

PARK WOOD

Our reasons for the decision:

1 Review Decision

- 1.1 On 17 February 2015 I conducted an oral review hearing into the listing of land known as Park Wood, Ragged Hall Lane, St Albans as an Asset of Community Value. The land was listed by St Albans City and District Council under a notice dated 9 April 2014. By a letter dated 9 November 2014 Jan Molyneux of Molyneux Planning acting for the owner of the land, CP Holdings Limited (CP Holdings), requested a review of the Council's decision pursuant to Schedule 2 paragraph 1(1) of the Assets of Community Value (England) Regulations 2012. Ms Molyneux requested an oral hearing. Subsequent to the Hearing I invited written submissions from the parties concerning a Decision dated 16 April 2015 by the First-Tier Tribunal (Case reference CR/2014/0018) regarding an Asset of Community Value Appeal Hearing into the listing of Bedmond Lane Field, St Albans as an Asset of Community Value.

2 The Evidence

- 2.1 At the Hearing I received oral and written representations from Ms Jan Molyneux on behalf of CP Holdings, from Ms Debbi White, Property and Asset Manager, on behalf of St Albans City and District Council (the Council) and from Parish Councillor John Bell, on behalf of St Stephen Parish Council (who nominated the land for listing).
- 2.2 I also heard oral evidence from Mr Robin Winward, Group Property Manager, CP Holdings. He produced a written statement and a number of attachments including a plan of the woodland purchased by CP Holdings, details of the company's woodland management operations, details re signage and a statement and report by Tilhill Forestry.
- 2.3 I also had before me a statement by Ms Debbi White, various photographs of Park Wood taken by Ms Debbi White and Ms Lyn Henny, Asset Management Surveyor for the Council and photographs produced by CP Holdings. I also had before me an agenda for the review hearing dated 24 November 2014 comprising 236 pages (the 'Main Agenda'). The agenda included extracts from the Localism Act 2011, the Asset of Community Value (England) Regulations 2012. The listing nominations submitted by the Parish Council dated 19 July 2013 and accompanying plan. I also had before me a supplemental agenda dated 27 January 2015 (the 'Supplemental Agenda') which included evidence submitted on behalf of St Stephen Parish Council which included extracts from leaflets published by Chiswell Green Residents' Association entitled 'CHISCHAT' between 1993

and 2007 and statements by Mr and Mrs O'Brien, Mr and Mrs White, Mr and Mrs Gibbard, Mr and Mrs Day and an email from Cllr John Bell. I also had before me a copy of a witness statement by Miss Mandy Floyd. The supplemental agenda also included photographs submitted by the landowner CP Holdings which included their comments on the written evidence submitted by St Stephen Parish Council.

- 2.4 I was also provided with copies of the First Tier Tribunal decisions numbered CR/2013/0010 concerning an appeal by Firoka (Oxford United Stadium) Limited and CR/2014/0005 concerning an appeal by Worthy Developments Limited. I was also given copies of dictionary definitions of the word 'ancillary'. I also received a copy extract of the minutes of St Stephen Parish Council held on 20 November 2014 and a plan showing the position of St Julian's Wood and Black Green Wood which was submitted on behalf of CP Holdings.
- 2.5 I was accompanied at the hearing by Cllr Julian Daly, Council Leader and Portfolio Holder for Planning and Conservation. I am delegated by the Council in consultation with Cllr Daly to consider and determine requests for reviews of Council decisions to list land as an asset of community value. Notes of the hearing on 17 February 2015 are attached as Appendix 4 to my decision. The notes summarise the submissions and evidence given at the hearing. The hearing was held in public.
- 2.6 Park Wood has been entered into the assets of community value maintained by the Council. The reasons given for the decision to list are as follows: "The area is woodland with no restriction to public access. There are wide vehicular tracks (with barriers to vehicular access) and smaller pedestrian paths. There is a definitive right of way at the very edge of the wood. A notice at one of the entrances gives users information regarding tree works. This appears to indicate that the owner acknowledges people will be walking through the land." The land was entered on to the list for 5 years from 28 March 2014. The decision notice and location plan are contained at paragraphs 123-125 of the agenda dated 24 November 2014.
- 2.7 The Hearing was originally scheduled to be heard on 24 November 2014. However, the 24 November 2014 meeting was adjourned until 17 February 2015 to enable CP Holdings to consider evidence submitted on 24 November. Notes of the Review Hearing on 24 November are attached as Appendix 5.
- 2.8 Section 88 (1) of the Localism Act 2011 provides that a building or other land in a local authority's area meets the criteria for listing if in the opinion of the authority (a) an actual current use of the building or other land that is not ancillary use furthers the social wellbeing or social interests of the local community, and (b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.

- 2.9 Section 89 (1) provides that land in local authorities area which is of community value may be included by a local authority in its lists of assets of community value only
- (a) in response to a community nomination or
 - (b) where permitted by regulations made by the appropriate authority.
- Section 89 (2) provides that a community nomination means a nomination which (a) nominates land in the local authorities area for inclusion in the local authority's list of assets of community value and (b) (iii) is made by a person that is a voluntary or community body with a local connection.
- 2.10 The Assets of Community Value (England) Regulations 2012 provide a definition of a local connection for the purposes of Section 89 (2) (b)(iii). These regulations provide that a Parish Council has a local connection with land in another Parish Council's area if any part of the boundary of the first Council's area is also part of the boundary of the other Council's area. Regulation 5 of the 2012 Regulations provides that a Parish Council is included in the definition of a voluntary or community body. Park Wood is situated within the boundary of St Michael's Parish Council. However, St Michael Parish Council and St Stephen Parish Council share a common boundary. I am satisfied that the nomination submitted by St Stephen Parish Council was valid because St Stephen Parish Council met the definition of a voluntary or community body with a local connection even though Park Wood is situated outside of their Parish boundary.

3 The Council's original Decision Maker's Evidence

- 3.1 Ms Debbi White, the Council's Property and Asset Manager who made the decision to list the land stated that she had inspected the site which could be accessed from the adjoining public highway at Ragged Hall Lane. Ms White took photographs of the wood. She said that there were no fences preventing public access, although there was a gate preventing vehicular access. Ms White said that she had not seen any signs suggesting the land was private. Ms White said that there was evidence of a sign stating that tree works were taking place, but this sign was damaged and could not be read clearly. Ms White said she could see desire lines, but there were no wayfarer signs. Ms White also referred to a set of photographs taken by Ms Lyn Henny which did show signs stating 'private' high up in the trees. Ms White said that based on the evidence it was reasonable to conclude that Park Wood was used as a community asset. Ms White confirmed that her decision to list was set out at pages 123-125 of the agenda. Ms White also stated that there was a public footpath to the right of Park Wood.
- 3.2 Ms White was questioned by Ms Molyneux on behalf of CP Holdings. Ms Molyneux asked Ms White whether there were any differences between Scrubbs Wood and Park Wood. Ms White said that there was clear evidence of vehicular access to Park Wood. Ms White agreed with Ms

Molyneux that there was a locked gate to the entrance of the wood and that the woodland is a pine wood with broad routes that could be driven over. Ms White agreed that there was a public right of way to the right of the wood which previously crossed the former M10 (now the A414). In answer to the questions Ms White said that she had not seen any signs and therefore she assumed that there were none. Ms White also commented that a sign shown by the locked gate in the photographs taken by Ms Lyn Henny was not there at the time of her original inspection. Ms White also said that on her second inspection of the photograph she could see a torn down sign on the tree.

- 3.3 Ms Molyneux asked Ms White whether she acknowledged that trespass had occurred. Ms White said that she did not accept that trespass had occurred. Ms Molyneux asked whether Ms White had any evidence to justify her remarks. Ms White answered that she relied on evidence from Cllr Bell and the other witnesses.
- 3.4 Cllr Bell asked Ms White whether Park Wood was more accessible to the local community than Scrubbs Wood. Ms White said that there was little difference, but that Park Wood was slightly closer. Cllr Bell asked Ms White whether there were any barriers which prevented walkers from entering the wood. Ms White replied that she did not see any and that there were entrances to the woodland which were clearly pedestrian entrances. Cllr Bell asked whether these entrances looked reasonably well used and Ms White agreed. Cllr Bell asked whether the sign on the trees stating that the woodland is private implied that although individuals have no rights, entrance itself was not being inhibited. Ms White replied that she could not judge this.
- 3.5 In answer to a question by Cllr Daly, Ms White clarified that she had walked part of the way into Park Wood. Cllr Daly asked Ms White on her comments on tracks seen inside the wood. Ms White replied that she had taken photographs at various points along the track which showed visible desire lines. I asked Ms White what use the community made of Park Wood. Ms White replied that they used it for leisure purposes such as walking and dog walking. I asked whether Ms White had seen anyone in the wood during her visit. Ms White said that she could not recall doing so.

4 The owner's, CP Holdings', evidence

- 4.1 Ms Molyneux stated that Park Wood was different from Scrubbs Wood because it was a commercial woodland used to grow wood for timber. It was not subject to a TPO. Ms Molyneux stated that when works were being carried out signs were erected. The existence of these signs did not however acknowledge any right of way. Ms Molyneux asserted that the listing of Park Wood as an Asset of Community Value is inappropriate. She said that the application by St Stephen Parish Council was not

- properly submitted. Ms Molyneux noted that Park Wood is situated in St Michael's Parish Council area and not St Stephen Parish Council area.
- 4.2 Ms Molyneux called Mr Robin Winward, Group Property Manager for CP Holdings to give evidence. Mr Winward referred to reports on the operation of the woodland at pages 142-179 of the agenda. These reports describe the area as commercial woodland. It is standard practice to put native trees on the outside of the woodland. Fencing had been erected, but these had disappeared. Instead a bund had been erected. The remains of the bund can be seen in the photograph taken by Ms Lyn Henny showing the gate. He said that CP Holdings had attempted to restrict public access to the woodland. Mr Winward drew attention to the comment by Tilhill Forest manager, Kasten Harris, at pages 184-185. Mr Winward stated that no sign had been erected that would suggest that there was a public right of way through the wood.
- 4.3 Validity of the Application
Ms Judith Adamson, Regulatory Solicitor, explained that under the 2012 Regulations there was no requirement for a nominating group to submit a plan with their application. Although the Council currently specified a plan was to be included, it did not do so at the time of the Parish Council's application. In answer to a question from me, Ms Adamson confirmed that the Parish Council's application met the criteria. The plan at page 125 (of the agenda) had been included by the Council so that the decision notice showed the land in question. Ms Molyneux commented that on 7 March 2014 (see page 122 of the agenda) the Council stated that the plan did not meet the minimum criteria. Ms Adamson replied that when the initial set of applications had been received there was no plan specification criteria in place.
- 4.4 Ms White drew Mr Winward's attention to the photograph of a post at page 209 of the agenda which she claimed could possibly have held a wayfinder sign. Ms White asked for Mr Winward's comments. Mr Winward replied that there was no evidence of any wayfinder sign at Park Wood. Ms White asked Mr Winward why CP Holdings had not erected a fence round Park Wood as some landowners had erected fencing. Mr Winward replied that they had fenced the land, but that the fencing had been removed by unknown third parties. Instead bunds had been constructed, but they too had been levelled. Mr Winward added that it was not economically viable to continuously replace the fence. Cllr Bell commented that he had never seen a fence along the border of Park Wood. Mr Winward replied that there is a wooden and metal fence between the public footpath to the East of the site and Park Wood. Cllr Bell drew Mr Winward's attention to the many dotted lines through Park Wood shown on the plan at page 142 of the agenda. Cllr Bell suggested that it was not unreasonable to interpret these lines as permissible routes. Mr Winward replied that there were no rights of way through Park Wood.

He referred Cllr Bell to the description of the woodland when it was marketed by the Gorhambury Estate at page 141 of the agenda. This described rights of way at Park Wood reserved to the Forestry Commission as shown on the sale plan by a broken line. Cllr Bell commented that St Stephen Parish Council had the right to make an application to list as an asset of community value and that the wood is even closer to the Parish than Scrubbs Wood. Ms Molyneux replied that she had no further comments. Cllr Daly then asked whether anyone had permission to access Park Wood. Mr Winward replied that no-one had any rights of access to the wood. I drew attention to the reference at page 196 of the agenda in the report from Tilhill Forestry that compartment 9 had a permissive footpath sign indicating the general public are invited to walk. Ms Molyneux clarified that this statement referred to Scrubbs Wood.

5 Evidence on behalf of the nominating group, St Stephen Parish Council

- 5.1 Cllr Bell presented the case for St Stephen Parish Council. He said that Park Wood serves a local area, particularly Chiswell Green. Cllr Bell referred to the evidence of use submitted on behalf of the Parish Council at pages 12-27 of the supplemental agenda dated 27 January 2015. Cllr Bell drew attention to the leaflets produced by the Chiswell Green Residents' Association which refers to walks through the wood, litter picking and bluebell walks. Cllr Bell stated that he had not heard of any cases of interference with the timber management and that residents and the owner worked together without affecting the wood. He stated that the pine forest in Park Wood is clearly commercial and that the area around the woodland consists of mainly deciduous trees. Cllr Bell pointed out that there was a new footpath at the entrance of the woodland. Cllr Bell explained that the local community enjoy the wood and have applied for it to be listed so that they would be able to purchase the wood should it come up for sale. Cllr Bell also asked the hearing to take into account the oral evidence given by Mr Jim White at the hearing into the Scrubbs Wood listing. He said that Mr White's evidence also applied to Park Wood.
- 5.2 Questions were put to Cllr Bell on behalf of CP Holdings and the Council. The questions and answers are recorded in the meeting notes. Ms Molyneux asked Cllr Bell to confirm that Park Wood is a commercial wood and that there are no public rights of way through it. Cllr Bell confirmed that this was the case. Ms Molyneux then asked Cllr Bell whether the paths in Park Wood are of the type to be expected in a commercial wood which Cllr Bell confirmed. Ms Molyneux stated the paths were for vehicles and not for people to walk upon. Cllr Bell replied that the paths are not particularly wide. Ms Molyneux commented that where an area of woodland is felled the paths are opened up again.

- 5.3 Ms Molyneux asked Cllr Bell whether he had seen any signs referring to access to the wood. Cllr Bell replied that the first signs he was aware of were those which had recently been erected. Ms Molyneux asked Cllr Bell whether he had considered the community's use of the wood to be ancillary to its commercial purpose. Cllr Bell replied that more time was spent in the wood enjoying it for leisure purposes than for cutting down trees for timber. Mr Winward then asked if the wood was being used extensively for walking. No residents reported the recent group who have been found camping in the wood. Cllr Bell commented that he was not aware of this incident. Mr Winward explained that the company had to evict 25 people from the wood and that if the local community were using the wood they should have noticed this. Mr Winward went on to say that he regularly visits Park Wood and does not see many local residents. Cllr Bell explained that there are fewer local residents that visit the wood during the day. He suggested that if Mr Winward visited the wood in the evening and at weekends there would be more locals.
- 5.4 Ms Molyneux referred to the statement of Miss Mandy Floyd. She asked Cllr Bell whether he had seen any signs welcoming people to Park Wood. Cllr Bell replied that he had not. Ms Molyneux then asked whether any of the evidence from the CHISCHAT newsletter related specifically to Park Wood. Cllr Bell replied that the newsletter related to both woods. Ms Molyneux asked Cllr Bell to confirm that as far as he was aware the land was being used without the landowner's consent. Cllr Bell confirmed this.
- 5.5 Ms White referred Mr Bell to the letter dated 1 December 2014 from Mr and Mrs J White at page 20 of the supplemental agenda. She noted that in his letter, Mr White said that he had used the wood before its purchase by CP Holdings and also mentioned that the Forestry Commission had allowed people to walk in the wood. Cllr Bell replied that the footpaths were still used. Ms White noted that there were no public rights of way in Park Wood. She asked Cllr Bell whether he believed that the public use of the paths gave them permissive rights. Cllr Bell replied that it had not been considered, but that given how long the paths had been used, perhaps this was the case. Ms White referred Mr Bell to his discussion with CP Holdings in 2009 when the signs went up. She asked whether these discussions with CP Holdings also applied to Park Wood. Cllr Bell confirmed that it did. Ms White asked Cllr Bell to confirm that an employee of CP Holdings had led him to believe that the company would not take action against people using the wood. Cllr Bell confirmed that this was the case.
- 5.6 Cllr Daly asked Cllr Bell whether he considered the public's access to the wood was an ancillary use, or a social use. Cllr Bell replied he believed it to be the latter. I then sought clarification from Ms Adamson as to the test for ancillary use and whether any official guidance had been issued. Ms Adamson stated that there was no definition in the Localism Act of the term ancillary and she could find no guidance on the point from the Department of Communities and Local Government. Ms Adamson referred to the First

Tribunal decision in the case of Worthy Developments Limited v Forest of Dean District Council and the save our Sun Committee (Tribunal reference CR/2014/0005). This case concerned a local authority listing of a former pub known as 'The Rising Sun' at Woodcroft outside Chepstow. The pub had closed its doors around February 2012. Before its closure it had served the local community, as well as visitors to the area, as a pub. It had also been used as a meeting place by groups such as the Womens' Institute and the Parent Teachers' Association. Worthy Developments Limited appealed the review decision to the tribunal. They had submitted that in order to meet the 'past' condition in section 88 (2)(a) of the Localism Act. The community use must necessarily be a substantial amount of the recent past. Judge Warren had rejected the submission commenting that no doubt trivial or very temporary use will be disregarded as ancillary to a main use but there was no warrant for reading the words 'substantial amount' into the Statute. Ms Adamson also noted that the term ancillary was also briefly referred to in the tribunal decision of Firoka (Oxford United Stadium) and Firoka (Oxford) Limited v Oxford City Council (Tribunal reference CR/2013/0010). This case concerned a decision by Oxford City Council to list the Kassam Stadium as an asset of community value. The stadium stood along three sides of the pitch. The East and South stands were built with substantial floor space behind them. The space behind the East stand was void. The South stand space was fitted out for conferences and hospitality. On match days the space was used by Oxford United FC. The rest of the time Firoka hired out the facilities bringing in just short of £500,000 on room hire alone. London Welsh Rugby Club also played at the stadium. Firoka derived about 35% of stadium revenue from Oxford United FC and about 65% from London Welsh and other activities. Firoka submitted that the Localism Act should be applied in respect of any planning unit only in respect of the primary use of that unit. Judge Warren rejected their contention saying that concepts such as "the planning unit" should not be imported; nor should they be allowed to restrict the Act to "primary use", words which, if intended, could so easily have been used. The Judge accepted that in making decisions under the Act the Local Authorities and Tribunals may have to draw lines; but such judgments should be made by applying the words actually used by Parliament to the actualities of the individual case. Judge Warren stated that if the Kassam Stadium was to fall within the definition of land of community value the condition in Section 88(1)(a) had to be met. He said that this condition referred to "an actual current use of the building or of the land that is not an ancillary use furthers the social well-being or social interests of the local community". The Judge then considered whether the use of the stadium as a home ground for Oxford United FC was an ancillary use. He stated that there are only about 25 match days a year. In his judgment, however, the cultural recreational and sporting interests extend wider than the hour and a half for which men play a game of football. The Judge said that the existence of a home town club linked to the use of its home ground fosters community pride and stimulates

daily conversations in pubs, workplaces and on-line. He concluded that the condition in section 88(1)(a) was satisfied. Ms Adamson also produced several dictionary definitions of the word ancillary. These definitions included “providing necessary support to the primary activities or operation of an organisation, system etc”. Also “something that functions in a supplementary or supporting role”.

6 Final submissions

- 6.1 Ms White submitted that she had based her decision on the evidence seen on site. She did not believe that the landowner had attempted to prevent public use of the land. There was a reasonable prospect that the community use of the land would continue. With regard to the contention on behalf of CP Holdings that the community use was an ancillary use, Ms White considered that the use is not ancillary because there are two primary uses in this case; one which is commercial and the other social. Ms White gave an example of an ancillary use at the wood as people gathering pieces of wood. Cllr Bell, on behalf of the Parish Council, submitted that the local community were concerned that Park Wood might go in the same direction as Black Green Wood. He said there was no reason for Park Wood not to continue as a commercial enterprise. He said that the community used the wood as a nature reserve and as a pleasant place for walking. The community had no interest in taking over the land. He hoped that CP Holdings would continue to allow the community to continue to use the wood.
- 6.2 Ms Molyneux referred to the conclusions of CP Holdings statement at page 138 of the agenda. Ms Molyneux stated that there was not a community right to buy the land, but only a right to bid. She said that the listing of the land as an asset of community value was not the right decision since it is a commercial woodland with no public rights of way and tracks which were established when the Forestry Commission planted the land. Ms Molyneux stated that there was no evidence of any rights of way in Park Wood. She expressed surprise that Ms White had not seen the signs in the woodland on her inspection. Ms Molyneux stated that the landowner was actively maintaining the privacy of the land and that St Stephen Parish Council was not the relevant Parish Council to make the application for listing.
- 6.3 Ms Molyneux then made several points which she said were relevant to both Scrubbs Wood and Park Wood. She noted that the application to list both woods had arisen as a result of the Localism Act which had prompted St Albans Council to alert St Stephen Council of the existence of the procedure. Ms Molyneux said had this not been the case an application would not have been submitted and the woods would not have been listed. Ms Molyneux also noted that Council officers had considered the plans attached to the listing applications were inaccurate which should be a fundamental part of the application. Ms Molyneux stated that there were

signs in Park Wood. On the question of ancillary use Ms Molyneux submitted that the use by residents of the footpaths in the wood was an ancillary use. It was therefore not an appropriate basis for applying for the wood to be listed as an asset of community value.

- 6.4 I asked Ms Molyneux whether she was submitting that trespass has occurred in both woods. Ms Molyneux confirmed that this was her submission. I asked Ms Molyneux about Cllr Bell's evidence of a conversation with a CP Holdings employee, Mr Mitchell, in 2009. Ms Molyneux stated that she had been working with CP Holdings since 1989 and did not know of a Mr Mitchell. Ms Molyneux also suggested that his authority to act on behalf of CP Holding is not clear.
- 6.5 I then formally closed both hearings at 15.22hrs.

7 My decision

7.1 I am reviewing the decision of Ms Debbi White dated 9 April 2014 to list Park Wood as an Asset of Community Value pursuant to Section 88 (1) of the Act, though I add that I have not confined myself to a 'judicial review' form of assessment. Instead, I have approached this matter with an open mind and reconsidered the merits myself based on all the available evidence and submissions. In particular, I have carefully considered the evidence and submissions presented to me by Ms White as the original decision taker, by Cllr Bell on behalf of St Stephen Parish Council and by Ms Molyneux on behalf of the landowner, CP Holdings Limited. I set out below a summary of the evidence given at the Hearing as to the use of the land.

- 7.1.1 Pages 117-121 and pages 222-226 of the Main Agenda - St Stephen Parish Council say that Park Wood has always been accessible to local residents by the permission of the owners. They say that the wood contains a good mix of fauna and flora with a particularly good display of bluebells in the Spring and that the numerous footpaths allow this amenity to be enjoyed to the full.
- 7.1.2 Pages 12-26 (Supplemental Agenda) - Further evidence was submitted on behalf of the Parish Council including photographs showing bluebells and pathways through Park Wood, extracts from Chiswell Green Residents' Association Newsletters and witness statements from local residents. Also contained in the Supplemental Agenda are photographs of Park Wood provided by CP Holdings (see pages 3-7), comments on the written evidence received by the Council during or after the Hearing on 24 November 2014. At page 28 there is a location plan which shows the position of Park Wood, boundaries of St Stephen Parish Council and the residential area of Chiswell Green.
- 7.1.3 Pages 122-125 – Evidence given by Ms Debbi White, Property and Asset Manager, who notes that there is a gated vehicular access point, but there are clear, well-used pedestrian routes in the wood and there are no fences preventing the public gaining access to the woods from Ragged

Hall Lane. In her Decision Notice dated 9 April 2014, Ms White gives the following reasons for including Park Wood in the listings of Assets of Community Value: "The area is woodland with no restriction to public access. There are wide vehicular tracks (with barriers to vehicular access) and smaller pedestrian paths. There is a definitive right of way at the edge of the wood. A notice at one of the entrances gives users information regarding tree works. This appears to indicate that the owner acknowledges people will be walking through the land".

7.1.4 Written witness statements by Mr and Mrs O'Brien of [REDACTED], [REDACTED] Mr and Mrs J White of [REDACTED] [REDACTED], Mr and Mrs Gibbard of [REDACTED], Mr Hugh Day of [REDACTED] [REDACTED] and from Miss Mandy Floyd of [REDACTED] [REDACTED]. In their statements the residents refer to the use of Park Wood by the local community. In their letter dated 3 December Mr O'Brien states that he and his wife derive great pleasure from walking through the wood at all times of the year and regularly see others jogging, cycling, riding horses or just walking through. He says that during the bluebell season large numbers of people come from the local area and from further afield to enjoy a natural spectacle. Mr O'Brien says that he is a keen bird watcher and that the woodland provides him with a miniature nature reserve. He comments that red kites, buzzards and tawny owls regularly nest and roost in the woods. Mr White states that Park Wood is approximately 200 yards from their property and that he and his wife have walked their dogs in the woods at least twice a day for 39 years. He says that Park Wood has an extensive network of footpaths which are used regularly by much of the local community and that there is an unofficial footpath established on dormant farmland between Ragged Hall lane and Park Wood which is used for daily access to Park Wood. Mr White also comments that many families and photographers use the woods, particularly when the bluebells are in flower and that one of the regular users of Park Wood has placed three small gnomes around the wood for the children to spot. He says that we are lucky that the owners of these woods have allowed us access. Mr and Mrs Gibbard, in an undated letter, say that they have lived in Chiswell Green for over 40 years and in Ragged Hall Lane for the past 20 years. They say that during this time they have often used Park Wood along with others for general walks and in particular dog walking. They observed that recreational horse riders frequently use Park Wood and that Monkjack deer can be frequently spotted during a visit. Mr Day in a letter dated 24 November 2014 states that he has used the woods for recreational walking and exercising his dogs for over 30 years. Miss Mandy Floyd of [REDACTED], in a letter dated 21 November 2014, says that she has walked in the woods for 32 years, along with many other dog walkers in the area. She comments that the woods are well-kept and are particularly beautiful when the bluebells are out. She

states that she is very grateful to the owners for allowing access so that they can enjoy the local nature. Please see witness statements at pages 19-24 of the Supplemental Agenda.

- 7.1.5 Ms Debbi White produced various photographs of Park Wood which included a photograph of signs within the wood saying 'Private Woodland No Right of Access'. The photographs also showed a number of pathways running between the trees. There was also a photograph containing a faded notice showing a sign headed 'Potters Crouch Woodland Management' from Tilhill giving notice of woodland operations. Ms Debbi White's photographs also showed that Park Wood was easily accessible from Ragged Hall Lane, although at one point there was a metal entrance gate to restrict vehicular access. The plan attached to the listing notice at page 125 of the Main Agenda appears to show a number of paths criss-crossing the wood.
- 7.1.6 Ms Molyneux, on behalf of the owner, submitted a statement at pages 127-132 of the Main Agenda. She stated that Park Wood is an area of 47.3 acres of mature woodland under professional management as a timber crop. It has been in the ownership of CP Holdings Limited since 1982 and has been managed as a woodland throughout that time. Ms Molyneux stated that there were no public rights of way through the woodland and that there were signs at the edges of the woodland stating that the land is private and there is no public access. She stated the reasons for nomination failed to acknowledge the presence of the signs. Ms Molyneux explained that the vehicle barriers are opened by the landowners and the woodland management company when substantial machinery is brought onto the land to allow commercial felling. The tracks through the woodland were created by this machinery and their existence is an indication of the level of woodland management. The public right of way skirts the woodland. She states that the notice relating to timber work is a warning to those who have legitimate, private business within the woodland on behalf of the company and cannot be considered to acknowledge any right of way. Ms Molyneux states that Park Wood is a longstanding woodland being managed as a timber asset which does not serve a social interests purpose and does not meet the criteria as a listing of an Asset of Community Value. Moreover, Ms Molyneux states that Park Wood is remote from St Stephen Parish and access is via a narrow road which does not have a footpath. She points out that the right of way immediately adjacent to the wood does not provide a right of way into the wood.
- 7.1.7 In her evidence at the Hearing on 17 February, Ms Molyneux stated that Park Wood is different to Scrubbs Wood because it is a commercial woodland used to grow wood for timber. She stated that unlike Scrubbs Wood it is not covered by a TPO. Ms Molyneux contended that the use by the residents of the footpaths in the wood was an ancillary use and it was not an appropriate basis for applying for the wood to be listed as an

Asset of Community Value. She also submitted that Residents' use at Park Wood was undertaken without the consent of the landowner and that all the activities described by Cllr Bell on behalf of the Parish Council amount to trespass onto private land. She stated that the activities described by the local residents were undertaken by a limited section of the community. The reference in Mr and Mrs White's evidence to an unofficial footpath from Chiswell Green to Park Wood was not clear, but is assumed to refer to a permissive path intended to link the path around Park Wood. The existence of this permissive path did not provide any evidence that Park Wood should be listed as an Asset of Community Value.

- 7.1.8 Pages 132-204 of the Main Agenda includes a statement on behalf of CP Holdings setting out ten reasons why they consider Park Wood should not be listed as an Asset of Community Value. It is stated that there is no public access to Park Wood or intention to allow public access, that there is no community use of the woodland, that there are notices on the woodland stating that it is private and there are vehicle barriers capable of opening by those who have authorised access to the woodland. The evidence also includes a written statement by Mr Robin Winward, Group Property Manager for CP Holdings, which sets out the background to the company's ownership of Park Wood. He states that the woodland was purchased from the Forestry Commission in the early 1980s as a commercial activity and has been managed by independent professional qualified companies, mainly Tilhill Forestry. He states that the intention of CP Holdings has been to optimise income, whilst maximising the capital value of the woodland. Mr Winward states that there is no public right of access to Park Wood from Ragged Hall Lane; the main track into Park Wood with a gate is a forestry road, made up to allow the removal of timber from on-going harvesting. The positioning of the warning signs during forestry activities was a routine precaution and is not an acknowledgement of a public right of access.
- 7.1.9 In oral evidence Cllr Bell stated that CP Holdings were aware that people were going into and out of the woods. He said that signs had been erected when CP Holdings purchased the wood. Cllr Bell said that he had contacted an employee (Mr Mitchell) of CP Holdings who informed him that the signs had been erected because of the company's concerns over their liability. In response Ms Molyneux stated that she had been working at CP Holdings since 1989 and did not know of a Mr Mitchell. She stated that his authority to act on behalf of CP Holdings is not clear.
- 7.1.10 After the hearing on 17 February 2015 I invited written submissions from the parties concerning a decision by the First-Tier Tribunal (Case reference CR/20140018) regarding an appeal by Banner Homes Limited against a decision by St Albans City and District Council to list Bedmond Lane Field, St Albans as an Asset of Community Value. A copy of the Tribunal Decision dated 16 April 2015 is attached at Appendix 2. Written

representations by Ms Debbi White, Cllr John Bell and Molyneux Planning are attached at Appendix 3 to this Decision.

- 7.1.11 In his written Decision Judge Peter Lane rejected a submission by Douglas Edwards QC for the landowner Banner Homes Limited ('Banner Homes') that the phrases "actual current use" and "actual use" in Section 88 of the Localism Act 2011 must mean actual legal use and that any activity which might be trespassory does not qualify as a use under Section 88 of the Localism Act 2011. Judge Peter Lane rejected Mr Edwards' submissions. He said at paragraph 32 of the Decision that "the town and village green legislation is, in my view, a clear example of Parliament legislating to confer community rights on those who have, over time, engaged in socially valuable activities ("lawful sports and pastimes") in a 'trespassory' manner, which did not involve force or deception". In paragraph 35 the Judge said "the fact that I decline to interpret Section 88 so as, in effect, to insert the word "lawful" after "actual" does not give carte blanche to use that section in ways that will violate the *in bonam partem* principle. The inherent requirement that the use of the land in question must further social wellbeing or social interest will, in practice, preclude many unlawful activities, for the simple reason that unlawful activities are, by their nature, unlikely to satisfy the tests of furthering social wellbeing/interests. Thus, for example, premises used for "raves", at which illegal substances are consumed, violence is prevalent and noise nuisance frequent would not fall within Section 88."
- 7.1.12 In her written submission dated 20 May 2015 Ms Molyneux stated that the detail of the Banner Homes Decision were not available to be considered at the Hearing into the Scrubbs Wood and Park Wood. In addition, the landowner was unable to cross examine the Council's representative with regard to the specific details of the Banner Homes case. Ms Molyneux contends that whilst comments on behalf of the Council relating to the Banner Homes Decision might be considered to "set the scene" the Council has re-opened the appeal. Hearing evidence, without the benefit of public examination, without the agreement of the landowner is contrary to the terms of the Hearing as set out by Mr Lovelady. Ms Molyneux states that although the introduction of the Banner Homes case is considered to be an abuse of process she wishes to provide an explanation as to why the decision is not relevant to the cases under review. Ms Molyneux states that there are significant differences between the Bedmond Lane Field site which was the subject land in the Banner Homes case and that of Park Wood and Scrubbs Wood. The key differences are:
- Bedmond Lane Field is crossed by two public footpaths and there has been significant trespass across the field over many years without signs noting the private ownership of the land alongside the public footpaths.

- The landowners made a number of attempts to allow and/or control the use of the land by the public and at some time offered a lease on the land to the local community.
- The land was used for 40 years by the local community.
- There is substantial evidence of a local resident using the land for a long term study of the wildlife of Bedmond Lane Field.
- There has been a refused Planning Application for the keeping of horses on the land, evidencing an interest in a change of use of the land by the landowner.
- The land has only recently been fenced off from the public along the line of the footpath and prior to its fencing off, Banner Homes never did anything to stop the trespass.

By contrast, there are significant differences in both the level of trespass and the efforts undertaken by the landowner between Bedmond Lane Field and Scrubbs Wood and Park Wood.

- At no time have CP Holdings granted or offered a lease over either woodland to any party.
- Neither have they granted “easements by prescription, in respect of any persons who have carried out any activities”.
- The landowner has frequently erected signs at the entrance to the woodland to state that it is private and there is no right of access. Photographs of old and new signs were considered at the hearing.
- Neither Scrubbs Wood nor Park Wood have any public rights of way running through them and there is no case for the establishment of any public rights of way.
- Unlike in the case of Banner Homes, CP Holdings have made no changes to the way in which they manage the land in recent years. They have continued to replace signs stating that the land is private and not open to the public.
- In the case of Scrubbs Wood and Park Wood, the only evidence that the local community were able to point to with regard to wildlife habitat is the existence of bluebell in the woodland. There is thus far less evidence of use by the local community in either wood than in Bedmond Lane Field.
- There has been no attempt by the landowner to alter the land as a private wood in the case of Scrubbs Wood and Park Wood as a commercial forest.
- The woodland is either commercial or private forestry and is not available for games nor is there evidence of long term usage or public benefit.
- There is no intention to change the use of the woodland and no recent applications have been made for an alternative use.

In conclusion, Ms Molyneux states that CP Holdings consider that the Banner Homes case should not have a bearing on the case relating to Park Wood and Scrubbs Wood especially as it is outside the date and terms for decision stated by Mr Lovelady.

Ms White made the following representations regarding the Banner Homes decision. She states that it is appropriate to apply the Banner Homes judgment in respect of trespassory use in respect of Scrubbs Wood and Park Wood because:

- The community has used the woods for decades, even before the current owner purchased it.
- The community's use has been in furtherance of the social wellbeing/interests of the community.
- The use has been peaceable.
- The landowner has not suggested that the public has caused damage to the wood.
- The use has not involved force or deception. It has been with the full knowledge of the landowner.

In response to Debbi White's representations Ms Molyneux states:

- The claim that the land has been used with the full knowledge of the landowner ignores the signs erected and replaced on the site stating that the premises are private.
- There is no evidence to support Ms White's statement that the use of the land has always been peaceable. The owner has instructed its staff working in the woodland that they should always work with at least two persons and never alone. When staff have informed trespassers that the land is private this has been received with mixed reactions and staff have not always felt safe as a result. There has been regular damage caused by the removal and destruction of signs noting that the woodland is private with no public access. The landowner does not agree that the use of the woodland is peaceable.
- Debbi White should not be given the opportunity to submit additional evidence after and outside the hearing where there is not an opportunity for cross-examination.

Parish Councillor Bell has submitted further evidence regarding usage by local residents in an email dated 10 May 2015. Ms Molyneux contends that the additional evidence contained in his email should not be taken into account in the Hearing decision.

- 7.2 I have considered and given weight to the letters referred to above by local residents. They support a conclusion of there having been relevant types of use within the meaning of section 88 (see further below).

- 7.3 Section 88 of the Localism Act 2011 provides two grounds for listing a property as an Asset of Community Value. Section 88 (1) is about actual current use and Section 88 (2) is about recent past use. Under Section 88 (1) land in a Local Authority's area is land of community value if in the opinion of the Authority –
- (a) An actual current use of a building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and
 - (b) It is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.
- Section 88 (2) concerns an actual use of a building or other land that was not ancillary in the recent past. In the case of Park Wood the use under review is a current use and therefore I have to consider whether the test in Section 88 (1) has been met in this case.
- 7.4 During the Hearing Ms Molyneux challenged the validity of the plan which accompanied the Parish Council's application - See page 125 of the Main Agenda. Ms Judith Adamson, Regulatory Solicitor, gave advice that under the 2012 Regulations there was no requirement for a nominating group to submit a plan with their application and that although the Council had subsequently specified that applicants should include a plan this requirement was not in place at the time that St Stephen Parish Council submitted their application. Accordingly, I am satisfied that the plan of Park Wood submitted by St Stephen Parish Council with their application dated 19 July 2013 is acceptable. In any event, the boundaries of the application site are clearly defined by a red line in the plan accompanying the decision notice on page 125 of the Main Agenda. I conclude that the nomination is valid.
- 7.5 The reasons for Debbi White's decision to add Park Wood to the list of Assets of Community Value are set out in paragraph 7.1.3 above.
- 7.6 The test for listing land as an Asset of Community Value is set out in Section 88(1) of the Localism Act 2011 (see paragraph 7.4 above). Having considered the evidence the issues I have to determine are as follows:
- A. Whether there is an actual current use of Park Wood that is not ancillary;
 - B. Whether that use furthers the social wellbeing or social interests of the local community;
 - C. Whether the use put forward by the applicant, St Stephen Parish Council, is a trespassory use and if so what are the implications for any trespassory use on meeting the test in Section 88;
 - D. If there is an actual current use of Park Wood that is not ancillary, which further the social wellbeing or social interests of the local community, is it realistic to think that such use can continue. [See the test in Section 88 (1)(b)].
- 7.7 **Issue A – Is there an actual current use of Park Wood that is not ancillary?** Evidence of use put forward on behalf of the applicant, St Stephen Parish Council, is that local residents regularly use the wood for

- recreational use including walking along the marked paths, exercising their dogs, bluebell walks, jogging, bird watching and riding horses.
- 7.8 Ms Debbi White, on behalf of the Council, refers to the presence of pedestrian paths and suggested that the information notice at one of the entrances regarding tree works appears to indicate that the owner acknowledges people will be walking through their land. (See paragraphs 7.1.1 – 7.1.5 above).
- 7.9 On behalf of the owner CP Holdings, evidence was given that Park Wood is a commercial woodland which is actively managed on behalf of the owners by Tilhill Forestry. Ms Molyneux stated that the notice relating to timberwork is a warning to those who have legitimate, private business within the woodland on behalf of the company and cannot be considered to acknowledge any right of way. There are signs at the edges of the woodland stating that the land is private and there is no public access. The main track into Park Wood with a gate is a forestry road made up to allow the removal of timber from on-going harvesting. (See paragraphs 7.1.6 – 7.1.8 above).
- 7.10 CP Holdings contend that as the use of Park Wood is as a commercial woodland any use by local residents is an ancillary use and therefore does not qualify under Section 88 (1) of the Act. Unlike Scrubbs Wood, Park Wood is not subject to a Tree Preservation Order. The question as to the residents' use was an ancillary use was raised in evidence during the Hearing on 17 February 2015. Ms Molyneux asked Cllr Bell whether he considered the community's use of the wood to be ancillary to its commercial purpose. Cllr Bell replied that more time was spent in the wood enjoying it for leisure purposes than for cutting down trees for timber. Cllr Daly asked Cllr Bell whether he considered the public's access to the wood was an ancillary use or a social use. Cllr Bell replied he believed it to be the latter.
- 7.11 I also received advice at the hearing from Judith Adamson, the Council's Regulatory Solicitor on the definition of ancillary use. Ms Adamson referred to recent First-Tier Tribunal decisions in the cases of Worthy Developments Limited and Firoka (Oxford United Stadium) and Firoka (Oxford) Limited. The evidence given at the hearing by John Bell and the written evidence by local residents appears to suggest that Park Wood is used both for the purposes of a commercial woodland by CP Holdings and for recreational purposes by local residents.
- 7.12 The Department for Communities and Local Government ('DCLG') have issued Guidance dated October 2012 on the Assets of Community Value scheme. The Guidance is entitled "Community Right to Bid: Non-Statutory Advice Note for Local Authorities".¹ Land of Community Value is described as "Building or other land whose main (i.e. "non-ancillary") use furthers the

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/14880/Community_Right_to_Bid_-_Non-statutory_advice_note_for_local_authorities.pdf

- social wellbeing or social interests of the local community, or have recently done so, and is likely to do so in the future. See Section 88 of the Act”.
- 7.13 The term ancillary is defined by Oxford dictionaries as “something which functions in a supplementary or supporting role”.
- 7.14 At the Asset of Community Value Hearing into CP Holdings Appeal against the listing decision of the nearby Park Wood, reference was made to recent First-Tier Tribunal decisions where the question of whether a use was ancillary was considered. In the case of Worthy Developments Limited v Forest of Dean District Council and the Save our Sun Committee (Tribunal reference CR/2014/0005) Judge Warren considered the meaning of the term ancillary use under Section 88 (2)(a) of the Localism Act 2011. The past use considered in that case was a former use of the Rising Sun pub at Woodcroft, outside Chepstow. The pub served the local community as a pub. It was also used as a meeting place by the Women’s Institute and the Parent Teachers’ Association. Judge Warren found that the actual use of the Rising Sun as a Public House had furthered the social wellbeing and interests of the local community. He rejected a submission that the community use must necessarily be for a substantial amount of the recent past. He stated that no doubt trivial or very temporary use would be disregarded as “ancillary” to a main use but that there was no warrant for reading the words “substantial amount” into the statute.
- 7.15 In the case of Firoka (Oxford United Stadium) Limited and Firoka (Oxford) Limited v Oxford City Council (Tribunal reference CR/2013/0010). Judge Warren considered a submission by Firoka that in considering applications to list a building or land under Section 88 (1) of the Localism Act 2011, the Act should be applied in respect of any planning unit only in respect of the primary use of that unit. The Judge rejected that submission and said that the Act was not restricted “to primary uses”. The case concerned the Kassam Stadium which since 2001 had been the home ground of Oxford United FC. Part of the Stadium was fitted out for conferences and hospitality which were hired out by the owner. The Stadium was also used by the London Welsh Rugby Club. Oxford United FC used the Stadium for 25 match days a year. The Judge held that use of the Stadium by Oxford United FC was not an ancillary use.
- 7.16 I recognise that neither the dictionary definitions nor the First-Tier Tribunal decisions summarised above are binding on me or determinative of the issue. I need to apply the statutory wording to the particular facts before me. Nonetheless, I consider the above guidance to be persuasive and of assistance to my decision.
- 7.17 Section 88 requires an applicant to establish that an actual current use of the land is not an ancillary use. In my view one use of Park Wood is by CP Holdings as a commercial woodland. However, I consider that the use by local residents is a separate non-ancillary use of Park Wood. It is the case that the Glossary in the DCLG Guidance refers to a main use. However, I consider that the Act does not require a use to be a main or primary use in

order to qualify for listing under the Act. This accords with the approach followed by Judge Warren in the First-Tier Tribunal decision concerning Firoka (Oxford United Stadium) Limited. It also accords with his decision in the case of Worthy Developments Limited where he commented that a trivial or very temporary use would be disregarded as ancillary to a main use.

- 7.18 I find that the use of Park Wood by local residents for recreational walks, exercising their dogs, bird watching, appreciating the bluebells and recreational horse riding is not trivial or temporary. is not trivial or temporary. It is not minor or negligible, and it is not merely supportive of some other use. Rather, in my view it is a separate use of the woods which is not ancillary to its use as a commercial woodland. I therefore consider that this use is a qualifying use under Section 88(1).
- 7.19 **Issue B – Does that use further the social wellbeing or social interests of the local community?** On this issue, I take into account in particular the following evidence.
- 7.20 Evidence was given that the local community regularly use Park Wood for a variety of activities including recreational walking, jogging, cycling, dog walking, recreational horse riding, photography and appreciating the bluebells. (See photographs of the bluebells in Park Wood page 13 of the Supplemental Agenda). In their evidence local residents emphasised the social benefits they derive from such use for example, Mr and Mrs O'Brien of [REDACTED], in their letter dated 3 December 2014 say that they derive great pleasure from walking through the woods at all times of the year and often see whole families out together, enjoying the great outdoors, learning a bit about nature and benefitting from the fresh air and exercise. They say that during the bluebell season large numbers of people come from the local area, and from further afield, to enjoy a natural spectacle. Mr and Mrs White of [REDACTED], say that Park Wood is approximately 200 yards from their property so they are well placed to see various members of the community making use of the woods. They comment that Park Wood has an extensive network of footpaths which are used regularly by members of the community and that many families and photographers use the woods, particularly when the bluebells are in flower. Miss Mandy Floyd of [REDACTED], in a letter dated 21 November 2014, says that she has regularly walked in the woods of Ragged Hall Lane for 32 years along with many other dog walkers in the area. She states that the woods are particularly beautiful when the bluebells are out. Mr and Mrs Gibbard of [REDACTED], state that for the past 30 years they have used Park Wood along with others for general walks and in particular dog walking. They say that recreational horse riders frequently use Park Wood.
- 7.21 CP Holdings dispute that this use furthers the social wellbeing or social interests of the local community. They state that Park Wood is remote from St Stephen Parish and does not have a visual or physical impact on the amenities of the community. They say that there is no linking pedestrian rights of way to Park Wood from St Stephen's and the pedestrian access

would therefore have to be via the narrow road which does not have a footpath. They say that there is no community use at the woodland. Molyneux Planning submitted comments on the written evidence received by St Albans District Council during and after the first Hearing on 24 November 2014. These comments can be found at pages 8-11 of the Supplemental Agenda. They say that Park Wood is a commercial woodland and that the activities were undertaken by a very small section of the community and it cannot be said that the land fulfils the social wellbeing or social interest of a local community.

- 7.22 Section 88(6) of the Act describes social interests as including (a) cultural interests, (b) recreational interests and (c) sporting interests. Location plans were produced by CP Holdings and St Stephen Parish Council at the Hearing. The plan at page 28 of the Supplemental Agenda shows the proximity of Chiswell Green residential area to Park Wood. I also note that there is a public footpath bordering the eastern edge of Park Wood which provides a continuous footpath link to the residential area known as the Verulam Estate, St Albans. A more detailed map of the wood at page 228 of the Main Agenda shows the close proximity of Park Wood to residential properties shown on the plan. I am satisfied that Park Wood can easily be accessed by local residents from Chiswell Green using Ragged Hall Lane.
- 7.23 Whilst the evidence of use is submitted by only a few local residents their letters refer to a frequent use by the local community. I am satisfied on the balance of probabilities that the number of people using the land in this way is sufficient for this use to be considered use by the local community.
- 7.24 I am also satisfied that this use as described above furthers the social wellbeing or interests of its users. I am therefore satisfied that the use put forward by St Stephen Parish Council does meet the test in Section 88 (1) as serving the social wellbeing or social interests of the local community.
- 7.25 **Issue C – what is the relevance of the allegedly trespassory use?** Ms Molyneux for CP Holdings maintains that the residents' use of Park Wood is unauthorised. She states that there are signs at the edges of the woodland stating that the land is private and that there is no public access. She also points out that Park Wood is an area of 47.3 acres of mature woodland under professional management as a timber crop. Mr Winward, in his evidence, states that fences had been put up but they had disappeared and that a bund had been erected alongside the woodland. He stated that the bund is visible in the photograph of the gate – See page 208 of the main agenda. Mr Winward went on to state that bunds had been levelled by others and that CP Holdings had tried to restrict public access to the woodland. In answer to a question from Ms Debbi White that the photograph on page 209 of the main agenda shows a post which could possibly have held a wayfinder sign Mr Winward had replied that there is no evidence that there was a wayfinder sign at Park Wood. In her written submission at pages 8-11 of the Supplemental Agenda Ms Molyneux states that the use by local residents has been undertaken without the consent of the landowner

and that all of the activities described by Cllr John Bell amount to trespass onto private land, in the full knowledge that it is such and thus without the ability to acquire any rights to such access.

- 7.26 Ms Molyneux points out that Cllr Bell acknowledged in his email dated 19 November to Ms Judith Adamson (see page 25 of the Supplemental Agenda) that there is no formal agreement to gain access to Park Wood. In the same email Cllr Bell states that when notices appeared in the Wood stating they are private and there are no rights of way he contacted CP Holdings after concerned residents approached him and was informed that the notices had to be put up for legal purposes in case a member of the public injured themselves in the woods and could then take legal action on the company. However, Cllr Bell says that he was informed at the time that access to the public was not going to be stopped, much to the relief of local residents who frequently use the woods.
- 7.27 In her written submission Ms Molyneux states that there is no clarity as to when he became aware of the landowner and whether, once aware, any attempt was made to seek consent to access to the land. She also states that the paths through Park Wood are provided as part of the commercial woodland and not intended to provide pedestrian access for trespassers (see page 10 of the Supplemental Agenda).
- 7.28 At the Hearing on 17 February 2015 evidence was given by Cllr Bell that after the erection of the signs in 2009 he spoke to an employee in CP Holdings (Mr Barry Mitchell) who had led him to believe that the company would not take action against people using the wood. I note, however, that Ms Molyneux disputes that there can have been a Mr Mitchell who provided such an indication on behalf of CP Holdings. I also recognise that I have no additional evidence about that communication. I therefore give limited weight to this particular point from the evidence.
- 7.29 Mr White of [REDACTED], in his letter dated 1 December 2014 states that “we are lucky that the owners of these woods have allowed us access”.
- 7.30 I have considered the evidence before me relating to Park Wood. Park Wood is significantly larger than Scrubbs Wood. Whilst it has deciduous trees around the edge of the wood, the bulk of the wood consists of pine trees. There are several paths which run through the wood. There are also a number of signs around the edge of the wood stating ‘Private Woodland No Right of Access’. However, it is clear to me that, whatever the status of signage and of legal rights, the actual use as described above has at least been tolerated by CP Holdings for some time. I am satisfied from the evidence I heard that CP Holdings were aware of local residents’ use of Park Wood and did not seek to prevent it happening. It seems to me that local residents activities are peaceable and have not caused damage to the woodland.
- 7.31 Although CP Holdings maintain in their submissions that the use by local residents amounts to trespass onto private land, they do not appear to have

particularised this allegation. The signs in the wood can be interpreted simply as a declaration of the company's ownership and a clear intent to prevent the establishment of formal rights of way. In my view, even if the residents' use is strictly unlawful it does not disqualify the land from being listed as an Asset of Community Value.

- 7.32 I consider that I may take into account the representations made by CP Holdings, Cllr Bell and Ms White concerning the Tribunal Decision in the case of Banner Homes v St Albans City and District Council. I have taken into account the submissions from CP Holdings that it is unfair for the Banner Homes to be considered in this case. I disagree. I am satisfied that all parties have had ample opportunity to make any submissions they wished to on that decision. In any event, I do not consider that these further representations add anything significant to the evidence already submitted at the Hearing on 17 February 2015.
- 7.33 At paragraph 35 of the Banner Homes Decision Judge Peter Lane declined to interpret Section 88 so as, in effect, to insert the word "lawful" after "actual". He said that the inherent requirement that the use of the land in question must further social wellbeing or social interests will, in practice, preclude many unlawful activities, for the simple reason that unlawful activities are, by their nature, unlikely to satisfy the tests of furthering social wellbeing/interests. He concluded that a particular technically unlawful use of land is not per se outside the ambit of the section. Again, I recognise that First-Tier Tribunal decisions are not binding as legal authorities, but I agree with Judge Lane's analysis and find it relevant and persuasive in this case. That is not to say that I reach the same outcome on the facts of this case simply because of the outcome of Banner Homes. Rather, I have applied the relevant reasoning to the facts of this case.
- 7.34 I am satisfied that from the evidence of local residents that the use of Park Wood made by the local community was entirely peaceful in nature. I conclude that there has been sufficient purely lawful use to satisfy the conditions under Section 88 and that any technically unlawful conduct does not disqualify Park Wood from being an Asset of Community Value.
- 7.35 Issue D - Is it realistic to think that there can continue to be non-ancillary use of Park Wood which will further (whether or not in the same way) the social wellbeing or social interests of the local community?**
- 7.36 I am satisfied that the current use of Park Wood by local residents for recreational walking, dog walking, recreational horse riding, bird watching and appreciating the bluebells is a non-ancillary use which furthers the social wellbeing or social interests of the local community. CP Holdings, in their evidence, stated that they have no intention to change the use of Park Wood from that of a private commercial woodland. They say that they have no intention to sell the woodland.
- 7.37 It accordingly appears to me that, if there is the requisite current use (see above), then there is also the realistic prospect of the requisite future use for

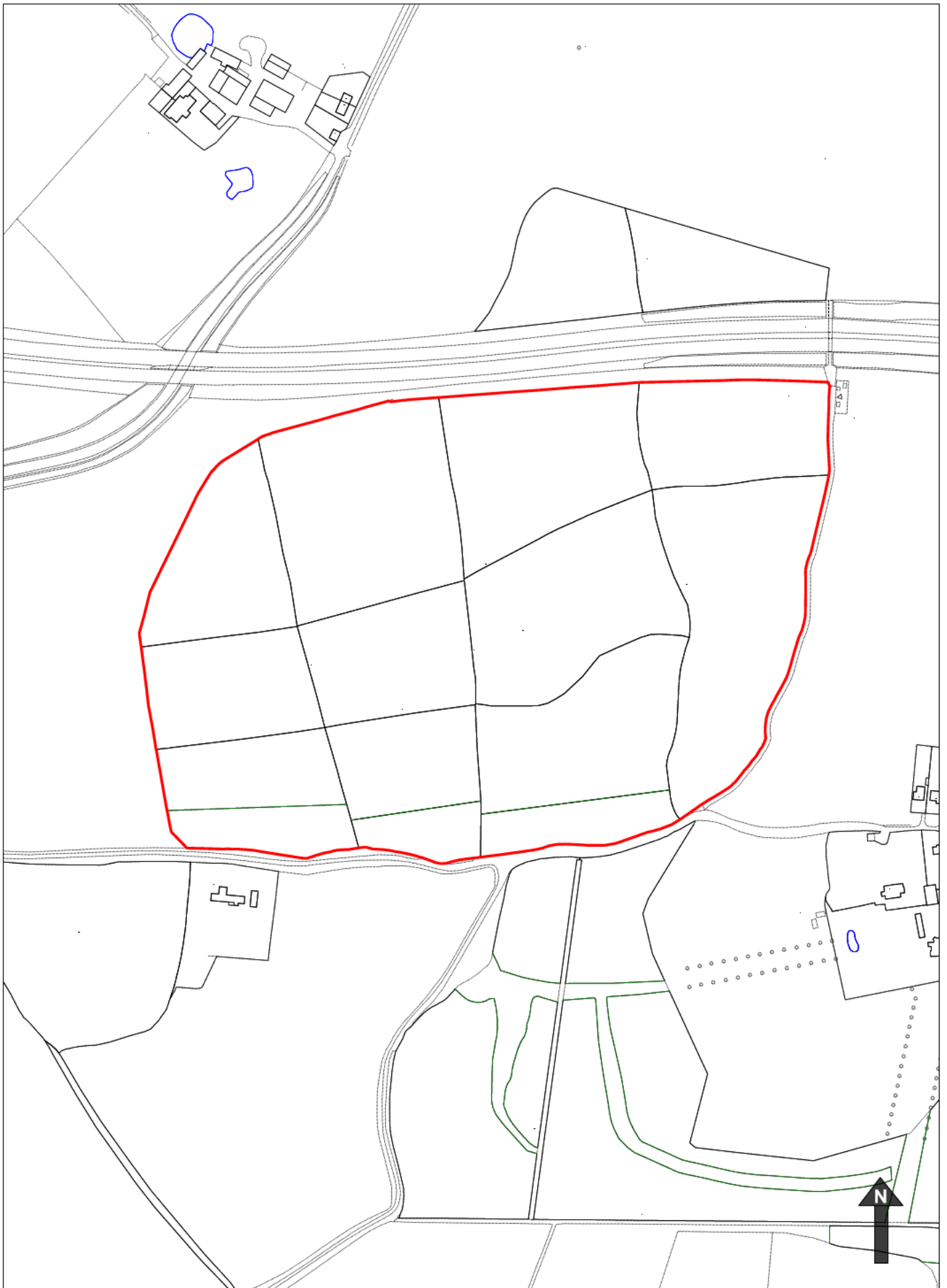
these purposes. On the evidence before me it is realistic to think that the current use by local residents can continue. I therefore consider that the test in Section 88 (1) (b) is satisfied.

7.38 For the reasons outlined above it is my decision that Park Wood should continue to be included in the Authority's list of Assets of Community Value. CP Holdings may appeal this listing review decision to the First-Tier Tribunal.

M Lovelady
Head of Legal, Democratic and Regulatory Services

3rd August 2015

APPEAL OF DECISION: THE OWNER CAN APPEAL THE REVIEW DECISION TO
THE FIRST-TIER TRIBUNAL



Park Wood, Ragged Hall Lane, Chiswell Green, St Albans

Date: 02/04/2014

Scale: - 1:4000



Scrubbs Wood & Park Wood Review Hearing: Case Management Notes

Directions made by Mike Lovelady on 24th November 2015 at the review hearing:

1. Written statements from St Stephen Parish Council to be submitted by within 14 days [by 8th December 2014]
2. No further evidence from St Stephen Parish Council after that time.
3. Two witnesses can be called to give evidence by St Stephen Parish Council at the next hearing, namely Mr James White & Mr C O'Brien.

An application to submit two further witness statements for the hearing was made by St Stephen Parish Council (SSPC) on 25th November 2014. Mike Lovelady agreed to vary his direction and permit the two additional statements but refused to permit any further witnesses to attend to give evidence. The only witnesses permitted to give evidence at the hearing are Mr White and Mr O'Brien [25th November 2014].

Mike Lovelady also agreed that CP Holdings/Molyneux Planning should be given the opportunity to respond to the evidence [25th November 2014].

Evidence submission:

Original deadline for evidence for Agenda from CP Holdings, SSPC and D White was 4pm on 5th November 2014.

Extension requested by CP Holdings on 3.11.14 for one week extension to 10th November 2014. Extension granted on 3.11.14 to 4pm on 10th November 2014.

D White submits evidence on 7th November & CP Holdings submit evidence on 9th November 2014.

St Stephen Parish Council does not submit any evidence by 5th November and they are informed on 6th November that they now have until 10th November. They indicate on 6th November that they have no evidence to submit. They are reminded of the criteria on 10th November and given an opportunity to submit evidence until 12th November 2014. They did not wish to submit further evidence.

On 19th November 2014 they are asked to respond to two questions: 1. Evidence of permission or agreement from owner to access site, 2. Evidence of actual use for any purpose. Respond on 19th November [see email on page 22 of the Addendum Agenda for Scrubbs Wood & page 25 for the Addendum Agenda for Park Wood] from Cllr John Bell (SSPC) submit at the hearing. Cllr Bell asked to provide details of his witnesses [21st November 2014] and does so by email the same day.

At the hearing further evidence is submitted by SSPC now shown in the Addendum Agenda for Scrubbs Wood at pages 12 to 24 and Park Wood at pages 12 to 27.

SSPC are permitted to submit further witness statements as specified above and these are submitted on 4th December 2014. CP Holdings are permitted to respond by 5th January 2015 and provide a response on 5th January 2015.



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Community Right to Bid**

Tribunal Reference: CR/2014/0018
Appellant: Banner Homes Limited
First respondent: St Albans City and District Council
Second Respondent: Verulam Residents' Association
Judge: Peter Lane

DECISION NOTICE

1. The Localism Act 2011 requires local authorities to keep a list of assets (meaning buildings or other land) which are of community value. Once an asset is placed on the list, it will usually remain there for five years. The effect of listing is that, generally speaking, an owner intending to sell the asset must give notice to the local authority. A community interest group then has six weeks in which to ask to be treated as a potential bidder. If it does so, the sale cannot take place for six months. The theory is that this period, known as the "moratorium", will allow the community group to come up with an alternative proposal; although, at the end of the moratorium, it is entirely up to the owner whether the sale goes through, to whom and for how much. There are arrangements for the local authority to pay compensation to an owner who loses money in consequence of the asset being listed.
2. This appeal concerns land known as Bedmond Lane Field, St Albans. The appellant, Banner Homes Limited ("Banner Homes") is the owner of the Field. The listing authority is St Albans City and District Council ("the council"). Banner Homes is part of the Banner Homes Group, owned since April 2014 by Cala Group Limited. Banner Homes would like to build on the Field but, since it falls within the metropolitan green belt, it is apparent that (absent a change in planning policy concerning the green belt) such development is unlikely within the near future. Two public footpaths (nos 32 and 95 on the council's definitive map) run across the Field. Footpath 32 runs essentially along its eastern edge, whilst footpath 95 joins it at right angles, roughly at the Field's halfway point. The Field comprises 4.83 hectares.

3. Until 2014, the Field had for some 40 years been used by local residents for recreational use, such as walking, exercising dogs, informal play (by local children) and photography of local flora and fauna. Ms Debbi White, Property and Asset Manager of the council, in 2014 observed evidence of such uses in the form of "desire lines" across the Field, away from the public footpaths.
4. On 10 March 2014, the Field was listed by the council as an asset of community value under the Localism Act 2011. On 30 April 2014, Banner Homes' solicitors requested a review of the decision. That review took place on 26 September 2014. The council's decision was to maintain the listing. Banner Homes appealed that decision to the First-tier Tribunal.
5. A hearing of the appeal took place at Field House on 4 March 2015, when Banner Homes were represented by Mr Douglas Edwards QC and the council was represented by Mr Robin Hopkins. I am very grateful to them for their submissions. The council's stance was supported at the hearing by Mr Timothy Beecroft of the Residents' Association.
6. I received written evidence from Mr Paul McCann, on behalf of Banner Homes, Mr Mike Lovelady and Ms Debbi White of the council and Dr Robert Wareing of the Residents' Association.
7. Section 88(1) and (2) of the 2011 Act provides as follows:-

"88 Land of community value

- (1) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area is land of community value if in the opinion of the authority -
 - (a) an actual current use of the building or other land that is not an ancillary use furthers the social wellbeing or social interests of the local community, and
 - (b) it is realistic to think that there can continue to be non-ancillary use of the building or other land which will further (whether or not in the same way) the social wellbeing or social interests of the local community.
- (2) For the purposes of this Chapter but subject to regulations under subsection (3), a building or other land in a local authority's area that is not land of community value as a result of subsection (1) is land of community value if in the opinion of the local authority -
 - (a) there is a time in the recent past when an actual use of the building or other land that was not an ancillary use

Contd.

furthered the social wellbeing or interests of the local community, and

- (b) it is realistic to think that there is a time in the next five years when there could be non-ancillary use of the building or other land that would further (whether or not in the same way as before) the social wellbeing or social interests of the local community".

8. Dr Wareing has lived in the vicinity of the Field (or Meadow, as he calls it) for over 40 years:-

"It has been an inspiration and a joy for us. We have spent at least an hour each day almost every day - in total amounting to more than 10,000 hours - enjoying the enchanting environment and diverse and rich flora and fauna. We use it for walking our dog, for playing with our grandchildren and our children before that. More recently, for the perfect tranquillity it affords, whilst I have been convalescing after a life-threatening illness".

9. Dr Wareing has produced a book of photographs depicting the Field, particularly in spring, when wildflowers and grasses are much in evidence, as well as in summer, when "floral blooms [are] typified by the rosebay willowherb, ox eye daisies, poppies and bee orchids". According to Dr Wareing, "where informal footpaths pass through areas with high density shrubs and bushes, the vegetation is carefully trimmed by residents to keep the footpaths open".
10. There is also evidence that, in the late 1990s, the owners of the Field, concerned about the activities on the land of travellers, unsuccessfully tried to interest local residents in taking a licence of the Field. Local residents apparently sought permission of the owners to go on to the Field for the purposes of hedge-planting.
11. Following the listing of the Field under the 2011 Act, Banner Homes erected a wire fence along the entire length of the footpaths, interspersed with signs stating "private land no unauthorised access". Mr McCann says this was done partly as a result of concerns regarding liability to trespassers. Also in 2014, Banner Homes applied to the council for planning permission to change the use of the Field so as to facilitate "the keeping of horses". In August 2014, the council's officers recommended refusal, owing to the absence "of a tree survey, ecology survey, detailed site layout, means of access, or any other supporting information", which meant that the local planning authority was "unable to fully or properly assess the acceptability of the impact of the proposed development on the openness and visual amenity of the green belt, the impact on ecology, the impact on existing landscape and trees and the impact on highway safety". It was also noted that Banner Homes "did not engage in pre-application discussions with the local planning authority and the form of development proposed fails to

comply with the requirements of the Development Plan and does not improve the economic, social and environmental conditions of the District". I was informed that planning permission was subsequently refused by the council and that the matter is currently the subject of an appeal.

12. The council's case is essentially as follows. Notwithstanding that the fencing off of the rights of way means local residents can no longer physically access any part of the Field other than the public footpaths, the council contends that the benefit which residents derive from looking at other parts of the Field constitutes "an actual current use" of the Field, for the purposes of section 88(1)(a). Alternatively, the council contends that, prior to the fencing off of the footpaths, the use made of the Field by local residents constituted an actual use, within the recent past, which furthered the social wellbeing or interests of the local community, with the result that section 88(2)(a) is satisfied. Notwithstanding Mr McCann's statement that Banner Homes do not intend to take down the fencing or dispose of the Field, the council submits that (a) it is, in all the circumstances, nevertheless realistic to think that there can continue to be non-ancillary use of the Field (on the basis of its first submission, in that local residents will continue to derive relevant benefit from looking at the Field from the footpaths); or (b) that, in terms of section 88(2), it is nevertheless realistic to think that there "is a time in the next five years when there could be" relevant non-ancillary use of the entire Field.

13. Mr Edwards QC categorises the first issue as follows:-

Issue 1 - does use of the two public footpaths amount in law and/or fact to a proper basis to conclude in respect of the whole of the 4.83ha of the land that there is "an actual current use of ...the land that is not an ancillary use..." and which "it is realistic to think ...can continue" for the purpose of s.88(1) of the LA 2011?

14. Although caution must be employed in employing statutes involving somewhat different regulatory regimes, I nevertheless agree with Mr Edwards that it is useful to note how enactments regarding town and village greens have been interpreted by the courts. In Cheltenham Builders Ltd. v South Gloucestershire District Council [2003] EWHC 2803 (Admin), Sullivan J had cause to consider section 22(1A) of the Commons Registration Act 1965:-

"(1A) Land falls within this subsection if it is land on which for not less than 20 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

Contd.

- (b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions".

15. At [29] of his judgment, Sullivan J observed that:-

"The onus was upon the applicants for registration to prove on the balance of probability that the site had become a village green. Thus the applicants had to demonstrate that the whole, and not merely a part or parts of the site had probably been used for lawful sports and pastimes for not less than 20 years. A common sense approach is required when considering whether the whole of a site was so used. A registration authority would not expect to see evidence of use of every square foot of a site, but it would have to be persuaded that for all practical purposes it could sensibly be said that the whole of the site had been so used for 20 years".

16. I agree that the same "common sense" approach falls to be applied in the case of section 88 of the 2011 Act. Assuming for the moment that the requirement imposed by section 88 is for there to be a physical use of the land to be listed, it cannot sensibly be contended that the narrow strips forming the public footpaths are such as to entitle the council to list the entire 4.83ha Field.
17. The council, however, argues that a person's observation from the footpath of the flora and fauna of the Field constitutes a use of the entire Field, albeit that the observer is no longer physically able to wander about the Field. Mr Edwards submits that the use of the word "actual" in section 88 "strongly suggests an intention that 'physical' use was intended". Mr Edwards accepts that visual observation of things growing or otherwise present on land may be an aspect of section 88 use but that mere reliance on people looking at such things from across a fence is not what Parliament had in mind, in enacting the 2011 Act.
18. I agree. Mr Hopkins was unable to point to any example, either in case law or guidance, that might support the contrary view. Indeed, the examples given in the gov.uk website on the 2011 Act all comprise or involve "physical" uses: for example a village shop, pub, community centre, allotment or recreation ground.
19. The council's interpretation would, I consider, have some surprising consequences. Local residents who derive enjoyment from viewing attractive scenery from a road might, on the council's view, be able to have the land in question placed on the list, even though they have never ventured upon it. Mr Hopkins suggested that any mischief which such an interpretation might entail would in practice be alleviated by the fact that the "scenic" aspect of the land would, in most cases, be merely ancillary to its agricultural use. However, one can envisage situations where that

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would not be the case. In any event, it is in my view highly unlikely that Parliament intended the owners of such land to be compelled to rely on the non-ancillary requirements of section 88, in order to defeat listing.

20. It was not suggested that the actual public footpaths have any significant flora or fauna of interest to the local community, since they are merely trodden grass paths. Any suggestion that the footpaths themselves might separately be listed is refuted by that fact, together with the finding I have just made regarding the inability of the council to pray in aid the merely visual aspects of the remainder of the Field. Such a suggestion in any event founders on the basis that the clear primary use of the footpath is, like any other right of way, for passing and repassing and that any enjoyment of views from the footpath is, on the facts, merely an ancillary use, incidental to the main use of passing and repassing.

21. The next issue is what Mr Douglas describes as:

Issue 2 – did trespassory use beyond those footpaths in law amount to an actual current use of the land on the facts for the purposes of s.88(2) of the LA 2011?

22. As Mr Edwards states, it is common ground that, as a matter of fact, local residents have, over at least several decades, “strayed off the public highway and onto wider parts of the land, including for recreational walking and dog-walking” before Banner Homes erected the fences in 2014. Mr Edwards contends that this use “was trespassory and therefore tortious”. Such unlawful use is, according to Mr Edwards, not “an actual use of the ...land” within the scope of section 88(2)(a) of the 2011 Act because Parliament cannot have contemplated conferring a benefit on those who can bring themselves within the relevant requirements only by relying upon their unlawful actions.

23. In Barkas v North Yorkshire County Council & Anor [2014] UKSC 31, the Supreme Court was concerned with whether a field that had been maintained by a local authority as a recreation ground for the benefit of those living in adjacent houses, pursuant to statutory powers, could be registered as a town or village green under section 15 of the Commons Act 2006, which provides:-

“(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2).... 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

Contd.

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”.

24. The Supreme Court held that members of the local community who had made use of the field had not done so as trespassers. At [27] Lord Neuberger made it plain that a person is either a trespasser or present on the land lawfully; there is no “middle ground”:-

“[27] It was suggested by Mr Edwards QC in his argument for Ms Barkas that, even if members of the public were not trespassers, they were nonetheless not licensees or otherwise lawfully present when they were on the field. I have considerable difficulty with that submission. As against the owner (or more accurately, the person entitled to possession) of land, third parties on the land either have the right to be there and to do what they are doing, or they do not. If they have a right in some shape or form (whether in private or public law), then they are permitted to be there, and if they have no right to be there, then they are trespassers. I cannot see how someone could have the right to be on the land and yet be a trespasser (save, I suppose, where a person comes on the land for a lawful purpose and then carries out some unlawful use). In other words a ‘tolerated trespasser’ is still a trespasser”.

25. Banner Homes have, for years, been well aware of the use made by the local community of the Field. As I have already noted, in the relatively recent past the owners contemplated formalising that use. The local residents have also sought permission for hedge-planting. None of that, according to Mr Edwards, makes the use of the Field (other than the footpaths) non-trespassory.
26. Mr Edwards invoked the principle of statutory interpretation known as construction *in bonam partem* (in good faith). According to *Bennion on the Statutory Interpretation* (Sixth Edition):-

“It is the basic principle of legal policy that law should serve the public interest. The court when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should therefore strive to avoid adopting a construction which is in any way adverse to the public interest”.

27. *Halsbury's Laws of England* (Fifth Edition) has, at paragraph 1152, a passage along very similar lines, followed by this:-

“Where a literal construction would seriously damage the public interest, and no deserving person would be prejudiced by a strained construction to avoid this, the court will apply such a construction.

...If a statutory benefit is given only if a specified condition is satisfied, it is presumed that the legislature intended the benefit to operate only where the required act is performed in a lawful manner".

28. Mr Edwards submits that the application of the *in bonam partem* principle means that the references in section 88 of the 2011 Act to "an actual use" cannot be construed as encompassing any unlawful use. As a recent authority for the application of this principle at the highest level, Mr Edwards draws attention to the judgment of the Supreme Court in Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government and another [2011] UKSC 15. A builder who had deliberately deceived a planning authority by applying for planning permission to construct a barn, when in reality he was constructing a residential dwelling, sought a certificate of lawfulness of existing use, relying on an enactment which provided for a four year time limit for enforcement action against a breach of planning control consisting in the change of use of any dwelling to use as a single dwelling house. In finding in favour of the local authority, the Supreme Court (per Lord Mance) invoked (albeit on an *obiter* basis) the principle set out in *Bennion*, refusing to confine that principle to situations where there has been the commission of a crime:-

"[53] ...The principle described in the passages cited from *Halsbury* and *Bennion* is one of public policy. The principle is capable of extending more widely, subject to the caution that is always necessary in dealing with public policy. ...

[54] Whether conduct will on public policy grounds disentitle a person from relying upon an apparently unqualified statutory provision must be considered in context and with regard to any nexus existing between the conduct and the statutory provision. ...Although the principle was not mentioned in Counsel's submissions and my conclusions have been reached independently of it, it is not uninteresting also to recall the way in which, before the enactment of section 26 of the Limitation Act 1939 (the predecessor of section 32 of the Limitation Act 1980), the courts held that the apparently general wording of the limitation statutes could not be relied upon in cases where the cause of action had been fraudulently concealed or, later also, was itself based on fraud. ..."

29. Mr Edwards submits that, applying the *in bonam partem* principle, the phrases "actual current use" and "actual use" in section 88 of the 2011 Act must mean actual *legal* use. Clear words would, he says, be required before it could be held that section 88 encompasses unlawful use.
30. In this regard, Mr Edwards draws a distinction between the 2011 Act and enactments relating to the registration of town or village greens. In the latter, as we can see from section 15 of the Commons Act 2006, Parliament

Contd.

expressly uses the phrase "as of right", which – somewhat counter-intuitively – has long been held to mean as *if* of right; that is to say, that the activity in question has been carried on in a trespassory manner otherwise than by force or stealth (in latin, *nec vi, nec clam*).

31. Submissions along those lines were advanced by Banner Homes at the council's review hearing. Mr Mike Lovelady, who conducted the review, had this to say:-

"7.9 ...I observe that although Banner Homes claim that there has been trespass by local residents on Bedmond Lane Field they do not appear to have particularised this allegation apart from making the general submission that all use (other than on the two public rights of way) amount to unlawful acts of trespass. The use of the site as described in the evidence before me in the Hearing Agenda...alleged to have been trespassory appears to have been minor. The evidence before me suggests that Banner Homes was aware of such use and until September this year never did anything to stop it. In my view even if such use was strictly unlawful it does not disqualify the land from being listed as an Asset of Community Value. Such use does not in my opinion undermine the primary use via the public footpaths which is non-trespassory.

7.10 Overall, whilst I accept that generally use for section 88 purposes must be 'lawful use' it seems to me that this general Rule is not entirely inflexible. Suppose for example that due to an oversight an owner failed to obtain the appropriate premises licences before opening an entertainments facility whose use subsequently delivers social wellbeing without anyone ever complaining about the licensing deficiency. Would it automatically be said that because some of the features of a community's enjoyment of that facility are tainted by a form of unlawfulness section 88 can never be fulfilled? It seems to me at least arguable that the answer is no.

7.11 In other words, I consider that it may be argued that some uses could qualify for the purposes of section 88 notwithstanding a taint of technical unlawfulness, especially where that use has caused no harm and had been condoned for many years. Therefore, my overall view is that there has been sufficient purely lawful use to satisfy the conditions under section 88 in this case, and that such technical unlawful conduct – if there has been any – which has formed part of the overall pattern of use of Bedmond Lane Fields does not disqualify it from being an Asset of Community Value".

32. Attractively put as Mr Edwards' submissions are, I am in no doubt that they should be rejected. As Lord Neuberger has counselled, caution must be employed when invoking public policy as an aid to statutory construction. The town and village green legislation is, in my view, a clear example of Parliament legislating to confer community rights on those who

have, over time, engaged in socially valuable activities (“lawful sports and pastimes”) in a “trespassory” manner, which did not involve force or deception. As Mr Hopkins submitted, the effects of listing under the 2011 Act are considerably less burdensome on the land owner than is registration as a town or village green.

33. It is also noteworthy that the courts have been willing to recognise rights, such as easements by prescription, in respect of persons who have carried on activities during the relevant limitation period, where those activities have constituted offences (Bakewell Management Ltd v. Brandwood & Ors [2004] UKHL 14); or rights of registration as proprietor, notwithstanding the fact that for part of the limitation period the occupier has been committing criminal trespass (Best v Chief Land Registrar & Secretary of State for Justice [2014] EWHC 1370 (Admin)).
34. Mr Edwards asks rhetorically how it could be said that the 2011 Act can confer a benefit on persons who, for example, had committed criminal damage so as to enter land (for example, by destroying fences). In this regard, I should record that there is some evidence of Banner Homes’ fences along the footpaths being damaged since their erection in September 2014. There is, however, no evidence whatsoever that the use upon which the council relies for the purposes of section 88(2), prior to the erection of fencing, was carried out in a way that involved the commission of criminal damage or other criminal activity. On the contrary, as the evidence (especially that of Dr Wareing) makes perfectly plain, the uses made of the Field by the local community were entirely peaceable in nature, at least equivalent in value to the sorts of games and pastimes envisaged by the town and village green legislation. In this regard, the facts of the present case are similar to those in Higgins Homes Limited v Barnet LBC [CR/2014/006].
35. The fact that I decline to interpret section 88 so as, in effect, to insert the word “lawful” after “actual” does not give *carte blanche* to use that section in ways that would violate the *in bonam partem* principle. The inherent requirement that the use of the land in question must further social wellbeing or social interests will, in practice, preclude many unlawful activities, for the simple reason that unlawful activities are, by their nature, unlikely to satisfy the tests of furthering social wellbeing/interests. Thus, for example, premises used for “raves”, at which illegal substances are consumed, violence is prevalent and noise nuisance frequent, would not fall within section 88. Furthermore, it would be in any case be wrong to rule out any application of the *in bonam partem* principle to section 88, merely because, on the facts of this case, I have concluded that a particular technically unlawful use of land is not *per se* outside the ambit of the section.

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36. I therefore turn to the final issue, as articulated by Mr Edwards:
- Issue 3 – on the evidence, can it be concluded, given the purpose behind the erection of fencing and prohibitory notices, that, in respect of trespassory use of the land beyond the footpaths, it is realistic to think that, in the next five years, such use could occur again (s.88(2)(b))?
37. I have fully taken into account the “statutory declaration” of Mr McCann; and in particular, the following:-
- “4. In view of the continued promotion of the Land for development it is not the intention, and has never been the intention, of Banner Homes Group PLC or, latterly, Cala Group Limited to grant rights of access to or use of the Land to any persons other than employees of Banner Homes Group PLC and/or Cala Group PLC or their respective agents or contractors. Further, neither Banner Homes Group PLC or Cala Group Limited are prepared to accept liability for any injury to those unlawfully accessing the Land, particularly given its overgrown condition and therefore, the decision to fence the Land was taken to prevent trespassory access”.
38. I nevertheless find, as a fact, that the requirements of section 88(2)(b) are satisfied. Given the long history of peaceable, socially beneficial (if formally unauthorised) use of the Field, and of the previous views of its owners, I do not consider that it is at all fanciful to think that, in the next five years, there could be non-ancillary use of the land, along the lines that pertained up to September 2014. The timing of the decision to fence the footpaths – coming hard upon the listing under the 2011 Act – strikes me as material. Also of significance is the uncertain present planning position of the land, where a recent application for the grazing of horses has been refused. Whilst I note Banner Homes’ current stated stance, it is not fanciful, given the history of the Field, to think that Banner Homes may well conclude that their relations with the local community will be best served by restoring the status quo or by entering into some form of licence arrangement with the Residents’ Association or similar grouping.
39. I accordingly find that the requirements of section 88(2) of the 2011 Act are satisfied. This appeal is dismissed.

Judge Peter Lane

Chamber President

Dated 16 April 2015

Michael Lovelady

From: Judith Adamson
Sent: 11 May 2015 10:23
To: Michael Lovelady
Subject: Scrubbs Wood & Park Wood Review Hearings - CR-2014-0018: Banner Homes v St Albans City & District Council and Verulam Residents' Association

Mike

Please find below the email response from Cllr Bell on behalf of St Stephen Parish Council.

I will forward it to all other parties.

Many thanks.

Kind regards

Judith

Ms Judith Adamson
 Regulatory Solicitor
 Legal Democratic & Regulatory Services
 St Albans City & District Council

From: john bell [REDACTED]
Sent: 10 May 2015 11:28
To: Judith Adamson
Subject: Re: Scrubbs Wood & Park Wood Review Hearings - CR-2014-0018: Banner Homes v St Albans City & District Council and Verulam Residents' Association

Dear Ms Adamson,

Thank you for this opportunity to make representations on this decision. I would just like to make the following comments :-

Having only just heard about the hearing that took place regarding the application to make both Park Wood and Scrubbs Wood Assets of Community Value, many more local residents have come forward in support of the application. They have also confirmed many years of unrestricted access to both woodlands even well before C.P. Holdings bought the land.

This clearly reinforces our assertion that both woods have been freely and openly accessible to local residents in living memory, in many cases well over 40 years.

There is also information that the woods have in the past been used by scout groups for their outdoor training etc.

No resident has been ever been told to leave the woods and at no time did they consider they were trespassing or was there any indication as such.

No damage or harm has been caused to the woods by visitors in all the years they have been accessible in fact everyone respects the woods as a lovely local attraction especially when the bluebells are out.

Litter picks have been regularly carried out by local residents to keep the woods tidy and a pleasant place to visit.

The woods have never been fenced to keep visitors out so it must be assumed that the owners of the woods including the Forestry Commission have not been concerned about people visiting these woods.

I hope the above helps to confirm that both these local woods are valued local assets for not only local residents but St. Albans as a whole.

Regards,

John Bell

-----Original message-----

From : [REDACTED]
Date : 21/04/2015 - 15:25 (BST)
To :
Subject : Scrubbs Wood & Park Wood Review Hearings - CR-2014-0018: Banner Homes v St Albans City & District Council and Verulam Residents' Association

Dear All

Mr Lovelady is considering his decisions with regard to Scrubbs Wood and Park Wood. He has asked me to bring to your attention the decision of the First Tier Tribunal in Banner Homes v St Albans City & District Council and Verulam Residents' Association (dated 16th April 2015, a copy attached). In the decision the Judge discusses whether trespassory use may amount in law to actual current use of land for section 88(2) Localism Act 2011. Mr Lovelady's review decision on Bedmond Lane and other material is available on our website:
<http://www.stalbans.gov.uk/community-and-living/improvements/CommunityRights/assets.aspx> and
<http://stalbans.moderngov.co.uk/ieListDocuments.aspx?CId=483&Mid=7694&Ver=4>

Mr Lovelady will take this decision into consideration in reaching his determinations and he is therefore giving you 21 days, until 12th May 2015, to make representations on the decision. Any representations received will be copied to the other parties. If we do not hear from you by the 12th May we will assume you do not wish to comment on the implications of the decision.

If I can help any further please let me know. Many thanks.

Kind regards

Judith

Ms Judith Adamson
Regulatory Solicitor
Legal Democratic & Regulatory Services
St Albans City & District Council
St Peter's Street, St Albans, AL1 3JE
[REDACTED]

Sat Nav Users please use AL1 3LD to locate offices.

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Please note that the Council does not accept service by e-mail

Michael Lovelady

From: Judith Adamson
Sent: 24 April 2015 14:12
To: Michael Lovelady
Subject: FW: Scrubbs Wood & Park Wood Review Hearings - CR-2014-0018: Banner Homes v St Albans City & District Council and Verulam Residents' Association

Mike

Please find below further comments by Debbi White with regard to the application of the Bedmond Lane decision on the Scrubbs Wood and Park Wood Reviews.

I will also forward this to the parties.

Kind regards

Judith

Ms Judith Adamson
Regulatory Solicitor
Legal Democratic & Regulatory Services
St Albans City & District Council
[REDACTED]

From: Debbi White
Sent: 23 April 2015 08:12
To: Judith Adamson
Subject: RE: Scrubbs Wood & Park Wood Review Hearings - CR-2014-0018: Banner Homes v St Albans City & District Council and Verulam Residents' Association

Judith

Having considered the decision in Banner Homes V SACDC I believe it is appropriate to apply the judgement in respect of trespassory use of Bedmond Lane fields to that of the use in respect of Scrubbs Wood and Park Wood. In both cases:

- The community has used the land for decades – even before the current owners purchased it
- The community's use has in my opinion been in furtherance of the social wellbeing/ interests of the community
- It has been peaceable
- It has not been suggested by the landowner that the public have caused damage to the land
- It has not involved force or deception - it has been with the full knowledge of the landowner

Regards

Debbi

Debbi White
Property & Asset Manager
St Albans City & District Council
[REDACTED]

From: Judith Adamson

Sent: 21 April 2015 15:25

Subject: Scrubbs Wood & Park Wood Review Hearings - CR-2014-0018: Banner Homes v St Albans City & District Council and Verulam Residents' Association

Dear All

Mr Lovelady is considering his decisions with regard to Scrubbs Wood and Park Wood. He has asked me to bring to your attention the decision of the First Tier Tribunal in Banner Homes v St Albans City & District Council and Verulam Residents' Association (dated 16th April 2015, a copy attached). In the decision the Judge discusses whether trespassory use may amount in law to actual current use of land for section 88(2) Localism Act 2011. Mr Lovelady's review decision on Bedmond Lane and other material is available on our website:

<http://www.stalbans.gov.uk/community-and-living/improvements/CommunityRights/assets.aspx> and
<http://stalbands.moderngov.co.uk/ieListDocuments.aspx?CId=483&Mid=7694&Ver=4>

Mr Lovelady will take this decision into consideration in reaching his determinations and he is therefore giving you 21 days, until 12th May 2015, to make representations on the decision. Any representations received will be copied to the other parties. If we do not hear from you by the 12th May we will assume you do not wish to comment on the implications of the decision.

If I can help any further please let me know. Many thanks.

Kind regards

Judith

Ms Judith Adamson
Regulatory Solicitor
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SCRUBBS WOOD AND PARK WOOD, GORHAMBURY ESTATE, ST ALBANS. EVIDENCE ON BEHALF OF C P HOLDINGS LTD AGAINST THE INCLUSION OF THE WOODLAND IN THE LIST OF ASSETS OF COMMUNITY VALUE.

COMMENTS ON BEHALF OF THE LANDOWNER

WITH REGARD TO THE EVIDENCE AFTER THE HEARING BY ST ALBANS DISTRICT COUNCIL, BEING THE DECISION OF THE FIRST TIER TRIBUNAL OF THE GENERAL REGULATORY CHAMBER – COMMUNITY RIGHT TO BID IN THE MATTER OF BANNER HOMES, ST ALBANS DISTRICT COUNCIL AND VERULAM RESIDENT'S ASSOCIATION.

INTRODUCTION

St Albans District Council (SADC) held a hearing into the CP Holding objection to the inclusion of Park Wood and Scrubbs Wood, Gorhambury in the list of Assets of Community Value on 24 November 2014.

The decision of the Council's panel following the hearing was due on 9 March 2015 , being the time required by the legislation.

The Council made repeated statements that the panel was not ready to issue the decision within the 9th March deadline, although the agreement of the petitioner to this delay was not sought.

On 21 April 2015 SADC forwarded to the landowner details of a decision by the First-tier Tribunal of the General Regulatory Chamber regarding their decision in the matter of Banner Homes Limited (the appellant) and SADC (first respondent) and Verulam Residents' Association (Second Respondent).

The detail of this appeal decision and its impact on the decision of the Panel with regard to Park Wood and Scrubbs Wood was not available to be examined at the hearing of 24 November 2014

COMMENTS OF THE LANDOWNER WITH REGARD TO THE PROCEEDURE

The landowner is concerned that the significant delay to the issue of a decision in his matter might be considered to have been to enable the "Banner Homes" decision to be taken into account.

The details of the Banner Homes decision were not available to be considered at the hearing into the Scrubbs Wood and Park Wood.

In addition the landowner was unable to cross examine the Council's representative with regard to the specific details of the Banner Homes case.

Whilst comments on behalf of SADC relating to the Banner Homes decision might be considered to "set the scene" the Council has re-opened the appeal. Hearing evidence, without the benefit of public examination, without the agreement of the landowner and contrary to the terms of the hearing as set out by Mr Lovelady.

COMMENTS RELATING TO THE BANNER HOMES LIMITED DECISION.

Although the introduction of this case, at this late stage in the proceedings, is considered to be an abuse of process, we consider it necessary to respond to the decision and provide an explanation of why we consider it not to be relevant to the cases under review.

There are significant differences between the site referred to in the Banner Homes case, Bedmond Lane Field, and that of both Park Wood and Scrubbs Wood.

Bedmond Lane Field (BLF) is crossed by two public footpaths and from the decision notice, there has obviously been significant trespass across the field over many years, without signs to note the private ownership of the land alongside the public footpaths which cross the site.

In addition, it would appear that the landowners have made a number of attempts to allow and / or control the use of the land by the public and at some time offered a lease on the land to the local community.

There is a statement at para 5 that the land has been used for 40 years by the local community

There is substantial evidence of a local resident of a long term study of the wildlife of the Field.

There has been a refused planning application for the keeping of horses on the land, evidencing an interest in the change of use of the land by the landowner.

The land has only recently been fenced off from the public along the line of the footpath.

Prior to the fencing off, the Council's conclusion, accepted by the Tribunal, is that Banner Homes "never did anything to stop" the trespass (M Lovelady para 31)

COMMENTS RELATING TO PARK WOOD, SCRUBBS WOOD

There are significant differences in both the level of trespass and the efforts undertaken by the landowner, between BLF, Scrubbs Wood and Park Wood.

At no time have CP Holdings granted, or offered a lease over either woodland to any party.

Neither have they granted any "easements by prescription, in respect of any persons who have carried out any activities"

The landowner has frequently erected signs at the entrance to the woodland to state that it is private and that there is not right of access. Photographs of old and new signs were considered at the hearing.

Neither Scrubbs nor Park Wood have public rights of way running through them.

There is no case for the establishment of public rights of way through either woodland

Unlike the Banner Homes case, CP Holdings have made no changes to the way in which they manage the land in recent years, but have continued to replace signs stating that the land is private and not open to the public.

In the case of Scrubbs Wood and Park Wood, the only evidence the local community were able to point to with regard to wildlife habitat was the existence of bluebell in the woodland. There is thus far less evidence of use by the local community in either wood than in BLF

There has been no attempt by the landowner to alter the use of the land from a private wood in the case of Scrubbs Wood and Park Wood as commercial forestry.

COMMENTS ON REPRESENTATION MADE BY CLLR BELL

At the hearing on 24th November 2014 Mr Lovelady stated that only those who were present at the hearing, or had previously made a case in writing would be considered to have made valid representations relating to the ACV.

Cllr Bell states clearly at the outset of his statement that he has not been involved in the proceedings before now. Cllr Bell makes a number of statements with regards to the use of both Park Wood and Scrubbs Wood which have not been made before, and have not had the opportunity to be tested at the Hearing.

Cllr Bell refers to "information" that the woods have been used by Scout groups for training, but does not provide any evidence of this use. Neither should any such evidence be brought forward at this late stage.

Cllr Bell also states that the woods have never been fenced and takes this to indicate that the various landowners have been content for trespass to take place. However, there is no requirement on a landowner to fence land that they do not want to be used by the public. Many open front gardens are a testament to this.

We do not consider that this additional evidence should be taken into account in the decision of the hearing panel.

ADDITIONAL EVIDENCE OF DEBBIE WHITE

This evidence continues the pretence that the land has been used by the public "in the full knowledge of the landowner/" and ignores the signs erected and replaced on the site, stating that the premises are private .

Ms White states that the use of the land has always been peaceable. There is no evidence to support this statement. It is the landowners instruction to staff working on the woodland that they should always work with at least two persons and never alone.

On occasions, when staff have informed trespassers that the land is private, this has been received with mixed reactions and personnel have not always felt safe as a result.

There has been regular damage caused by the removal and destruction of sign noting that both woodlands are private, with no public access. Consequently the landowner does not agree that the use of the woodland is peaceable.

Whilst the evidence of Debbie White relating to the Banner Homes case does not provide any further additional evidence, it is not considered appropriate for such evidence to be made. These are after and outside the hearing and as such do not provide an opportunity for cross examination of the statements made.

CONCLUSIONS

The situation relating to Park Wood and Scrubbs Wood is very different from that of Banner Homes. The woodland in C P Holdings ownership is either commercial or private forestry and is not available for games etc. in the same way, nor is there evidence of long term usage or public benefit.

There is no intention to change the use of the Woodland and no recent applications have been made for an alternative use.

There has never been an attempt to offer the land to the local community for lease or other form of tenancy. To the contrary constant signage has been erected to state that the land is private with no public access; it is not the fault of the landowner that there are periods without signage when it has been removed by persons trespassing on the land.

For these reasons we do not consider the Banner Homes case to have a bearing on the case relating to Park Wood and Scrubbs Wood nor should it be brought into consideration in making a decision, especially as it is outside the date and terms for a decision by Mr Lovelady.

We continue to be of the opinion that this application for the woodland to be declared an ACV should be dismissed, given the failure, from the initial hearing on 24th November 2014 to provide conclusive arguments / evidence for inclusion of either woodland as areas of ACV

Minutes of the Review Hearing of the Listing of Park Wood as an Asset of Community Value

Mr Lovelady noted that the procedure would be as for the Scrubbs Wood hearing.

Evidence of the Council

Ms White noted that before making her decision she inspected the site, and took photographs. She noted that there were no fences preventing public access, although there was a gate preventing vehicular access. At the time of inspection she noted that she had not seen any signs suggesting that the land was private. She noted that there was evidence of a sign from Potters Crouch Woodland Management, informing that tree works were taking place, but that this sign was damaged and could not be read clearly. She noted that she could see desire lines, but that there were no wayfinder signs. With regard to the second set of photographs taken by Lyn Henny, Ms White noted that show signs stating 'Private' high up in the trees. Ms White concluded that based on the evidence, it was reasonable to assume that Park Wood was used a community asset and this was why she decided to list it.

Mr Lovelady asked Ms White to confirm where her decision could be found, and Ms White referred to the decision notice p. 123. Mr Lovelady asked Ms White to confirm dates and Ms White confirmed that the notice is dated 9 April 2014 and the decision was taken 28 March 2014. Mr Lovelady referred to the map p. 125, and asked Ms White to confirm that this referred to the wood path, that Ragged Hall Lane was found to the left and the public footpath to the right. Ms White confirmed this. Mr Lovelady asked Ms White whether she inspected the site. Ms White confirmed that she inspected the site with Lyn Henny.

Questions from the Owner to the Council

Ms Molyneux asked Ms White whether she saw any difference from Scrubbs Wood when she visited the site. Ms White replied that in Park Wood there was clear evidence of vehicular access. Ms Molyneux asked Ms White whether she had seen the locked gate at the entrance, which Ms White confirmed. Ms Molyneux commented that the woodland is pine with broad roots that can be driven over, and Ms White confirmed this. Ms Molyneux commented that a public right of way can be found to the right of the wood by the bridge which crosses the A10, which Ms White confirmed. Ms Molyneux asked Ms White to confirm whether she did not see the signs in the wood, or whether there were no signs. Ms White replied that since she did not see any signs, she assumed there were no signs. Ms White additionally commented that on the photos taken by Lyn Henny, the sign seen by the locked gate was not there at the time of the original inspection. Ms White also noted that on second inspection of the photograph, she could see a torn down sign on the tree. Ms Molyneux asked whether Ms White acknowledged that trespass had occurred. Ms White answered that she did not acknowledge that trespass has occurred since there is no sign that the landowner has prevented people accessing the land. Ms Molyneux asked whether Ms

White's evidence for there being public rights of way was from Mr Bell, and Ms White replied that it was from Mr Bell and other witnesses.

Questions from the Nominating Group to the Council

Mr Bell noted that Park Wood is closer to Chiswell Green than Scrubbs Wood and asked Ms White whether she believed that it was more accessible to the local community. Ms White replied that there was little difference, but perhaps Park Wood is slightly closer. Mr Bell asked Ms White whether there were any discernible barriers to prevent walkers from entering the wood. Ms White replied that she did not see any, and that there are other entrances to the woodland which are clearly pedestrian entrances. Mr Bell asked whether the entrances looked reasonably well used, and Ms White replied that they did, but that it was difficult to judge this. Mr Bell asked whether the sign on the trees stating that the woodland is private implies that, although individuals entering the wood have no rights, entrance itself is not being prohibited. Ms White replied that she could not judge this.

Questions from the Chair and Consultee to the Council

Councillor Daly asked Ms White whether she walked up to the A414, and Ms White clarified that she walked part of the way into the wood. Councillor Daly asked Ms White to comment on the tracks seen in the wood. Ms White explained that she took photographs at various points along the track, that the main entrance can be seen and that other desire lines were visible which do not necessarily run north/south.

Mr Lovelady asked Ms White what use the community made of Park Wood. Ms White replied that they used it for leisure purposes such as walking and dog-walking. Mr Lovelady asked Ms White whether she saw anybody in the wood during her visit, and Ms White replied that she could not recall this.

Evidence of the Owner

Ms Molyneux noted that Park Wood is different to Scrubbs Wood by virtue of it being commercial woodland used to grow wood for timber, meaning that it is not covered by a tree protection order. Ms Molyneux noted that when works are being carried out in the wood, signs are put up whether or not a public right of way exists, and that the existence of any signage does not acknowledge any rights of way. Ms Molyneux noted that listing Park Wood as an Asset of Community Value is inappropriate, and that Park Wood is unlikely to be on the market. Additionally, Ms Molyneux noted that the application to list Park Wood as an Asset of Community Value was not properly submitted. Ms Molyneux additionally noted that the wood is in St Michael Parish Council, not St Stephen Parish Council.

Mr Winward referred to pp. 142-179, which refer to the area as a commercial woodland. He explained that it is standard practice to surround a commercial woodland with native trees. With regard to barriers, he noted that fences had been put up but that they had disappeared, and that a bund has been erected. He referred to Lyn Henny's photographs showing the gate with a clearly visible sign. He noted that a bund had been erected alongside the woodland which is visible in the photograph of the gate. He noted that the bunds have been

levelled and that CP Holdings have tried to restrict public access to the woodland. Mr Winward referred to TilHill's comments pp. 184-5 referring to health and safety. He noted that it is not possible to continuously replace signs. Mr Winward finally noted that no sign had ever been erected that would suggest that there was a public right of way through the woodland.

Ms Adamson clarified the Council's position with regard to plans. Regulation 6 sets out what a nomination must include, and there is no requirement for a plan to be submitted. Ms Adamson explained that currently, the Council specifies that a plan must be included, but they did not at the time of St Stephen's application. Additionally, Ms Adamson noted that these requirements are not statutory and so this would not invalidate the application.

Mr Lovelady asked Ms Adamson to clarify whether at the time of submission St Stephen's application met the criteria. Ms Adamson confirmed that it did since at the time of application there were no guidelines in place. Mr Lovelady asked Ms Adamson why an extra plan had been included, and Ms Adamson explained that this was so that the decision notice clearly showed the land in question. Ms Molyneux commented that the Council, on 7 March 2014, stated that the plan did not meet the minimum criteria. Ms Adamson re-confirmed that when the initial set of applications was received there were no plan specifications in place.

Questions from the Council to the Owner

Ms White noted that Mr Winward stated that there is no evidence of signs in Park Wood similar to the wayfinder sign in Scrubbs Wood, however she noted a photograph p. 209 which shows a post which could possibly have held a wayfinder sign, and asked for Mr Winward's comments. Mr Winward replied that there is no evidence that there was a wayfinder sign at Park Wood. Ms White asked Mr Winward why he had not fenced around the woodland, noting that some landowners go to extreme lengths to keep the public out, and questioning why CP Holdings had not found that to be necessary. Mr Winward replied that they had fenced the land but that this had been removed, and that they had bunded the land but this had been levelled. He noted that it was economically unviable to continuously replace the fence.

Questions from the Nominating Group to the Owner

Mr Bell commented that he has never seen a fence along the wood's border, and Mr Winward replied that there is a wooden and metal fence between the footpath (to the east) and Park Wood. Mr Bell noted that the map p. 142 shows many dotted lines through the wood, and that it is not unreasonable to interpret these as permissible routes to take. Mr Winward replied that there are no rights of way through Park Wood and referred Mr Bell to p. 141. Mr Bell noted that St Stephen Parish Council have the right to make an application for Park Wood to be listed as an Asset of Community Value, and that it is even closer to the parish than Scrubbs Wood. Ms Molyneux replied that she had no further comments with regard to this.

Questions from the Chair and Consultee to the Owner

Councillor Daly asked whether anybody has permission to access the site, and Mr Winward confirmed that nobody has rights of access to the wood. Mr Lovelady noted that p. 196 refers to a 'permissive path', and Ms Molyneux clarified that this refers to Scrubbs Wood.

Evidence of the Nominating Group

Mr Bell noted that the wood serves the local area, particularly Chiswell Green. He noted that he could have produced more evidence of local use of the wood, and drew attention to the evidence presented including Chis Chat, which refers to walks through the wood, litter picking and bluebell walks. He noted that he had not heard of any cases of interference with timber, and that the residents and owner work together without affecting the wood. He noted that the pine forest is clearly commercial, and that the area around the woodland is mainly deciduous trees. He observed that the wood is closer than Scrubbs Wood for the Chiswell Green community. He noted a new footpath opposite the entrance to the woodland. Mr Bell explained that the local community enjoy the wood and have applied for it to be listed as an Asset of Community Value so that they would be able to purchase the wood if it came up for sale, and that the local community are trying to protect the woodland for the future. He observed that the owners have mentioned that they do not intend to sell the wood, in which case its listing as an Asset of Community Value is irrelevant.

Questions from the Owner to the Nominating Group

Ms Molyneux asked Mr Bell to confirm that Park Wood is a commercial wood, and that there are no public rights of way through it, which Mr Bell confirmed. Ms Molyneux asked Mr Bell whether the paths in Park Wood are the type to be expected in a commercial wood, which Mr Bell confirmed. Ms Molyneux noted that the paths are for vehicles, not for people to walk on, and Mr Bell observed that the paths are not particularly wide. Ms Molyneux observed that when an area is felled the paths are opened up again. Ms Molyneux asked whether Mr Bell had ever seen signs referring to access to the wood. Mr Bell replied that the first signs he was aware of were those that had been recently erected. Mr Bell confirmed that he had not seen any obvious fencing. Ms Molyneux asked Mr Bell whether he considered the community's use of the wood ancillary to its commercial purpose, and Mr Bell replied that more time was spent in the wood enjoying it for leisure purposes than time spent cutting down trees for timber. Mr Winward questioned why, since the wood is used extensively for walking, no residents reported the Eastern Europeans who had been found in the wood. Mr Bell commented that he was not aware of this. Mr Winward explained that he had had to evict 25 people from the wood, and that if the local community were using the wood they should have noticed this. Mr Winward noted that he regularly visits the wood and does not see many local residents. Mr Bell explained that there are fewer local residents there during the day, and suggested that if he visited the wood in the evening and at the weekend there would be more locals. Ms Molyneux asked the Chair whether the questions from the Scrubbs Wood hearing could be taken to apply here, and Mr Lovelady asked that questions are formally asked. Ms Molyneux referred to the evidence of Mandy Floyd, and asked whether Mr Bell had seen signs welcoming people to this wood. Mr Bell replied that he had not. Ms Molyneux asked whether any of the evidence from the Chis Chat newsletters relates

specifically to Park Wood, and Mr Bell explained that it relates to both woods. Ms Molyneux asked Mr Bell to confirm that as far as he was aware, the land was being used without the landowner's consent. Mr Bell confirmed this.

Questions from the Council to the Nominating Group

Ms White referred to Mr White's letter and noted that he used the wood prior to its purchase by CP Holdings, and mentioned that the forestry commission allowed people to walk in the wood. Mr Bell explained that the footpaths were still used. Ms White noted that there are no public rights of way, but asked Mr Bell whether he believed that the public's use of the paths gave them permissive rights. Mr Bell replied that this had not been considered, but given how long the paths had been used, perhaps this was the case. Ms White referred to the discussion with CP Holdings when the signs went up in 2009, and asked whether this also applied to Park Wood. Mr Bell confirmed that it did. Ms White asked Mr Bell to confirm that an employee of CP Holdings had led him to believe that the company would not take action against people using the wood. Mr Bell confirmed this. Ms White referred to p. 209, and pointed out the post where it seems as if a sign has been removed. She asked Mr Bell whether he had any knowledge of this, or of what the sign may have been. Mr Bell replied that he did not.

Questions from the Chair and Consultee to the Nominating Group

Councillor Daly asked Mr Bell whether he considered access to the wood an ancillary use, or its social use. Mr Bell replied that he believed it to be the latter. Mr Lovelady asked Ms Adamson to clarify the test for this, and whether there is any official guidance. Ms Adamson explained that there is no definition in the act of 'ancillary', and no guidance from the Department for Communities and Local Government. She noted that this is referred to tangentially in Worthy Developments Ltd, where the amount of time a particular use needs to occur was considered. Oxford United Stadium also refers briefly to ancillary. Ms Adamson noted several dictionary definitions of ancillary, including 'providing necessary support to the primary activities or operation of an organisation, system etc', 'in addition to something else but not as important' and 'something which functions in a supplementary or supporting role'.

Final Submissions

Ms White submitted that she had based her decision on the evidence seen on site, noting that she did not believe that the landowner had attempted to prevent public use of the land, and that there was a reasonable prospect that community use of the land would continue. With regard to the word ancillary, having read the documents, she noted that she did not consider this use to be ancillary, since there are two primary uses in this case, one commercial, the other social. Ms White gave an example of an ancillary use of the wood as people gathering pieces of wood.

Mr Bell submitted that the community had been concerned following their previous experience of Blackgreen wood, which was fenced off and lost to the local community, and

noted that there was a possibility that this woodland could go in this direction. Mr Bell noted that there is no reason for Park Wood not to continue as a commercial enterprise. Mr Bell noted that the community use the wood as a nature reserve and pleasant walking place, and that they have no interest in taking over the land. Mr Bell noted that he hoped that CP Holdings would continue to allow the community to do this.

Ms Molyneux asked that the conclusion of CP Holdings' statement be referred to. She clarified Mr Bell's statement by explaining that there would not exist a right to buy the land, but a right to bid. Ms Molyneux explained that listing the land as an asset of community value is not the right decision since it is a commercial woodland, with no public rights of way, only tracks, which were established when the forestry commission planted the land. Ms Molyneux noted that there is no evidence of rights of way. Ms Molyneux expressed surprise that Ms White did not see the signs on the woodland on inspection. Ms Molyneux noted that the landowner is actively maintaining the privacy of the land. Ms Molyneux noted that St Stephen is not the relevant parish council to make the application.

Ms Molyneux raised several issues relevant to both Scrubbs Wood and Park Wood. She noted that the application to list the land came as a result of the Localism Act, which prompted the local authority to alert the parish council of the existence of the procedure. Ms Molyneux noted that had this not been the case, this proceeding would not have taken place. Additionally, Ms Molyneux noted that council officers considered the plan inaccurate, which should be a fundamental part of the application. Ms Molyneux noted that there were signs on the site. With regard to the question of ancillary use, Ms Molyneux submitted that the use of footpaths is ancillary and therefore not an appropriate basis for applying to be listed as an asset of community value.

Mr Lovelady asked Ms Molyneux whether she was submitting that trespass had occurred in the case of both woods. Ms Molyneux confirmed that she was submitting this. Mr Lovelady asked about Mr Bell's conversation with a CP Holdings employee. Ms Molyneux replied that she has been working with CP Holdings since 1989 and that she does not know of a Mr Mitchell, and would suggest that his authority is not clear.

Mr Lovelady thanked the parties, noting that he would consider the written and oral evidence and prepare a written decision to be sent to the parties, along with notes from the hearing, and that he would aim to produce a decision within 14 working days.

Mr Lovelady closed the hearing at 15.22.

Note on Review Hearings for the Listings of Scrubbs Wood and Park Wood as Assets of Community Value held 24 November 2014

The review hearings for the listings of Scrubbs Wood and Park Wood as Assets of Community Value were originally scheduled for 24 November 2014 at 10.00 am and 2.00 pm respectively. These hearings were adjourned to 17 February 2015 at 10.00 am and 2.00 pm respectively.

The review hearings for the listing of Scrubbs Wood began at 10.00 am. In attendance were Mike Lovelady, Head of Legal, Democratic and Regulatory Services, St Albans City & District Council; Councillor Julian Daly, St Albans City & District Council, Judith Adamson, Regulatory Solicitor, St Albans City & District Council; Hannah Adler, Democratic Services Officer, St Albans City & District Council; Debbi White, Property and Asset Manager, St Albans City & District Council; Jan Molyneux, Molyneux Planning; Robin Winward, CP Holdings and Parish Councillor John Bell, St Stephen Parish Council.

Colour versions of the photographs taken by Ms White were circulated to the parties, as were colour versions of photographs taken of Scrubbs Wood and Park Wood on 20 November 2014.

Mr Lovelady noted that he was delegated to hear and determine review applications for listing of assets of community value. Councillor Daly would act as consultee. The procedure for the hearing was noted.

It was noted that the decision notice to list Scrubbs Wood as an asset of community value was issued 9 April 2014. CP Holdings requested a review of this listing on 2 June 2014.

Mr Lovelady noted the need to establish whether the statutory criteria have been met. S.89 of the Localism Act 2011 notes that land in a local authority area may be included by the authority in a list of assets only in response to a community nomination. S.89(2) notes that this may be made by a parish council in that parish's area. Scrubbs Wood and Park Wood are not in St Stephen Parish Council's area. Further regulations (s. 89(4)) note that an application may be made by a parish council for land in another parish council if these areas share a boundary. Mr Lovelady circulated a plan showing the boundary between St Michael and St Stephen Parish Councils. Mr Lovelady accepted that the nomination was valid but stated that he would consider the fact that it was not in the St Stephen Parish Council's area.

Parish Councillor John Bell, from the nominating group, noted that he intended to call two witnesses to the hearing, James White and Chris O'Brien. A witness statement from Mandy Floyd was additionally provided.

Ms Molyneux asked why evidence had been received late from St Stephen Parish Council. Mr Bell explained that he had not realised that so much evidence would be required.

Mr Lovelady noted that it was important to ensure that the applicants have sufficient time to consider the evidence. He noted that he would admit the evidence submitted late. However,

if the owners felt that they needed more time to consider the documents the hearing could be adjourned.

Ms Molyneux noted that they would first need time to read the new evidence, before assessing whether a further adjournment would be needed. The hearing was adjourned for fifteen minutes to allow this.

The hearing resumed at 11.10 am.

The owners requested that both hearings be adjourned.

Mr Lovelady accepted this. He proposed to adjourn both hearings to a later date, and gave the nominating group 14 days from the date of the original hearing to submit witness statements. The owners would be permitted to respond to this evidence.

The nominating group submitted their additional evidence on 19 November 2014. The owners provide a response to this evidence on 5 January 2015.

An addendum agenda was issued to all parties on 27 January 2015. This included the evidence from the nominating group, the response from the owners and a map showing parish boundaries.