



Application Decision

Inquiry opened on 13 February 2013

by **Alan Beckett BA MSc MIPROW**

An Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 21 March 2013

Application Ref: COM 366

- The application was made by Mr Philip Wagstaff on behalf of the Woburn Residents Association ('the Applicant') and is dated 15 June 2011.
- The application was made under section 15 (2) of the Commons Act 2006 ('the 2006 Act').
- The application is for land adjacent to Woburn Road, Woburn, Launceston to be registered as a town or village green.

Summary of Decision: The application is granted.

Preliminary Matters

1. Following notice of the application being given, one objection was made which has not been withdrawn.
2. I held an inquiry into the application on 13 & 14 February 2013 and made an unaccompanied inspection of the claimed town or village green and the neighbourhood identified by the Applicant on 12 February. I made a further inspection of the land and neighbourhood accompanied by representatives of the parties during the afternoon of 13 February.
3. The application has been referred to the Planning Inspectorate in accordance with regulation 27(3) (a) of the Commons Registration (England) Regulations 2008. This provides for an application to be referred to the Planning Inspectorate where the registration authority has an interest in the outcome of the application such that there is unlikely to be confidence in the authority's ability impartially to determine it. In this case Cornwall Council ('the Council') owns the application land and is also the Registration Authority.

The Application Land

4. The land to which the application relates is identified in green on the plan appended to this decision¹. The land is bounded to the north by the carriageway of Woburn Road, to the east by the property boundary of No. 25 Dunheved Fields, to the west by the property boundary of No. 30 Woburn Road and to the south by the eastbound A30. The application land is separated from the A30 by a Cornish hedge.

¹ Appendix 1

5. There is no formal name used to describe the land at issue, although the supporters of the application referred to the land as 'Woburn Green'. For the purposes of this decision I refer to the land at issue as the 'application land' or more simply 'the land'.
6. The application land is level and laid to grass; in addition to the grass there are a number of maturing specimen trees planted in a line on the southern side of the land towards the aforementioned hedge. There are a number of street lights positioned in the land to provide illumination for users of Woburn Road and a litter bin is located close to Woburn Road at about the middle of the land.
7. The application land is in the ownership of the Council as successors to the Launceston Borough Council to which the land had been conveyed in 1971. The application land was 'marginal land' upon which the developer of the Woburn housing estate had been unable to build houses due to part of the 'marginal land' being required for the construction of the A30.

The Statutory Requirements

8. Section 15 (1) of the 2006 Act provides that any person may apply to the relevant commons registration authority to register land as a town or village green where subsection (2) (3) or (4) applies. The application in this case has been made under the provisions of subsection 15 (2). Subsection 15 (2) 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.
9. In *R (Beresford) v Sunderland City Council* [2004] 1 AC 889 it was noted that it is no trivial matter for a landowner to have his land registered as a town or village green. All elements of the relevant criteria need to be proved by the applicant (*R v Suffolk County Council, ex parte Steed* (1995) 70 P&CR 487) ('the Steed case'). Nevertheless the burden of proof is the normal, civil standard, namely, the balance of probabilities.
10. Defra² have issued Guidance³ on the provisions of the 2006 Act. Chapter 8.10 of that guidance addresses Section 15 specifically and describes the considerations in detail.

Reasons

Locality and neighbourhood

Locality

11. The application is based on long use of the application land by inhabitants of a neighbourhood within a locality. Any locality must be an area recognised in law and in *R (Laing Homes Ltd) v Buckinghamshire County Council* [2004] 1 P&CR 573 ('*Laing Homes*') it was confirmed that an ecclesiastical parish qualified as a locality. The applicant identified the locality as being the ecclesiastical Parish of Launceston St Mary Magdalene; the claimed locality was not disputed by the

² Department for Environment, Food and Rural Affairs

³ Part 1 of the Commons Act 2006 - Guidance to commons registration authorities and the Planning Inspectorate for the pioneer implementation September 2011 Defra

Council. I conclude that the ecclesiastical parish of Launceston St Mary Magdalene provides a qualifying locality for the purposes of section 15 of the 2006 Act.

Neighbourhood

12. In *R (Cheltenham Builders v South Gloucestershire DC* [2003] EWHC (*Cheltenham Builders*) it was said by Sullivan J that a neighbourhood must have a sufficient degree of cohesiveness. A similar point was made in *Paddico (267) Ltd v Kirklees MBC* [2011] EWHC 1606 (*Ch*) (*Paddico HC*) where Vos J put forward the view that the term neighbourhood is understood to be a cohesive area capable of meaningful description in some way.
13. In *R v (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire CC* [2010] EWHC 530 (*Admin*) the view was taken that a neighbourhood must have a sufficient degree of cohesiveness although it was considered that the factors as to whether a neighbourhood qualifies are undoubtedly more varied than those relating to a locality.
14. In *Leeds Group plc v Leeds CC* [2010] EWHC 810 (*Ch*) (*Leeds Group HC*) the meaning of neighbourhood was directly at issue. It was recognised that the term neighbourhood is an ordinary English word without legal baggage and was deliberately imprecise. The term was introduced to avoid technicalities and to make registration easier. In *Leeds Group HC* HHJ Behrens took into account a number of factors and referred to a preponderance of post war semi-detached housing within the relevant areas although there was a variety of styles of housing in the area. HHJ Behrens also referred to the existence of connecting streets and the fact that it was not necessary to look too hard for the reasons for the boundaries. It was held that even though there were limited community facilities and no shops, the areas concerned could properly be described as neighbourhoods. The references to cohesiveness in *Cheltenham Builders* have therefore to be read in the light of these later determinations on the issue of neighbourhoods. In *Leeds Group plc v Leeds CC* [2010] EWCA Civ 1438 (*'Leeds Group CA'*) Tomlinson LJ supported the view that the term neighbourhood was a deliberately imprecise term and that it may not be difficult to define the relevant neighbourhood by reference to the green.
15. Having regard to recent case law, whilst there is a requirement for a neighbourhood to demonstrate some cohesiveness this should be seen in the context of the fact that the term neighbourhood is deliberately imprecise and has been used to make registration of town and village greens easier. Nevertheless any neighbourhood should be capable of meaningful description and may, but not necessarily, be defined by physical boundaries such as roads. There is no requirement for the housing within any given neighbourhood to be homogenous in respect of styles and socioeconomic circumstances or for there to be common facilities.
16. The neighbourhood put forward by the applicant encompasses the Woburn housing estate, the building of which commenced in the late 1950s but which was not completed until the 1980s. The land on which the housing estate was built is generally triangular in shape and is bounded by Western Road, Dunheved Road and by the A30. Within the triangle formed by the aforementioned roads, the houses on the Woburn estate can only be accessed

from three points; first at the junction of Hendra Vale with Western Road; secondly at the junction of Woburn Road and Western Road and finally at the junction of Dunheved Fields with Dunheved Road.

17. Although the boundaries of the claimed neighbourhood are somewhat irregular, the boundary encompasses those houses which rely upon the three road junctions identified above for access to the estate. A number of houses which were built as part of the housing development are not included in the neighbourhood for the simple reason that those houses take their access from either Western Road or Dunheved Road.
18. The Woburn estate is characterised by generously proportioned detached houses set in substantial garden plots and are representative of private housing estate layouts of the 1950s and 1960s. There are no communal facilities within the neighbourhood, although the estate has always been served by a small shop at the junction of Hendra Vale and Western Road; the shop is currently part of a petrol station located at that junction. The claimed green is wholly enclosed within the triangle of the estate. The estate is also served by a Resident's Association.
19. Notwithstanding the lack of community facilities, the enclosed nature of the estate and the character of the houses found therein provide the required degree of cohesion for this housing estate to be identified as a neighbourhood for the purposes of the 2006 Act. The majority of those who gave evidence of use of the application land at the inquiry were or had been residents of the housing estate and all those who had submitted evidence questionnaires in support of the application were also residents of the estate. If the approach of Tomlinson LJ in the *Leeds Group CA* case is followed, then the Woburn housing estate would also qualify as a neighbourhood for the purposes of the 2006 Act.

Conclusion on locality and neighbourhood

20. I conclude that the Woburn housing estate as shown on the plan found in the Applicant's inquiry bundle constitutes a neighbourhood within the locality of Launceston St Mary Magdalene.

Identification of the relevant 20 year period

21. Section 15 (2) of the 2006 Act applies where there has been use of the land as of right for a period of 20 years and that use was continuing at the time of the application. The application was signed and dated on 15 June 2011 and was received by the Registration Authority on 24 June 2011. The short period of time between the completion of the application and its delivery to the Registration Authority has no material effect upon the relevant period of use to be considered. I consider that June 2011 can be taken to be the date at which the application was made. Under section 15 (2) use is considered to have continued up to the date of the application which would mean that the relevant 20-year period of use by the inhabitants of the neighbourhood would run from June 1991 to June 2011.

Use of the land for lawful sports and pastimes

22. In the case of *R v Oxfordshire County Council and Oxford Diocesan Board of Finance ex parte Sunningwell Parish Council* [2000] 1 AC 335 ('*Sunningwell*') it

was made clear that the term '*lawful sports and pastimes*' was a composite term which encompassed present day sports and pastimes and that the activities engaged in can be informal in nature; there is no requirement that the activities engaged in must be organised sports. Accordingly the term '*lawful sports and pastimes*' can include recreational walking (with or without dogs) and children's play. In the *Steed* case, Carnwath J said that dog walking and playing with children were, in modern life, the kinds of informal recreation which may be the main function of a village green.

Walking / dog walking

23. The predominant use of the application land has been for dog walking. Of the 12 witnesses who gave evidence at the inquiry, seven had walked their dog on the application land and of those five had walked their dog on the land during the relevant 20 year period. When walking her dog, Mrs Rickard noted that she would also be followed by the family cat, and Mr Tremain recalled that Father Grigg had regularly walked his cat on the land.
24. All witnesses spoke of having seen dogs being walked on the land with the numbers of dog walkers that could be observed varying throughout the day with some of the witnesses speaking of around 3 dog walkers per hour being observed.
25. Of those who walked their own dog during the relevant 20-year period, the evidence was that the dog would not necessarily be kept on a lead as Woburn Road was lightly trafficked and it was safe for a dog to run free or to chase and fetch a ball. Although four witnesses acknowledged that their use was of a linear nature, either walking over the land to cross the hedge in the south-west corner or to walk on the grass parallel to Woburn Road as an alternative to walking on the footway, the majority of those who used the land for walking their dog took no fixed track or route when on the land.
26. The Council submitted that the evidence of use in a linear manner should be discounted as it was use in the nature of a public right of way as opposed to a right of recreation. The case of *Oxfordshire County Council v Oxford City Council* [2004] Ch 253 suggests that use of a defined track to gain access to a particular location or to travel between two public highways is likely to give the appearance of use consistent with a highway. If walkers deliberately diverted from a track to carry out other recreational activities then such use may count as lawful sports and pastimes. Where the use is ambiguous the inference should be drawn as to the existence of a right which is least burdensome to the landowner. In *Oxfordshire County Council v Oxford City Council* [2006] UKHL25 the House of Lords declined to offer any further guidance on this issue but considered that each case would be determined on its own facts. Hoffman LJ considered the comments of Sullivan J in *Laing Homes* as a useful common sense approach. However it was held that recreational use of tracks could amount to recreational use of the land when considered as a whole.
27. In the *Laing Homes* case it was held that it was important to distinguish between use with or without dogs which would suggest that users were exercising a public right of way, and use which would suggest that users were indulging in lawful sports and pastimes across the whole of the land. Where there is an existing public right of way over the land and walkers or dog

walkers casually stray from the public right of way it was considered that this would not suggest to a reasonable landowner that the users were exercising a wider right than that of passing and repassing. In the *Laing Homes* case there were public rights of way on the land which had been established as a consequence of the confirmation of a definitive map modification order. It was considered that the evidence of use could not be relied upon in relation to the registration of the land as a town or village green.

28. I am not persuaded that the evidence of use given by four of the witnesses should be discounted in this case, and there are a number of factors which lead me to this conclusion. First, the nature of the application land which is an elongated and narrow strip of grass fronting on to an estate road; any use of the land will as a result of its physical dimensions be linear in nature to a greater or lesser degree. Secondly, there are no worn tracks or paths in the grass surface of the land and there are no recorded public rights of way which either cross it or are adjacent to it.
29. Thirdly, although it is possible to climb over the hedge at the south-west corner of the land and follow a worn path to reach the western end of the A30 slip road at the junction with Western Road, any reasonable person observing the use of the land as described by the witnesses is unlikely to form the view that what is being asserted by the pattern of use is use of a public right of way. The predominant use of the land, according to the oral evidence I heard was of a place to exercise and walk a dog. The physical evidence from the site does not suggest that such activity is of a fixed linear nature, nor does it involve the use of the land as a short cut or cut through between two highways. I saw people walking dogs on each of my two visits to the site and no fixed route appeared to be followed, each dog owner making his or her way over and around the land as necessity, or the dog, dictated.

Children's play

30. There is little by way of direct evidence of children playing on the application land, although many of the witnesses provided anecdotal evidence of either their own children playing on the land in the 1960s and 1970s or of personal use of the land for play as a child. Mrs Stewart for example had moved to her current address in March 1967 and her children had played on the land with children of neighbouring families; Mrs Rickard's children had played on the land with their friends from the estate during her period of residence between 1957 and 1965.
31. Mr Wagstaff's daughter had played on the land with her friends during the late 1970s and 1980s as had Mr Conway's children; it was Mr Conway's evidence that during the 1980s it had been common to see children from the estate playing on the land. Mr Stone had played football and cricket on the land with his friends as a boy and recalled his father mowing part of the grass to create a wicket. A number of witnesses stated that children returning from school would occasionally kick a ball around on the land.
32. The evidence regarding children's play was primarily anecdotal and related to the period between the late 1950s and mid 1980s. It was submitted that the absence of evidence of children's play on the land during the relevant 20-year period was a matter of demographics. When the estate had been first built it

was occupied by young families with children and whereas the children had grown and left the estate, the parents had stayed in residence. As a result the population of the estate had aged, although a number of long settled residents continued to use the land for walking their dog. It was also submitted that the demography of the estate was once again changing with more young families moving in. Mr Burford's children, for example, had been aged 11 and 8 when they moved to Woburn Road in 2004 and had used the land on a regular basis to kick a ball around and to play with a Frisbee.

Blackberrying and ancillary activities

33. This is a seasonal activity which some of the witnesses indulged in and which others had observed other residents engaged in. The bramble bushes are to be found along the southern boundary of the land adjacent to the hedge which separates the land from the A30 slip road. Mr Shadrick said that he went blackberrying in season and also picked damsons from one of the trees which had been planted within the land.
34. As part of a related pastime Mr Jeffery had collected leaves from the middle and southern edge of the land for use in the production of seasonal wreaths. He had also used the land to introduce his children to nature study.

Other activities

35. Mrs Stewart recalled that bonfire night parties had been held on the land during the 1970s although such an activity had not taken place in the last 20 years as there were fewer children on the estate. A number of witnesses recalled seeing a horse being ridden along the land on a couple of occasions each year. Mr Conway's motorcycle trainees had regularly paused for a cigarette break on the land during their training exercises which took in the right hand and left hand turns of the estate roads.

Other witness evidence regarding use for sports and pastimes

36. In addition to the oral evidence I heard, the Applicant submitted a further 13 witness statements on which reliance was placed. I acknowledge that some of these additional statements indicate that there has been no personal use of the land by the author of the statement and contains evidence of the observation of the activities of others. However, many of those who speak of seeing dog walkers on the land or of school children playing are residents of Woburn Road or Dunheved Fields whose properties over look the land and who would be in a suitable position to comment on the nature and frequency of use.
37. Although the greatest evidential weight can be placed upon the oral evidence given and tested, I can accord the remaining untested evidence some weight as it reflects and supports the oral evidence with regard to the predominant nature of the use of the land as an area on which to walk a dog, together with evidence of other limited recreational use of the land.

Conclusion on sports and pastimes

38. I conclude that the evidence of use I heard from the witnesses was evidence of use of the land for those lawful sports and pastimes identified in the *Steed* case and endorsed by Hoffman LJ in *Sunningwell* as being the kind of informal recreation engaged in on a modern town or village green.

Whether user has been interrupted

39. There is no evidence before me to suggest that the current owners of the land or their predecessors in title have taken any action to interrupt access to the land. The evidence is that since the Woburn Estate Company developed the estate between the 1950s and the 1970s access to the land was open and unrestricted. Furthermore, the evidence before me is that during the relevant 20-year period no attempt was made by North Cornwall District Council or Cornwall Council to fence the land or otherwise prevent access to it.
40. I conclude that the use of the land has not been interrupted during the relevant 20-year period.

Whether user has been as of right

41. Use as of right is use which is without force, without secrecy and without permission. It was not claimed or suggested by the Council that the use described by the witnesses was forcible, secretive or that permission had been given by the Woburn Estate Company or its successors in title.
42. The land is currently open to Woburn Road and by all accounts has been so since the development of the estate in the late 1950s. The evidence of use is that it takes place at all times in full view of any landowner who wishes to look, and that permission to access the land has never been sought by or given to the users. There is no evidence that signs have ever been erected on the land to prohibit access to, or use of, the land. I conclude that the use of the land for lawful sports and pastimes was use as of right.

Whether there has been use by a significant number of inhabitants of the neighbourhood within the locality

43. Although I have concluded that use of the application land has been use as of right, the further test to be satisfied under section 15 of the 2006 Act is whether use has been made of the land by a significant number of the inhabitants of the neighbourhood.
44. It was the Council's case that the oral and written evidence submitted did not demonstrate this. In the Council's analysis there were 147 dwellings within the claimed neighbourhood and yet the Applicant had only submitted evidence from 11 witnesses who could speak to personal use of the land during the relevant period and of those there were only 4 individuals who claimed to have used the land throughout the relevant 20-year period. Mr Jones had calculated that these 11 individuals equated to 8% of the population of the neighbourhood.
45. For the Applicant, Mr O'Brien placed reliance upon the findings of Sullivan J in *R (McAlpine Homes Ltd) v Staffordshire County Council* [2002] 2 PLR 1 in which it was held that the use had to be sufficient to indicate that use of the land signifies that it is in general use by members of the local community for informal recreation rather than occasional use by individuals as trespassers. In Mr O'Brien's submission, when the evidence of use was considered as a whole it was sufficient to satisfy the section 15 (2) test.
46. I am unaware of any authority that directs that all those who claim to have used the land must have done so for the whole of the relevant 20-year period.

My understanding is that what is required is that collectively the evidence of use demonstrates that there has been use throughout the period without any breaks in that use. Although only four of those who provided witness statements could speak of use throughout the period 1991 to 2011, the evidence of the others is that the land had been widely used by the public throughout that period.

47. I acknowledge that a number of witnesses at the inquiry and a number of those who gave written evidence but who did not appear had no personal use of the land. What those individuals gave evidence about was the extent of use which could be seen by those who cared to look during the relevant 20-year period. Those witnesses state that dog walking was frequently to be observed on the land at all times of the day and that other activities identified above had also been observed. Although this is only indirect evidence of use, many of those who gave such evidence are residents of the estate who would have had occasion to pass the land on a regular basis if their house did not have a direct view of the land. The observations of use by these witnesses reflect and support those made by users of the land who appeared at the inquiry.
48. Mr Jones stated that in the course of his duties for North Cornwall District Council and for Cornwall Council he had had occasion to visit the site around 8 or 9 times per year since 2010 but only around 3 times per year prior to that date; he had noted some dog walking activity taking place on the land on some of his visits. Whilst Mr Jones' limited number of visits and limited observations of use may not have alerted him to the extent of use of the land, an assessment of the extent of the user has to be made not from the point of view of an absentee landowner (as the Council can be regarded) but how use would have appeared to a landowner who was on the spot.
49. The evidence before me is that use of the land was there for a reasonably alert landowner to observe and was of the same extent and duration that residents and users alike had observed and on which they gave evidence. The extent of use would have been such to alert a reasonable landowner that what was being asserted was a right of recreation over the land and not merely a right of way. That North Cornwall District Council was aware that the land was being used for dog walking can be inferred from the fact that it had installed a dog waste collection bin on the land⁴.
50. Those witnesses I heard from were or had been resident on the estate and had used the land for the purposes of recreation. Of the observed use of the land by others, it was acknowledged that there was some use of the land for dog walking by residents of nearby St John's; however, some of the witnesses said that they recognised other users as being residents on the Woburn estate or knew the users by face although not necessarily by name. Mrs Judd stated that during her time as a resident she knew that a significant proportion of those on the estate who kept a dog used the land to exercise their pet; it seemed to Mr Wagstaff that everyone on the estate who owned a dog went on to the land with it.

⁴ The dog waste collection bin is shown in the photographs in the Applicant's bundle taken in 2010 and has subsequently been replaced with a conventional litter bin.

51. It would have been fortuitous for the witnesses at the inquiry to have been able to positively identify each of the dog walkers they had seen on the land as being a resident of the estate. However whilst acknowledging that there will have been some use by persons not resident within the neighbourhood, I consider it more probable than not that of those who did use the land for dog walking, a substantial proportion would have come from the Woburn housing estate. A number of factors lead me to this conclusion; first, the land is an easily accessible open space within the boundaries of the estate; secondly, those people observed walking their dogs early in the morning or late at night are unlikely to have travelled from outside the area to walk their dog at those times; finally, there is no evidence that dog walkers arrived at the land by car which suggests that those who used the land lived very close by.
52. In my view, the evidence of use in this case is sufficient to signify that the application land was in general use by members of the neighbourhood for informal recreation and is sufficient to satisfy the test set out in section 15 (2) of the 2006 Act.

Conclusions

53. I conclude that, on a balance of probabilities, there has been use of the application land for lawful sports and pastimes as of right for a period of not less than 20 years prior to June 2011 by a significant number of the inhabitants of Woburn, a neighbourhood within the locality of the ecclesiastical parish of Launceston St Mary Magdalene.
54. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the application should be granted.

Formal Decision

55. The application is granted and the land shown coloured green on the plan attached to the application dated 15 June 2011 shall be added to the register of commons and town or village greens.

Alan Beckett

INSPECTOR

APPEARANCES

For the Applicant (Mr Philip Wagstaff on behalf of the Woburn Resident's Association)

Mr P V O'Brien Launceston

Who called:

Mrs R E Bawden	Woburn
Mr D W Burford	Woburn
Mr J C Conway	St Stephens
Mrs M E Hills	Woburn
Mr P Jeffery	Woburn
Miss J M Judd	Launceston
Mrs S J Rickard	St Stephens
Mr D A Shadrick	Woburn
Mrs B A Stewart	Woburn
Mrs D M Stone	Woburn
Mr R L Tremain	Park View
Mr P E Wagstaff	Woburn

For the Objector (Cornwall Council)

Miss V Davis Legal Officer, Cornwall Council, Council Offices,
Dolcoath Avenue, Camborne, Cornwall, TR14 8SX.

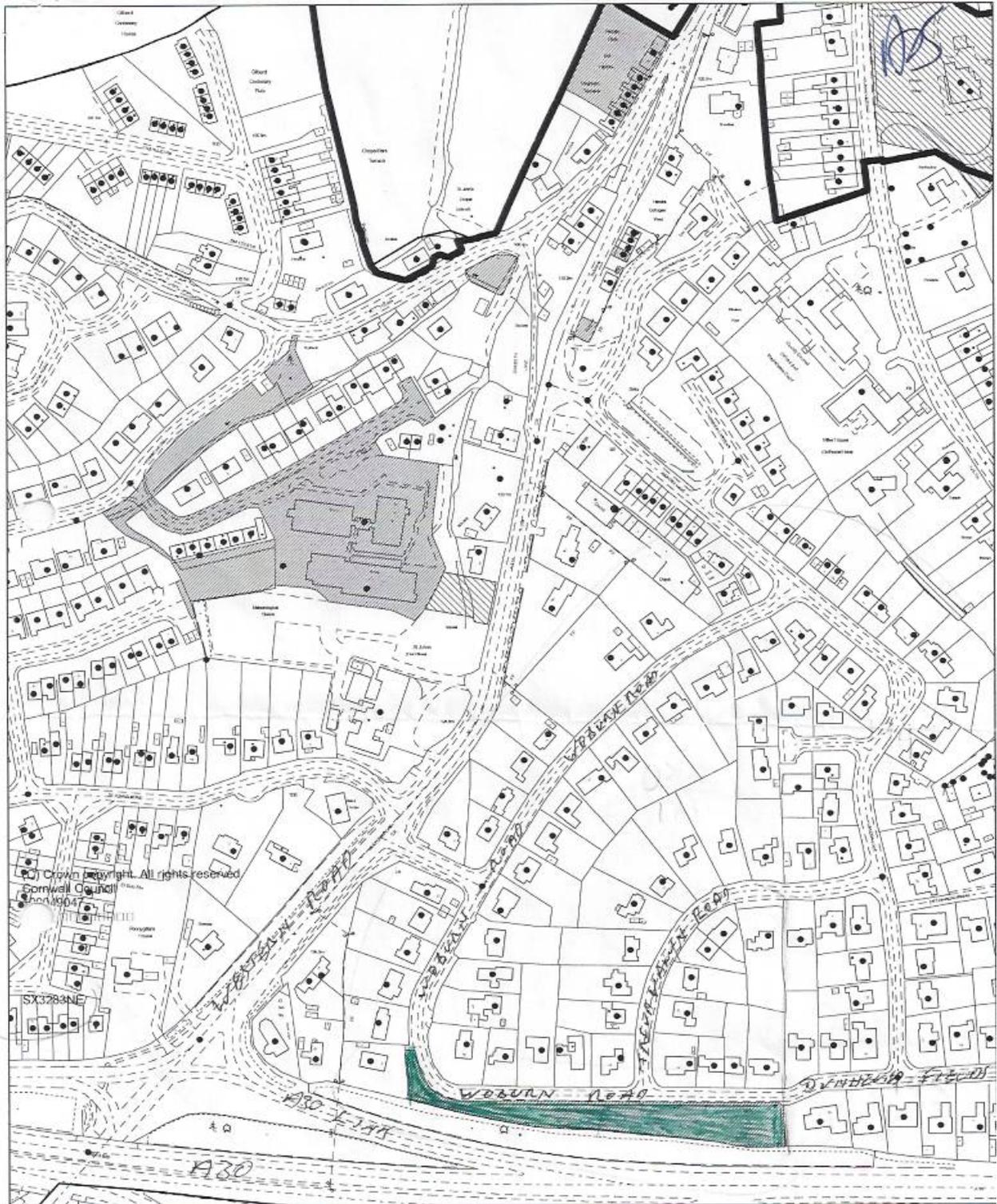
Who called:

Mr P Jones Valuer, Cornwall Council, Caradon Enterprise
Centre, 1 Holman Road, Liskeard Business Park,
Liskeard, Cornwall, PL14 3UT.

Inquiry documents:

1. Plan of the full extent of the ecclesiastical parish of Launceston St Mary Magdalene.
2. Covering letter attached to a petition against proposed housing development on the application land dated 27 March 2011.
3. Photographs of the land taken in 2010.

APPENDIX 1



COLOURED GREEN ON MAP
WOBURN GREEN

J.A. Shadrick J.A. SHADRICK
P.E. Warstaff P.E. WARSTAFF

LANCINGTON SOUTH

Scale: 1:2500

User:

20/04/2011