



## Appeal Decision

Hearing held on 5 February 2025

Site visit made on 6 February 2025

by **Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4<sup>th</sup> March 2025

### Appeal Ref: APP/X0415/C/23/3335970

#### Land at Stampwell Farm, Oxford Road, Jordans, Buckinghamshire HP9 2XD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (“the Act”). The appeal is made by Dr Frog Orr-Ewing against an enforcement notice issued by Buckinghamshire Council.
- The notice was issued on 3 November 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, a material change of use of the land to a mixed use comprising agriculture, residential, coffee bean processing, community facility for worship and leisure purposes and integral to that use, operational development comprising the erection of a marquee and play equipment.
- The requirements of the notice are to: (1) Cease the use of the land as a community facility for a place of worship and leisure purposes; (2) Cease the use of the building (marked A on the attached plan 1) and the land for coffee bean processing; (3) Remove the marquee (shown in the approximate position marked hatched on the attached plan 1) from the land; (4) Remove the play equipment (shown in the approximate position marked cross hatched on the attached plan 1) from the land; and (5) Remove all debris and materials resulting from compliance with steps (1) to (4) from the land.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

**Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.**

#### Preliminary matter

1. Evidence was given at the Hearing in the context of the revised National Planning Policy Framework (“the Framework”) published on 12 December 2024. The first sentence of paragraph 155 of the Framework, concerning development of grey belt land, a matter to be considered in this appeal, was subsequently amended on 7 February 2025. This made it clear that all the paragraph’s relevant criteria (a, b and c in this case) need to be addressed. As discussion at the Hearing had addressed all 3 relevant criteria, and as the amendment does not constitute a change to policy, it was not necessary to revert to the parties.

#### The appeal on ground (b)

2. This ground of appeal concerns whether the matters stated in the notice have occurred as a matter of fact. It was agreed at the Hearing that the community facility was only being used for worship when the notice was issued and that the reference to leisure purposes within the allegation could be deleted without causing injustice. There is therefore success on ground (b) in this limited respect and I shall correct the notice accordingly.

3. The notice states that the erection of the play equipment is integral to the alleged material change of use. However, it is agreed that its erection was authorised, retrospectively, under the terms of a planning permission granted in 2014<sup>1</sup> (“the 2014 permission”).
4. The 2014 permission was time limited until 30 June 2017 and condition 3 required the play equipment to be removed within one month of that date, thus limiting the period during which it could be retained. While a time-limited permission will expire and cease to exist at the end of the relevant period, a condition limiting the duration of that permission will continue to bind the land and be enforceable.<sup>2</sup> Accordingly, and as 10 years have not elapsed since the breach of condition 3 of the 2014 permission began, the notice should have alleged the retention of the play equipment in breach of that condition.
5. The appellant refers me to the *Wealden*<sup>3</sup> judgment, in which it was found that an Inspector was empowered to correct an allegation of a material change of use to one of operational development. While the correction I might make in this case is different, I see nothing in *Wealden* to indicate that it would be more fundamental than in that case or otherwise beyond my power.
6. Under section 176(1)(a) of the Act a notice may be corrected in respect of any defect, error or misdescription within it. The courts have interpreted this power widely but subject to the single test that the decision-maker is satisfied that the correction will not cause injustice to the appellant or the local planning authority. Neither party raised any concern on that point in the Hearing, indeed the appellant confirmed that his argument did not concern injustice.
7. The appeal on ground (b) therefore also succeeds to this limited extent and the notice will be corrected. I shall consider whether the retention of the play equipment is immune from enforcement action in the appeal on ground (d).

#### **The appeal on ground (d)**

8. This ground of appeal is that the matters alleged in the notice are immune from enforcement action by reason of passage of time. In this case, the ground of appeal was only brought in respect of the alleged operational development of the erection of the marquee and the play equipment.

#### *The marquee*

9. This was erected prior to the introduction of coffee bean processing, which resulted in the mixed use alleged in the notice. While the marquee may have been central to the previous mixed use of the land including worship, that use had begun before it was erected. The marquee was not included in the application for the 2014 permission, which authorised the previous use and the erection of the play equipment for limited periods.
10. The erection of the marquee was therefore operational development carried out before 24 April 2024. Consequently, there will be success on this ground if it can be demonstrated that substantial completion occurred on or before 3 November 2019,

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<sup>1</sup> CH/2014/0555/FA granted 27 June 2014.

<sup>2</sup> *Avon Estates Ltd v Welsh Ministers & Ceredigion CC* [2011] EWCA Civ 553.

<sup>3</sup> *Wealden DC v SSE & Innocent* [1983] JPL 234.

4 years before the date on which the notice was issued. The onus lies with the appellant and the relevant test is the balance of probabilities.

11. The appellant's evidence, including contemporary photographs, shows that the marquee was erected in May 2014, even though it was not included in the planning application then current. Later photographs indicate that substantial completion was achieved at that time. There is no ambiguity or imprecision in the appellant's version of events on this matter and no other evidence makes it less than probable.

#### *The play equipment*

12. As noted, this has been retained in breach of a planning condition and the question of immunity must be considered accordingly. Condition 3 of the 2014 permission continued to bind the land after that permission expired and required the play equipment to be removed not later than one month after 30 June 2017. The play equipment was not removed by the required date, 30 July 2017, whereupon the breach of condition 3 commenced.
13. For it to become immune from enforcement action, a breach of a planning condition must continue for not less than 10 years. As the breach only began on 30 July 2017, the unauthorised retention of the play equipment had not acquired immunity from enforcement action on the date the notice was issued.

#### *Conclusion on ground (d)*

14. For the reasons given, the appeal on ground (d) must fail in respect of the play equipment. However, no enforcement action could be taken in respect of the erection of the marquee at the date the notice was issued and the appeal on this ground must therefore succeed in respect of it. The notice will be corrected accordingly.

#### **The appeal on ground (a)**

15. The appeal on this ground and the deemed planning application are in respect of the alleged material change of use (MCU) and not the retention of the play equipment in breach of condition. The agricultural and residential elements of the mixed use are agreed to be lawful uses of the land, so the assessment of the mixed use needs to focus on the coffee bean processing and community facility for worship elements.
16. The main issues in this ground of appeal are:
  - Whether the MCU is inappropriate development within the Green Belt (GB) having regard to the effect on the openness and purposes of including land in the GB and, as necessary, sustainable development principles and the effect on the setting of designated heritage assets.
  - The suitability of the vehicular access from Oxford Road.
  - Any support provided to the rural economy.
  - If the MCU constitutes inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, and so amounts to the very special circumstances required to justify the proposal ("the GB balance").

17. Whether the development is well integrated into the rural setting and conserves the scenic beauty and amenity of the landscape had been identified as a main issue prior to the Hearing. However, the Council's concerns in this respect were limited to the marquee, which does not form part of the deemed planning application.

### **Reasons**

#### *Inappropriate development – coffee bean processing*

18. This element of the mixed use is carried out in a building that predates the MCU and which is agreed to be of permanent and substantial construction. Paragraph 154 h) iv of the National Planning Policy Framework ("the Framework") relates to the re-use of such a building. It states that this is not inappropriate development provided it preserves the openness of the GB and does not conflict with the purposes of including land within it.
19. While the Council took enforcement action in respect of the mixed use it indicated in the Hearing that, viewed in isolation and limited to building G, the coffee bean processing element may have been considered differently. There is no evidence that the location is unsustainable for the use at its current scale or that it has any adverse effect on the setting of the 3 designated heritage assets<sup>4</sup> nearby.
20. In that context, the Council does not identify a conflict with any purpose of including land within the GB arising from the coffee bean processing use. The Council's concern about harm to the openness of the GB in respect of this element was expressed in terms of activity, specifically comings and goings.
21. The appellant's transport statement indicates that deliveries to the coffee bean processing use generate 2 to 3 vehicle arrivals and departures per week. The use is carried out by one person, who lives on the land, so it does not generate any journey to work vehicle movements at present. The Council accepts that the effect of this element on the openness of the GB is limited.
22. If the person carrying out this element of the mixed use were to live elsewhere in future, their daily arrivals and departures would not make an appreciable difference to the effect of the use on the openness of the GB in visual or spatial terms. Subject to restrictions on the scale of the enterprise, which could be secured through the imposition of conditions, future increases in activity that might reduce the openness of the GB may be avoided.
23. Accordingly, and subject to any necessary limitations, this element of the mixed use does not constitute inappropriate development within the GB and accords with policy GB29 of the Chiltern District Local Plan ("the CDLP") and policy CS19 of the Core Strategy for Chiltern District ("the CS").

#### *Inappropriate development – community facility for worship purposes*

24. At the Hearing, the appellant described 3 components of this element of the mixed use. The first and main component is worship held in the marquee on Sundays and other holy days such as Good Friday and Christmas Day. The second component is leading of online worship from an office building. As it does not involve any visitors to the appeal site, I do not consider this component to require further

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<sup>4</sup> Stampwell Farmhouse, grade II; barn to north of Stampwell Farmhouse, grade II; and stables and link to north east barn at Stampwell Farmhouse, grade II.

- assessment. The third component is forest worship, held outdoors on summer evenings and at weekends 4 or 5 times each year, attended by some 60 people.
25. Although not consented by the 2014 permission, it is evident that the marquee was erected for the purposes of worship and has since been used as such. Thus, there has been no re-use of the marquee building that could be considered under paragraph 154 h) iv of the Framework. Furthermore, while this element of the mixed use is centred on the marquee it also takes place outside of any building. It should therefore be considered as a use of land under paragraph 154 h) v.
  26. Paragraph 154 h) v states that a MCU of land may not be inappropriate development within the GB provided it preserves the openness of the GB and does not conflict with the purposes of including land within it. However, this is stated to apply to “[changes of use such as] for outdoor sport or recreation, or for cemeteries and burial grounds.” While that list is not exhaustive, the words ‘such as’ indicate that, to be found not inappropriate, a use must have the flavour of the examples.
  27. A common relevant characteristic of outdoor sport or recreation, cemeteries and burial ground uses is the fundamental primacy of open-air activity within the use, without which it would not occur. Any buildings, be they pavilions, changing rooms or chapels of rest, are incidental or ancillary to the open-air activity and would not exist without it. In contrast, the worship use is primarily carried out inside the marquee building, with the most popular event, Sunday afternoon worship, typically attended by some 120 people. Occasions when the weather would allow this or a similar scale gathering to be held outside the marquee must be limited. Viewed in this light, the worship use is predominantly an indoor activity, inconsistent with the common characteristics of the examples cited in paragraph 154 h) v of the Framework. No other exception within paragraph 154 has been identified.
  28. The appellant contends that the appeal site meets the definition of grey belt land, to which paragraph 155 of the Framework relates. The paragraph states that the development of homes, commercial and other development in the GB should not be regarded as inappropriate where its applicable criteria all apply. Because the matters alleged are not major development involving the provision of housing, only criteria a, b and c would need to be met.
  29. Criterion a is that the development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining GB across the area of the development plan.
  30. The Framework defines grey belt land as land that does not strongly contribute to any of 3 purposes of the GB. These are a) to check the unrestricted sprawl of large built-up areas, b) to prevent neighbouring towns merging into one another, and d) to preserve the setting and special character of historic towns.
  31. The land is within General Area 47b as described and assessed in Annex 1D to the Buckinghamshire Green Belt Assessment, published in 2016. This records that General Area 47b had an overall rating of 3 (“Meets Purpose”) for purposes a) and b) and of 1 (“Meets Purpose Weakly”) for purpose c). The Assessment’s criterion scoring requires a rating of 4 or above for the contribution to be regarded as having strength. This evidence therefore confirms that the appeal site does not strongly contribute to any of the 3 relevant purposes of the GB and on this count, it constitutes grey belt land.

32. Grey belt excludes land where the application of the policies relating to the areas or assets in footnote 7 to the Framework (other than GB) would provide a strong reason for refusing or restricting development. Of the relevant areas and assets listed in the footnote, only the 3 nearby designated heritage assets fall to be considered in this case. The Council's concerns in that regard are expressed in terms of the effect of the marquee, which is excluded from the deemed planning application. The policies identified in footnote 7 therefore do not provide a strong reason for refusing planning permission.
33. No evidence that granting planning permission for the uses would fundamentally undermine the purposes (taken together) of the remaining GB across the area of the development plan has been produced. Criterion a is therefore met.
34. Criterion b of paragraph 155 is that there is a demonstrable unmet need for the type of development. The appellant contends that the church's needs cannot be met elsewhere because of an intrinsic link between worship and the environment, which he describes as integration of people, purpose and place. He told me that some 30% of the church's congregation also carry out agricultural or environmental activity or buy farm produce when visiting the land.
35. The rural setting is important to the ethos of the church and has made it attractive to members of the congregation, with spiritual and wellbeing benefits. I have no doubt that this amounts to a private demand for worship that is closely associated with farming and the rural environment. However, the evidence before me on these matters is limited and does not convince me that a wider need, which planning policies and decisions should address as a matter of public interest, has been demonstrated. While I understand the significance of agricultural and environmental activities to the church, it has not been shown that they could not be carried out, and their benefits be realised, if indoor services were held elsewhere. In that regard, there is no evidence of a shortage of accommodation suitable for worship in the local area, including non-GB locations. Criterion b is not met.
36. Forest worship, being an outdoor activity, exhibits the closest association with the rural environment that is at the heart of the church's ethos. While it was not examined in the appeal, it appears to me that this component alone, i.e. if indoor worship were to cease, could be a temporary use of land for not more than 28 days in total in any calendar year.<sup>5</sup> That would, however, be a matter for the Council to consider if the circumstances arose.
37. Criterion c of paragraph 155 is that the development is in a sustainable location, with particular reference to paragraphs 110 and 115. Paragraph 110 notes that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, a matter to be taken into account in decision-making. Among other things, paragraph 115 has 2 key requirements for assessing planning applications. The first is that sustainable transport modes are prioritised taking account of the vision for the site, the type of development and its location. The second is that safe and suitable access to the site can be achieved for all users.
38. Bus services 101, which runs between High Wycombe and Uxbridge, and 102, which continues to Heathrow, stop near the site. While the appellant's transport statement says buses run half-hourly, only service 102 runs past the site on

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<sup>5</sup> Part 4, Class B of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 (as amended).

Sundays. Accordingly, there is an hourly service in each direction when there is greatest potential for use by members of the congregation.

39. There has been no significant change since a previous appeal decision<sup>6</sup> found the site was not well located in relation to public transport and that users would place considerable reliance on the private car to gain access to it. While that appeal related to a different proposal, the unattractive location of the site in relation to public transport is the same.
40. The pedestrian route from the nearest bus stops to the appeal site are far from ideal. The A40 is unlit and has a 50mph speed limit where it passes the site and while there are signs of a surfaced footway, it was laid some years ago and is now largely overgrown. It is highly improbable that some users, particularly those with limited mobility or with children in pushchairs, would wish to use it. Safe and suitable access to the site cannot therefore be achieved for all users. Accordingly, criterion c is not met.
41. At the Hearing, the appellant suggested that a travel plan could be drawn up to encompass the provision of bus travel information, appointment of a travel co-ordinator, operation of a minibus service and carrying out monitoring and review. No further detail has been provided so it is unclear how such a plan might be funded or what it might achieve. However, noting the condition of the pedestrian route from the nearest bus stops, it is unlikely that a travel plan of the scope indicated would make use of public transport any more attractive.
42. While criterion a of paragraph 155 is met, criteria b and c are not. The use comprising the community facility for worship is therefore inappropriate development and harmful to the GB by definition.
43. For the reasons given earlier, I must set aside the marquee and focus on the use of the land when considering the effects on openness and the purposes of including land in the GB. The Council does not consider the use to conflict with the purposes of including land in the GB and I agree.
44. The main aspects of the use likely to affect openness are the activity associated with it, vehicle movements in particular, and car parking. The appellant's transport statement records that vehicle movements peak at 40 arrivals in the hour before Sunday worship and 40 departures in the hour after. They are considerably lower at other times. Movements on this scale influence openness in spatial terms, while parking also has an effect in visual terms, mostly along the track leading to the church and in an overspill area at the busiest times. While those effects may cause significant harm to openness, they are mitigated by the fact that they are short-term and limited to when services are held.

#### *Vehicular access*

45. A full assessment of the requirements for this in connection with worship use had been made when the application for the 2014 permission was considered. That application had included a drawing showing the access track as 4.8m wide and with a passing place 15m from the edge of the carriageway. I saw on my site visit that the track is of the required width and while the passing place is laid out differently from the drawing, it appears comparable. Any changes deemed necessary would

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<sup>6</sup> APP/X0415/W/19/3229432 dismissed 13 August 2019.

therefore be relatively minor and could be secured by condition if the worship use were permitted. It has not been suggested that any change to the vehicular access is necessary in respect of the coffee bean processing element.

#### *The rural economy*

46. While members of the congregation participate in agricultural and environmental activities and buy produce from the farm, any effect this may have on the rural economy has not been quantified in the evidence before me. The coffee bean processing use only provides employment for one person, so its contribution to the rural economy, while according with policy CS19 of the CS, is limited.

#### *The GB balance*

47. For the reasons given, and due to the inclusion of the community facility for worship use, the MCU is inappropriate development overall, contrary to policy GB2 of the CDLP. Inappropriate development is harmful by definition, a matter to be given substantial weight in determining whether to grant planning permission in respect of the community facility for worship element. Inappropriate development should only be permitted if other considerations clearly outweigh the harm to the GB and any other harm.
48. Other harm arises because the land is in a location with limited non-car access by reason of the poor connection to the nearest bus stops and the relative infrequency of services at times of the worship use's peak demand. It is therefore not easily accessible by frequent public transport services and does not have safer access for pedestrians and is not near to existing community infrastructure. The mixed use in this location is therefore contrary to policies CS1, CS4 and CS29 of the CS.
49. The absence of any harm to the setting of the nearby heritage assets is a neutral factor and does not carry significant weight in favour of granting permission.
50. I have considered the importance of the rural and agricultural context to the church and its congregation. However, this private benefit does not clearly outweigh the identified public harm to the GB and by reason of the poor transport choices. The community facility for worship use is therefore unacceptable.
51. In contrast, and viewed in isolation, the coffee bean processing use of building G is the change of use of an existing permanent and substantial building in sound structural condition and is not inappropriate development. That element also does not result in employment generation on a significant scale or involve the loss of community facilities or residential land and the existing vehicular access is suitable for it. The coffee bean processing use of building G therefore complies with policies GB2, GB29 and TR2 of the CDLP and policies CS4 and CS19 of the CS.
52. Section 177(1) of the Act allows that planning permission may be granted for the whole or any part of the matters alleged or in relation to the whole or any part of the land to which the notice relates. Subject to the imposition of a condition to restrict the coffee bean processing use to building G, it is acceptable.

#### *Conditions – the coffee bean processing use*

53. As agreed between the parties, a condition restricting the coffee bean processing use to building G should be imposed. This is to ensure that the use accords with the development plan's policy for re-use of buildings in the GB. I have adjusted the

condition to make clear that no external storage is permitted. This is because keeping waste or other material outside the building could have a harmful effect on the openness of the GB and the setting of the nearest heritage asset, the grade II listed barn to north of Stampwell Farmhouse.

*Conclusion on ground (a)*

54. For the reasons given, the appeal should succeed insofar as it relates to the coffee bean processing use of building G, and I shall grant planning permission for that element of the mixed use. Otherwise, and for the reasons stated, the mixed use is contrary to the development plan as a whole and the appeal must fail in respect of the community facility for worship use.

**The appeal on ground (f)**

55. Notwithstanding my conclusion in the appeal on ground (a), the notice's second requirement refers to coffee bean processing use of a building marked A on the attached plan 1, whereas that plan shows a building marked G. That is of little consequence because requirement 2 applies to all land affected by the notice, so clarification by way of a minor variation would not cause injustice.
56. I found in the appeal on ground (d) that the erection of the marquee was immune from enforcement action on the date the notice was issued. Requirement 3, to remove the marquee, therefore exceeds what the notice may reasonably demand.
57. I have noted that there may be circumstances in which forest worship could be held if indoor worship were to cease. It would be prudent to allow for it by varying requirement 1 to recognise the permitted development rights conferred by Article 3 and Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 (as amended).
58. The appeal on this ground succeeds in these respects and the notice will be varied accordingly.

**The appeal on ground (g)**

59. The appellant had identified that a range of groups would need to relocate if the notice is upheld and stated that a 12-month period would improve their chances of finding suitable alternative accommodation. In the Hearing he advised that a search for other premises had only been made during the 15 months since the notice was issued in respect of the coffee bean processing use.
60. Any group visiting the land in connection with agricultural use or to carry out environmental works would be unaffected by the notice's requirements. A home schooling network meets quarterly and conducts its meetings indoors or outdoors according to the weather. Those meetings are attended by some 35-40 people, and I have been given no reason to believe they could not be accommodated in existing community buildings.
61. The main Sunday and holy day worship is attended by a larger number of people, and it would be more challenging to find appropriate alternative premises. However, in the absence of any evidence on the availability of premises, it has not been demonstrated that suitable arrangements could not be made within the 4-month period allowed for by the notice.

62. For these reasons, the appeal on ground (g) must fail.

### **Conclusion**

63. For the reasons given above, there is partial success on grounds (b), (d) and (f) and the notice will be corrected and varied accordingly, and I conclude that the appeal on ground (a) should succeed in part only. I will grant planning permission for the coffee bean processing use of building G, but otherwise will uphold the notice with corrections and variations and refuse to grant planning permission in respect of any other part of the matters and any other part of the land. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the Act.

### **Formal Decision**

64. It is directed that the notice is corrected in section 3 by:

- The deletion of the words “and leisure.”
- The deletion of the words “operational development comprising the erection of a marquee and play equipment” and the substitution of the words “the retention of play equipment in breach of condition 3 of planning permission CH/2014/0555/FA.”

65. It is further directed that the notice is varied in section 5 by:

- The deletion of the words “and leisure” and the substitution of the words “other than as may be permitted by Article 3 and Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 (as amended)” in requirement 1.
- The deletion of “A” and the substitution of “G” in requirement 2.
- The deletion of requirement 3 (to remove the marquee from the land).

66. Subject to the corrections and variations the appeal is allowed insofar as it relates to building G marked on plan 1 where permission is granted, and the coffee bean processing use, and planning permission is granted under section 177(5) of the Act subject to the following condition:

- 1) This permission is for the coffee bean processing use (Use Class E(g)(iii)) only and limited to the building marked G on plan 1 accompanying the notice. No storage of waste or other materials in connection with that use shall take place outside of building G.

67. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to all land other than building G marked on plan 1 and planning permission is refused in respect of the community facility for worship use on the application deemed to have been made under section 177(5) of the Act.

*Mark Harbottle*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Douglas Edwards KC	
Louise Newton RICS	Partner, Bidwells
Suzi Green MRTPI	Associate, Bidwells
Martina Sechi CMLI	Associate, Bidwells
Chris Callaway	Paul Basham Associates
Dr Frog Orr-Ewing	

### **FOR THE LOCAL PLANNING AUTHORITY:**

Stephanie Penney MRTPI	Planning Enforcement Team Leader, Buckinghamshire Council
Morwenna Breenhaynes	Conservation Officer, Buckinghamshire Council
Tristram Higgs	Senior Highways Development Management Officer, Buckinghamshire Council

## **Documents submitted at the Hearing**

- 1 Public Rights of Way plan
- 2 Journal of Planning Law report on *Wealden DC v SSE and Innocent* [1983]