

29th APRIL 2019

**STATUTORY DECLARATION AS TO
APPLICATION UNDER S.88
LOCALISM ACT 2011 -
ASSET OF COMMUNITY VALUE**

PHILLIP JOHN PLATO MRICS

BROWN NOT GREEN CHESHAM LTD
2 Claridge Court
Lower Kings Road,
Berkhamsted, England, HP4 2AF

I am Phillip John Plato of 2 Deer Park Walk Chesham Bucks HP5 3LJ and I do solemnly and sincerely declare as set out below.

1. I am a Chartered Surveyor and Member of the Royal Institution of Chartered Surveyors (member number 0847540) with 20 years post qualification experience.
2. I am also a director of a company called Brown Not Green Chesham Limited (company number 10810899) whose registered office is situated at 2 Claridge Court Lower Kings Road, Berkhamsted, England, HP4 2AF (the **Company**) and I am authorised to make this statutory declaration on its behalf.
3. The Property that is the subject of this S.88 application made under the Localism Act 2011, consists of open fields of circa 39.6 ha in total that are located NE of Chesham and situated between the north eastern edge of the town and the settlement known as Lye Green, (the **Property**) shown (for the purposes of identification only and excluding any private residence) edged red on the plan attached and marked "Annex A" (the **Plan**).
4. There are two separate owners of the freehold interests of the Property both of which are registered at Land Registry under title numbers BM20138 and BM334723. The Property is crossed by several public footpaths shown in yellow on the Plan within Annex A.
5. I will now describe in this statement the extent of the public uses of the land and how access to this Property is valued by local people and how the Property furthers the social wellbeing, health, education & social interests of the local community, and why it is realistic to think it will continue to do so in the next five years.
6. The Company is a not for profit private company limited by guarantee that was incorporated in 2016 from a previous informally organised association of local people with the sole aim of protecting the Property for the benefit of local people specifically and the wider community of Chesham generally. In view of emerging proposals for the Property to be removed from Green Belt designation and earmarked for development, the Company is seeking to have the Property listed as an Asset of Community Value and to be granted the right to bid for this asset.
7. The Company has 95 household members representing nearly 200 individuals. Membership is defined by any household who has donated funds to the Company. In addition, the Company has received support from circa 1,800 individuals who signed a petition in late 2016 organised by the Company calling for the Property to remain subject to Green Belt designation. As a properly constituted not for profit private company with a Board of volunteer Directors, its own funds and bank account, that also is not prohibited by its Articles from borrowing money, it is realistic that the Company could purchase the Property and hold it in trust for the community it represents for future years if given the opportunity.

8. I have worked with the Company since it was founded, and I have lived at Deer Park Walk beside the Property since 1999.
9. Throughout that period, I have observed people regularly using the Property along the designated public footpaths but significantly I have also observed many people using other areas of the Property for various types of informal outdoor recreation or access. Neighbours who have lived here even longer than myself, advise me this has been habitual and widespread practice for many years before I ever moved here some 20 years ago.
10. Physical evidence was apparent to support this assertion even in 1999 as I recall observing when first moving here that that there was already a network of well-trodden footpaths upon the Property mainly around the field boundaries and within the woods that were not part of the adopted public rights of way. I also recall seeing at that time there were already a number of rear gates giving access into the Property from various private homes that share a boundary with the land.
11. Accordingly, I am advised that some of those informal but well-trodden tracks may now be a prescriptive right of way capable of being added to the Definitive Map of public footpaths. I understand this is being considered by others at this time.
12. I am further advised that those people or properties who have enjoyed 20 years continued open and uninterrupted use without any apparent complaint or licence from the landowners, may now have an easement or prescriptive rights over the Property. It has been reasonable to assume that a considerable number of local people have acquired such rights over the land around all the field boundaries and in the woods. I am advised that as these practices have prevailed over such a long period of time, the landowner(s) now cannot prevent those people from future such continued access or use.
13. My own recent enquiries and observations over the last 20 years has established that free and unrestrained access and use has been available to the public. This access has been conducted without them having to force their way into the Property, either by them using a habitually unlocked gate or by them accessing the land through unfenced openings formed beside other field gates into the Property or via numerous other well-trodden openings around the field boundaries. I have been informed about several local people periodically cutting the grass on parts of the Property and also of them cutting back any overgrowth of hedges at certain locations that are beside the informal tracks previously referred to, in order to keep these tracks open and accessible to themselves and others. Additionally, general access into the Property is also self-evidently available via the various public rights of way into and across the fields.
14. No signs or fences have ever been put up by the owner(s) prohibiting or restricting public access during the last 20 years I have lived here. From my

observations I have concluded that public access to all extremities of the Property for various informal recreational uses or for access, has for decades been habitual, open, and enjoyed by the public at large without secrecy or force. This fact and the period of time that these recreational and access uses have prevailed, suggests that there has been acquiescence by the landowners to these continuing practices.

15. I have walked upon the Property myself periodically since moving here in 1999. Aside from the designated public footpaths (marked in yellow on the Plan in Annex A) I have observed numerous other tracks that have been well-established across and through the land. Many of these tracks are so well-trodden they are clearly visible using images from Google Earth. I believe this represent physical evidence of long term use by many people. I have recently assembled a schedule of photographs that I have copied either from Google Earth or which have been taken at ground level and which are all presented in "Annex B" attached (the **Photographs**).
16. The Photographs are presented first with an aerial picture from Google Earth of the whole of the Property marked with various red rectangles labelled A to I. These red rectangles approximately relate to subsequent enlarged Google Earth images also included within Annex B that are similarly labelled A to I and which I refer to as such by my narrative herein. Amongst other things, these enlarged Google Earth images show the physical evidence upon the Property of widespread use namely several informal footpaths that have been created over time, all of which have prevailed since I moved here some 20 years ago.
17. The other Photographs are numbered P1 to P61 inclusive and are of images taken at ground level upon the Property. Some show members of the public upon the land. To assist the reader in identifying what these images show, I have included another OS Plan within Annex B, upon which there are markings numbered from 1 to 38 roughly corresponding to points around the boundary or other features and these numbers are sometimes marked upon the Photographs or used to describe herein what these images show and where upon the land the relevant image was taken and in what direction it was taken or what a photograph is showing or what my narrative relates to.
18. Collectively these Photographs illustrate certain facts as well as physical evidence on the land that support the assertion that for several decades the land has been used habitually by a considerable number of local people for a range of informal outdoor recreational uses.
19. Since 1999, I have observed these informal outdoor recreational uses myself which have involved hiking/rambling, dog walking, bird watching, jogging, and general outdoor exercise but has also included people just observing nature and local wildlife or picnicking with their family and children, as well as picking flowers and blackberries, kite flying, children undertaking adventurous play or practicing for Duke of Edinburgh expeditions or for children walking to or from school as well as for people to socialise with other likeminded people

from the immediate neighbourhood. I have also occasionally seen people cycling upon the land.

20. Several people I have spoken to have told me they have regularly used the land for these recreational purposes for decades. A number have also written letters or made Statements of Truth supporting all that I have seen. Significantly, many of these letters and statements also illustrate how The Property is clearly part of the identity of Lye Green too and that it serves the wellbeing and social interests of many hundreds of people living in the NE of Chesham town particularly in or close to the housing estate near Brushwood School too.
21. My conversations with local people combined with the aforementioned letters and Statements of Truth that have been received in support of this S.88 Application, reveal how important this Property is to the local community in terms of furthering the health, mindfulness & social interests of the local community.
22. It is notable that people who enjoy the Property have not confined their use just to the public footpaths but have enjoyed full unrestrained freedom to walk upon all parts of the Property. I have observed that most people only walk close to the boundaries or upon the informal tracks that have become established upon the land or through the wooded areas of the Property. Most of these are not designated public footpaths. However, some of these informal well-established tracks also cross the land and do not just follow the boundary.
23. One such well-established track that crosses the land that is not a public foot path, is clearly visible in the enlarged Google Earth image labelled "A" within the Photographs in Annex B as well as within those Photographs labelled P1 to P9 inclusive. This track runs from point numbered 35, through points numbered 36, & 3, 4, 5, 6, 7, until reaching a public footpath at point 8 on the OS Plan in Annex B. I have measured this route digitally and have found it represents circa 800m. It is even possible to observe people walking on this track in the enlarged Google Earth image labelled "B" in Annex B. Considering my previous comments, I think this informal track may now be eligible for adoption as a public footpath by prescription.
24. The enlarged Google Earth Images labelled "A" & "I", together with associated photographs taken at ground level also included within Annex B labelled P10 to P17 inclusive, show that there is another well-established track around the perimeter of the northern field of the Property namely through points numbered 1, 2, 3, and 36, 37, & 38 on the OS Plan also included in Annex B. I have also measured this route digitally and have found it represents circa 700m. This informal track may now also be eligible for adoption as a public footpath by prescription.
25. The enlarged Google Earth images labelled "C", "D" & "E", together with associated photographs taken at ground level within Annex B labelled P18 to P29 inclusive, show that there is a further well-established track around the

perimeter of the southern field too, namely through points numbered 9 to 17 inclusive. This route has also been measured digitally and it represents circa 740m. Similarly, this informal path may also be eligible for adoption as a public footpath by prescription.

26. The enlarged Google Earth images labelled "F" & "G" shows part of the well used public footpaths leading from Lye Green Road into and across the Property. These accord with the Definitive Map of adopted public footpaths.
27. The enlarged Google Earth image labelled "H" together with associated photographs taken at ground level within Annex B labelled P31 to P36 inclusive, show that there are various tracks across the land close to the northern boundary between points 31 to 35. I have measured this route digitally and have found it represents circa 390m. The Google Earth Image "H" also shows vehicular tracks presumably made by the farmer into the field from points 30 & 31 into the middle of the field and moving up to near point 34 and I have occasionally observed the public walking along these vehicular tracks too. Accordingly, other prescriptive footpaths may now prevail here too.
28. Throughout the time I have lived nearby, I have never seen or heard of anyone being denied access to any part of the Property including those areas that are away from the public footpaths.
29. Similarly, I have never seen any signs or notices displayed prohibiting public access on the areas of the Property that are not on the public footpaths whilst I have lived in this area.
30. Whilst many of the boundary fences have fallen into disrepair and the entrance gate near point 1 on the OS Plan in Annex B is often left unlocked, there are various other points of access into the Property or areas of degraded fencing where there are gaps that clearly facilitate entry and exit of the land by members of the local community.
31. I have observed people entering and leaving the Property at several different places on all days and times of the week whilst I have lived nearby. I have also observed that people enter the Property not just via the public footpaths. These additional entry points where I have seen people entering or leaving the Property include two of the field entrance gates or other openings in the boundary near or at points numbered 1, 6, 12, & 29 on the OS Plan within Annex B. Photograph P 39 illustrates one such point.
32. Aside from the public right of way beside Brushwood School, there is also a very well-established path leading into the Property from Hillcroft Road near point numbered 6 on the OS Plan as shown by photographs P47 & P48 in Annex B which provides a convenient access into the land from those living in the wider Brushwood housing estate too. I have seen many people enter or leave the Property via this route.

33. There are also various tracks leading up through the area labelled as Nalder's Wood & Gee's Spring on the OS Plan in Annex B (as shown in Photographs labelled P51 to P56 inclusive) which show people walking or running through this part of the Property from which they can then enter the fields from the woods either at point number 2 or at various other places between points numbered 4 & 5 on the OS Plan in Annex B. I have included some photographs illustrating this in Annex B labelled P49, P50, P57 & P60.
34. The Photographs in Annex B also show that there are numerous private residences that share a boundary with the Property and many of these residences have gates installed into their rear boundary fences to afford them easy access into the Property. There are at least 18 such gates that directly access the fields plus a considerable number more from residences backing onto Nadler's Wood & Gee's Spring Wood. Specifically, there are private gates located at (all with reference to the OS Plan within Annex B):
- o seven homes on the west side of Deer Park Walk (between points 36 & 38 – Shown in Photographs labelled P41 to P44A inclusive),
 - o several residences along the boundary (between points 14 & 15 - Shown in Photographs labelled P25 to P 27 inclusive),
 - o two residences at point 6 (shown in Photograph P8),
 - o residences near point 11 & point 32 respectively, (shown in Photographs P22 & P31 & P40),
 - o As previously mentioned, I have also observed a number of residences in Sycamore Dene, Birch Way, Hillcroft Road and Nalder's Road whose gardens back onto Gee's Spring or Nalder's Wood where they also have rear gates giving access onto several tracks that run through the wood leading up into the fields where, I have seen people entering the land between points labelled 4 & 5 on the OS plan attached in Annex B. Photographs labelled P52, P54 & P55 illustrate just some of these observations.

Many of these gates have also been in use for a long time and the properties they serve may have prescriptive rights of access over the Property.

35. I have also observed that there are two stiles at Henry Mash Court (one was observed broken on 4 April 2019 – see photograph P33) that provide access over the fence into the Property from the Henry Mash Court communal gardens, where I believe there are seven private dwellings within that neighbouring development.
36. Other older stiles were noted elsewhere in the Property as shown in the Photographs at locations 3 & 36 on the OS Plan within Annex B as shown in Photographs P4 & P37. Both these stiles are old and are displaced about 1m north from the well-trodden track in use today. The stile near point 36 affords access to some Deer Park Walk residents into the field.

42. I have established from speaking with many local people that they also value the Property's inherent accessibility, which some regard as an oasis of tranquillity from nearby congested highways. The land also supports diversity of wildlife that some people enjoy observing or showing to their children and I am also informed by those who are ornithologists, that several rare or endangered species of birds are regularly seen on the Property as well as there being other wildlife ranging from butterflies to badgers which the community value.
43. Chesham town suffers from bad traffic congestion with poor air quality¹ along Berkhamsted Road which regularly exceeds particulate levels recommended by the World Health Organisation & EU and consequently part of Berkhamsted Road nearby is a designated Air Quality Management Area (AQMA). The World Economic Forum recently published a report² indicating that studies now suggest that the number of premature deaths caused due to air pollution is more than double previous estimates. The young and elderly are most at risk. Aside from providing a haven from such issues, the Property also represents green infrastructure that absorbs CO₂ and other harmful air particulates and as such contributes to the wellbeing of the local community.
44. Although Chesham is located within the prosperous County of Buckinghamshire, the town has a surprising number of wards categorised as "deprived" in terms of health deprivation and living environment³ with some areas of the town also scoring badly in terms of overall levels of deprivation in stark contrast to the scores in other wards nearby also within Chiltern District.
45. Public Health England and the UK Government want to see people of all ages being more active and taking regular exercise or increasing the number of steps they walk each day. ⁴ Those in deprived areas are more likely to suffer poor mental & physical health. Informal outdoor recreation such as that being undertaken by the community at the Property is a vital part of staying healthy and keeping fit and doing so in a tranquil and natural environment also improves mindfulness and mental health. ⁵

¹ See https://www.chiltern.gov.uk/media/12398/Chiltern-Annual-Status-Report-2018/pdf/2018_Chiltern_ASR.pdf?m=636699468075170000

² See <https://www.weforum.org/agenda/2019/04/air-pollution-in-europe-is-reducing-the-average-lifespan-by-2-years>

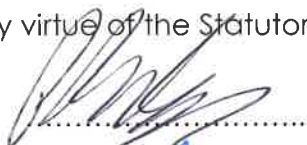
³ See <https://www.buckscc.gov.uk/media/4508260/deprivation-in-buckinghamshire.pdf>

⁴ See <https://www.gov.uk/government/publications/health-matters-getting-every-adult-active-every-day/health-matters-getting-every-adult-active-every-day>

⁵ See <https://www.countryliving.com/uk/wellbeing/news/a180/mental-health-benefits-nature-outdoors-study/>

46. I have concluded that the ability for the community to continue to have access to this area where they can exercise informally and interact with nature improves physical and mental health and thereby improves the wellbeing of the community. This is evidenced by the numbers of people who support the Company. Unlike many other areas designated as Green Belt where widespread public access is prohibited, this land is both easily accessible and has been habitually used for recreation for decades.
47. Even if prescriptive rights are not recognised or are not yet registered over the Property at Land Registry, it is apparent from the decision in Banner Homes vs St Albans City & District Council 2018 where the Court of Appeal held that the legislative intention within the Localism Act 2011,(s 88) was plainly that 'actual use', in the statutory context, should mean what it says and it was upheld that the land should be registered as an Asset of Community value despite the fact in that case, that some uses had constituted trespass.
48. Even if the various informal tracks and prescriptive rights of way and access were to be formally recognised, this fact alone would not safeguard the whole Property as its potential loss of Green Belt status and it then being earmarked for development, would undermine its substantial community value. It is the general openness of the whole Property, with its tranquillity and access to nature and wildlife that the community values and which provides the social and personal wellbeing currently enjoyed.
49. The number of people who support the Company and who have donated funds since the Property came under threat from future development, is also clear evidence that the community would want the right to bid to acquire it in order to preserve the land for continued future recreational use and the social wellbeing of the local community around Lye Green & NE Chesham.
50. I have therefore concluded that the habitual use of this Property is valued by local people and that the Property furthers the social wellbeing, health, education & social interests of the local community, and it is realistic to think it will continue to do so in the next five years. Accordingly, I feel the Property should be listed as an Asset of Community Value.
51. I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Sworn by



on


29 April 2019

at

LENNONS SOLICITORS

Before me

Pameer Haynes



Solicitor/Commissioner for oaths

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This is the Plan marked "Annex A" referred to in the statutory declaration of Phillip John Plato declared before me this 29th day of April 2019

Solicitor/Commissioner for oaths



PARVEEN HAYNES .

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This is the copy of the photographs marked "Annex B" referred to in the statutory declaration of Phillip John Plato declared before me this 29th day of April, 2019

Solicitor/Commissioner for oaths



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