place but has different places within it, such as Peachcroft, Radley Green, and Hadland Road. Her view was there is Abingdon and a number of smaller communities within Abingdon.

[128] I do not place much reliance on Mrs. Legge’s evidence about use of the lakes, but I accept that she has an informed view about the communities within Abingdon.

(23) Mr. Phillip North

[129] Mr North produced a written statement⁴⁵ and gave oral evidence. Mr North has lived in the E side of Abingdon since 1987.

[130] Mr North’s written statement gave the impression that for at least 16 years, he has jogged, walked or cycled a circular route from Abingdon around the lakes, using the BOAT and subsequently the Sustrans route. His trips were not every year. It was not clear from his written statement that he had ever entered the application land except for stepping onto the E bank from the BOAT to look at wildlife or the view.

[131] In his oral evidence, a somewhat different picture emerged. He said that until the Sustrans route was built he usually came and left by Thrupp Lane. He said that he had entered the application land to the E of Bullfield Lake and “most likely” out across the Curtis land. He had been most of the way up the W bank of Thrupp Lake but not on the N bank of Thrupp Lake.

[132] Mr North had not seen Thrupp Lake drained. He had not fished in the lakes although he had seen fishermen there. He had not swum or seen anyone swimming in the lakes although he had heard tell of swimming in the lakes many years ago.

⁴⁴ R78

⁴⁵ R80

[133] I found Mr North’s evidence about his own use of the application land very vague and hesitant. I formed the view that although he had walked, cycled or jogged a number of times over the years since about 1990 along the BOAT on the E side of Thrupp Lake and had admired Thrupp Lake from the BOAT, he had not often been on the application land itself.

(24) Mr. John Orchard

[134] Mr Orchard produced a written statement⁴⁶ and an evidence questionnaire with annexed statement⁴⁷. He is a retired vacuum physicist and has lived on the E side of Abingdon since 1980. When he moved to his present house his children were aged 6 and 3.

[135] Since 1980, Mr Orchard has visited the lakes “on a reasonably regular basis more in summer than in winter”. According to his evidence questionnaire, he visited once a week from 1980 onwards. The lakes are about a 10 minute walk away. He usually walks to the N end of the lakes via Wick Hall and then walks down the E side of Thrupp Lake on the BOAT. There is a fence on the W side of the BOAT but it has been “virtually gone” ever since he has known it. Sometimes he approaches the S end via Barton Lane and the Sustrans route.

[136] When he approaches from the N he usually enters the application land E of Bullfield Lake and walks N or S of Bullfield Lake. He had walked some of the way up the W side of Thrupp Lake but I got the impression that it was not very often. He did not use the N bank of Thrupp Lake. When he approached from the S, he sometimes entered the application land through the gate at the SW corner. In his written statement, he described this gate as a closed gate in poor condition. In his oral evidence he said that it was often open. He usually entered through that gate only if it was open. However, when it was shut, he sometimes crawled through it.

[137] Mr Orchard did not recollect Thrupp Lake’s being drained in 1991. “I was not around when it was being drained”. He did recollect the builders’ compound in the SW sector of the application land in the early 2000s. He did not enter at the SW gate when the builders were there. However, it was possible to pass around the N side of the builders’ compound and he did so.

[138] Mr Orchard has seen fishermen on the isthmus between Thrupp and Bullfield Lakes. Bullfield Lake is more popular for fishing although there is fishing in both lakes. He has not swum in the lakes or seen anyone swimming in the lakes with the exception of children larking about in the shallows. He remembers seeing a water-skiing ramp in Thrupp Lake in the early days. He has heard but not seen jet-skiing.

[139] I accept the accuracy of what Mr Orchard says that he has done and seen on the application land. However, I think that his evidence questionnaire claim to have visited once a week is a considerable exaggeration. If he had visited that frequently, he would have seen Thrupp Lake drained.

⁴⁶ R81
⁴⁷ EQ31

(25) Mrs Marion Joan Orchard

[140] Mrs Orchard is the wife of the previous witness. She produced a written statement⁴⁸ and an evidence questionnaire with attached statement⁴⁹ and gave oral evidence. She has lived with her husband and children in the E part of Abingdon since 1980.

[141] Mrs Orchard's evidence about use of the lakes really fell into three periods:

- Use when her children were young
- Use in an intermediate period
- Use since 2004.

[142] Bearing in mind that her children were 6 and 3 in 1980, the first period must be the 1980s. She used to take the children to the lakes to watch wildlife and to walk her mother's or sister's dog. They seem to have mostly approached the S end of the application land, either via Barton Lane and the BOAT or across the Curtis land. Unless they came via the Curtis land, they usually entered either through the gate at the SW corner or the gap at the SE corner. The SW gate has only been locked for the last 6 or 7 years. The children pond-dipped and paddled at the edge of the lakes. One summer (about 1990) her teenage daughter swam in the lake. This was without her parent's permission and Mrs Orchard disapproved. Although her daughter was a strong swimmer, the water was very cold and the lakes were not generally suitable for children's swimming. It seems that they generally stayed at the S end of the application land. Mrs Orchard gave some evidence of walking up the W side of Thrupp Lake sometimes as far as the metal barrier close to the Curtis works gate, but she seemed rather hesitant about this evidence and I inferred that her use of the W bank was infrequent.

[143] Her written evidence about the frequency of her visits to the lakes during this period was somewhat inconsistent. In her written statement, she said that it was sometimes daily but not less than monthly. In her evidence questionnaire, she said that she visited the lakes about 6-12 times a year from 1980 to date. When questioned about this, she said that "the evidence questionnaire was filled in very quickly. It was a case of time. We were all under pressure to get them in very quickly. It is difficult to give a precise answer to these things".

[144] Mrs Orchard did not give much evidence about her use of the application land in the intermediate period although she said that she visited the lakes about once or twice a month. Again, this does not fit very well with the evidence in her evidence questionnaire.

[145] Since 2004, Mrs Orchard has worked as a voluntary walks leader for Abingdon Health Walks, which is based at the White Horse Leisure centre. Every three or four weeks, she leads people, many with health problems, on one hour walks. The Health Centre is near the end of the Sustrans route in Barton Lane and she often leads her walks onto the application land. She produced some photographs⁵⁰ showing

⁴⁸ R82
⁴⁹ EQ54
⁵⁰ R83

her leading a walk around Bullfield Lake. The photographs were taken in 2006 by the applicant, Mrs Cartmell, and so may well be self-serving evidence.

[146] She has never asked permission to enter the application land and her use has never been challenged. She could not explain why she had said in her evidence questionnaire that the owner or occupier had seen her on the application land and accepted that it was a wrong answer. She has never swum or fished in the lakes although she has seen fishing, mostly in Bullfield Lake. She has picked plums along the edge of the BOAT on the E bank of Thrupp Lake. There was no continuous fence along that boundary: only the remains of a post and wire fence lying on the ground. She has seen jet-skiing once. She saw some boats in front of Sandles. She has not been on the N bank of Thrupp Lake.

[147] She recalls the builders' compound in the SW sector of the application land. "I do not remember the builders' compound being a problem. It did not restrict us. Perhaps we did not go that close to it."

[148] I am perturbed by the inaccuracies in Mrs Orchard's evidence questionnaire, which do place a question mark over her evidence. I do not doubt that she has been on the S end of the application land with her children and with the Health Walks. I do have some doubt about the frequency of her visits before 2004 and the extent to which she used the W bank of Thrupp Lake.

(26) Ms Marguerite Osborne

[149] Ms Osborne did not produce a written statement but gave oral evidence in support of the application. She lives in Radley. When the Sustrans route opened (which she thought was in 2002 although the evidence was that it opened in about 1999), she started cycling from Radley to Abingdon past Thrupp Lake. She stopped by Thrupp Lake and had "a little wander about by the side of the lake", often along the isthmus between the two lakes. She was writing a book called "Waterside Walks from Abingdon". It was published in 2003 and sold well. She included the Sustrans route, including the BOAT E of Thrupp Lake as one of her walks. She did not include any route within the application land itself. She had to stop cycling in 2005. Until she stopped cycling, she cycled past Thrupp Lake "at least once a week" and "usually" stopped to wander onto the application land.

[150] I think that Ms Osborne exaggerated the frequency of her expeditions onto the application land but, otherwise, I accept her evidence.

(27) Ms. Lynda Pasquire

[151] Ms. Pasquire produced a written statement⁵¹ and an evidence questionnaire with attached statement⁵². She has lived in Radley since 1992, but first visited the lakes in 2005 after learning of the proposal to fill them with PFA.

⁵¹ 2R60

⁵² EQ81

[152] Ms Pasquire has visited the lakes at least weekly to take photographs (of which she produced numerous examples) and has encountered many people enjoying informal recreation around the lakes. She has seen children swim in the lakes and many fishermen.

[153] I accept Ms Pasquire's evidence but it is of limited use for present purposes as it covers only the last of the relevant 20 years, being a year when the controversy about filling the lakes had already been kindled.

(28) Mrs Alison Prewett

[154] Mrs Prewett submitted an evidence questionnaire⁵³ dated 16th November 2006 and a written witness statement⁵⁴. She gave oral evidence to the public inquiry.

[155] Mrs Prewett lived with her husband and sons in Duffield Close from 1985 to 1997. Since 1997 she and her family have lived in St. Peter's Road. Both addresses are on the E side of Abingdon.

[156] In her evidence questionnaire, Mrs Prewett said that she had used the application land weekly between 1978 and 1985 and between 1990 and 2006. In her witness statement she said that she had only used the application land since moving to her present address in 1997, although her husband and sons had used it before 1997. In her oral evidence she said that she "probably" walked on the application land once or twice before 1997 although not before 1985 and that, since 1997, she had walked on the application land about 10-15 times a year as a "wild guess". Her husband suffered a heart attack in 2003 and she and her husband used the application land very frequently after that. When questioned about the discrepancies about dates of use in her evidence, Mrs Prewett said that the evidence questionnaire was completed in a hurry. She has problems with dates.

[157] Mrs Prewett said that it was about a 25 minute walk from her home to the lakes. She usually approached from the N via Wick Farm but sometimes approached from the S via the Sustrans route. She usually walked along the E side of Thrupp Lake on the BOAT, sometimes walking down the bank to the edge of the lake. There was no fence between the BOAT and the E shore of Thrupp Lake. She usually entered the application land to the E of Bullfield Lake and walked along the paths around Bullfield Lake and to the S of Thrupp Lake. She never walked down Thrupp Lane along the N end of Thrupp Lake or entered the land between Thrupp Lane and the N shore of Thrupp Lake. She has walked along the W shore of Thrupp Lake although not particularly frequently. She has never been through the Curtis works gate at the NW corner of Thrupp Lake.

[158] She has seen various informal recreational activities on the application land such as people walking with or without dogs, and children's play. She has seen people fishing on the S banks of both lakes. She has never seen anyone swimming in the lakes although she has heard tell of people swimming there. She has seen no boats on the lake other than jet-skis. She does not recollect Thrupp Lake being drained.

⁵³ EQ74

⁵⁴ R84

[159] Mrs Prewett has never asked permission to use the application land and her use has never been challenged. There were no signs on the land identifying a landowner and she assumed that she could walk where she pleased.

[160] In her evidence questionnaire she agreed that the locality which use the application land was as shown edged green on an attached map, i.e. the part of Abingdon E of Oxford Road. In answer to question 11 of the evidence questionnaire, Mrs Prewett identified various facilities as available to the inhabitants of that locality. However, it appeared, when she was questioned, that those facilities, although available to the inhabitants of the locality, were not provided by reference to the selected locality.

[161] I am bound to say that I do not think that Mrs Prewett adequately explained the wild inconsistency in her evidence about the dates when she used the application land and therefore I can only place limited reliance on her evidence.

(29) Professor PD Prewett

[162] Professor Prewett produced a written statement⁵⁵ and gave oral evidence to the public inquiry. He is the husband of Mrs. Prewett.

[163] In his written statement, Professor Prewett wrote of using “the Radley Lakes area...including the track running alongside the lakes” since 1980 for walking and jogging”. The track running to the E of the lakes is the BOAT which is not, of course, part of the application land. It was unclear from Professor Prewett’s written statement whether or to what extent he had actually entered the application land.

[164] In his oral evidence, Professor Prewett said that he and his family lived near the junction of Oxford Road and Radley Road from 1978 to 1983, in Duffield Close from 1983 to 1997 and thereafter in St. Peter’s Road. All these addresses are on the E side of Abingdon. From 1980 he used to run once or twice a week to the lakes. Usually he ran a circular route from home via Wick Hall, Thrupp Lane, the BOAT down the E side of the lakes and then back to Abingdon by Barton Lane. Less often, he ran the other way round. After the Sustrans route was opened he ran along that. His use of the application land itself, before the Sustrans route was opened, usually involved entering through a gap at the SE corner of Bullfield Lake and walking or running S of Bullfield Lake to exit at the SW corner of the application land where there was some exit which he variously described as a hole in the fence, a hole in the gate or an open gate or open double gates. “I have no recollection of the SW corner”. He did not go on the N or W banks of Thrupp Lake. In 2003, he suffered a heart attack and went to the lakes daily for exercise. It was not clear from Professor Prewett’s evidence precisely where he walked during this period.

[165] He saw people fishing in both lakes. There were signs saying that the fishing rights belonged to an angling club. He was doubtful whether all the fishermen were members of the club (but this seems to have been speculation on his part rather than based on any firm evidence). He saw fishermen’s boats, speed-boats and jet skis on

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Thrupp Lake. He was not familiar with the Curtis land to the W of the lakes. He does not remember seeing Thrupp Lake drained. He did not mention in his written statement or in his oral evidence seeing any people other than the fishermen and boaters on the application land indulging in recreational activities. He did not mention the npower contractors' compound in the SW sector of the application land in 2002.

[166] The impression that I got from Professor Prewett was that his main recreational activity until his heart attack in 2003 was running and that he often ran a circular route taking in the BOAT along the E and S sides of Thrupp and Bullfield Lakes. Until the Sustrans route opened on the old railway line in 1999, he frequently took a short cut along the path skirting Bullfield Lake at the southern end of the application land. He does not seem to have made much, if any, use of that track since 1999 or he would surely have noticed and mentioned the contractor's compound and have remembered the nature of the SW exit. The fact that he did not notice the draining of Thrupp Lake in 1991 suggests that he did not always run around the lakes as frequently as once or twice a week.

(30) Mr. David Roderick Price

[167] Mr. Price produced a written statement⁵⁶ and an evidence questionnaire with an attached statement⁵⁷. He gave oral evidence.

[168] Mr Price has lived in the E part of Abingdon since 1972. His periods of use of the application land falls into two periods. He used to visit the application land, often with his children, regularly from the mid 1970s until about 1990. From 1990 to 2000, he was working away from home and his visits were infrequent. Since 2000, he has started visiting the lakes again, sometimes with his young grandson.

[169] His recollection is that, during his first period of use of the application land, the configuration of the land W of Bullfield Lake was different from during his second period of use since 2000. The lake was not the same geographic shape. There were more lakes, ditches and gullies. The isthmus between the lakes was not passable because it was always flooded or very muddy. When he went back in 2000, the land, including the isthmus, was generally accessible.

[170] During his first period of use, he usually approached via Barton Road and entered the application land at the gate at the SW corner, which was rarely, if ever, closed. He then walked up the W side of Thrupp Lake to the Curtis gate at the NW corner of the application land which was not generally closed until there was an outbreak of joyriding and burned out cars in the 1980s. He also walked to the S of Thrupp Lake and to the S of Bullfield Lake. He exited onto the BOAT on the E side of Bullfield Lake and walked up the BOAT along the E side of Thrupp Lake. He did not normally use the N bank of Thrupp Lake because it was beside Thrupp Lane which was always very busy with traffic. He cannot recollect a fence along the E bank of Thrupp Lake except around Sandles.

⁵⁶ R87

⁵⁷ EQ7

[171] He used the application land for walking and watching wildlife. He has seen speed boats and water-skiing on Thrupp Lake although not recently. He has seen sub-aqua divers in Bullfield Lake. He has seen children swim in the SE corner of Bullfield Lake.

[172] From 2000 to 2003, he visited the lakes about twice a week. In 2004, he visited very infrequently. From 2005-2006 he visited about 3-4 times a month. Since then he has visited infrequently.

[173] There has always been open access to the application land through gaps in the fencing. He has never asked permission to use the land and his use has never been challenged.

[174] Mr. Price's evidence about the frequency with which the SW gate was open does not square with other evidence, which I prefer, that this gate was often shut. However, subject to this point, I accept the evidence of Mr Price.

(31) Mrs. Jennifer Standen

[175] Mrs Standen produced no written statement but gave oral evidence. She lives in Radley and is chair of Radley Parish Council. The Parish Council supported the application.

[176] Mrs Standen said that she had visited the lakes on a number of occasions, but it was unclear whether she entered the application land. I think that the purpose of her evidence was to express general support for the application rather than to contribute useful evidence about use of the application land.

(32) Mr. Barry Stayte

[177] Mr Stayte produced a written statement⁵⁸ and gave oral evidence. Mr Stayte has lived in Galley Field (on the E side of Abingdon) since 1987.

[178] He is a very keen ornithologist. He has frequently visited Thrupp and Bullfield Lakes to watch birds. He went once or twice a month from 1987 to about 2001, when the lakes to the S were filled in. There were some years when he visited less frequently. Recently, he has started visiting again about once or twice a month. He has also visited the lakes with the RSPB and the Oxford Young Ornithologists Club. The attraction of Thrupp Lake is that one can observe bird species "which require a large undisturbed water surface...This is one of the very few large lakes left in the Thames Valley where the swans, ducks and geese can be left undisturbed by recreational activities..."

[179] His main access to the application land is at the SE corner. That access has been open as long as he has known the land. The existing access from the BOAT to the SE of Thrupp Lake and NE of Bullfield Lake "has not been open that long". When he first visited the lakes, the gate at the SW corner was not often open. A few times he squirmed around the side of the gate. He usually visited the S and E sides of Bullfield

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Lake (because the bird watching was not affected by the sun in the early morning). He has only walked the isthmus between the lakes 5 or 6 times because it is often flooded in winter and muddy all year round. It was easiest to watch birds on Thrupp Lake from the E side of the lake. There were a number of points where you could step off the track to watch birds. About 8-10 years ago he found that the area SW of Thrupp Lake and W of Bullfield Lake was accessible from the SW gate. About 6-7 years ago a wire panel was removed from the gate so that it was possible to climb through. He started to use the SW part of the application land for bird watching. He has only twice walked up the W bank of Thrupp Lake. He once walked onto the N bank of Thrupp Lake and decided that it was not a good place for bird watching.

[180] Mr Stayte remembers Thrupp Lake's being drained in the early 1990s. He cannot remember water-skiing or jet-skiing on the lakes but he saw ramps in the water at some stage. He and his family have never swum in the lakes and he has only ever seen dogs swimming in the lakes. He does not fish but he has seen lots of people fishing, mostly on the E side of Thrupp Lake and the S side of Bullfield Lake.

[181] Mr Stayte was rather vague about the builders' compound in the SW sector of the application land: "There may have been...at some stage. When something like that happens, I tend to go in at [the SE corner] and just go a short way in there."

[182] I got the impression that Mr Stayte mostly watched birds from the BOAT along the E side of Thrupp Lake although he did quite often venture into the E sector of the application land near Bullfield Lake. I am not convinced that he often went elsewhere.

(33) Mr. Roger Martin Stephens

[183] Mr Stephens produced a written statement⁵⁹ and gave oral evidence. He has lived on the E side of Abingdon since 1975. From 1974 to 1993, he was headmaster of Radley Primary School. From 1993 to 1998, he worked in Oxford. From 1998 to 2005 (when he retired) he worked as a supply teacher in Abingdon and the surrounding villages.

[184] About once a month in the summer (less frequently in his last years as headmaster) he drove to the lakes after work. He usually parked near Sandles and walked down the BOAT along the E side of Thrupp Lake. He does not remember a fence between the BOAT and the lake. Beyond the end of Thrupp Lake, he entered the application land through a longstanding gap in the wire fence and walked around Bullfield Lake looking at the wildlife. Less often, he walked on the N side of Thrupp Lake but it was less attractive because of the heavy vehicles on Thrupp Lane. On occasions (probably only once a year) he has walked on the W bank of Thrupp Lake, sometimes part of the way and sometimes all the way to the NW corner. The W bank is less attractive because, although there is a clear path, the banks are more overgrown than elsewhere.

[185] From time to time he met other walkers, sometimes with dogs or children. He recognised some of the walkers as local people. Dogs swam in the lakes and the

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children played in the undergrowth. He did not see Thrupp Lake drained. He saw motorboats on Thrupp Lake but not water-skiers or jet-skiers. He has not swum in the lakes or seen anyone swim in the lakes although he remembers a child at his school saying that he had swum in Thrupp Lake. He did not see a builders' compound at the SW sector of the application land, but he did not normally go into that area. Nobody ever queried his use of the lakes.

[186] I accept the general thrust of Mr Stephens's evidence, although the fact that he did not remember Thrupp Lake's being drained in 1991/92 or the builders' compound in 2002 suggests that his visits were not as frequent as he remembered. In particular, I do not think that it would be possible to walk around Bullfield Lake or to walk up the W side of Thrupp Lake from the S without seeing the builders' compound when it was there.

(34) Dr. A Johanna Taylor

[187] Dr. Taylor produced an evidence questionnaire⁶⁰, a written statement dated 12th November 2006⁶¹, and an "extension to statement"⁶². She also gave oral evidence.

[188] Dr. Taylor and her husband moved to their present address on the E side of Abingdon in the 1950s. They discovered Thrupp and Bullfield Lakes in the early 1980s when walking at the weekends. In 1989, she retired and since 1990 has owned dogs, which she walks daily, mostly in the area of the lakes. She usually parks in Barton Lane and walks across the Curtis land to the W side of Thrupp Lake and then walks up the W side of Thrupp Lake to the Curtis works gate at the NW corner. She does not go any further because of the heavy traffic on Thrupp Lane. She then walks back and walks S of Bullfield Lake. She then usually returns to her car across the Curtis land. She has been on the N bank of Thrupp Lake but it is the least popular side because Thrupp Lane is a busy road.

[189] Dr. Taylor meets lots of other dog walkers on the application land. The dogs swim in the lakes. She has not swum in Thrupp or Bullfield Lakes but she once tried to swim in one of the lakes to the south. The water was full of vegetation which caught around her legs and she was frightened. She once saw a lady who swam in Bullfield Lake with her dog and has occasionally seen children swim in Bullfield Lake. She has seen power boats on Thrupp Lake but not water-skiing or jet-skiing. She does not fish but has seen fishermen on Thrupp Lake, more frequently long ago.

[190] In answer to question 25 of her evidence questionnaire, Dr. Taylor said that she had seen kite flying on the application land. On being questioned it emerged that the kite flying was on the Curtis land which she mistakenly thought was part of the application land. In answer to questions 30 and 30a of the evidence questionnaire, Dr. Taylor said that she thought that she had seen the owner or occupier of the application land on the land and that he had said "hello". When questioned, it emerged that she thought she saw Mr Curtis five or six years ago and exchanged "hellos" but not on the application land.

⁶⁰ EQ75

⁶¹ attached to EQ75

⁶² R93A

[191] Dr. Taylor appeared to me to be an honest and genuine witness but I was concerned about the mistakes in her evidence questionnaire which raise questions about the care with which she completed her evidence questionnaire..

(35) Mr. Roger Michael Thomas

[192] Mr Roger Thomas produced a written statement⁶³, a supplemental written statement⁶⁴ and a plan⁶⁵. He also gave oral evidence to the public inquiry. He is an archaeologist and a non-practicing barrister. His evidence fell into two parts:

- His own use of the application land
- A detailed history and analysis of the application land, Abingdon and Radley.

[193] As for his own use of the application land, he lived on the E side of Abingdon as a child and teenager in the 1960s and 1970s and frequently visited Radley Lakes. He did not specifically say whether he entered the application land or, if so, what he did there. He rarely visited the lakes between the 1970s and the mid 1990s. He now lives on the W side of Abingdon. He became involved in the campaign to save the lakes in 2005, since when he has visited the lakes frequently. He has seen people enjoying recreational activities there and has been told by many inhabitants of Abingdon and Radley of their recreational use of the lakes over the years. He gave no details of what he saw or was told.

[194] The main part of his evidence was an immensely detailed description of the application land, Abingdon and Radley. I must pay tribute to the enormous amount of research that has gone into this evidence, none of the factual content of which was seriously disputed by the objectors. I cannot hope to do justice to Mr Thomas in any summary of his evidence, but I think that the following key points can be picked out:

- The town of Abingdon and the village of Radley are both adjoining civil parishes. Abingdon has a town council and Radley a parish council. Both lie within area of the Vale of White Horse District Council which itself lies within the county of Oxford.
- Abingdon and Radley are also both adjoining ecclesiastical parishes, although the expansion of Abingdon has resulted in part of Abingdon's being situated within Radley parish.
- Geographically, Abingdon is divided into a W and E side by the Oxford Road which runs roughly N-S into the historic core of the town by the river
- The E side of Abingdon is not a single administrative area
- The E side of Abingdon expanded enormously between 1975 and 1990, with the number of dwellings increasing from c. 1350 to c. 4000. Mr Thomas did not provide figures to distinguish between pre 1986 and post 1986 development.
- An analysis of the addresses of users of the application land showed that most (but by no means all) lived on the E side of Abingdon⁶⁶

⁶³ R94
⁶⁴ 2R83
⁶⁵ 2R117
⁶⁶ R126 & 127

- Thrupp and Bullfield Lakes are easily accessible from Abingdon by a variety of routes and, as they are not securely or completely fenced, are easily accessible to local people by a variety of entrances⁶⁷.
- The only signs on the application land are (a) a sign saying “Abingdon and Oxford Angling Alliance Private Fishing” at the SW corner of Bullfield Lake, (b) a similar sign at the SE corner of Thrupp Lake, (c) a similar but fallen sign at the E end of the isthmus between the lakes and (d) a sign on the SW part of the land which probably said “Private. Danger. Deep Water. J Curtis and Sons Ltd” before it was obscured in 2006.

[195] Mr Thomas was questioned in some detail, but I think that I need pick out only two points:

- He gave evidence in chief about the character and facilities of the E side of Abingdon⁶⁸, but, when questioned, it did not seem to me that the facilities were generally provided exclusively by reference to that side of Abingdon. For example, he was not aware of the catchment area of the schools situated to the E of the Oxford Road and, of the three public houses he mentioned, two were actually on the Oxford Road.
- I asked him about the rationale of the W boundary of the application land, bearing in mind that there was no physical boundary between the avenue of trees included within the application land and the Curtis land immediately to the W of the application land. He replied that the focus of activity was walking up and down the W shore of the lake. It was the water that was the draw.

[196] In his supplemental written evidence, Mr. Thomas analysed extracts from OS 1:2500 maps of 1933, 1972 and 1990. These maps are a guide to the features of the application land at different dates, although the date when particular features were surveyed is not always easy to ascertain:

- The 1933 OS map, based on a survey of 1872, revised in 1932, showed the land, before gravel extraction, as two fenced fields corresponding with the present Thrupp and Bullfield Lakes, with an unenclosed track passing along the S end of Thrupp field.
- The 1972 OS map appears to be based on the former County Series maps revised in 1971. This shows no fencing on the E and S sides of Thrupp Lake (except for a short length at the N end of the E side). It also shows no fencing on the N, E or S sides of Bullfield Lake. It shows an unenclosed track across the isthmus, which then seems to have included what is now the long S island in Thrupp Lake.
- The 1990 OS map states that boundaries are as at February 1990 although the map is not necessarily up to date in all details. This shows no fencing on the E side of Thrupp Lake except behind Sandles. The E and N sides of Bullfield Lake appear to be fenced against the BOAT where it passes to the E and S. No track is shown along the isthmus, which seems to have shrunk to its present size.

[197] Mr Thomas also produced an aerial photograph said to date from about 1981. The photograph shows Thrupp and Bullfield Lakes as having broadly their present

⁶⁷ R130

⁶⁸ R104 para 4.2

configuration, except that Thrupp Lake appears to stretch further S into the SW sector of the application land than it does today.

[198] Finally, Mr. Thomas produced a plan to illustrate the limited visibility from Sandles to the shores of Thrupp Lake. The plan was, I think, illustrative rather than based on any very precise survey. Also, visibility must obviously vary with the amount of foliage on the trees and whereabouts on the Sandles site the notional observer is standing. However, I think it is probably fair to say that one cannot see all the shores of Thrupp Lake from any single point in the grounds of Sandles.

[199] Mr Thomas was obviously a diligent and careful researcher and I accept all the primary facts in Mr Thomas's evidence. I will deal later with the inferences to be drawn from those facts.

(36) Mr. Oliver Tickell

[200] Mr. Tickell produced no written statement but gave oral evidence. He has lived in Oxford since 1986. He met some people who lived in Radley and were in the habit of swimming in the Radley Lakes. He went along with them and subsequently went on his own. Mostly he swam in the lakes to the S of Bullfield Lake. However he swam in Thrupp Lake no more than 5-10 times and in Bullfield Lake upwards of 10 times over a period of 6 or 7 years. Subsequently he has swum in the lakes only sporadically, although he swam in Bullfield Lake with his children last year.

[201] I thought that Mr. Tickell was rather vague about the number of times that he has swum in Thrupp and Bullfield Lakes and I suspect a degree of exaggeration. He is not, of course, a local inhabitant.

Written Evidence in support of application

[202] The applicant also submitted a mass of written evidence from witnesses who did not give oral evidence at the public inquiry. I am conscious that some of these witnesses did attend the public inquiry but could not be heard at a time when they were available because of the large number of witnesses who attended to give evidence. I have to approach this written evidence with considerable caution. Much is very vague about the exact period and extent of use of the application land. For example, Susan Gorton stated in her evidence questionnaire that the Abingdon Half Marathon took place on the application land, whereas the evidence at the public inquiry was that it used the BOAT on the E side of Thrupp and Bullfield Lakes but not the application land itself. Audrey Stonebridge and Mr David Buckle wrote of a lake on the application land being filled with ash from Didcot Power Station and must have been referring to a lake that was not on the application land. None of this evidence has been tested by cross-examination. It appeared at the public inquiry on cross-examination of witnesses who had submitted evidence questionnaires that many such questionnaires were completed in a very careless and cavalier manner. However, I have read and taken due account of all this evidence.

[203] I summarise the written evidence as follows:

	Name	Address	User Period	Reference
1	CS Baillie	SW Abingdon	2003-2005	EQ42
2	Mrs Helen E Beckett	Radley	1968-88 & 1989-2006	EQ43 & attached statement
3	Neil Bennett	E Abingdon	1995-present	EQ44
4	PJ & VJ Bronsden	Sutton Courtney	1973-8?	EQ41
5	Beryl Buckle	Radley	1930-2006	EQ84
6	David Buckle	Radley	1941-date	EQ83
7	Simon Burchill	W Abingdon	1998-date	EQ20
8	RG Burrage	E Abingdon	1988-92 & 2001-06	EQ1
9	Susan Calvert-Fisher	Radley	Pre-1960s-date	2R99
10	Sharon Campbell	E Abingdon	1992-date	EQ62
11	Rory Conway	E Abingdon	1973-2006	EQ63
12	Mrs V Conway	E Abingdon	1973-2006	EQ64
13	Neil Crossley	E Abingdon	1987-date	EQ21
14	Mrs SC Dawson	E Abingdon	2002-2006	EQ65
15	Neil Denton	E Abingdon	1990-2006	EQ46
16	Mrs RM Drew	E Abingdon	1980-date	EQ22
17	Andy Durkin	Barton Lane	1996-date	EQ66
18	James Durkin	Barton Lane	1996-date	EQ16
19	Karen Durkin	Barton Lane	1996-date	EQ17
20	Christopher Evans	W Abingdon	1980-2006	EQ47
21	Margaret Fallon	E Abingdon	1995-2006	EQ67
22	Elaine & Chris Ford	Wick Cottage Gardens	1980-2006	EQ68
23	Jean Freeman	E Abingdon	1975-79	EQ69
24	Elizabeth Gordon	E Abingdon	1978-2006	EQ13
25	Cliff Gorton	E Abingdon	1986-2006	EQ48 & attached joint statement
26	Susan Gorton	E Abingdon	1985-2006	EQ49 & attached joint statement
27	Derek Green	Not stated	Not stated	R150A-B
28	Dr. Peter J Harbour	W Abingdon	1971-2006	EQ77 & letter 3-4-07
29	Prof. JH Harding	E Abingdon	1986-2004	EQ79
30	Mrs Carol Hendry	E Abingdon	1985-date	EQ70 & attached statement
31	Judith Lyn Hosking	W Abingdon	2001-2006	EQ25
32	Michael Hosking	W Abingdon	2001-2006	EQ24
33	AF Hughes	E Abingdon	1986-present	EQ71
34	Christopher Hughes	E Abingdon	1986-2000	EQ5
35	Paul Anthony Hughes	E Abingdon	1986-2000	EQ6

36	Mrs AH Jacobs	E Abingdon	1986-1998	EQ50
37	Lynne Johnson	E Abingdon	2004-2006	EQ26
38	Catherine Jones	E Abingdon	1996-date	EQ27
39	Mrs Gwyneth Jones	E Abingdon	Not stated	Statement attached to EQ 51
40	Tony Juniper	Cowley	Not stated	2R108
41	Mrs M Kelly	E Abingdon	1986-2006	EQ11
42	MR Kelly	E Abingdon	1986-2006	EQ12
43	Ian Kemp	E Abingdon	1983-2005	EQ52
44	Leonard Lambe	E Abingdon	1987-2006	EQ3 & letters dated 3-11-06 & 19-03-07
45	MJ Lambe	E Abingdon	1986-2006	EQ4 & letter dated 3-11-06
46	David Lewis	E Abingdon	1965-date	EQ29
47	David Mazey	W Abingdon	1958-2006	EQ15
48	Vivienne Merritt	E Abingdon	1983-2006	R138 & EQ8
49	Olive Minton	Not stated	Not stated	R192
50	Pamela Mitchell	E Abingdon	1991-present	EQ53
51	Alison Mummery	E Abingdon	1998-present	EQ30
52	Rosemary Myers	E Abingdon	1987 to date	Letter 1-11-06
53	John & Jeanette Nolan	E Abingdon	1964-80 & 1995-present	
54	VH Parker	W Abingdon	1985-87 & 1989-date	EQ32
55	Sandra Pell	E Abingdon	1993-2006	EQ33
56	Mrs VC Penton	Oxford Road	1966-76 & 1988-2001	EQ34
57	Peter Purbrick	W Abingdon	1940-2006	EQ19 & letter 1-10-06
58	Stephen & Joanna Quirk	E Abingdon	1982-present	EQ35
59	Richard & Judy Riggs	E Abingdon	1978-present	EQ55
60	Mrs SM Rolfe	W Abingdon	1984-2006	EQ78
61	Brenda M Ross	W Abingdon	1984-90 & 1996-present	EQ36 & attached statement
62	Rosemary Ryder	E Abingdon	1987 to date	R140, EQ2 & attached letter dated 15-11-06
63	JA Sammons	E Abingdon	1978-2006	EQ56
64	KD Sammons	E Abingdon	1978-2006	EQ61
65	Audrey Stonebridge	E Abingdon	1983-2006	EQ74 & attached statement
66	Helen & Peter Stoner	SW Abingdon	2005-2006	EQ40
67	Robert Taylor	E Abingdon	1964-present	EQ57
68	LJ Tomlinson	E Abingdon	1983-2006	EQ58
69	Celia Turner	Drayton	“many years”	R182

70	Elizabeth Turner	E Abingdon	1965-2006	EQ9
71	Melvyn Turner	E Abingdon	1965-2006	EQ10
72	Ian Walker	E Abingdon	2005-2006	EQ60
73	Jo Walker	E Abingdon	2005-2006	EQ59
74	Iris Wheatcroft	E Abingdon	1978-date	EQ 76 & attached statement
75	Eric White	E Abingdon	1973-2006	EQ37
76	Roger Wiggins	Central Abingdon	1991-1994	R143, EQ38 & attached statement
77	Dr. Martin & Mrs. Sylvia Wilson	Radley	1963-65 & 1999-present	R137, EQ39 & attached statement
78	Christine Wootton	E Abingdon	1963-2006	EQ14

4. Evidence for Objectors

[204] The objectors relied upon four witnesses, three of whom gave oral evidence.

(1) Mr. Charles Dockar-Drysdale

[205] Mr. Dockar-Drysdale produced a written statement⁶⁹ and gave oral evidence.

[206] The site of Thrupp Lake originally formed part of a large farming estate owned by his family. In the 1940s, the mineral rights were sold to Curtis who worked it for gravel, leaving the flooded gravel pit now known as Thrupp Lake. On the break-up of the family estate, Thrupp Lake vested in Mr. Dockar-Drysdale’s uncle, who, from the mid 1960s allowed Mr Dockar-Drysdale to use the lake for water skiing. In 1972, his uncle gave the lake and immediately surrounding land to Mr Dockar-Drysdale. About that time, the lake was drained for Curtis to remove clay for the construction of new reservoirs. After the lake refilled, Mr Dockar-Drysdale ran a water-skiing club on the lake. In 1977, Mr Dockar-Drysdale obtained planning permission to build Sandles in the NE corner of the lake and Mr Dockar-Drysdale and his family moved into Sandles in 1981. The water-skiing club was wound up in 1984-85, but Mr Dockar-Drysdale and his family and their friends continued to use the lake for water skiing, boating and swimming. He had a “miniature navy” of rowing boats, canoes and sailing dinghies as well as the motor boats used for water-skiing. The use of the lake for water-skiing was less intensive after the club was wound up. However, Mr Dockar-Drysdale water-skied at least once a week in the summer and his children were out on the lake in boats most weeks, although not for a long period of time.

[207] Before water-skiing, it was the “golden rule” to drive slowly around the lake, picking up flotsam and jetsam and telling people not to swim in the lake. The powerful water-skiing motor boats would “make mincemeat” of swimmers. A water skiing session typically lasted 1 or 2 hours. The club used the lake largely at weekends and summer evenings. His children water-skied mostly in school holidays.

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He lived in Sandles full time (except for holidays) and most of the lake was visible from the house. After they had been in the house a couple of years, the problem of swimmers largely went away because swimmers transferred to the lakes S of Bullfield Lake. Mr Dockar-Drysdale accepted that there may have been some swimmers when the lake was not in use for water-skiing. However, after he moved into Sandles in 1981, the problem of swimmers was more or less non-existent. He recalled one occasion in the 1980s when he had to speak to people who were scuba-diving in the lake.

[208] While he was living in Sandles, he held a couple of duck shots each year. The shooting was from islands in the middle of the lake.

[209] His uncle had allowed a fishing club to fish Thrupp Lake without charge and Mr Dockar-Drysdale continued the arrangement after he acquired the lake. However, there were problems with damage and litter and Mr Dockar-Drysdale ended the arrangement in about 1986/87. About a year later, a small private fishing club was formed, run by his wife, which grew to about 100 members. The subscription was £12 pa, going up to £15 pa. However, there was no water bailiff and some members continued to fish without renewing their membership and some members stole specimen carp from the lake. The club was dissolved in 1991/1992 when he removed the fish from the lake.

[210] In 1991 or 1992, he expected to reach an agreement with npower to use the lake for infilling with PFA. He therefore drained the lake and removed the fish. The work started in the spring. A pump was installed at the SW corner of Thrupp Lake. The water was pumped out of the lake and passed through trenches and land pipes to the ditch by Barton Lane, whence it flowed into the Thames. He hired a professional fishing outfit to gather up the fish in large nets from the pools left on the lake bed. After the fish were removed, he turned off the pumps and the lake refilled naturally over a 4-5 week period. The whole process took 3-4 months.

[211] In 1995 he moved out of Sandles to live in Radley. His eldest son continued to live in the house and Mr Dockar-Drysdale still visited to keep an eye on the property.

[212] In 1997, he sold Sandles and the lake to Mr and Mrs Plyer. They bought the property because they were mad keen on jet-skiing and had two sons who were of national standard. Mr Dockar-Drysdale retained a strip of land along the W bank of Thrupp Lake and a triangle of land at the S end of Thrupp Lake. After 1997, Mr Dockar-Drysdale had no interest in the lake. Subsequently, he sold the triangular plot of land at the S end of Thrupp Lake to the Plyers.

[213] On the N side of Thrupp Lake there was some post and rail fencing between Thrupp Lane and the N Bank. It was erected in about 1985, was never complete and was intended to deter vehicles and especially fly-tipping. The N Bank has always looked much the same. The only tracks went down to the fishing spots and were used by the fishermen. There was the odd bird watcher. If he came across one he would point out that the land was private but that they were welcome to watch birds. There used to be some picnickers before the fence was erected in 1985 but not afterwards.

[214] There were never any fences on the W bank of Thrupp Lake.

[215] He erected a 2 strand wire fence along the E bank of Thrupp Lake in the early 1970s to deter swimmers and people launching boats on the lake. The purpose was to prevent interference with the water-skiing. The problem was only on the E bank. Some new posts were installed and otherwise existing posts and trees were used. He did it with a working party and it was not a professional job. He could not say how long it lasted. No doubt the vandals got at it. However, he did repair it for a while, although he could not be specific for how long. It did the job of deterring swimmers and boats. The E bank was a popular place for bird watching. People stood on the highway looking at the birds.

[216] There were occasions when people picnicked on his land around the lake. If he saw them, he went over in a boat and asked them to move. In the early years, he did this perhaps 10-12 times in a hot summer. He never saw anyone walking on the W bank. If he saw walkers on his land he spoke to them. On a couple of occasions, people knocked at the door of Sandles and asked for permission to use the lake.

[217] Mr Dockar-Drysdale agreed that there had been significant use of the Bullfield, but it was not his land and so he took no notice of it.

[218] It was striking that Mr Dockar-Drysdale's oral evidence differed in certain important respects from his written statement:

- In para 2.6 of his written statement⁷⁰ he wrote:

“Throughout my time of ownership, I actively and rigorously enforced the privacy of the lake and would ask people caught trespassing on the water and the edges of the lake to leave immediately”

In his oral evidence, he said that he did not ask bird watchers and walkers to leave but rather reminded them that the land was private.

- In para 2.9 of his written statement, he wrote that:

“To the best of my knowledge, based on an ongoing social connection, the Plyers continued to discourage public access to any part of the lake or its immediate surrounds; and as far as I am aware they also jealously guarded their privacy.”

In his oral evidence, it appeared that he really knew nothing about this at all.

- In para. 5.1 of his written statement, he wrote:

“Throughout my period of ownership... substantial fencing was erected and maintained particularly along the northern and eastern edges of Thrupp Lake”

In his oral evidence, it appeared that only partial fencing had been erected along the N edge and that only home made wire fencing had been erected along the E side in the early 1970s which had not been maintained throughout his period of ownership.

[219] The picture that emerged in Mr Dockar-Drysdale's oral evidence was somewhat different from that in his written evidence. I am satisfied that he took active

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steps to protect his main hobby of water-skiing by trying to deter public use of the water and by removing people from the water of the lake. However, I think that his attitude to trespassers on the banks who were not interfering with the water-skiing was much more relaxed than he depicted in his written statement. If he came across trespassers, I am satisfied that, as landowner, he would have pointed out that they had no right to be on the land. However, I do not think that he had any very active policy of policing his land, particularly the W bank of Thrupp Lake which was remote from Sandles.

(2) Mr John Curtis

[220] Mr Curtis produced a written statement⁷¹ and gave oral evidence. Curtis is a family company engaged in the business of mineral extraction. Mr Curtis has been managing director since 1970. He has known Radley Lakes since he was a child in the 1950s.

[221] Curtis owns the Bullfield, which was worked for gravel from about 1958 until the mid 1970s. In the early 1970s, part of the excavation was filled to form the SW sector of the application land, which is the only significant area of dry land forming part of the application land. In 1983, Curtis leased filling rights in respect of Bullfield Lake to the CEGB for 40 years for potential disposal of PFA. Sporting rights over the lake were retained and vested in Mr Curtis and his fellow directors personally.

[222] Between 1989 and 2005, fishing rights in Bullfield Lake were rented to the Abingdon and Oxford Anglers Alliance which was required to control the fishing and protect the area from trespass. There are a number of private fishing signs around the lake. Mr Curtis did not know whether the club in fact took any action to control trespass.

[223] Since at least 1986, there has always been open access to Bullfield Lake from the SE corner. It was intended as access for the fishermen.

[224] At the NW corner of the application land there is a substantial steel gate across Thrupp Lane with “private property” signs attached to it. The gate is normally locked shut at nights, Saturday afternoons, Sundays and public holidays. Until 4 or 5 years ago, the gate was usually closed on Saturday morning as well. It is not possible to gain access to the W side of Thrupp Lake from the N when the gate is closed.

[225] In the SW corner of the application land, there is a gate which is normally kept locked. A panel was removed from the gate within the last few years. The gate controls a vehicular track which leads from the Curtis works to the lakes S of the Bullfield. Until 1997, the track was heavily used by vehicles carrying gravel from gravel pits S of the old railway. There were about 40 vehicle movements a day (20 full and 20 returning empty). The gate was open during the day while these works were in progress. After 1997, this gate was locked, although the local farmer had a key and may have left it open sometimes.

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[226] The SW part of the application land was the site of a substantial contractors' compound enclosed by Heras fencing for a period of about 6 months during 2002. The compound was on land leased to npower in connection with the filling of lakes to the S of the Bullfield. The contractors used land outside the fenced compound for plant and machinery.

[227] Until 1997, Mr Curtis went down to the SW sector of the application land every other day on his way to the S gravel pits. He did not see any walkers on the land and the SW sector was not welcoming to walkers since it carried heavy lorry traffic. He did not walk around Bullfield Lake although he had a cursory look at it as he drove by. He did not see anyone walking on the land around Bullfield Lake, and has therefore never had occasion to ask people to leave, but he accepted that he was only there in working hours and that people may well have walked on his land. Since 1997, he has only been down to the Bullfield about once a month. He did not think that the paths around Bullfield Lake were suitable for horse-riding or bicycling.

[228] Mr Curtis did not think that Bullfield Lake was suitable for swimming because the banks were hazardous. He thought that swimmers had traditionally preferred the lakes to the S of the old railway.

[229] Mr Curtis recalls giving oral permission to Mrs Bullock to use the lake for swimming tests and to Dr. Eeles to use the land around the Bullfield for nature studies.

[230] There were some passages in Mr Curtis's written statement which were not supported by his oral evidence. For example, in para. 2.4, Mr Curtis wrote that the Curtis works gate at the NW corner of the application land is locked at weekends, whereas in his oral evidence he accepted that for some years it has been open on Saturday mornings. In para 4.1 he wrote that the fishing club effectively policed the Bullfield Lake area for trespassing. In his oral evidence he admitted that he did not know whether they did or not. It seemed to me that Mr Curtis had not checked his written statement very carefully. However, I was impressed by Mr Curtis's oral evidence and I do accept the gist of his evidence as summarised above.

(3) Mr John Norton

[231] Mr Norton produced a written statement⁷² and gave oral evidence. Mr Norton is a FRICS employed by npower as property services manager. He has been involved on and off with Radley Lakes since 1992. He had discussions with Mr Dockar-Drysdale in 1993/94 about the possible exercise of an option to purchase some of the application land. He was involved in discussions with the Plyers in about 2000/01 and again in 2005. He has recently become involved again in connection with the present application.

[232] Mr Norton's evidence was very detailed. I cannot hope usefully to summarise it, but it is fair to say that there are three threads in his evidence:

- There is an account of the history of Radley Lakes and of npower's involvement with them, which is mostly uncontroversial

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- There is a description of the present state of the application land and its boundaries, which is again largely uncontroversial. This includes a large number of useful photographs (Appendix 8)
- There is evidence on the alleged recreational use of the application land by local which is predominantly based not on personal observation but on hearsay or speculation. I cannot place much weight on this aspect of Mr Norton's evidence.

[233] Mr Norton produced a number of plans purporting to show the position of the 2002 contractors' compound in the SW sector of the application land⁷³. It appears to me that each plan shows a different position, and it is not easy to determine exactly what area was covered by the builders' compound.

[234] I accept Mr. Norton's evidence in relation to the first two threads.

(4) Mr. & Mrs. Plyer

[235] A short email from Mr & Mrs Plyer dated 16th January 2007⁷⁴ was produced. It stated that during the eight years that they lived in Radley, they did not allow any public access to any part of their property or land. The Plyers did not attend the public inquiry to give evidence and I can place little weight on this email.

Findings of fact

[236] Having considered this mass of evidence, I turn to make findings of fact.

[237] The evidence is overwhelming that for many years, certainly since before 1986, Thrupp and Bullfield Lakes have together formed a popular destination for trips by residents of Abingdon. They are only a short distance from the edge of Abingdon and are readily accessible on foot or by bicycle using public rights of way which are easily combined to make a short round trip. It is also possible to park a car near Sandles. There are very good views over Thrupp Lake from the BOAT running down its E bank. Thrupp Lake is an attractive expanse of water with interesting waterfowl. The ease of access has increased with the opening of the Sustrans route in 1999, but I find that the trip to these lakes was very popular with Abingdon residents even before 1999.

[238] Although many people doubtless confined themselves to the public rights of way running along the E and S sides of the lakes, I find that, since before 1986, a significant number of local people have left the public rights of way and walked around the sides of the two lakes. Since before 1986, it has been possible freely to enter the application land through an opening at the SE corner of the application land. From there, it is possible to walk a circuit of Bullfield Lake using the path along the isthmus to the N of the lake and the path running through the strip of land to the S of Bullfield Lake. It has also been possible to walk a circuit of Thrupp Lake by walking N or S of Bullfield Lake and then walking along the W side of Thrupp Lake, exiting through the Curtis works gate when it is open and then walking along Thrupp Lane to

⁷³ B82C, 107 & 108

⁷⁴ B109

the N of Thrupp Lake to rejoin the E BOAT. Of course, these routes can also be walked in reverse.

[239] It would be theoretically possible to ride a horse or mountain bike along some of the tracks, particularly along the S side of Bullfield Lake and the W side of Thrupp Lake, and I accept that this has been done on occasions over the years. Some of the tracks, e.g. the track along the isthmus, are obviously not suitable for horses and would be very hard to use with a bicycle. I am not satisfied that use of the application land by cyclists or horse riders (except for the S BOAT) was common and I think that the vast majority of users were on foot,

[240] It is however necessary to divide the application land into different sections as, in my view, different consideration apply to each section. I divide the application land as follows:

- Thrupp Lake
- E bank of Thrupp Lake
- W bank of Thrupp Lake
- N bank of Thrupp Lake
- Bullfield Lake
- The isthmus
- The land to the E of Bullfield lake and to the W of the BOAT
- The land to the S of Bullfield Lake
- The SW sector, i.e. the land to the W of Bullfield Lake and S of Thrupp Lake
- The BOAT running along and just inside the S boundary of the application land

Thrupp Lake

[241] Although Thrupp Lake is the central attraction of the application land for its natural beauty and abundance of wildfowl, I am not satisfied that the lake (either as a whole or as to any identifiable part) has been used for recreation by a significant number of local people. I do not doubt that people walking around the edges of the lake have sometimes skimmed stones over the lake, dangled their feet in the water and allowed their children to paddle and pond-dip and that their dogs have sometimes swum in the margins of the lake.

[242] There was some evidence of swimming in the lake in the late 1950s, 1960s and early 1970s, but little evidence of swimming in the period after 1986. Many regular users of the application land had never seen anyone swim in the lake. I think that there are two reasons for this. First, the lake seems to have been more attractive to swimmers when first dug but it became much less attractive in later years when the bottom became overgrown with vegetation and swimmers tended to transfer to other more freshly dug lakes to the S of Bullfield Lake. Certainly, when I viewed the lake this year, it looked very uninviting indeed for swimming. No doubt the occasional unauthorised person has swum in the lake during the relevant period, but in my view it has been rare.

[243] There was little evidence of boating on the lake except by the landowners and fishermen who may have been licensed fishermen. No doubt, over the 20 year period

there were a few occasions when unauthorised persons launched boats on the lake. However, I am not satisfied that the lake was used to any material extent for unauthorised boating by local people.

[244] As for fishing, I consider that evidence is that fishing of the lake was predominantly by members of the private fishing club run by the Dockar-Drysdale from 1986/87 until the lake was drained and the fish removed in 1991/92. I accept that there was some unauthorised fishing during this period. It clearly took a number of years until the fish stocks were regenerated when there would have been little fishing in the lake. In later years, fish do seem to have re-appeared and there has been a certain amount of unauthorised fishing. In my view, there is no evidence to suggest that there was any material amount of unauthorised fishing by local people over the 20 year period as a whole.

[245] Taking a broad overview of the use of the lake for unauthorised recreation by local people over the relevant 20 year period, I do not consider that it has been established that the lake (viewed either as a whole or as to any particular part) has been so used by a significant number of local people over the period 1986-2006. As Mr. Stayte pointed out, it was the lack of general recreational use of the lake which encouraged the wildlife which was one of its main attractions.

[246] I find that in 1991 or 1992, Mr Dockar-Drysdale drained the lake for a period of some 3-4 months in order to remove the fish. The lake was not available for recreation by anyone during that period.

[247] As for the use of the lake by the landowners, it seems to me that this use falls into two periods.

- First, I find that between 1986 and 1995, the lake was used to a material extent by Mr Dockar-Drysdale, his family and friends for water skiing and boating. The principal activity was water-skiing, which took place at least once a week in the summer and less often in the winter. It was obviously not possible when the lake was drained. I accept that Mr Dockar-Drysdale ensured that there were no members of the public in the water before water-skiing although I think that it was very rare that there were from 1986 onwards. I accept that on one occasion he challenged unauthorised scuba divers in the lake.
- Second, I find that between 1997 and 2005, the lake was used for jet-skiing by the Plyers, although there was no satisfactory evidence as to the frequency or extent of that use.

E bank of Thrupp Lake

[248] The N end of the E bank of Thrupp Lake is occupied by Sandles and its grounds, and they are not part of the application land. The rest of the E bank of Thrupp Lake consists of a very narrow strip of land falling quite steeply from the W edge of the BOAT to the water's edge. I find that there has been effectively no fencing between the BOAT and the E bank since 1986. I accept Mr Dockar-Drysdale's evidence that he erected a home made wire fence between the BOAT and the E bank in the early 1970s but I find that it had virtually disappeared by 1986. There are 3 or 4 places where it is possible to walk down from the BOAT to the water's edge and I find that users of the BOAT have often walked down to the water

in these places to admire the view, to watch birds, and to let their children paddle or pond-dip or their dogs paddle in the water. It would be surprising if they had not. However, the majority of the bank is quite steep and overgrown and it is impossible to say that the E bank of the lake has been generally used for recreational purposes.

W bank of Thrupp Lake

[249] I find that the lakeside path between the avenue of trees on the W bank of Thrupp Lake has been used by a significant number of local people during the period 1986-2006. It was less well used than the tracks around Bullfield Lake, probably because of the deterrent effect of the Curtis works gate, which was sometimes closed. I consider that the predominant use has been as part of a lakeside walk. I find that many local people used the W bank as part of a circular walk of Thrupp Lake, although this has been impeded when the Curtis works gate was shut on Saturday afternoons, Sundays and bank holidays. A number of witnesses had been deterred by the Curtis works gate and the busy weekday traffic on Thrupp Lane and had only walked part way along the W bank and then retraced their steps.

[250] A point not much explored in the evidence was the use of a parallel path to the W of the avenue of trees. This path may fall partly within the application land. There was no convincing evidence that this second path had been much used by local people, and, in my view, the usual route was along the lakeside path between the avenue of trees.

[251] I accept that, when using the lakeside path, local people have over the years stopped to pick blackberries, have picnics and had walked at various places down to the water's edge to look at the lake and the birds, to pond-dip and to paddle in hot weather.

[252] Although I accept that, if Mr Dockar-Drysdale had met a walker on the W bank, he would have pointed out that he had no right to be there, there was little or no evidence of such challenges. I think that there are probably three reasons for this. First, the lakeside path runs between trees and bushes and users of that path are not always visible from Sandles or the lake. Second, Mr Dockar-Drysdale did not suggest that he often visited the W bank of the lake. Third, the W bank was at all material times open to the Curtis land to its W and the Bullfield to the S, and since Curtis took a relaxed view of pedestrian trespassers on its land, it was something of a forlorn hope to try to deter trespass on the W bank of the lake.

N bank of Thrupp Lake

[253] There was evidence from some witnesses of entering the N bank of Thrupp Lake to observe wildlife or to fish without licence. I do not doubt that this happened on occasions. On the other hand, many witnesses disclaimed any use of the N bank of Thrupp Lake. I am not satisfied that, viewed over the period 1986-2006, the N bank of Thrupp Lake has been used for unauthorised recreation by a significant number of local people. The land is mostly wooded and overgrown and has a rather forbidding appearance. There is no substantial path along this bank parallel with the N bank of the lake. The obvious walking route is along Thrupp Lane. There are a few lightly used tracks going down to the water's edge, but they could have been created by

licensed fishermen. The boundary between Thrupp Lane and the N bank is partly fenced with post and rail fencing and the N bank is close to Thrupp Lane which is heavily used by works traffic during weekdays. The fencing and traffic would, in my view, make recreational use of this land less attractive and tend to deter trespass.

Bullfield Lake

[254] I do not consider that there is sufficient evidence to prove use of the Bullfield Lake (either as a whole or as to any particular part) for unauthorised recreational use by a significant number of local people. In my judgment, as with Thrupp Lake, the principal attraction of Bullfield Lake has been the view and the wildlife. I accept that, over the relevant 20 year period, there has doubtless been the occasional swimmer, boater, pond-dipper and unlicensed fisherman but I think that these have been rare. Bullfield Lake struck me as an even less inviting place for swimming than Thrupp Lake. I accept that children have sometimes paddled from accessible places on the bank and that dogs have sometimes swum in the lake, but I do not regard this as evidence amounting to recreational use of the lake as a whole (or as to any particular part) by a significant number of local people.

[255] As for use of the lake by the landowner, I find that Mr Curtis and his co-directors, as owners of the fishing rights, have let the fishing in the lake to a club between 1989 and 2005 and I think that it is fair to infer that most fishermen on the lake belonged to the club during this period and fished under licence from Curtis. There was no evidence that licensed fishermen were predominantly from Abingdon or Radley.

[256] I also find that, for a material part of the relevant 20 year period, there has been a sign by Bullfield Lake saying “Private. Danger. Deep Water”.

The isthmus

[257] The isthmus is a very narrow strip of land along which there runs a well defined path between the lakes. It was very wet when I viewed it, and there was conflicting evidence as to how passable it had been over the years. I think that the probability is that it has been difficult to use in the winter but easier in the summer. I accept the evidence for the applicant that it has been well used over the relevant period. I consider that the principal use has been as part of a walking circuit of one or other of the lakes. No doubt, people have often paused to watch wildlife or stepped to the edge of one or other of the lakes to look at the view.

Land to E of Bullfield lake

[258] Between the E end of Bullfield Lake and the partly complete wire fence that runs along the W side of the BOAT, there is a fairly narrow strip of land, which is partly overgrown and through which there runs a well worn track skirting the E end of the lake. I find that this track has been well used over the relevant 20 year period (1986-2006) by local walkers, predominantly as part of a walking circuit of Bullfield Lake or a larger circuit of both lakes. No doubt, people have frequently stepped off the track to the edge of the lake to admire the view or to watch wildlife.

Land to S of Bullfield Lake

[259] This is again a fairly narrow strip of land, somewhat wider at the E end. Along the W end of this land there is a single well worn track running parallel with the S bank of the lake. At the E end of this land, the track splits into two, one branch skirting the lake and the other leading to the SE entrance to the application land. Again, I find that this track has been well used over the relevant 20 year period (1986-2006) by local walkers, predominantly as part of a walking circuit of Bullfield Lake or a larger circuit of both lakes. No doubt, people have frequently stepped off the track to the edge of the lake to admire the view or to watch wildlife.

The SW sector

[260] The land lying in the SW sector of the application land, W of Bullfield Lake and S of Thrupp Lake is the only substantial piece of dry land comprised in the application land, nearly all the rest being either the lakes themselves or fairly narrow strips of land along the banks of the lakes. I am satisfied that, over the relevant 20 year period, this land has been crossed by walkers doing a circuit of Thrupp Lake. There is no particular defined route. However, I am not satisfied that it has been generally used for recreation by a significant number of local people over the 20 year period. I have the following reasons for taking this view:

- First, there was no witness who, to my mind, gave clear evidence of general recreational use of this part of the application land as opposed to crossing it en route to or from the W bank of Thrupp Lake
- Second, I accept Mr Curtis's evidence that the track crossing the W side of this land was in use for heavy lorry traffic up to 1997 and it seems to me improbable that land in the vicinity of this track would have attracted much informal recreation when there was the much more pleasant alternative of walking around the banks of the lakes
- Third, although the evidence was conflicting about the extent to which the gate at the SW corner of the land was shut and locked, there was no dispute that this gate was sometimes shut and locked. I think that the probability was that it was shut and locked when not in use for lorry traffic for most of the relevant 20 year period. I particularly bear in mind the evidence of Mrs Bullock who needed to obtain the key from Mr Curtis each year from 1979 to 1997 in order to get vehicular access through this gate to Bullfield Lake. Although it was possible to gain access by walking around Bullfield Lake from the E, it seems to me that the gate which was frequently shut and locked must have deterred use of that sector of the application land because it prevented direct access or egress except for climbing the gate or squeezing around it and lent an air of private property to that sector of the application land.
- Fourth, I find that a substantial part of the SW sector was cleared, levelled and used as a contractors' compound for about 6 months in 2002. I accept Mr Curtis's evidence that plant and machinery was parked outside the compound during this period. Mrs. Hughes saw lorries and equipment on the whole of the SW sector during the period when it was being used as a builders' compound. It is not possible on the evidence that I heard to fix the precise boundaries of the land which was rendered inaccessible for recreation during this period, although I accept that it remained possible for walkers to walk around the side

of the compound to access the W bank of Thrupp Lake. On any basis, it seems to me that this was a material interruption during the relevant 20 year period of any general recreational use of this sector of the application land.

- Fifth, I am not satisfied that the SW sector has precisely the same configuration now as in 1986. In this connection, I bear in mind the evidence of Dr. Eeles and Mr. Price and the aerial photograph produced by Mr. Thomas. It looks to me that there was some post-1986 infilling work at the S end of Thrupp Lake.

The S BOAT

[261] The last piece of the application to consider is the BOAT running just within the S boundary of the application land and S of the Sustrans route/old railway line. I heard no evidence that this was ever used other than in a way consistent with its status as a BOAT, i.e. by walkers, horse riders and cyclists for walking horse riding and cycling.

6. New Greens: Law and Procedure

The Law

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

[263] The expression “town or village green” is defined by s 22(1) of the Act. It is a three limbed definition, comprising

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

It is the third limb of the definition, i.e. the definition of prescriptive greens, which is relevant in this case. This definition has been altered twice, first, by the Countryside and Rights of Way Act 2000 (“CRoW 2000”) and second, by the Commons Act 2006 (“CA 2006”).

[264] Until 30th January 2001, the first definition of a prescriptive green was:

“land...on which the inhabitants of any locality have indulged in [lawful] sports and pastimes as of right for not less than twenty years”.

[265] As from 30th January 2001, this definition was replaced, pursuant to s 98 of CRoW 2000, by the following second definition:

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

No regulations have ever been made to implement para. (b) of the second definition and it seems unlikely that any will now be made.

[266] Section 15 of the CA 2006 was brought into force on 6th April 2007 and contains the following provision for the registration of new prescriptive greens:

“Registration of greens

(1) *Any person may apply to the commons registration authority to register land as a town or village green in a case where subsection (2), (3) or (4) applies.*

(2) *This subsection applies where-*

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

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

(3) *This subsection applies where-*

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

(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 period of two years beginning with the cessation referred to in paragraph (b),*

(4) *This subsection applies (subject to subsection (5)) 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;*

(b) *they ceased to do so before the commencement of this section; and*

(c) *the application is made within the period of five years beginning with the cessation referred to in paragraph (b)*

However, by para 4 of the Commons Act 2006 (Commencement No 2, Transitional Provisions and Savings) (England) Order 2007, an application made before 6th April 2007 to register a new green continues to be governed by the pre CA 2006 law.

The Legal Issues

[267] The main legal issues concerning prescriptive greens that have been decided by the courts are as follows:

What is a Town or Village Green?

[268] A town or village green is land which is subject to the right of local people to enjoy general recreational activities on it. There is no legal requirement that it should consist mainly of grass, be situated in or in reasonable proximity to a town or village, or be suitable for use by local inhabitants for traditional recreational activities⁷⁵.

What is the Effect of Non-Registration?

[269] Greens which were not registered by 31st July 1970 ceased in law to be town or village greens and, so long as they remain unregistered, local people have no recreational rights over them⁷⁶.

What is the Effect of Registration?

[270] The effect of registration can be summarised as follows:

- The fact that land is registered as a green is conclusive evidence that it was a green as at the date of registration⁷⁷.
- Land becomes a new green only when it is registered as such⁷⁸.
- Registration as a new green confers general recreational rights over the green on local people⁷⁹.
- Registration as a new green subjects the land to the protective provisions of s. 12 of the Inclosure Act 1857 and s. 29 of the Commons Act 1876, which in practice preclude development of greens⁸⁰

Which definition applies?

[271] In the case of any application to register a new green made after 30th January 2001, and before the CA 2006 comes into force, only the second definition applies⁸¹. This, therefore, is the relevant definition in the present case.

What is the meaning of the second definition?

[272] The meaning of the second definition has also been extensively considered by the courts.

Land...

⁷⁵ *Oxfordshire County Council v Oxford City Council & anor* [2006] 2 AC 674 *per* Lord Hoffmann at paras 3-16, & 37-39, Lord Rodger at para 115 & Lord Walker at paras 124-128 (Lord Scott dissenting at paras 71-83)

⁷⁶ *Oxfordshire per* Lord Hoffmann at para. 18.

⁷⁷ Commons Registration Act 1965 s. 10

⁷⁸ *Oxfordshire per* Lord Hoffmann at para 43, Lord Scott at para 110, & Lord Rodger at para 116 (Lady Hale dissenting at para 142 in relation to original definition)

⁷⁹ *Oxfordshire*

⁸⁰ *Oxfordshire*

⁸¹ *Oxfordshire per* Lord Hoffmann at para 43, Lord Scott at para 110, Lord Rodger at paras 117-123 & Lord Walker at para 124. Lady Hale dissented at para 147.

[273] “Land” includes land covered by water⁸². The lakes are therefore legally capable of being registered as part of a new green. Indeed, there is no legal reason why a new green should not be wholly under water.

...on which for not less than 20 years...

[274] The 20 year period must be the 20 years immediately before the s. 13 application⁸³.

...a significant number...

[275] “Significant” does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers⁸⁴.

...of the inhabitants of any locality.....

[276] A “locality” cannot be created by drawing a line on a map⁸⁵. A “locality” must be some division of the county known to the law, such as a borough, parish or manor⁸⁶. An ecclesiastical parish can be a “locality”⁸⁷ but it is doubtful whether an electoral ward can be a “locality”⁸⁸. It will be seen that the courts have adopted a very narrow construction of “locality” which catches out many lay applicants for registration of new greens. The House of Lords in the *Oxfordshire* case recognised and upheld the narrowness of this definition of “locality” and said that it was qualified only by the fact that it was sufficient if the recreational users of the green came “predominantly” from the relevant locality⁸⁹.

...or of any neighbourhood within a locality...

[277] A “neighbourhood” need not be a recognised administrative unit. A housing estate can be a neighbourhood⁹⁰. However a neighbourhood cannot be any area drawn on a map: it must have some degree of cohesiveness⁹¹. A neighbourhood need not lie wholly within a single locality⁹².

⁸² CRA 1965 s. 22(1)

⁸³ *Oxfordshire* case per Lord Hoffmann at para s 41-42 & 60, Lord Rodger at para 114 & Lord Walker at para 124. Lady Hale dissented at para 147.

⁸⁴ R (McAlpine) v Staffordshire CC [2002] EWHC 76 (Admin) at para. 77

⁸⁵ R (Cheltenham Builders Ltd) v South Glos, DC [2004] 1 EGLR 85 at paras 41-48

⁸⁶ Ministry of Defence v Wiltshire CC [1995] 4 All ER 931 at p 937b-e, R (Cheltenham Builders Ltd) v South Glos. DC at paras 72-84 and see R (Laing Homes Ltd) v Buckinghamshire CC [2003] 3 EGLR 69 at para. 133

⁸⁷ R (Laing Homes) Ltd v Buckinghamshire CC

⁸⁸ R (Laing Homes) Ltd v Buckinghamshire CC

⁸⁹ *Oxfordshire* per Lord Hoffmann at para. 25 applying the ruling of the House of Lords in R v *Oxfordshire County Council ex. p. Sunningwell Parish Council*[2000] 1 AC 335.

⁹⁰ R (McAlpine) v Staffordshire CC

⁹¹ R (Cheltenham Builders Ltd) v Sth Glos. CC at para 85

⁹² *Oxfordshire* case per Lord Hoffmann at para 27 disapproving R (Cheltenham Builders Ltd) v Sth. Glos. CC at para. 88

...have indulged in lawful sports and pastimes...

[278] The words “lawful sports and pastimes” form a composite expression which includes informal recreation such as walking, with or without dogs, and children’s play⁹³. It does not include walking of such a character as would give rise to a presumption of dedication as a public right of way⁹⁴.

...as of right...

[279] The cases disclose three threads in the requirement that recreational use of the application land must be “as of right”:

- use of land “as of right” must be use which is without force, stealth or permission (“*nec vi nec clam nec precario*”) and does not turn on the subjective beliefs of users⁹⁵.
- Use of land “as of right” must be use as a trespasser and not use “by right”, i.e. pursuant to a legal right⁹⁶.
- Use of land “as of right” must have the appearance of the exercise of a legal right

[280] As to the first thread:

- “Force” does not just mean physical force. User is by force in law if it involves climbing or breaking down fences or gates, if it involves ignoring notices prohibiting entry, or if it is under protest⁹⁷. There is a *dictum* in the *Beresford* case⁹⁸ that assumes that user can be as of right notwithstanding that it involves ignoring a prohibitory notice. There was no argument on that point in the House of Lords and, in my view, the assumption is contrary to principle. It was held by the Court of Appeal in the *Oxfordshire* case that a prohibitory notice prevented user as of right. This proposition was not questioned by the House of Lords, although it is fair to say that the accuracy of the proposition did not arise on the view taken by the House of Lords since the signs were erected after the date of the application.
- “Permission” can be express, e.g. by erecting notices which in terms grant temporary permission to local people to use the land. Permission can be implied, but permission cannot be implied from inaction or acts of encouragement by the landowner⁹⁹. The effect of permissive signs to preclude continuing user as of right will, in the case of post 6th April 2007 applications, be affected by CA 2006 s. 15(7)(b).

[281] As to the second thread, if user is pursuant to a legal right, e.g. under a statutory trust for public recreation, it is “by right” rather than “as of right”

⁹³ R v Oxfordshire CC ex p. Sunningwell PC at pp 356F-357E
⁹⁴ Oxfordshire CC v Oxford CC [2004] Ch 253 at paras 96-105
⁹⁵ R v Oxfordshire CC ex p Sunningwell PC
⁹⁶ R (Beresford) v Sunderland CC paras 3, 9 & 30
⁹⁷ Newnham v Willison (1987) 56 P&CR 8
⁹⁸ para. 72
⁹⁹ R (Beresford) v Sunderland City Council [2004] 1 AC 889

[282] As to the third thread, there are hints in the speeches of Lord Hoffmann in the *Sunningwell* and *Oxfordshire* cases (a) that qualifying recreational user must have the appearance to the landowner of the exercise of a legal right and (b) that this appearance may be affected by the interaction between the use of the land made by the landowner and by local people. In cases where the land is subject to low level use by the landowner, there may be no conflict between the use of the land by the landowner and the recreational use of the land by local people. There must be give and take between the landowner and local recreational users. However, if recreational use by local people materially defers to the use by the landowner, the recreational use may not have the appearance to the landowner of use “as of right”.

[283] I therefore conclude that user “as of right” means user which is:

- not forcible, secret or permissive (“*nec vi nec clam nec precario*”).
- trespassory and not pursuant to a legal right, i.e. “as of right” as opposed to “by right”,
- has the appearance to the landowner of the exercise of a legal right

...and continue to do so.

[284] The most important point decided by the House of Lords in the *Oxfordshire* case is that the relevant user need continue only down to the date of the **application**: user need not continue down to the date of **registration**¹⁰⁰. This point decided by the House of Lords is of crucial practical importance because it means that, after an application is made to register a new green, but before the green is actually registered, the landowner cannot take steps, e.g. by fencing the land or erecting notices on the land, to prevent user “as of right” from continuing. The House of Lords overruled the decision of the Court of Appeal that recreational user must continue down to the date of registration, a decision which appeared to give every landowner a cast-iron method of defeating any application to register a new green.

Human Rights

[285] The majority view of the House of Lords in the *Oxfordshire* case was that the creation of a new green by prescription did not infringe the landowner’s human rights under art. 1 of the 1st Protocol to the ECHR.

Procedure

[286] Procedure on applications to register new greens under the CRA 1965 is governed by **The Commons Registration (New Land) Regulations 1969**. These regulations have proved quite inadequate to resolve many disputed applications and registration authorities have had to resort to procedures not contemplated by the Regulations to deal with such applications.

¹⁰⁰ *Oxfordshire* case: Lord Hoffmann at para 44, Lord Rodger at para 114, Lord Walker at para 124 & Lay Hale at para 143. Lord Scott, at para 109, would have allowed recreational use to cease shortly before the date of the application provided that the application was made reasonably promptly after interruption.

Who can apply?

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

Application.

[288] Application is made by submitting to the registration authority a completed application form in Form 30. The form asks a series of questions which are very hard in practice to answer.

- Part 3 asks for the “locality” of the application land. Few people completing the form are aware of the narrow technical meaning given by the courts to “locality”.
- Part 4 asks the applicant to state on what date the land became a green. This question is now hard to answer in the light of the House of Lords’ ruling that land does not become a new green until it is registered. Probably the correct answer is the date of the application.
- Part 5 asks how the land became a green. This question is now also hard to answer in the light of the House of Lords’ ruling that land does not become a new green until it is registered. Probably it means: how did the land become land which qualifies for registration as a new green?

The House of Lords in the *Oxfordshire* case has emphasised that the procedure is intended to be simple and informal and that applications are not to be defeated by technical objections to the form of applications provided that the applications are handled in a way which is fair to all parties¹⁰¹. The form has been replaced in relation to post 6th April 2007 applications.

Accompanying documents.

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

Evidence.

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

Preliminary consideration.

[292] After the application is submitted, the registration authority gives it preliminary consideration under reg. 5(7). The registration authority can reject the

¹⁰¹ Lord Hoffmann at paras 60-62, Lord Scott at para 110, Lord Walker at para 124 & Lady Hale at para 144.

application at this stage, but not without giving the applicant an opportunity to put his application in order. This seems to be directed to cases:

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

Publicity.

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

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

Objectors.

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

Objection Statement.

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

Determination of application.

[296] The most striking feature of the regulations is that they provide no procedure for an oral hearing to resolve disputed evidence. The Commons Commissioners have no jurisdiction to deal with disputed applications to register new greens: *R (Whitney) v Commons Commissioners*¹⁰². The regulations seem to assume that the registration authority can determine disputed applications to register new greens on paper. A practice has grown up, repeatedly approved by the courts, most recently by the House of Lords in the *Oxfordshire* case, whereby the registration authority appoints an independent inspector to conduct a non statutory public inquiry into the application and to report whether it should be accepted or not. In some cases, procedural fairness will make an oral hearing not merely an option but a necessity¹⁰³. In the *Whitney* case, it was held that the procedure by non statutory public inquiry did not infringe art. 6 of the ECHR because any decision of the registration authority is subject to review by the courts. However, there is no power to award costs. Accordingly, it can be very expensive to become involved in a disputed application to register a new green since all parties will be left bearing their own costs.

¹⁰² [2005] 1 QB 282.

¹⁰³ *Oxfordshire* case per Lord Hoffmann at para 29 approving Sullivan J in *R (Cheltenham Builders Ltd) v South Gloucestershire District Council*

[297] In the *Whitmey* case, the Court of Appeal said that either party could apply to the court to determine whether the application land was indeed a new green, without waiting for the registration authority to decide. This would put a powerful weapon in the hands of landowners, since applicants are otherwise free to pursue their application without any risk of having to pay the legal costs incurred by the landowner in opposing the application. However, in *McLaren v Kubiak* [2007] EWHC 1065 (Ch) it was held that the reasoning in the *Whitmey* case had been overtaken by the analysis in the *Oxfordshire* case and that it was now an abuse of process to bring legal proceedings for a declaration as to the registrability of an alleged new green

Procedural issues.

[298] A number of important procedural issues have been decided by the courts:

- **Burden and Standard of Proof.** The onus of proof lies on the applicant for registration of a new green, it is no trivial matter for a landowner to have land registered as a green, and all the elements required to establish a new green must be “properly and strictly proved”¹⁰⁴. However, in my view, this does not mean that the standard of proof is other than the usual flexible civil standard of proof on the balance of probabilities.
- **Defects in Form 30.** The House of Lords has held in the *Oxfordshire* case that an application is not to be defeated by drafting defects in the application form, e.g. where the wrong date has been inserted in Part 4. The issue for the registration authority is whether or not the application land has become a new green
- **Part registration.** The House of Lords also held in the *Oxfordshire* case that the registration authority can register part only of the application land if it is satisfied that part but not all of the application land has become a new green. Indeed, the House seemed to think that a larger or different area could be registered if there was no procedural unfairness¹⁰⁵.

7. Applying the law to the facts

[299] I now turn to apply the law to the facts of this case. I first need to deal with some general points.

[300] The first point is whether I should view the application land as a whole or break it down into its constituent parts. It was urged on me by Mr Petchey, counsel for the applicant, that it would be wrong to break down the application land into different parts, but that the whole of the land, including the lakes, should be considered as a single recreational area in the nature of a country park. I entirely accept that land can be registered as a new green although parts of it are inaccessible or unused for recreation. Thus in the *Oxfordshire* case, it was estimated that 75% of the scrubland was inaccessible. Lord Hoffmann gave the example of a park with ornamental flower beds on which the public could not walk. It is no doubt a matter of fact and degree whether one perceives the whole of the application land as used for recreation despite

¹⁰⁴ R v Suffolk CC ex p Steed (1996) 75 P&CR 102 at p 111 per Pill LJ approved by Lord Bingham in R (Beresford) v Sunderland at para. 2

¹⁰⁵ Lord Hoffmann at paras 61-62, Lord Scott at para 111, Lord Rodger at para 114, Lord Walker at para 124 and Lady Hale at para 144.

the fact that parts are inaccessible or whether one perceives the land as falling into a distinct part which is used for recreation and a distinct part which is not. An example of the latter would be the reed beds in the *Oxfordshire* case.

[301] My perception in the present case is that the application land broadly falls into two main and distinct parts. First there are the two lakes, which are the fundamental attraction of the area for their beauty and birdlife, but which have not themselves been used for unauthorised recreation by a significant number of local people. Second, there are the banks of the lakes, along some of which run tracks which have been used by a significant number of local people for many years.

[302] I therefore consider that this is a case where it is necessary to consider separately the constituent parts of the application land

[303] The second point is whether the unauthorised recreational users of the tracks on the application land constituted a significant number of the inhabitants of any locality or neighbourhood within a locality. The applicant focussed on the area that she called East Abingdon and contended that this was a neighbourhood within a locality. However, it emerged in the evidence (particularly that of Mr. Green, Mrs. Legge and Mr. Thomas) that East Abingdon is not a community with any cohesive character. It is just that part of Abingdon which lies east of the Oxford Road. The recreational users of the lakes came predominantly from that part of Abingdon simply because it was the part closest to the lakes. However, there was evidence of recreational users coming from all over Abingdon. Abingdon is a civil parish and thus is a “locality” in law. It seems to me that (insofar as the application land was used by a significant number of local people) the recreational users of the application land constituted a significant number of the inhabitants of the locality of Abingdon.

[304] Third, I need to consider the issue which was raised as issue (x) in the *Oxfordshire* case, i.e. how to distinguish between recreational use of land that gives rise to a prescriptive green and recreational user which gives rise to a prescriptive public right of way. A riverside promenade can be a linear green: *Abercromby v Town Commissioners of Fermoyle*¹⁰⁶. On the other hand, recreational use of a strip of river bank between a riverside public footpath and the river is not necessarily to be ascribed to any legal basis other than the public right of way: *Dyce v Hay*¹⁰⁷. Walking along a public footpath is often a pastime, but no one would suggest that every public footpath is registrable as a linear green. The point was discussed in some detail in paras 96-105 of Lightman J.’s judgment at first instance. However, the Court of Appeal and the House of Lords declined to give guidance on the point on the ground that it did not raise an issue of principle but one of fact and degree in applying the statutory test. However, it is fair to say that neither the Court of Appeal or the House of Lords expressed disagreement with the guidance given by Lightman J.

[305] It seems to me that the heart of the guidance given by Lightman J is that all depends on whether the use would appear to the reasonable landowner as referable to the exercise of a right of way along a defined route or referable to a right to enjoy

¹⁰⁶ [1900] IR 302

¹⁰⁷ (1852) 1 Macq. HL 305

recreation over the whole of a wider area of land. If the appearance is ambiguous, it should be ascribed to the lesser right, i.e. a right of way.

[306] Applying this guidance, it seems to me that the use of the tracks around the N, E and S sides of Bullfield Lake (including the isthmus) and the track along the avenue of trees on the W side of Thrupp Lake has had the objective appearance of the exercise of rights of way. Essentially they are lakeside tracks which can be combined to form a walking circuit of the lakes. I do not think that this perception is affected by the fact that people could and did sometimes wander off the side of path to pick blackberries, picnic, sit by the lake, watch birds on the lake and allow their children to paddle or pond-dip and their dogs to swim in the lake. To my mind, this is just the way in which an unfenced public right of way along a lakeside is inevitably used. There must be many public footpaths crossing open land where the public have stepped off the path to pick blackberries, to picnic on the banks of a lake or river or to watch wildlife. No one could suggest that this type of activity elevated the public right of way and its margins into an elongated stretch of TVG.

[307] Fourth, I need to consider whether unauthorised recreational use of the application land was “as of right” in the sense of being not forcible, secret or permissive.

[308] I find that the application land was always accessible to local people through the gap at the SE corner. It has therefore always been possible to enter the land without force. It has also been possible to enter the application land at the SW and NW corners when the gates have been open. When the NW Curtis works gate has been shut, access at that corner has been impossible. When the gate at the SW corner has been shut, there is evidence that local people have climbed around or through the gate. Such access must, in my view, be treated as forcible, but I think that most people have accessed the application land without use of force. There was no evidence of any prohibitory signs on the application land except for the “Private. Danger Deep Water” sign by Bullfield Lake, and that was clearly referable to the lake rather than the lakeside tracks. There was and is a “Private” sign on the Curtis works gate at the NW corner. However, the Curtis works gate is not on the application land and the sign is in my view referable to the Curtis works approached through the gate from Thrupp Lane and not to the application land itself. I accept that Mr Dockar-Drysdale challenged walkers on his land when he came across them. One person who completed an evidence questionnaire (Mrs Beckett) had been approached by the landowner who said “Please be aware that this is my private land”. However, I think that the vast majority of users were unchallenged. Mr. Curtis did not suggest that walkers on the Bullfield were ever challenged. I think that Mr. Dockar-Drysdale’s attention was more on people who might interfere with the water-skiing than people walking the lakeside paths.

[309] I do not consider that unauthorised recreational use of the application land by local people can be characterised as secret.

[310] I consider that the vast majority of recreational use of the application land (other than the lakes themselves where fishing was largely permissive) by local people has not been permissive. There was some evidence of permission, e.g. that granted to Mrs Bullock and Dr Eeles, but I think that this was very rare.

[311] I now turn to the individual parts of the application land.

Thrupp Lake

[312] I do not consider that the applicant has established that Thrupp Lake has become a new TVG for the following reasons:

- I am not satisfied that the lake itself (or any particular part of it) has been used over the relevant 20 year period for unauthorised recreation by a significant number of local people
- The lake has been used to a material extent by the landowners and their licensees in a way which was inconsistent with general use of the lake by local people for recreation, i.e. water-skiing between 1986 and 1995 by Mr Dockar-Drysdale and his family and friends, jet-skiing by the Plyers between 1997 and 2005 and fishing by the Dockar-Drysdales' fishing club between 1986/87 and 1991/92. Any unauthorised use by local people during these periods has necessarily deferred to the authorised use and so has not had the appearance of the exercise of a right.
- Any unauthorised recreational use of Thrupp Lake by local people was materially interrupted by the draining of the lake in 1991/92.

E bank of Thrupp Lake

[313] I am satisfied that over the whole of the relevant twenty year period users of the BOAT along the E bank of Thrupp Lake have often stepped off the BOAT at three or four places onto the E bank of Thrupp Lake to look at the view, watch wildlife, pond-dip and to let their dogs and children paddle at the edge of the lake. However, I cannot see how this can turn the whole of the E bank of Thrupp Lake, most of which is steep overgrown and inaccessible, into a new green.

[314] This leaves the question whether the three or four places where people can walk and have walked down to the lakeside from the BOAT have become a series of mini-greens a few square metres in size. I do not think so. In my view, this use must be regarded as merely ancillary to the use of the BOAT as a public right of way.

W bank of Thrupp Lake

[315] I am satisfied that over the whole of the relevant 20 year period a significant number of local people have walked along the track between the avenue of trees along the W bank of Thrupp Lake and have sometimes ventured off the side of the track to pick blackberries, picnic, admire the view over the lake, watch wildlife, pond-dip and to allow their dogs and children to paddle at the edge of the lake. In my view, this use would be regarded by the reasonable landowner as being in the nature of the exercise of a right of way along a lakeside track and not as the exercise of a right of general recreation over the whole of the application land lying W of Thrupp Lake. It follows, in my judgment, that the use was not such as to confer TVG status on the W bank of Thrupp Lake

N bank of Thrupp Lake

[316] I am not satisfied that the N bank of Thrupp Lake has been used by a significant number of local people for unauthorised recreation over the relevant 20 year period.

Bullfield Lake

[317] I am not satisfied that Bullfield Lake (or any particular part of it) has been used for unauthorised recreation by a significant number of local people over the relevant 20 year period. There is evidence that the lake has been actively fished for much of the relevant 20 year period by a fishing club licensed by the landowner and it appears to me that such unauthorised use as there was by local people must have deferred to that authorised use. Further, there has during at least some of the relevant 20 year period been a sign by the lake saying “Private. Danger. Deep Water.” People who entered the water in defiance of that sign were not, in my view, acting as of right.

Bullfield Lake banks

[318] I am satisfied that over the whole of the relevant 20 year period, a significant number of local people have walked the track along the isthmus between the two lakes, the track along the E side of the lake and the branching track along the S side of the lake and have stopped at the edge of the lake to look at the view, watch wildlife, pond-dip and to allow their dogs and children to paddle at the edge of the lakes. In my view, this use would be regarded by the reasonable landowner as being in the nature of the exercise of a right of way along a lakeside track and not as the exercise of a right of general recreation over the whole of the application land lying N, S and E of Bullfield Lake. It follows, in my judgment, that the use was not such as to confer TVG status on the N, S and E banks of Bullfield Lake

SW sector

[319] I do not consider that the applicant has established that the SW sector of the application land has become a registrable town or village green for the following reasons:

- I am not satisfied that this sector of the land has been generally used for recreation by a significant number of local people over the whole of the relevant 20 year period. A track leading to the Curtis works runs along the edge of this land and was in heavy use for gravel extraction lorries until 1997. Direct access and egress from outside the application land was controlled by the SW gate which was often closed and locked. This land is unattractive for recreational use compared with the lakeside which, in my view, was the real attraction of the application land.
- To the extent that this land was used for recreation by local people, there was a material interruption in that use in 2002 when a large part of this land was used as a contractors’ compound for some six months and the rest of this sector of the land was used for lorries and builders’ equipment.
- In view of the evidence of Mr. Price, Dr. Eeles and Mr. Thomas, I am not satisfied that the configuration of this land has been the same throughout the relevant 20 year period

- I accept that local people have at all material times walked across this land as part of the walking circuit of Thrupp Lake and that it remained possible to walk around the contractors' compound during 2002. However, I consider that this use was as part of the walking circuit of the lakes rather than by way of recreational use of the SW sector as a whole.

S BOAT

[320] There was no evidence that the BOAT running along and inside the S boundary of the application land was ever used except as a public right of way. I see nothing that can have converted it into a registrable town or village green.

8. Conclusion

[321] I conclude that the applicant has failed to prove that the application land or any part of the application land is registrable as a new green.

[322] I recommend that the application is rejected. It is necessary under reg. 8(1) of the 1969 Regulations for the registration authority to give the applicant written reasons for rejection. I recommend that the reasons are stated to be "the reasons given in the Inspector's Report of 13th. October 2007".

Vivian Chapman QC
13th. October 2007
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