

COMMONS ACT 2006, SECTION 15(4)

APPLICATION NUMBER TVG/2008/01 FOR THE REGISTRATION OF LAND AT BRIXHAM AS A TOWN OR VILLAGE GREEN

INSPECTOR'S *SUPPLEMENTAL* REPORT AND RECOMMENDATION TO THE REGISTRATION AUTHORITY –TORBAY COUNCIL

Background to supplemental report

1. A public inquiry ('the Inquiry') took place over 5 days at Brixham on 4/5/6 February and on 19/20 March 2009. My initial (110 page) report is dated 5/08/09 (to which I made inconsequential alterations on 24/11/09). My recommendation to the registration authority at paragraph 296 was that the application to register the application site (which I shall also refer to in this report as 'the field') as a new town or village green should be allowed. My report was posted on Torbay Council's website soon after it was received by them.
2. At that stage a meeting of the full council had been fixed for 24/09/09 when it was intended that a decision would be made on the application to register in the light of the contents of my report. However, on 10/09/09 the objector's solicitors wrote to the registration authority inviting them to defer any decision on the application to register until after fresh evidence had been considered by the inspector. On 14/09/09 the registration authority wrote to the objector's solicitors indicating that it had a reasonably open mind about the possibility that material new evidence might come to light which would cause it to consider requesting the inspector to re-open the Inquiry. The objector was accordingly given one week to lay before the registration authority material new evidence which was sufficient to satisfy the registration authority that, in the interests of natural justice, its consideration of the application to register should be postponed. However the registration authority made it clear to the

objector's solicitors that it would at any reconvened Inquiry want an explanation as to why the new evidence could not have been and / or was not adduced at the time of the original inquiry.

3. In the event, 4 new statements were provided to the registration authority on 18/09/09 and in light of further representations from the objector's solicitors it was my advice to the registration authority that consideration of the application to register should be deferred until after the new evidence and any further evidence which the objector intended to lay before the registration authority had been considered at a re-convened Inquiry.
4. I therefore made fresh directions on 23/09/09 under which the objector was given a time-table for the production of all its further evidence and dates were posted for a resumption of the Inquiry on 25/11/09 when the objector's further evidence was heard over a period of 3 days. As before, the parties were represented by the same advocates, namely Keith Polyblank for the applicant and Leslie Blohm QC for the objector, both of whom I would again like to thank for the presentations of their respective cases.
5. I might add that I visited the field again both before and after the resumed Inquiry. On the latter occasion I saw people there walking dogs. This means that I have now visited the field on a total of 5 occasions. My last visit was important as I wanted to view the field in light of the evidence and photographs adduced at the Inquiry. I had asked both parties whether they wished to accompany me on this visit but they declined to do so.

Relevance of the new evidence

6. The relevant issue concerns the usage of the field by guests at the holiday camp before 2007. In my first report I considered that such usage was limited and did not preclude qualifying user within the meaning of the Commons Act 2006. In the event, the objector adduced oral and written evidence from a number of new witnesses along with one witness, Debbie Hutchinson, who had simply not turned up at the original Inquiry to give evidence for the objector but who had nonetheless provided a statement.

7. It will be recalled that Mr Blohm had previously submitted that:
- (a) the field was used significantly by the holiday camp (which, for ease of reference, I will refer to as either 'the camp' or 'St Mary's') over many years up to 2007;
 - (b) the evidence of those who supported the application to register was plainly flawed in that they gave little or no credence to the use of the field by the camp;
 - (c) the public's intermittent use *'has been corrected and prevented by the owners of the land and their agents'*;
 - (d) such local usage as there was, was intermittent *'and not such as to indicate ... that the claimed right was being exercised'*;
 - (e) such local usage as did take place deferred to the landowner's use and was not a use that demonstrated the existence of a public right.
8. Mr Blohm had also asked me to bear in mind that throughout the relevant period the field was used *'as an adjunct to Homelea'* and that, as a result, during the season and at other specific times (as, for instance, when playing host to Travel Class) it was being used for such purpose. At other times, the field would admittedly have been left open. Mr Blohm argued that the evidence of the objector's witnesses *'gave consistent use of Pathfields'*.
9. Mr Blohm had invited me to accept that his witnesses were *'impressive witnesses'* – *'They were independent people'*. I was unable to accept his submissions about this. At paragraph 259 of my report I said that the witnesses whom he had mentioned (namely Dore, Glover, Hill, Hutchinson, Massey, Brian and Deborah Meaden, Tye, Thomas and Benson) were not disinterested witnesses and had all striven in their various ways to underplay the public's usage of the field for informal recreation in the face of a good deal of compelling evidence to the contrary. I found that what had taken place on the field over the years was a great deal less important to the occupiers of St Mary's than the objector was now seeking to suggest it was and that the

evidence given about this by their witnesses was, in my view, an attempt to rationalise what they think must have happened long after these events had actually taken place.

10. I also found that the Travel Class documentation and the brochures that had previously been put in evidence were not very helpful. In the case of the former, whilst it was undoubtedly true that a number of children were at the camp on activities-based holidays for a number of weeks in the approximate period April – July in the years for which records are available, they tell us nothing about user of the field itself, whereas at least the brochures for 2000/01 tell us that the field was available for guests with dogs, something which, as I found, was not incompatible with it also being used by locals for informal recreation, with or without their dogs. I also found that the pitch and putting facility was a notably unsuccessful venture which none of the witnesses had actually seen being used for this purpose.
11. Mr Blohm submitted (in effect) that this was a case where the principle enunciated in *R (Lewis) v Redcar and Cleveland Borough Council & Persimmon Homes (Teesside) Ltd [2009] EWCA Civ 3*, is engaged. The ratio of *Redcar* is that if there is a conflict between the landowner's use and recreational use by local people, and the use of the local people materially *defers* to the use by the landowner, then the recreational use will not have the appearance to the landowner of use as of right.
12. *Redcar* is an issue as the objector argues that any user on the part of local inhabitants would have deferred to the use of guests at the holiday camp. If this is right then user as of right will have been precluded as by voluntarily desisting from interfering with the owner's activities it would then not have appeared to the landowner (or his lessees or licensees) that the locals were asserting a right to use the field for the sports and pastimes in which they were indulging.
13. I noted in my earlier report that in paragraph 47 of his judgment in *Redcar Dyson* L.J had said *'that it is a question of fact and degree for the fact-finder to resolve whether in practice there is inconsistency between the activities on*

his land of the owner and the recreational activities of the local inhabitants. In some cases the activities of the owner may "in practice" make no difference to the activities of the local inhabitants in the sense that they will not need to adjust their activities to allow for those of the owner. In such cases, provided that the use has been nec vi, nec clam, nec precario, it is likely that it will be held that the activities of the local inhabitants have the necessary appearance of asserting a right against the owner. But in a case where there is a conflict between the activities of the owner by the local inhabitants, and the activities of the local inhabitants can only be accommodated with those of the owner by the local inhabitants deferring to the owner's use, then the activities of the local inhabitants may not have the appearance of asserting a right against the owner. On the contrary, those activities may have the appearance of an acknowledgment by the local inhabitants that they have no right at all. Those who always defer to the owner whenever his competing use of the land threatens to interfere with their use of the land are not likely to convey to the reasonable owner the impression that they are claiming the right to use the land'.

14. The *Redcar* case involves two inter-linked issues and arises from the use of the field by the landowner (or his lessees or licensees). These are (a) whether the character of the locals' usage changes so that it defers to the landowner's own use, such that the reasonable landowner is entitled to conclude that the locals are not acting as of right; and (b) whether the landowner's use constitutes a material interruption without necessarily precluding user as of right.
15. The issue of whether a temporary interruption of the use of part of the land by those engaged in organised sporting or other similar activities precludes registration of a town or village green is not one that is the subject of any judicial authority. My own view on this is that the answer is one of fact and degree such that it would not be appropriate to exclude the land just because it was unavailable for lawful sports and pastimes for only limited periods (ie where the interruption was insignificant, in the sense that it did not substantially interrupt or interfere with the use by local people). On the other

hand, for instance, if part of the land had been taken over by a substantial civil engineering project and the works' site excluded part of the application land for a substantial period or periods then the length of the works, coupled with the size of the works' site, may well make it appropriate, as a matter of fact and degree, to preclude registration of that part, or even the entirety of the land, if it meant that the character of the user had changed. These are difficult questions and may well be resolved quite soon now that *Redcar* has gone to appeal (and as I understand it, the appeal was heard by the Supreme Court on 18/19/20 January 2010).

16. In my original report I had found that apart from the Travel Class business, user of the field on the part of the landowners (i.e. by their lessees or licensees) would have been negligible. I was told that the field was important amenity land but I was presented with no compelling evidence of any organised activity taking place on the field, although I dare say that youngsters (ie as guests at the camp) had played there intermittently.
17. I had also found that the field itself did not lend itself to ball games and there are only a couple of areas at the top of the field (where the land is terraced) where it would be practicable to station large structures. For the most part, the field is uneven and slopes at quite an angle and other than dog walking or informal recreation it is difficult to see what the landowners could sensibly do with such land apart from designate it as an area for dog-walking.
18. Although I accepted that from time to time in the weeks when Travel Class were using the camp between April to July in any one year, organised activity took place in the field, I found that it was neither prolonged on the days when it was taking place, nor particularly frequent. I also considered it improbable that a substantial climbing frame would have been left out in the field for any appreciable length of time or that archery would have taken place at all in the field.
19. I accepted that organised games of some description might well have taken place in the field but I did not believe that the extent or duration of these activities would have been such as to exclude local inhabitants wishing to use

the field for informal recreation. I found that locals would not have had to adjust their own activities to make way for Travel Class who, in my view, would have utilised little more than some of the flatter ground at the top of the field at times during the day but this is unlikely to have been for the whole day every day in the weeks that Travel Class were at the camp. It seemed to me that my findings on this were consistent with the evidence of the applicant's witnesses, none of whom were ever impeded in their use of the field by organised activity taking place. In fact none of the applicant's witnesses (whose evidence I preferred on this issue) had ever witnessed such activity.

20. Accordingly, it was my view that the activities of the landowners (and their lessees or licensees) made no difference in practice to the activities of the local inhabitants when they were using the field for informal recreation, and accordingly I found that their user would have had the necessary appearance of asserting a right against the owner.
21. I also noted in my original report that the *Redcar* issue had been a difficult one to deal with in view of the absence of any independent evidence. I mentioned this more than once during the Inquiry and expressed surprise that, given the importance of this issue to the objector, evidence had not been called from others who may have been in a position to tell me more about what had taken place on this field during the Travel Class holidays.
22. I indicated that it would have helped me if I had heard from witnesses who had either assisted in the assembly of either the climbing or A-frames, or who had even used any of the Travel Class equipment. I indicated that large numbers of children and their supervisors had apparently visited the camp over the years on Travel Class holidays and it seemed to me that if the objector had made some effort to trace witnesses then it is likely that some very worthwhile evidence may have come of it. In the result, I was forced to make a finding of fact on the *Redcar* issue which was of no assistance to the objector and it seemed to me that the objector had only itself to blame for this. It was against this background that the objector asked the registration authority to consider new evidence.

23. At the start of the re-convened inquiry I asked the parties what my approach should be to the new evidence. Mr Blohm indicated that the weight of the new evidence was a matter for me and that the principles of *Ladd v Marshall* did not apply. I agree with him about this but I also agree with Mr Polyblank who said that I should scrutinise the new evidence very closely as it comes so late and he was, I think, right to express his disappointment that the new evidence had not been adduced at the original Inquiry.
24. I asked Mr Blohm why the new evidence was not and / or could not have been adduced at the original inquiry. The primary explanation he gave is one that I accept namely that if the objector had known what the locals were going to say then it would have gone to more trouble to gather in more evidence than it did about the landowner's usage. He also explained that the objector's task has not been an easy one on account of (i) the changes of ownership since Weststar owned the holiday camp and the problems this had caused in relation to relevant documentation; (ii) the fact that the Travel Class business was sold and that Mr Outhwaite, who was owner of the business, 'had sailed off into the sunset' (he had in fact gone sailing round the world and was not contactable at the time of the original Inquiry – he has since provided a statement but has gone off sailing again and is unable to give evidence in person although he has been able to provide contact details); (iii) that staff engaged on these adventure holidays are apt to be young and to change from year to year; and (iv) that guests at the holiday camp tended to be far away and difficult to contact, not least in relation to activities involving children.
25. My impression is that had it been apparent to the objector that the locals were going to challenge the claimed user on the part of Travel Class then it would have gone to greater lengths than it did to assemble its evidence under this head. However, I do not exclude from my mind that such evidence is being adduced for the first time after my report which was adverse to the objector and for this reason the credibility of the new evidence needs to be considered very carefully, not least in the case of one witness, Debbie Hutchinson, who had simply failed to turn up before. I might also add at this point that in the interests of hearing all the available evidence which the objector wanted to

call, I was content to hear the evidence of 3 witnesses on the telephone (by way of a telephone conference call which took place in a room in the same building where the Inquiry took place).

The objector's evidence

26. I should mention that the evidence at the re-convened inquiry was recorded and transcribed and for this reason I intend in this report to cover only what I consider to be the relevant parts of the new evidence. I shall deal with the objector's evidence in the order in which the witnesses gave their evidence, that is, with the exception of Geraint Scott.

John Spalding

27. Mr Spalding lives at an address at Christchurch in Dorset and his statement, which is dated 9/10/2009, begins at p.28 in the objector's second bundle (OB2). Mr Spalding is an organiser with R&T Tours Ltd ('R&T') a company which runs junior football tournaments held in the Torbay area, where the children are housed at the camp. He told us that such tournaments take place at Easter, over the Mayday bank holiday weekend and during Whitsun half term week when in fact two tournaments are held. He says that there can be in the region of 800-1000 children, parents and managers staying at the holiday camp during either of the Whitsun tournaments. He said that what normally happened was that participants at these tournaments usually had a free day on the day of their arrival followed by matches at a local venue but away from the holiday camp on the second and third day of their stay. He said that he had attended one of the Easter tournaments and had helped to organise the Whitsun tournaments for at least the last 7 years.
28. He recalls the field which in his statement he said was *'well used by the boys during their time at the holiday park ... it was a really convenient area for the boys to play'*. He said that *'the general use was by small groups of lads kicking a ball about and running around'*. When examined in chief Mr Spalding said that when he spoke of *'small groups'* he said that sometimes there would be a small group of *'perhaps half a dozen lads, other times there was several*

groups of perhaps up to 6 or 8 in each group ... sometimes several groups' of 6/8 in each group. When I asked him about this he said that he only went into the field at all some 2/3 times whilst he was at the holiday camp and he would only have seen groups of boys playing there 'about half the time'. Mr Spalding also said in answer to questions from me firstly that R&T never organised any activity which took place in the field and, secondly, that he had only been approached in the summer to give evidence at the inquiry.

29. I find that Mr Spalding's evidence was of limited value to the objector. On the face of it, all he could say is that for a very limited period each year there would have been a number of people staying at the camp and that on the very limited occasions when he went out into the field he saw groups of youngsters playing around there, although not on any organised basis, and I doubt very much whether this would have had any material effect upon the activities of local inhabitants who happened to be in the field at the same time.

Mark Earnshaw

30. Mr Earnshaw comes from Romford and his statement begins at OB2/27. He is a director of R&T and has been with this firm since 1993. His firm organises junior football tournaments for youngsters across the country and since around 1998 they have been using the camp in Brixham. He was able to recall (as he said in his oral evidence) that it would have been around this time as he remembers that Deborah Meaden got in touch with him soon after Weststar had acquired the camp, and we know that Weststar purchased St Mary's in 1998 and Mr Earnshaw said that *'we were the first one in'*. The R&T brochure for 2002 attached to Mr Earnshaw's statement (which was as far back as he could go) shows that R&T would have been using the facilities at the camp for only 14 days a year (for the 3 tours in that season), inclusive of the days of arrival and departure. In terms of nights stayed, this would have been only 11 nights.
31. Mr Earnshaw also produced an R&T brochure for 2004 (by which time ownership of the camp had passed to Landscope) which showed that in that year there were 4 tours lasting a total of 18 days (as before, including days of

arrival and departure) and a total of 14 nights. This was the pattern between 2004/07 whereas in 2008 R&T only ran 2 tours from the camp. Mr Earnshaw said that R&T normally took over the entire camp and he was able to say from R&T records that in 2002 a total of 1533 players would have stayed at St Mary's although he said that that figure would not have included additional players, coaches and parents who would also have been at the camp on the Easter tour held at the beginning of April of that year. He said that the 2002 figures indicate that 766 R&T guests had attended on each of the tours that year.

32. Mr Earnshaw did not attend every tour at St Mary's but when he did go there he would normally stay for the duration of the particular tour. He explained that matches would be played throughout the day away from the camp and I understand that that the match schedule was arranged so that say half the youngsters would be playing their games (morning or afternoon) whilst the other half were already back at the camp which meant that large numbers of players (and their supporters) were not spending their days at the match venues either waiting for their games to be played or afterwards. It seems that everyone would have been back at the camp by mid to late afternoon which gave the children plenty of leisure time which they could no doubt spend in the field if they wanted and it seems that some must have done because they were encouraged to kick balls away from the chalets. However Mr Earnshaw took us all rather by surprise when he said that he had not actually seen the field himself. He said that he was not at the camp *'when (he) understood that the children mainly used the field'*, and because all they wanted to do was to play football and (as he put it) *'I know that the staff will be directing them to the field to play football so that is why I understand that they will either be in the swimming pool complex or in that field kicking a ball around ... I did not see R&T Tours guests using the field but I understand that it was used by them'*.
33. Mr Earnshaw remembers asking Gail Massey (or whoever was in charge at the time) whether there was a practice area the children could use and being told about the field which they could use, which information was relayed to the

team managers. Mr Earnshaw said in cross-examination that he had no idea how suitable the field was for playing on as he had never seen it. He merely speculated that the children must have used it, not only because he had been told it was available, but also because he knew that the children had to play away from the chalets and also because Mr Spalding had told him that the children played on the field, something which he had not seen for himself. He also commented that if there had been nowhere for the children to kick balls around (having been told that there was) he would have expected complaints from the managers but this apparently never happened.

34. Although Mr Earnshaw and Mr Spalding did their best to assist the Inquiry with what took place in the field, their evidence was, in my view, of little assistance to the objector. It seems to me that the usage of the field on the part of R&T guests amounted to little more than occasional usage by youngsters for informal play. The field itself was quite unsuitable for football training and although small groups may have congregated there from time to time (no doubt usually with a ball) I find that this is unlikely to have interfered with informal recreation on the part of locals on the few days in the year that R&T had booked up the camp. There is no suggestion that locals ever had to adjust their activities to accommodate those of R&T.

Debbie Hutchinson

35. Ms Hutchinson's statement dated 17/07/2008 will be found at OB/46. I dealt with her written evidence at para 251 in my first report and for ease of reference I will set out again what I said there.
36. Ms Hutchinson was employed by Weststar between 1994-2001 and dealt with bookings. Between 1994-96 she was based at their Exeter office. She then moved to Weststar's Sandford Holiday Park in Dorset but from 1999-2001 she was employed at St Mary's holding various positions from Reception Manager to Assistant General Manager. Between 2001-03 she was employed as '*Centre Manager at St Mary's Bay for Landscope, working for Gail Massey*'. She left Landscope in 2005 and returned to work for Weststar.

37. She speaks of the field as the 'Doggy' field which was used by guests at St Mary's Camp for dog-walking. She actually lived at St Mary's Camp towards the end of 1999. She says the field could be divided into 3 parts. On the top area it was laid out as a pitch and putting area with flags and mounds. She says the lower *'tiers were used either for dog walking or for activities that were set up'*. She says that when Travel Class were at the camp the field *'was used almost exclusively by Travelclass and their guests'*. She mentions climbing frames being set up, archery targets, blind man's' trail and camp fire nights taking place in the field. She says the equipment *'would take up much of what I would describe as the lower tiers of D-field ... The pitch and putt area was on the higher tier'*. She also says that between July and November guests would play *'Frisbee, pitch and putt, and football on Doggy field'*.
38. She also mentions security staff who would have carried out regular patrols of the camp, including the field. There was a log kept in the office to confirm that patrols had visited but this was not produced. It seems there were problems at one time in that arson took place on the old Dolphin Camp site and youngsters would congregate on the field to watch the fire or fires and who would have to be dispersed by security personnel at the camp.
39. She was not aware that locals were using the field for recreation, other than by walking along the footpath. She asserts that the field *'was the only real field and area of open space of some size within which you could play games or hold activities'*.
40. I indicated in my first report that as Ms Hutchinson's written evidence was flatly contradicted by those of the applicant's witnesses who gave oral evidence, it was of little evidential value. I also indicated that I was inclined to accept that Mr Benson was probably nearer the mark when he said that when Travel Class were not in the field there was not a lot going on there, by which he meant holiday related activity on the part of residents and their families.
41. When asked by Mr Blohm why she had not given evidence last time Ms Hutchinson said that she was detained at work. I explored this with her. I put it to her that she had simply failed to turn up without calling to say that she was

not coming to give evidence at the Inquiry. It appears that she emailed (presumably the objector or their solicitors) two days later and when I asked her why she had not taken steps at the time to let anyone know that she was not going to turn up she said that she was working and had not been in her job long and *'events at the hotel overtook and I just couldn't get away to get here'*. When I asked her why she had not called on the day she said that *'it was just impossible for me to get to a phone, or even get a message and try and find the telephone number to call anybody'*. She said that she had worked a double shift on that day and *'it wasn't on the list of my priorities'* and that *'it was just unfortunate that I couldn't be here'*. None of this was particularly convincing and Ms Hutchinson was, I thought, quite unconcerned about the consequences of her actions.

42. It will be recalled that Ms Hutchinson worked at St Mary's between 1999-2003, in the last 2 years as Centre Manager. She recalls that they got the pitch and putt area at the top of the field ready after Travel Class had finished in July. She also said the Travel Class activities varied from season to season. Reference was made to the photo at OB2/245 (dated 5/05/2001) on which the area at the top of the field laid out for pitch and putting could be seen. She said that the *'lower tiers'* of the field were used for dog walking or by Travel Class between April and July. In her statement she said that the equipment brought in by Travel Class would take up much of the *'lower tiers'* of the field, with the pitch and putt area being *'on the higher tier'*.
43. In her oral evidence she said that the location of the areas utilised by Travel Class varied from year to year but that *'they would generally use a good percentage of the field'*. She mentioned the climbing frame which she said was probably 50' high which she said in one year (possibly 2000) was located in the field at the point marked 'X' on my copy of the photo at OB2/245 before being moved in the following year into the car parking area behind the chalet block D1-D4 (and identified by Ms Hutchinson as probably being in this location in the new photo at OB2/252). She said that when the climbing frame was in the field (*'tucked away in the corner'*) it would have been similar to the one shown in the photo at OB2/252.

44. Ms Hutchinson said that the location of the archery targets also varied from year to year, citing locations in the middle or bottom part of the field. She also said that in the first couple of years when she was at St Mary's (this would have been in 1999/2000) the 'blind man's trail' would have been in the field before being moved elsewhere. She also mentioned that camp fire nights took place in the field '*somewhere out of the way*' or down on the beach on a Thursday or Sunday evening which was generally on the last night of the children's (Travel Class) holiday.
45. That Ms Hutchinson's recollection of the field cannot be as good as it was (indeed she told us that this was the first time she had been back to Brixham since 2005) is borne out by the fact that she identified the location of the activities taking place in the photos at OB2/247&251 as being well outside the field, nearer the Mudstone Lane entrance to the camp, whereas the location shown on these photos is roughly half way down the slope on its eastern side and is clearly within the field. I confirmed this for myself on my last visit to the field (Mrs Yelland also thought that Ms Hutchinson was wrong about this). Ms Hutchinson marked what she thought was the location of the photo at 247 (and she believed that the location of the photo at 251 would have been in the same place) on the copy in my bundle. She did, however, identify the location and activities taking place within the field as shown in the photos at OB2/248/250/253.
46. In the case of the photo at 247, we see a small group of children playing in the trees. In 248 we have an instructor and two children firing air rifles at targets only a few feet away on the path at the SE corner of the field (the photo at 249 is inverted and is not as it is on the ground). In the case of 250, the photo is of a small group of children and 4 adults in the SE corner of the field (in a place where the ground is level) and in the case of 251 the location is a little further down the slope where there appears to be 6 children engaged in what must be the 'blind man's trail', whose location Ms Hutchinson told us moved every year. In the case of the photo at 253, we see an instructor and 3 children firing their air rifles at targets a little further away than is shown in 248, again at the top of the path in the SE corner of the field (the wall shown in the photo has

since been replaced by fencing and there are now double gates leading into the camp site adjacent to the targets in this photo). It seemed to me that the Travel Class activities (whose staff wore distinctive clothing) shown taking place in these photos were at a fairly low-level, occupying only small areas within or on the periphery the field, even allowing for any cordoning off in the case of the rifle shooting.

47. In chief Ms Hutchinson was asked how often she would have gone to the field in the period 2001/03 when she was Centre Manager and she said it would have been at least twice a day as she would patrol the camp first thing in the morning between 8.30 and 10am, and again in the evening between 6 and 9.30pm. She said that it was unnecessary for her to go into the field on these occasions as she could observe the field from the top car park behind the chalets at D1-D4 and from lower down. Her concern was to see that the field was *'clean and tidy'* as it was being used as a dog walking area. She also said that she looked in on the field if the camp's entertainment team had organised *'something for the field'* (such as *'a kick around with a football, to rounders, to hoola-hooping, to volley ball, to pitch and putt'*) in which case (as she put it) *'I would have wandered up and just had a look to make sure that everything was okay'*.
48. When asked in cross-examination about locals in the field, she said that she rarely saw any locals there although when later pressed about this she accepted that there had been problems with local children who were making a nuisance of themselves by going into the old Dolphin camp and starting fires although she never witnessed any informal recreation taking place in the field. She also located the climbing tower in the season it was in the field in the position shown in the photo at OB2/253. I understood her to be saying that it would have been roughly where in this photo we see the bales of straw or hay and the youngsters firing their air rifles although, of course, none of the applicant's witnesses had ever seen the climbing frame located in the field. I think Ms Hutchinson also surprised us all by asserting that the public footpath actually ran around the perimeter at the bottom of the field (ie close by the undergrowth at the bottom of the field) when no one else had suggested that

this was the case. I also found it hard to accept her evidence (in response to questions from me) that she had never known of anyone walking across the field and that locals would walk their dogs at the bottom of the field where there was a track (which is where she used to walk her own dog).

49. Ms Hutchinson also confirmed to me that the field would have been mown at the start of and later on in the season, and the state of the grass in former times is clearly evident from some of the photos and bears no relation to the condition of the grass as it is today. It would certainly have been easier to have kicked a ball around on the flatter or terraced areas at the top of the field (which had ready access into the camp through the opening at the top of the field) and this may explain why this area appears to be so worn in the photo at OB2/250. This is not simply because the R&T footballers may have been using it as a place to kick balls around, but because it is flatter than the rest of the field it is likely to have been used more heavily by guests at the camp for informal sports and recreation with the lower areas being used, in the main, by the dog walkers where, as I understand it, the grass would have been longer as it was cut less often. I might add finally that Ms Hutchinson said that she also observed R&T footballers kicking balls around on her morning inspections of the field.

50. I did not find Ms Hutchinson a convincing witness, nor do I think that she was particularly objective when it came to usage of the field on the part of locals. In my view, it is probable that she had little interest in what was happening on the field and I believe that there was probably not a lot going on in the field anyway when Travel Class were not using it in the 3 months of the year or thereabouts when they were at the camp. Nor am I satisfied that the climbing tower was ever located at the top of the field for any appreciable length of time although, even if it was, it was (as Ms Hutchinson put it) probably *'tucked away in the corner'*. In much the same vein she mentioned (i) that the archery targets varied from year to year (ii) that the 'blind man's trail' would have been in the field before being moved elsewhere, and (iii) that even the camp fire nights took place either in the field 'somewhere out of the way' or down on the beach on a Thursday or Sunday evening. It seems to me that this evidence is

consistent with what I consider was more than likely to have been low-level activity on the part of R&T and Travel Class when it came to their usage of the field, and the evidence of this witness does not cause me to alter my recommendation to the registration authority.

Paul Gee

51. Mr Gee lives in Swindon and his statement begins at OB2/40. He was employed as a security guard at St Mary's between April 2004 until August 2006. In the close season he was part of the camp's maintenance team. Mr Gee told us that during the season only part of the field was mown (with a sit-on mower being brought through the double gates at the top of the field) which makes it altogether more likely, in my view, that the flatter upper terraces were used predominantly for active play by guests at the camp with the remainder of the field being devoted primarily to dog walking in the longer grass. When cross-examined Mr Gee said that it was quite a large area *'to be mowed all in one go, so we used to sometimes cut the field, obviously just enough for the guests to use as a doggy walk, or for Travel Class to use during events'*. When I probed him about this he said the grass that was mown during the season *'was the grass that was closest to the park, nearer to the perimeter fence, and then obviously the remainder half of the field was left untouched'* which confirms my view that, in practice, only a portion of the field nearest to the concrete path would have been used by Travel Class. Mr Gee agreed with me that half the field furthest away from the perimeter fence of the park was left uncut during the season. It is then Mr Gee's evidence that during the season most of the grass cutting took place on the side of the field nearest the camp, although I accept that he qualified this to some extent by saying that it would also depend upon how much of the field Travel Class required for their activities.
52. Mr Gee worked a 6 day week (at what by then had become known as the *Riviera Bay* holiday camp) on shifts from around 5pm until 2/3am. He wore a distinctive uniform and he produced his security badges. In chief he said he would also patrol in the field which was used by guests at the camp for

walking their dogs. He recalls asking a non-resident dog walker to leave the field only once in his time at the camp (he had been told that the field was not supposed to be used by locals). He also recalls asking some campers to leave the field on a couple of occasions and they did so. In his statement he also recalls the footpath running through the field which he sometimes saw being used by people *'presumably as a short cut'*. He also spoke of occasional instances of problems with youths gaining access into the camp itself or riding motor bikes on the field or causing damage on the Dolphin site which it was his responsibility to deal with.

53. Mr Gee thought that the capacity of the camp would have been about 800 people and he was the only security guard at nights. When I suggested to him that he would not have been that concerned about what was going on in the field if there was nothing happening there which required his attention, he conceded, I think, that he would normally do no more than have *'a quick look'* at the field on his 3 or 4 rounds of the camp each night only one of which would have occurred during the hours of daylight. Finally, Mr Gee confirmed that he had only been approached to give evidence some 7/8 weeks previously.
54. I consider that Mr Gee's evidence was of limited value to the objector. He appears only to have worked nights and his awareness of what was going on in the field, at least in the daytime, would, as I find, have been negligible. However, as already explained, I consider that his evidence in relation to the grass cutting was important.

Geraint Scott

55. Mr Scott lives in Cardiff and his statement begins at OB2/78. Mr Scott says that he used to be employed by Junior Choice Adventure Holidays Ltd which was a subsidiary of Travel Class Ltd (although Mr Outhwaite says that JCA was in fact the trading name of Travel Class Ltd – at any rate, I shall continue to refer to the business as Travel Class). As an employee of Travel Class (and he left their employment in 2007), he appears to have stayed at or visited the camp in 2001, 2002 and 2003. At that stage he was an instructor, when

he left he was the firm's project manager. The transcript of Mr Scott's evidence shows that I spent some time asking him questions after he had been examined by the advocates. What I was aiming to do was to narrow those parts of his evidence which I considered were going to be important to the Inquiry.

56. In 2001 Mr Scott worked at the camp for a period in May of that year. In 2002 he came to the camp for 3 courses which lasted for around 3 weeks although the weeks may not have been consecutive. In 2003 he said that he may have visited occasionally, but not as an instructor. He cannot recall much about 2003 and when I pressed him about this he said that he was aware that the archery and rifle range had been moved to another camp by that stage (in fact, as will appear later on from Mr Scott's evidence in chief, the rifle shooting had already moved out of the field during the course of the 2002 season) and the children had had to be walked over to the nearby Landscope camp which was said to be a 20 minute walk away if they wanted to participate in these activities which, as I say, no longer took place in the field after the 2002 season.
57. This was important evidence as the impression I had gained from the earlier evidence was that these were activities which were regularly carried out without fail in the field every year by Travel Class and there are, of course, photographs of the rifle shooting at OB2/248&253. Mr Scott said that the archery and rifle shooting went together as it made no sense to move only one group activity to the other camp when it was only going to last for around 30 or 40 minutes, so by moving two activities it meant that the groups doing archery and rifle shooting could spend a full morning at the other camp and would return to St Mary's in time for lunch. Mr Scott also said that archery and rifle shooting continued at Landscope after 2003 and his evidence about this was not queried by the objector. I have to say that it concerns me that I had not been informed earlier that archery and rifle shooting had been moved to Landscope after 2002.

58. When asked what activities did occur in 2003 Mr Scott could not be too specific although he said that activities still took place on the field. He mentioned what he referred to as a survival activity which is apparently what we see in the photo at OB2/247 but he said that this had only been trialled at another camp in 2002 and had been (as he put it) '*rolled out*' to other centres in 2003 which is again important as the production of the photo might imply that this was one of a number of activities which habitually took place on Travel Class holidays whereas in fact it only gets underway in 2003.
59. Mr Scott also told us that although Travel Class were at the camp between April and July, it would have been busier in June and July as the children finished school after their SATS tests seeing as most of the Travel Class children at the camp were of primary school age, mainly years 5/6, although there were some secondary children. It is then important to note that the earlier months of the Travel Class cycle, ie during term time, would have been quieter.
60. Mr Scott said that Travel Class laid on as many as 14 different activities for the children on their stays, not all of which would have taken place in the field. He said that most children came on the Monday to Friday trips. As I understand his evidence, the pattern in the early 2000s was that one activity would normally have taken place at the camp on the days of the children's arrival and departure with 4 on each of the 3 intervening days. He said that there was no reason why there could not have been as many as 3/4 activities taking place in the field at any one time, although in citing rifle shooting this would not have happened in 2003 and beyond (likewise in the case of the archery). The other activities he mentioned were the initiative exercises and the blind man's trail.
61. Mr Scott said that each activity slot was scheduled to last an hour and a half but in practice it could have been 15 minutes less than this after allowing for setting up time and the children readying themselves for their next activity which could be elsewhere at the camp such as at the swimming pool which would have involved a quick change. Mr Scott said that there could have been

groups on the field between 9.30am until 4.30pm. It appears that rifle shooting was not so popular with the children as the schools were not interested in that sort of activity. In the case of the archery, which was a popular activity, Mr Scott said that this took place right at the bottom end of the field in an area which was cordoned off. Mr Scott said it was roped off until the equipment was removed at the end of the day. Mr Scott also mentioned that what the senior instructor would try to do would be to co-ordinate archery because it was so popular so that all the groups that wanted to do it could be accommodated on the same days and he said, by way of example, that if 8 groups had wanted to do archery then it could, for instance, take place on only 2 instead of 3 days which meant that there would have been one day in that particular holiday cycle when the equipment (and the cordon) did not have to be set up.

62. When I asked Mr Scott how large an area was cordoned off for the archery, it was my understanding of his evidence that the area in question would have been in the region of, say, 10 yards wide (Mr Scott estimated that it could have been the length of the stage in the theatre in which the Inquiry took place) and, in terms of distance to the targets from where the archers stood, it could have been much the same again, perhaps slightly less (Mr Scott had suggested that it could be from the edge of the stage to the curtain behind where I was sitting). Behind the targets (and there would have been 2 targets standing around a couple of yards apart) a cordon would have been set up (as Mr Scott put it) '*a good 25 paces*' back (say 25 yards) in front of which there would have been netting which would have been around 10 yards behind the targets (it is unclear to me now whether the netting was in fact the limit of the cordon behind the targets – in practice it probably was as if the archery took place at the very bottom of the field then at the rear of the targets there is likely to have been heavy undergrowth and thus little obvious need for a rope cordon behind the netting – at any rate there would have been an area behind the targets which was, in practice, a no-go area). Where the archers stood there would have been a coloured rope on the ground known as the '*shooting line*' which the archers would straddle with each foot when taking

their shots at the targets. Behind the shooting line there was a further gap of around 5 yards where there would have been another coloured rope on the ground. This was the edge of the cordon behind the archers. It was, however, only at the sides and rear of the shooting area that the ropes comprising the cordon would be off the ground on posts or stakes delineating the sides of the area earmarked for archery. Mr Scott said the entire area taken over by the archery would have been '*an out of bounds area*'. Mr Scott also agreed that the photo shown on the brochure at OB2/125 would have been comparable to what we had on the field (although there would have been 2 targets – as is shown in the photo at OB2/147) and if this is right then a short archery range could have been set up right at the bottom end of the field although, as I find, it is unlikely to have been particularly intrusive in relation to the field as a whole as the main walking areas of the field or areas best suited for informal recreation are, as it seems to me, well away from the bottom of the field which is where any archery activity is bound to have taken place. When I returned to the field at the end of the Inquiry I paid special attention to this area and it seemed to me that the archery would have been located well out of the way and almost certainly well away from other areas of the field where children would have been playing. There are also bound to have been people walking their dogs in the field and those managing the archery would undoubtedly have wanted to keep it well out of harm's reach.

63. It was a pity that, on such an important matter as the archery, the objector had not pegged out the area taken up by this on the ground or otherwise provided me with a measured layout plan so that I could see where it was likely to have been located in the field, but there was I think enough in Mr Scott's evidence to give me a reasonably clear idea of where the archery took place at the bottom end of the field.
64. In relation to 'the blind man's trail' (or 'blind trail' as Mrs Yelland called it – an activity that involved communication and team building), Mr Scott was shown the photo at OB2/251 and I might add that I went to the place on the field where the photographer would have stood when taking this photo (the tree in the foreground has gone) and we are looking at very small area within the

field. When I asked Mr Scott about the area of the field taken over with 'blind man's trail' he said it could be *'as little or as much as you want, I mean a 'blind trail' could fit comfortably on this stage with no problem at all'*. Mr Scott thought that the photo at OB2/251 showed the end of the trail. What he described to me about this activity (which were games or the like involving the wearing of blindfolds with the children negotiating obstacles on the ground along a simple roped course) leads me to think that it probably did not take up much of the field and is, I think, unlikely to have interfered in any significant manner with the recreational activities of local inhabitants. It seems to me that this can be implied from his evidence that the area of the 'blind man's trail' would have occupied an area of the field as big as only one and a half times the size of the stage. Mr Scott also suggested that some of the so-called 'initiative exercises' would also have taken place in the field and some of these exercises (and he cited the 'spider's web' exercise – see for instance the photo of children making a spider's web on OB2/215 which plainly does not take place within a particularly wide radius – when cross-examined, Mr Scott said that the spider's web was a 6' square structure which was embedded in the ground) would have required flatter areas of the field. He pointed out the second tyre in the background of the photo at OB2/251 which he said was probably equipment used on an 'initiative exercise'. The impression I got from this evidence was that the 'initiative exercises' probably did not take up much of the field either and, in common with the 'blind man's trail', was not intrusive when it came to the use of the field by locals for informal recreation.

65. Mr Scott had said in chief that a local dog walker had complained about the rifle shooting (when I asked him about this he accepted that there had been *'issues'* with the dog-walker). He said that although the site chosen for this had been perfectly safe it made common sense to re-locate this activity to the other camp. I have little doubt that Travel Class were deferring to the locals about this although I accept that there must have been a health and safety issue as well. At any rate, while air rifle shooting took place Mr Scott suspects that there would have been a roped cordon alongside the footpath going no

further back than about a metre beyond the targets and about 5 steps behind the shooters, although he never saw any cordon for himself in this instance as he never operated the firing range shown in the photo at OB2/253 in which, incidentally, no such cordon is shown alongside the footpath. The range which he operated was that shown in OB2/248 where one can see a red flag above the targets.

66. When it comes to Mr Scott's evidence in chief and his cross-examination, I need only touch upon a few points. He said in chief that he had only been approached to give evidence in September 2009 and that he had no connection with the objector. In the case of the archery, he said that in 2001 the archery equipment (indeed all the equipment required for the various activities taking place that day in the field) would have been taken over to the field at 9am where it would have been set up and would have been taken down at 4.30pm. He also said in chief that the distance from the 'shooter' to the target would have been at least 7m (although sometimes, I think, it might have been increased to 10m depending on the age of the children) which roughly ties in with the answer he gave me about this. It was as limited as this because they were involved with children who had never done archery before. Mr Scott also said in chief that the archery was at the bottom end of the field *'as far down as you could go ... It was kind of the furthest point of the field away from where the accommodation was'*. It was this area that I inspected closely on my final inspection of the site (it would have backed on to fairly dense undergrowth although the grassed areas would have been better maintained than they are now) and it is clear in my mind where the archery range must have been located and, as I have already indicated, it is unlikely to have been an intrusive location or even a particularly large area in relation to the size of the field as a whole. Mr Scott also dealt with the shooting in the 2 locations shown in the photos at OB2/248/253 which aided his evidence about this.
67. When it came to the 'initiative games' it seems clear enough to me that the evidence shows that the children were not required to use much of the field as the activity involved some rather interesting puzzle-solving, albeit at a fairly

basic level, and needed very little in the way of materials or space for the children to work in. This activity took place in different areas of the field although some of the exercises needed to be on the flat, as he told me later on his evidence.

68. In his statement he said that if the park was running at capacity (by which he probably meant the busy periods of June and July) *'there could be in the region of 50 children, instructors and staff at a given time during the day on the field'*. In my view, if this had happened then it would have been exceptional and certainly would not have been prolonged. It seems to me that the available photos are likely to be more indicative of what the position must have been like, even in the busier times. Had the numbers been up to the levels described by Mr Scott then it is certain to have been observed by the locals and there is, I think, likely to have been conflict as if there were so many children using the field then it seems to me that locals are bound to have had to adjust their own activities. Nor, for that matter, is there is any evidence either showing that locals were actually impeded in their own usage by any organised activity taking place in the field. As I have already found, none of the applicant's witnesses ever witnessed such activity going on in the field and if there had been as many as 50 or more people using the field intensively for any prolonged period then locals are bound to have seen it. With the number of dog-walkers using this field throughout the day there is, I think, bound to have been some conflict with Travel Class if Mr Scott is right in his estimate of numbers. In my view, his recollection about these things is bound to be less reliable in view of his own very limited involvement with this particular field which, in essence, boils down to a few weeks when he was at the camp in 2001/02.

69. Mr Scott also mentioned other activities taking place in the field. He referred to games such 'Egg Destroyer', 'Eggspllosion' and 'World of Sport' which I understand involved games and competitions and no doubt involved the children in letting off a good deal of steam on what would sometimes have been their first night at the camp. When asked in chief where these activities took place Mr Scott said that it varied, depending on the size of the group, but

'We absolutely used to use the field at certain times, the same sort of area that we used for the archery range if it wasn't in use. We also used a patch of grass down by some of the chalets if it was a particularly small group'. The impression I get from this evidence is that such usage would have been occasional and was unlikely to have been prolonged or intrusive when it came to usage of the field by locals.

70. Mr Scott also mentioned evening activities in the field which he said always began after dinner at 7.30pm. He mentioned games where instructors (whom I should say appear to have worn distinctive uniforms at other times – examples of which I was shown at the Inquiry) dressed up as Cleudo characters and 'If the allocation of schools was full there could be somewhere in the order of about 120 or 130 people on this given activity' in the field (ie children and adults). This and other evening activities in the field (such as camp fires) only went on until around 9pm or perhaps a little later. I cannot see that these occasional evening activities in the field which lasted for around 1.5 hrs would have sufficed to preclude as of right on the part of locals, even if there were any out in the field at this time of night and it is perhaps worth reminding ourselves that qualifying user for the purposes of a town or village green does not require user to take place in every hour of every day.
71. There are just a few more points of note in Mr Scott's case:
- (a) he was unable to identify the location of the photo in OB2/247 although the children appeared to him to be engaged in an activity called 'Survival' – I cannot see that anything turns on the activity shown in this photo either where you appear to have a handful of children trying to build a rudimentary shelter amongst the trees half way up the slope near the concrete path;
 - (b) he says he was told by a colleague (Ben Kelly) that the rifle range had been re-located away from the field as a dog walker had walked along the concrete path (*'I recall Ben telling us that the man had been difficult and that he had had to ask the man to leave the field'* – later on in his cross-examination Mr Scott said that the individual in question had been making a nuisance of

himself and was suggesting *‘that we should not be there’*) so *‘it was felt sensible to move that activity out of the field for the season, for the remainder of the season’* just in case (as he also said in cross-examination) *‘that person came and tried to access to the range and disrupt the session ... There was a health and safety issue there ..’*. When I asked him a question about this during his evidence in chief he said that the shooting was transferred during the 2002 season and, as previously indicated, after 2002 both the rifle shooting and archery took place at another camp;

- (c) he said that the gateway at the top of the slope had been the main access into the field for the children; (d) he also said that in the case of the archery there would have been a sign saying ‘Archery in progress. Do not proceed’ although none of the applicant’s witnesses ever saw this and such signage was never addressed by any of the objector’s other witnesses;
- (e) although only briefly at the camp, Mr Scott said that he did not recall anyone else being on the field other than children with Travel Class who, he said, normally comprised of individual groups of up to 12 children on each activity (although the available photos admittedly show fewer than 12);
- (f) when cross-examined Mr Scott also cited another ‘initiative exercise’ involving an alarm clock in a large locked box (apart from the spider’s web activity) which he said would have lasted an hour and a half, and it seems to me that this activity is unlikely to have involved extensive use of the field either;
- (g) most of the equipment in the field would have been removed at the end of each day (although he said that the spider’s web structure is likely to have stayed put - other than in Whitsun week – although none of the applicant’s witnesses ever saw it there);
- (h) Mr Scott was also unaware that a public footpath crossed the field when he worked there.

72. I have dealt with Mr Scott’s evidence at some length (in fact his evidence covered 41 pages of the written transcripts) as it seemed to me that he was able to explain with reasonable clarity what is likely to have been involved in

relation to the Travel Class activities which took place on the field, even though he had only been there for a short time. The very real impression I got from his evidence is that groups of children would have undoubtedly used this field for activities organised by Travel Class but that such usage would not have interfered unduly, if at all, with the recreational activities on the field of locals.

Jackie Yelland

73. Mrs Yelland comes from Mansfield and her statement begins at OB2/71. She is a teacher at a primary school in Mansfield and between 2000-06 she brought a group of children (between 24-32 plus staff) down to St Mary's on a Travel Class activity holiday in mid to late June just after the children's SATS tests. We are dealing here mainly with children aged 10/11 (year 6) although there were some younger children as well. In her statement she says the field was used for some activities and she recalls 'World of Sport', 'Eggsplosion' and camp fire evenings taking place although she remembers only one camp fire as *'there was a health and safety issue with that'*. She said that the camp fire evenings could involve around 45 children plus staff and Travel Class personnel of around 12 adults and the event, at which games would also be played, would last for a couple of hours (7-9pm).
74. Mrs Yelland also recalls air rifle shooting at the top of the field. She does not though recall seeing locals using the field while she was there (and she reiterated this when she was cross-examined). It was Mrs Yelland who actually provided the photos at OB2/247-253 (which she said were taken from an album dated 2000-2006) and she took us through these photos. She was able to recall that the photo at OB2/250 was of one of the camp fire evenings although the photo shows nothing like the numbers mentioned above for this activity. Mrs Yelland also dealt with the photo of the climbing tower at OB2/252 which, as I understand her evidence, would have been taken at the back of the chalets and not on the field and she noted that on the photo at 253 you could see the climbing tower on the other side of the wall (ie off the field). None of us had spotted this. In fact when she was cross-examined she said

that the climbing tower was never in the field. Mrs Yelland also said in chief that she had only recently been asked to give evidence and that she had no connection with the objector.

75. When I asked Mrs Yelland questions she said that activities moved around the camp from year to year. She also mentioned that the 'World of Sport' activity took place on the evening of the day of arrival (which in her case would have been a Monday night – in other words, this was by no means a daily occurrence) where there could be as many as 60 children (from two schools) plus adults (*probably at least 12*) on the field for 2 hours. The 'Eggsplosion' activity also involved around 30 children on the field and again took place on only one day of their stay in the evening and, like the 'World of Sport' activity, lasted only 2 hours although Mrs Yelland said that they did not do this activity every year. The camp fire activity was another evening activity which took place every year and also lasted for 2 hours and in terms of numbers would have been comparable with 'World of Sport'. Mrs Yelland also said that they only used the *'top part of the field'* and with reference to the plan attached to her statement at OB2/76, she also told me that they probably did not go beyond the point marked 'X' and that in her case (as I understand her evidence) Travel Class activity mainly took place in the upper part of the field on the side of the concrete path. This is perfectly feasible as this includes the flatter areas within the field.

76. Mrs Yelland's evidence, which I accept, was consistent with that of Mr Scott. The very clear impression I get from her evidence is that there were substantial numbers of children and support staff (including Travel Class personnel) using perhaps, say, one-third of the field from time to time for what were by no means prolonged periods. At other times, there were much smaller groups of children and support staff (again including Travel Class personnel) who, at times throughout the day, would have been participating in activities which, in my view, occupied only small areas of the field. There was never any cordoning off and the field would have been available for use by locals.

Sarah Hicks

77. Mrs Hicks comes from Taunton. Her statement begins at OB2/54. Mrs Hicks was employed by Weststar between 1990 and 2007. She was their Operations Manager at the time that firm acquired St Mary's and can therefore speak for the period 1998-2001.
78. In her statement Mrs Hicks says that she carried out regular inspections at Weststar-run holiday camp sites (I think there may have been 5 of them by the time we get to the late 1990s) and is familiar with the field which she says was not ignored on her inspections at St Mary's. In chief I understood her to be saying that her inspections at the camp would have been sufficient to address matters *'that needed immediate attention'* which did not mean, however, that she needed to walk the whole field. In her statement she says that her visits were usually monthly and sometimes as often as once a fortnight (she said her visits were more frequent in the period immediately following the acquisition of a park). When re-examined about this she said that in the course of a year she would visit every park at least once a week which was something of a departure from her statement but she explained that it would have been quite often in the case of St Mary's as major projects were being carried out at the camp in the winter months and when this was happening she may even have had to visit *'perhaps twice a week'* (in fact she agreed, both in re-examination and in response to a question from me, that it would have been at least 50 visits in a year) and that on these visits she would have viewed the field on about *'two thirds of them'* (again in re-examination she said that she would have inspected the field on 'say' 34 occasions per year between the time of its acquisition in (as I was told) January 1998 until its sale to Landscope in (as I was also told) March 2001). Indeed, when Mr Blohm put it to Mrs Hicks that on the basis that Weststar had owned the field for 3 seasons, she could have viewed the field *'just in excess of 100 times'*, she agreed without any hesitation. I have to say that I thought her evidence in relation to the frequency of her periodic visits to the camp and of her claimed inspections of the field was unreliable. I find that she probably

visited the camp at least once a month and occasionally more often than this but only when the circumstances warranted an additional visit.

79. St Mary's was a fairly small holiday park (being around 16/17 acres with a capacity of around 700 guests per week) in contrast with Weststar's camp at Sandford which extends to 66 acres and has a capacity in excess of 3,000 per week in the peak weeks during the school holidays. In the non-peak weeks the occupancy rates would still be in the region of 80-90% and I think this applied in the case of both camps. Mrs Hicks said that St Mary's was probably open from a week or two before Easter until the beginning of November. It also opened at Christmas and in the New Year where the camp would have been full for a two week period. On the face of it, the camp is open and in full swing for around 8 months of the year, otherwise it is closed.
80. In para 13 of her statement Mrs Hicks says that she recalls seeing the climbing tower at the field which she says would have been '*perhaps 20 feet high*'. She says that the area at the top of the park was redeveloped at some point and that it may have been moved into the field from the D block area to accommodate the redevelopment. This may be a likely explanation for the presence of the climbing tower at the top of the field but it could not have been for very long. What I certainly cannot accept, however, is that the climbing tower would have stood in the field for any appreciable length of time. I should perhaps say that I was rather puzzled by the locations (both on the field and off it) of the tower on the aerial photo at OB2/62. I think neither can be correct (the field is actually sloping at this point and would not have been a suitable base or platform from which to have sited such a structure) as it seems to me that the climbing tower could only feasibly have been located right at the top of either the field or the camp behind the chalets at D1-D4. This confusion may show that Mrs Hicks may not be as familiar with the layout of the camp as she thought she was. At any rate, she says that on her inspections of the field (and she also made inspections at St Mary's out of season, and this would have included the field) she does not recall having seen many people ('*Apart from the tower*') and in cross-examination she said that she assumed that those whom she saw would have holiday-makers.

81. When cross-examined about her inspections of the field she said they varied *'from a detailed walk ... to sometimes a glance over to check all was in order'*. She also only has *'a vague recollection of there being signs'*. In response to questions from me about this she agreed that *'quite often'* her visits to the field would have been *'fleeting, literally standing and having a look and walking away ... Sometimes from the D field you can glance over and look at the field and that itself would have been sufficient for the purposes of my site visit'*. She also agreed that the time she spent on or looking at the field would have been no more than 5 minutes. She also agreed that she saw people walking dogs in the field: *'it was rare that it (ie the field) was empty'*. Crucially, I think, she told me that her visits *'weren't long enough for me to draw any conclusions really as to the level of use that it had, but it was regularly used'*. In the light of the evidence which she gave about this in response to questioning from me, I rather think that she merely assumed that if there were people with dogs in the field then they must have been guests at the camp whereas, of course, some or all of them might well have been locals as it would not have occurred to her at the time that locals were also using the field. There were undoubtedly guests at the camp with dogs as Mrs Hicks told us (and I accept her evidence about this) that there were some 20-30 chalets reserved for those with pets and although they were not always full of pet owners, the majority were. I can therefore see that the 'Doggy Walk' area would have been an important amenity for the camp and I find that although there were guests at the camp who brought their dogs with them, the field was also used by a substantial number of local inhabitants and it seems to me that Mrs Hicks is unlikely to have had any real appreciation of this on her occasional fleeting visits to the field.
82. Evidence from the next 3 witnesses was taken on a conference call on a telephone link in a room at the Inquiry venue. Mr Polyblank had misgivings about this but he agreed to participate in this process which was the only way in which any oral evidence was going to be heard from these witnesses.

Craig Crowton

83. Mr Crowton lives in Cheshire and his statement dated 13/10/2009 begins at OB2/93. He has no connection with the objector and had only recently been approached to give evidence. Mr Crowton said that he was unable to leave his office to come down to Brixham to give evidence.
84. Mr Crowton was employed by Westar at the camp as an Entertainment Manager. He worked at St Mary's between 2000-02. In relation to the field he told us that on Sunday mornings newcomers would be taken on a walk around the camp which always included a walk into the field where he said they remained *'for a couple of minutes'*. This was known as the Ramble.
85. Mr Crowton said that the field was used for a number of activities in the course of the entertainment programme at the camp. He mentioned a nature trail *'around the woods'* with the children which took place, as I understand it, outside the NE corner of the field. The *'woods'* in question lay outside the field and Mr Crowton appeared to concede this in cross-examination. Apparently, members of the entertainment team would take a hoola hoop and throw it on to the ground in different places and the children who participated in this event would then be encouraged to describe the insects and plants that they could see within the hoola hoop. They would also inspect the trees. I doubt very much whether anything turns on this for the objector.
86. Also held on the field were kite flying competitions, manhunt games, tug of war competitions, football and the weekly sports day. Later on in the season organised activities would normally take place indoors. The manhunt games would involve a member of the entertainment staff hiding somewhere on the field and children and their parents would follow clues which lead them to the field and once the *'baddie'* was caught (and I doubt whether there would have been that many places to hide) he would be taken away to the pool area where no doubt some appalling punishment would be inflicted upon him by the children! Mr Crowton said that some 20-30 people could be involved in this activity along with 7 staff. I consider it likely that this activity took up little time on the field itself. The activity is mentioned in the programme at OB2/109

as the 'Family Manhunt' and was scheduled to take place on what was a Friday in October at 10.30am (the next event in the programme is set to start at 11am).

87. Mr Crowton then mentions football which is referred to in the same Friday programme as taking place between 11am and 12 noon. We are dealing here with a kick around on what would have been the flatter area at the top end of the field which I rather doubt would have been large enough for anything other than a fairly rudimentary 5 a side or shots at a goal if one had been carried over to the field, as I think it may have been, particularly during the adult (usually teenagers) football session which I see was listed in the same Friday's programme at 2pm. We therefore had 3 separate activities taking place in the field on this particular Friday in October.
88. In the programmes at OB2/111 (again on a Friday but this time on a date in May) Mr Crowton refers to tug of war competitions and sports day activities taking place on the field at, respectively, 10.30am and between 2-3pm. Evidently the Time Trial event, also at 10.30am on the same Friday, is the same event as the Manhunt referred to above. Tug of war and sports days were obviously popular events and Mr Crowton says that they tended to be arranged *'in the flattest areas of the field, fairly close to the park'*. In cross-examination he said the tug of war took place on the lower part of the field. He said that there could be around 20-30 people on the field for the tug of war event and as many as 50-60 people on the sports day which seems to have been for a relatively short period only on Friday afternoons.
89. Mr Crowton also mentions the pitch and putt area which none of the applicant's witnesses ever saw being used. It was undoubtedly a facility for a time but I rather think that it was not greatly used by guests at the camp as if it had been then I would have heard more evidence about it. Mr Crowton also recalls the visits of Travel Class and R&T. However he is unlikely to have been heavily involved in this as they had their own staff. He says in his statement that they would share the field with Travel Class and would try and combine their respective programmes *'so that we would be there* (ie on the

field) *at different times of the day and week*'. However since Travel Class would have comprised the bulk of the guests at the camp and R&T would have taken over the entire camp when they were there, I rather think that Mr Crowton was probably not overly concerned with what was happening on the field anyway at these times. He does though recall seeing the climbing tower at the top of the field in his first year at the camp (ie 2000). In the case of R&T he says that he saw children *'kicking about on the Field en masse. I remember seeing them all playing around, with footballs flying everywhere'*. This is not consistent with other evidence which I heard about this.

90. In his statement Mr Crowton also says that he was never *'conscious'* of other people being on the field other than *'occasional use of the footpath and dog walking close to the back of the chalets, at the top of the field'*. He too is saying (as I understand it) that the footpath ran around the edge of the bottom of the field which I do not accept was the case. In his time there, he says he exercised his own dog on the field during lunchtimes and in the evenings. He said that his dog did not like other dogs *'so the Field was an ideal place to walk as you didn't tend to see people with dogs up there'*. He went on to say that as the field was not well lit *'and so, when I did come across anyone walking, it would be a bit of a shock'*. I am not inclined to accept this evidence.
91. In cross-examination Mr Crowton explained that in terms of numbers of people on the field involved in camp activities, it varied from week to week depending on the weather or whether it was during the school holidays. He said that *'if we had a ramble or anything like that out of season when things were a bit colder, you can have as little as four or five people'*. By the same token there could be much larger numbers of people involved in the peak season.
92. When cross-examined Mr Crowton repeated that there were few locals or dog walkers around, evidence which I am not inclined to accept, although it is possible, I suppose, that he was so pre-occupied with what he was doing at the time that he failed to spot them. I consider this unlikely. He is, after all, giving evidence about events going back some 7-9 years ago and I doubt

whether his recollections about this are reliable, particularly his assertion that dog walkers would walk around the edge of the bottom of the field, rather than across it (*'it was very rare to see them in the middle'*). I cannot accept that this was the case, especially if dogs were being walked off the lead.

93. When I asked Mr Crowton whether there was much going on in the field outside of the school holidays (including half term holidays), he said there was but there would not have been as many children at the camp yet the activities' programme remained the same. I was not convinced by Mr Crowton's answer that it was easier for parents to take children out of school in the period under discussion (he said that this changed in 2002 although he never said why) with the result that the camp would still have had its compliment of children outside the school holidays. I am not so sure about this. I suspect that there would have been more pre-school children at these times and that the field is unlikely to have been used nearly as much as it was during the peak season. Finally, and importantly in my view, Mr Crowton said that there was never any conflict with locals that he was aware of.

Lucy Cotsell

94. Ms Cotsell lives at Portreath in Cornwall and was unable to attend the inquiry in person because of family commitments. She too had only been asked recently to become involved in these matters and has no connection with the objector. Her statement begins at OB2/85. She was a Travel Class instructor for 4 seasons between 1999-2002 and worked at St Mary's for around 3 weeks in April / May 1999 and again for at least a month in around March / April 2002, when she was a senior instructor.
95. Ms Cotsell's evidence was consistent with other Travel Class evidence but it was noteworthy that she said in her statement that the air rifle shooting *'firing'* area was *'fenced off so that people couldn't access the field* (presumably only while shooting was taking place – no one has suggested that the aim of this was other than for reasons of safety, as for instance by blocking off this access point permanently). *However on a daily basis the fencing would be broken down by locals so that they could walk across this part of the field. We*

continually re-erected the fence or blocked up the gap as the season went on to prevent people crossing the field'. I should perhaps add that when she uses the words *'fenced off'* in her statement, she qualified this when cross-examined to mean that the area behind the targets was fenced whereas there was a rope strung between 2 posts down the side of the firing range.

96. As we now know from Mr Scott's evidence, there was at least one local who very probably took exception to the layout of the shooting activity and because rifle shooting was moved elsewhere in 2002 (presumably by which time Ms Cotsell had already gone) Travel Class had, on the face of it, deferred to the claimed right of locals to recreate on the field at this point. I am not so sure that any user on the part of locals would necessarily have been non-peaceable in these circumstances as it might, I think, be argued that the landowner did not do enough to contest and / or to interrupt the user about which complaint is made. At any rate, Ms Cotsell's evidence about this is undeniably consistent with the evidence of those who gave evidence in support of the application to register. She was also cross-examined about this and she said that they had been told that locals *'would walk through where the shooting range was, saying that it was a footpath'*. By later re-locating the air rifle shooting it is even arguable that the landowner was in fact raising no objection to the activities of the locals.
97. Ms Cotsell also remembers the climbing tower in 2002 in the area behind the chalets and she recalls watching the children carrying out their activities in the field below. When cross-examined she said that the Travel Class activities mainly took place on one side of the field at the top of the field. She said that *'the main part we used was the bit that ran along the side of the holiday camp and then along the top corner of the camp'*. She said they also used *'the little bit that went down along where there was a footpath that led into the field'* which we have already determined was not actually within the field (this was in relation to the nature trail activity). This is precisely what I would have expected although the archery was, of course, elsewhere in the field.

98. It is also worth mentioning that when Ms Cotsell was asked about the camp fire activity (she says there were not literally camp fires but rather the aim was to re-create *'the spirit of a camp fire with sketches and songs'*), she recalls being on the climbing tower watching the children below singing. She recalls *'local children watching what was going on and looking a bit put out because they couldn't join in'*. The local children must have been on the field at the same time. It is not suggested that they were an unwelcome presence on the field and what Ms Cotsell describes is certainly consistent with local people using the field quite harmlessly for informal recreation. The significance of this evidence is obvious.
99. Unlike Mr Crowton, Ms Cotsell was aware that there was a public footpath running through the field (rather than skirting round the lower end of it) which she said was *'a clear footpath'* (she told Mr Blohm that the path was *'worn'* – *'it just looked as if people had used it as a cutway across the field'*). She said *'you could see where the people walked and people would walk across there when we had children doing activities'* and there would be dog walkers and *'often local children looking on at what we were doing, as I said, I think a bit jealous that they weren't able to join in ... they would spectate from a distance'*. She said they may have been *'both on the footpath and on the field'*. She later said that local children usually came in during the evenings as they would have been at school during the day. She said that when they came into the field they would try and join in with the Travel Class children *'and certainly watch the bigger group activities that we would have run'* in the field (she also complained that local children kept *'pinching the rope that was our blind trail'* although I think it is stretching things to say that all the local children who came into the field misbehaved themselves, but undoubtedly some did.
100. Ms Cotsell also saw dog walkers in the field in the evenings. Later, in re-examination, she said that *'people would walk along and throw the balls for their dogs ... there were definitely people about in the field that were obviously people that lived locally ... my concentration was mainly on the children ... as to the specifics of where people were on the field, I don't remember'*. Although it would be wrong to rule out the possibility that some of the dog

walkers were guests at the camp, some (in my view, a minority) must have been.

101. When I asked Ms Cotsell about dog walkers she said she would *'sort of notice people out of the corner of your eye'* walking dogs *'but whilst they weren't interfering with what we were doing they weren't my priority, the children were'*. In answer to a question from me, she said that there would have been a mix of dogs on and off the lead although it was her recollection that more of the dogs on a lead came into the field through the opening at the top of the hill.
102. It was also Ms Cotsell's evidence that the 'blind trail' took place *'in a small area'* on the field *'alongside the boundary wall of St Mary's Bay'*. She also said that the children would have finished their main activities in the field *'between 3.30 and 4 o'clockish'* apart from occasional events taking place in the field in the evenings (such as the camp fire activity). She said that towards the end of the Travel Class season things were busier and there could have been as many as 100 children in the field participating in the camp fire activity whereas it could have been a lot less, perhaps as many as 30, at the start of the season as there would have been fewer schools using the camp.
103. When I asked Ms Cotsell about her recollection of events occurring some years ago, she seemed clear enough in her own mind about where the various activities took place on the field. She could recall that the children had 2 one and a half hour activities in the morning and the same in the afternoon plus another activity in the evening and that some of these activities took place in the field. She said that between the end of May and July it was likely that there would have been more than just one activity taking place on the field at the same time. She said that earlier on in the season there would *'possibly only be one activity a day or two activities a day, rather than the whole day being spent doing the sessions on the field'*.
104. I also asked Ms Cotsell about activity areas being cordoned off and apart from the rifle shooting, she mentioned the rope for the 'blind trail' but said that that activity *'was in an area of youngish trees and the tree'd area was sort of the*

boundary for that'. Otherwise there was no cordoning off and equipment would have been taken to the field as required without any demarcation or cordoning off on the ground.

105. Ms Cotsell's evidence was important and although she was only at the camp for a short time (rather like Mr Scott), what she seemed to me to be saying was entirely plausible and was also consistent with the applicant's evidence.

Steve Cross

106. Mr Cross comes from Cheshunt in Herts and his short statement begins at OB2/34. He too had only become involved recently and has no connection with the objector. Mr Cross was a parent of a child involved in one of the R&T Tours. He says he took his son Ryan (then aged 10) to St Mary's in 2002/03. In his statement he says that whenever the R&T children had free time *'they would generally all play on the field and at any one time there would tend to be about 30-60 kids playing on the field. Typically, they would stay out until I called them in for their evening meal'*. In his oral evidence he said that his son's team and a number of others played and *'messed about'* on the field. When I asked him whether he spent much time in the field himself on his trips to St Mary's he said *'Very little, I'm afraid, they had very good bars. We left the kids to their own devices'*. I understand his recollection to be that whenever the children had free time at the camp more often than not they tended to run over to the field with a ball. He has little memory of the field itself – *'it could have been full of nettles for all I knew, I really cannot remember'*.

107. In terms of the time available for the children to have played on the field, he said that if there was a 12 noon kick off (off-site in the case of his son's U12 team) the children would be back at around 3/4pm and *'then they might go over there'*. If they had a late afternoon kick off (and they normally played two matches a day at the venue – lasting 1 hour overall – which were kept fairly close together), they might go over in the morning. If it was an early morning kick off they might come back at lunchtime. He said it really depended on the

tournament schedule when they played on the field. They '*never had any set routine*'.

108. My finding in the case of Mr Cross's evidence is that he has little memory of the field itself but he remembers that children would have played on it. I rather think that his evidence that there would have been 30-60 children playing on the field '*at any one time*' was in the nature of pure speculation and although there are likely to have been a number of children playing on the field it is, in my view, likely to have varied a good deal from day to day in terms of number and frequency and is, as I find, likely to have been confined mostly to the flatter areas in the top part of the field and is most unlikely to have interfered with any user on the part of locals.

Mike Quartley

109. Mr Quartley was the last witness to give oral evidence. He comes from Crewkerne in Somerset and his statement begins at OB2/122B. Mr Quartley (who again had only been approached recently to give evidence and who also has no connection with the objector) was formerly employed by a security firm called Vision Guarding Services Ltd ('VGS' – which went into liquidation in 2005) between 2002 and 2005 which provided security services at the camp at times when R&T were in residence. Between 2005/07 a firm called SWS (this was the firm which Mr Quartley ran) has been doing the same. The numbers of additional children on the site meant that greater provision for security was needed in addition to in-house security at the camp. He said in cross-examination that additional security was provided for approximately only 13 days a year.
110. Mr Quartley says they were requested to patrol the camp, including the field, which they were told was only available for guests at the camp. He said that the field fell within the area of 'D' patrol which extended to the area of 'D' chalets and included the arcade and clubroom areas. He said that each security guard (and they had 6 altogether) for each of the 4 patrol areas would carry out patrols between 2pm and 3am which he said in his statement would tie in with teams gradually coming back to the camp in the mid to late

afternoon period (he said that the majority of the children were off site after breakfast). Mr Quartley himself was employed as Operations' Manager of VGS and he said that he *'was floating between security guards pretty much all the time'*. I am not sure what the position was with SWS.

111. In his statement he said that they *'often had cause to ask local kids to leave the Holiday Park'*. He refers here to locals gaining access to the facilities within the camp complex such as the arcade or the clubroom, and he included the field in this. Mr Quartley said that if they ejected local youngsters from the arcade or clubroom then they would *'tend to find the same kids lurking in the field at the back of the chalets later in the evening'*. He explained that the locals in the field would sometimes not need to be spoken to as they would simply run off at the sight of the camp's security personnel, otherwise they would be told that they had to leave the area (he can recall asking local children to leave the field on 4/5 occasions although he cannot remember what any of these incidents were about now – when I pressed Mr Quartley about the details of these 4/5 events he said it happened at times when he thought the locals in question were up to no good and were trying to get into the main part of the camp and, on one occasion, even wanted to drink in the field). He recalled one instance involving some locals riding a motorcycle in the field although he himself had not been directly involved in this. He said that there was an incident book kept in the office which they were meant to fill in but I have not seen this. He says at the end of his statement that he thinks they were successful in keeping locals off the field and out of the main camp areas. He says that it was *'fairly easy to identify the R&T boys as compared from the locals' as the former tended to wear distinctive football kit and would play in large groups'*. In the case of the locals he said that they would tend to run off whenever they saw them *'or if we approached them, they might get a bit of verbal'*.

112. When asked about checks made on the field, Mr Quartley said that they would have walked over to the field to make sure that nobody was there who had no right to be there. He said that they would have looked down from the top of the field. He said that they *'did not really patrol the field ... our main remit was*

obviously the chalets unless ... there was a problem in the field'. He agreed that they would not have seen locals using the field as they were not always there at the time. He did not know, however, that a public footpath ran across the field. He agreed though that if locals (including dog walkers and children – and as far as he was aware it would have been just people *'cutting through the field'*) were seen on the field then providing they were not causing any problems they would be left to get on with it. In my view, this is what must have happened and is consistent with his evidence that the camp had neighbours whom they did not want to upset so they would *'not necessarily approach every single person who walked through the field'* and he agreed with me that they were *'not looking for confrontation'*. He even said that it was always in their minds not to upset the neighbours and as an example of this he cited keeping the noise down in the clubroom in the evenings. When I asked him how often he spent on the field during one of his shifts (lasting 13 hours) he said it would have been around one hour although mostly after dark when the R&T children were supposed to be indoors.

113. My view of Mr Quartley's evidence is that it was of limited value to the objector for these reasons: (a) he was never at St Mary's long enough to have been able to assess local usage taking place in the field; (b) when he was there his visits to the field are likely to have occurred mainly in the evenings when fewer locals are likely to have been around; (c) any direct involvement with locals in the field seems to have been confined very largely to keeping youths out of the main part of the camp; and (d) if there were locals in the field who were not perceived to be a threat to good order they would usually be left alone as no one was looking for any unnecessary confrontation with locals.

Other Evidence

Jono Oram

- 114 Mr Oram of Brixham provided a statement which will be found at OB2/66. Mr Oram was a Duty Manager at the camp between 2001-05. He is now an electrician. He says that part of his job involved patrolling the field. He said he would inspect the field about 4/5 times a night to ensure that no one was on it.

He said he removed usually children from the field on a number of occasions. He said they would be doing different things and he cites riding bikes, go-karts or other small motor-bikes. He also says he saw teenagers drinking on the field. He says that if he saw 'kids' on the fields he would ask them to leave although they would sometimes run away when they saw him coming. Sometimes they would give him some abuse or would even throw things at him as they left the field. He said it was important to keep the locals out and preventing them from mixing with the holiday makers. He then deals with what he describes as '*one particular honey pot*', namely the arcade which they had on the main site at the camp which he says was a major attraction for local youngsters '*because they kept coming back to play in there*', and it was his job to keep them out. He said that children who had been made to leave the arcade would go to the field instead and it was these children who had to be removed from the field as well.

- 115 Mr Oram also says that R&T children played on the field when not off at matches. He also recalls Travel Class and he specifically remembers archery taking place in the field (he does not though say that archery stopped in the field after 2002) and '*get togethers in the evening where there would be upwards of twenty children in the field doing activities in groups*'.
116. The points I would make about Mr Oram's written evidence are these: (a) there was no obvious reason why he could not have given oral evidence on such important matters; (b) there is no obvious reason what I should prefer his evidence over those who came to the inquiry and gave evidence in person and were cross-examined; (c) the impression I get from Mr Oram's statement is that he was only involved in confrontations with locals in the field in cases where there had either been trouble in the field or where youngsters who had been turned off the camp site proper were hanging around in the field and were no doubt thought likely to return if they were not turned off the field; and (d) in common with Mr Quarterly, I rather doubt whether managers or security personnel at the camp were looking to get involved in unnecessary confrontations with locals if they were using the field peaceably. Again, one has to ask oneself the question why, if the field was truly out of bounds to

locals, there was no appropriate signage in or near the field warning those people who were not otherwise guests at the camp to stay on the footpath and not to trespass on the field on either side of it.

Alan Outhwaite

117. Mr Outhwaite lives in Lymington and his statement is at OB2/115. Between 1994 and 2005 Mr Outhwaite and his wife were the owners of Travel Class Ltd which (under the trading name of Junior Choice Adventure) ran activity holidays for school children. St Mary's was one of 12 sites from which such residential holidays were run by Travel Class. Mr Outhwaite produces brochures for the holidays at St Mary's in the years 1998-2005 (in fact he understands that Travel Class also operated at the camp in 2006 although he does not have a brochure for this year).
118. Mr Outhwaite says that he would attend sites used by Travel Class at the start of and at least once during the season and sometimes at the end of the season as well. He knows of the field and says that it was '*extensively used*' by Travel Class for a number of activities. He thinks the climbing tower was located in the field in one year and he marks the plan attached to his statement with a '3' to show where he recalls where it would have been located (although he says his recollection about this '*is not so clear*') which was neither a likely location for such a structure nor a place identified by any of the other witnesses. He says that groups of 7/8 children, along with their instructor, would '*rotate between different activities throughout their stay*' and he identifies a number of these and he concedes that not all the children on one of the Travel Class holidays at St Mary's would be present on the field at any one time as there were other activities (and he includes the 'blind trail') which were carried out elsewhere. Nor does he mention either that archery and air rifle shooting were re-located to Landscope's other camp in Brixham after 2002 although he mentions these activities in detail.
119. My impression of this evidence is that Mr Outhwaite's direct involvement with the field would have been too limited to enable him to offer a reliable opinion about the extent and frequency of the day to day use of the field by Travel

Class for their activities, let alone in relation to usage on the part of local inhabitants.

The JCA Brochures for 1998-2005 (except for 1999)

120. I have re-read all these brochures. The 1998 programme shows that Travel Class holidays started at St Mary's in 1998. The 1998 programme deals with St Mary's at OB2/128 and it tells us that there were 2 activity sessions in the morning and 2 in the afternoon with '*an evening entertainments programme*'. Various activities are listed:

- Abseiling
- Aerial runway
- Air-rifle shooting
- Archery
- Assault course
- Beach games
- Blind trail
- Body boarding
- Climbing
- Crazy golf
- Fencing
- Initiative exercises
- Orienteering
- Raft building safety session
- Scavenger hunt
- Surfing

- Swimming
- Team challenge
- Tennis
- Trek

We are also told that 'Centre facilities' included:

- Heated outdoor swimming pool
- Tennis Courts
- Crazy golf
- Football pitch
- Beach
- Entertainments room
- Theatre
- Shop/Bar/Restaurant

121. At OB2/134 you will find the equivalent page for 2000 with some minor modification of the activities on offer such as the inclusion of World of Sport. In the 2001 brochure the equivalent page is at OB2/144. For 2002 it is at OB2/161 where the programme is much the same as before. At OB2/169 the prices for 2002 show that a school party could book up for a weekend course (Frid-Sun), a long weekend (Fri-Mon), midweek (Mon-Fri) or for a short week (Sun-Frid). All courses commenced at 1pm on the day of arrival and ended at 12.30pm on the day of departure. In 2003 the relevant pages are OB2/185&186, and in 2004 it is at OB2/211. In 2005 it is at OB2/232&241 (the short week holiday has gone).
122. I am not going to deal with these brochures in any greater detail but it is clear that St Mary's offered many other activities apart from those which we are told took place exclusively on the field.

Closing Submissions

123. Mr Blohm argues that the new evidence is important as it *'shows substantial, regular, visible and repeated usage being made of the application land during the application period by the landowners, its licensees and its guests as part of its business'* (1.1).
124. It is also argued (again at 1.1) that *'the usage of the land by locals during the periods of usage by the landowners was:*
- (i) at a very low level;*
 - (ii) not such as to indicate to the landowner that their usage indicated an assertion of a local right to recreation;*
 - (iii) such as to defer to the landowner's entitlement to use the land as and when he wished.'*
125. Mr Blohm said that the new evidence must *'be judged on its own merits'* (2.1). He also said that the new witnesses had all given their evidence exactly as they would have done had they been called to give evidence at the earlier Inquiry. Further that they were witnesses with no interest in the outcome of the Inquiry and they had all done their best to assist the Inquiry as *'honestly as best they can'* (2.2).
126. I do find that the new witnesses did their best to assist the Inquiry and that their evidence must be judged on its own merits and the old and new evidence considered together.
127. I do not propose to deal with Mr Blohm's rather abbreviated summary of the new evidence as I have already gone into this evidence in great detail. The transcript of the new evidence has also been extremely helpful. As I say, I have gone through all of this material very carefully and have outlined in this report what I consider to be the material parts of this evidence.
128. There are, however, some points arising in his submissions which I should mention.

- (a) He argues that there was no evidence of any usage of the field by locals at the same time as R&T.
- (b) He also argues that had locals been carrying on any activity on the field at the same time as Travel Class, they would have seen and heard it taking place, but they did not – the only realistic conclusion, he argues, is that locals were not there at the same time as Travel Class.
- (c) In terms of usage by holiday guests (see Craig Crowton) he says that any reasonably regular local user would have seen what was going on. There is no suggestion that any local did.
- (d) He also says that none of the new witnesses gave any evidence of recreational use of the field by locals. This was not the case. It should also be emphasised that in practice dog-walking, children's play and general informal recreation will normally suffice as qualifying user under section 15. I do though accept that the usage claimed must be visible and apparent if it is to be acquiesced in by the landowner (5.1).
- (e) He also argues that the new evidence produced by the objector demonstrates that the field was used extensively by the landowner. This touches upon my findings in paras 180 and 280 of my earlier report that none of the applicant's witnesses ever saw any children engaged in organised activities on the field. At para 179 I also said that if the field was being used extensively the locals would have seen what was going on. Mr Blohm says that they saw nothing because they were not there whilst it was going on. Another explanation, of course, is that (as I found previously – see para 280) the claimed activity on the part of the landowner and their guests was neither prolonged on the days when it was taking place, nor particularly frequent and it seems to me that this is consistent with my earlier finding that none of the applicant's witnesses had ever been impeded in their use of the field by organised activity. Indeed, none of them ever witnessed such activity taking place and I accept their evidence about this. Qualifying user does not have to take place all the time.

- (f) At 5.2 Mr Blohm says that the evidence of usage by locals *'is practically non-existent'* and in any event was, in the main, referable to the use of the footpath rather than of the field as a whole for lawful sports and pastimes (5.3). He says that the *'only possible conclusion is that the landowner was using the field as an adjunct to its holiday business'*. I simply cannot accept Mr Blohm's submission (at 5.4) that locals did not use the land for qualifying purposes *'during the season and between the hours of 9:30am and 9:15pm'*, as if they had (so he argues) they would have seen what was going on in the field. As he puts it: *'The conclusion therefore is that the locals did not use the land for lawful sports and pastimes at these times'*. He goes on to say at 5.5 that the applicant's witnesses *'have given evidence of using the land with such regularity that it is simply not credible for the Inquiry to accept their evidence that they never saw any other usage by the landowner'*. Mr Blohm therefore invites me to re-consider the earlier evidence in the light of the objector's new evidence which should no longer be found wanting.
- (g) Mr Blohm also argues at 5.7 that the issue is *'not whether the organised events interfered with the locals; it is whether the organised events and the locals' recreational usage, if any, accommodated each other. They did not. The organised events took place wherever they wanted to take place'*.
- (h) Mr Blohm also relies on *Redcar* where the Inspector had found that the locals' use of the application site was not as of right because it overwhelmingly deferred to the extensive use of the land by the golf club to whom such land had been leased. Cases which engage *Redcar* (namely whether locals defer or acquiesce to the landowner's superior user) are bound to be highly fact specific. In my view, it is a question of fact and degree whether the landowner has acquiesced in favour of the locals' prescriptive claim or whether the locals have acquiesced to the landowner thereby preventing their own user from being as of right (in which case it would not have the appearance to the landowner of an assertion of the legal right claimed). It is, in my view, also a question of fact for the registration authority as to whether the landowner and his agents *'have simply utilised the land without being aware of the existence of the public and its assertion of these claimed rights'* (6.2). I understand Mr

Blohm to be arguing that there is in fact '*no use here within the Redcar principle*', presumably because the claimed user by locals is alleged to have been non-existent, from which it would follow that there had as a matter of fact been no conflicting or concurrent user (ie during the daytime or during the evening – Mr Blohm argues that such user as was seen is thought either to be the use of a footpath or the use of the field by guests) which may even have had the appearance to the landowner of an assertion of the legal right claimed. Alternatively, taken as a whole, he argues that the use claimed is not '*significant*' within the meaning of section 15 (6.4).

129. In his lengthy closing submissions Mr Polyblank also went into the new evidence in some detail. It seems to me that the main points which emerge from his submissions are as set out below.
- (a) The activities of the landowner made no difference in practice to the activities of the locals who were never impeded in their usage of the field.
 - (b) The user on the part of Travel Class was confined to certain parts of the field.
 - (c) The evidence of user on the part of R&T and of Weststar was insubstantial.
 - (d) Apart from the recent photos the evidence of user on the part of the landowner was confined to those whose association with the field was limited in contrast to that of locals who have been using the land for many years.
 - (e) The whole of the field was not always cut short.
 - (f) The climbing tower was not in the field.
 - (g) There was no signage on the land which would have precluded user as of right.
 - (h) Security was only fleeting when it came to the field. None of the applicant's witnesses were ever challenged.
 - (i) The evidence of the applicant's witnesses was consistent and reliable and likely to be correct in contrast to those who gave evidence for the objector.

Discussion and findings of fact

130. Mr Blohm's central argument is, I think, that the new evidence shows that the usage of the field on the part of guests staying at the camp and those supervising them was so extensive that had locals been on the field at the same time (particularly in the case of Travel Class) they would have seen and heard it taking place, but they did not and he submits that this can only be because locals were not on the field at the same time. It follows from this, he argues, that any usage of the field on the part of locals on those occasions when Travel Class, R&T or even when activities within the camp's entertainment programme were taking place in the field, must have been at such a low level that it cannot have been qualifying usage for the purposes of section 15 and that, at best, it could only have been referable to the use of the footpath rather than of the field as a whole for lawful sports and pastimes. In effect, what I think Mr Blohm is saying is that during the 8 months or so when the camp was open for business in any one year, any usage on the part of local inhabitants would either have been insignificant or else would have deferred to the superior user of the landowner and its guests, and in either case would be non-qualifying for the purposes of section 15. However, I have no hesitation at all in rejecting these submissions.
131. In the first instance, I prefer the evidence of the applicant's witnesses. There was, in my view, ample evidence presented to the Inquiry that a significant number of local people had been using the field for informal recreation for many years and that such usage had neither been trivial nor only occasional.
132. As already indicated, qualifying usage does not have to take place all the time, but it clearly has to be substantial and regular if the landowner is to comprehend that there are people using his land as though they had a right to be there. The fundamental point is that a reasonable landowner cannot be regarded as acquiescing unless the user would appear to him to be an assertion of the right claimed. In my view, the locals' usage was substantial and regular and successive landowners were or ought to have been aware of this yet chose to do nothing about it. For instance, camp security was only

fleeting when it came to the field and I cannot imagine for one moment that locals acting peaceably would ever have been challenged and save only in those exceptional cases when local youngsters were making a nuisance of themselves, none were. There is also the fact that there was never any signage in or near the field which would have precluded user as of right.

133. I have looked at the new evidence very closely and although, on the face of it, there is scope for thinking that the field was being heavily used by Travel Class, R&T and by those participating in the camp's entertainment programme, I find that in practice the position was probably very different. In my view, such usage as is relied on by the objector was not nearly as extensive as is claimed and, on the whole, is likely to have been at a low-level.
134. Dealing firstly with R&T (who took over the camp for around a fortnight each year), I would refer to my findings in relation to the evidence of John Spalding, Mark Earnshaw and Steve Cross whose evidence was, as I find, to the effect that the use of the field on the part of R&T guests amounted to little more than occasional usage by youngsters for informal play, and although small groups of youngsters must have been on the field from time to time (and would have mainly used the flatter areas in the upper part of the field) it is, in my view, unlikely that they ever interfered with locals who, as I find, were also using the field for informal recreation, quite possibly even at times when R&T children were also there.
135. Dealing next with the camp's entertainment programme, the objector's case is, I think, even weaker. When, for instance, the evidence of Craig Crowton is closely examined it is probable that the camp's usage of the field was intermittent and limited in terms of duration as well as in relation to the extent of any land which may have been used for these purposes. I also think any usage would have been negligible outside the peak holiday periods when the children were still at school, or towards the end of the camp's opening season. In my view, the field was, in the main, used by the camp as a place

where guests walked their dogs and for very little else. Indeed, Mr Crowton said that there was never any conflict with locals that he was aware of.

136. Turning next to Travel Class, the position is admittedly less clear cut. I do, however, accept that between 1998 and 2005 (and possibly even in 2006 as well), Travel Class ran childrens' activity holidays at the camp for roughly 3 months a year ending in around the third week of July (ie before the peak weeks of the holiday season) and that during this period the field would have been used for some of the childrens' activities. However, apart from the occasion in 2002 when a local or locals appear to have taken exception to being impeded at the top of the field by the air rifle firing range, there is no other evidence of any conflict with local inhabitants. In my view, this was not because there were no or hardly any locals in the field at these times (as I find there must have been) but because the activities in question were confined only to small areas of the field (which extended to around 3 acres) at certain times during the day and only occasionally for around a couple of hours in the evenings.
137. When one considers archery, it admittedly took place within what I consider to have been a small cordon right at the very bottom of the field towards the NW corner of it and, as I find, would have been kept well away from others in the busier parts of the field which, in my view, is bound to have been a consideration of major importance in the minds of those who organised what went on in this field. Much the same can be said of the air rifle shooting which also took place in a very small part of the field at its SE corner. It is also crucial to note, I think, that rifle shooting ceased on the field altogether at some stage during 2002 and that neither this activity nor archery took place at all on the field after 2002 which is, I think, something that I should have been told about at the original Inquiry.
138. It is also relevant that there was credible evidence from Lucy Cotsell in a number of respects.

- (a) She said that Travel Class activities were confined mainly to that part of the field which was closest to the camp where, in the upper reaches of the field, there were areas which were flat.
- (b) She also said that locals were using the field for informal recreation at the same time as Travel Class were there.
- (c) She also said that Travel Class were busier towards the end of the season. Between the end of May until July she said that it was likely that there would have been more than just one activity taking place on the field at the same time. She said that earlier on in the season there would *'possibly only be one activity a day or two activities a day, rather than the whole day being spent doing the sessions on the field'*. The point about this is that the volume of usage on the part of Travel Class was not constant throughout their time at the camp. For instance, Ms Cotsell said that towards the end of the Travel Class season things were busier and there could have been as many as 100 children in the field participating in the camp fire activity whereas it could have been a lot less, perhaps as few as 30, at the start of the season as there would have been fewer schools using the camp.

It will be recalled that the Travel Class schedule allowed for 2 one and a half hour activities for groups of 7/8 children (who in this instance were mainly of primary school age) along with their instructor and any teachers accompanying the groups, in the morning and in the afternoon (although Mr Scott said that it might in practice have been a little less than this if the children had had to get ready for their next activity which might have taken place in another part of the camp, such as swimming) with another activity in the evening which, I think, would only have lasted for around a couple of hours at most. In my view, this is unlikely to have been a particularly intensive schedule when it came to the amount of time devoted to organised activity within the field.

139. I have considered a number of other activities which are said to have taken place on the field, some of which may have taken place at the same time as others. These are the 'blind trail', 'Eggplosions', 'Egg Destroyer', 'World of

Sport', 'Survival' and the 'Initiative exercise'. I have already made various findings about this in my examination of the evidence (not forgetting the climbing tower either at paras 43/80). In my view, these activities are likely to have occupied only small areas of the field. There was, for instance, no cordoning off and most of the field would still have been available for use by locals who, in my view, are also likely to have been using the field from time to time when the Travel Class children were also there (which would not have been for prolonged periods during the day) and that whenever this happened there was never any conflict or necessity on the part of the locals to adjust their own activities to accommodate those of Travel Class. The position would, I think, have been just the same in the case of R&T and in relation to the camp's entertainment programme.

140. The issue on the new evidence is, as it seems to me, to determine whether any temporary unavailability or interruption in the use of parts of the field by local inhabitants for informal recreation will preclude registration of the whole field as a town or village green. I consider that the answer to this question is one of fact and degree so that it would not be appropriate, in my view, to exclude the land just because it was unavailable for lawful sports and pastimes for only limited periods provided that the registration authority is satisfied (as, in my view, they can be on the basis of the evidence which was before the Inquiry) that the interruption was insignificant and did not substantially interrupt or interfere with the use by local inhabitants.

141. It is as well to remind ourselves of what was said by Dyson L.J in Redcar at 47:

'that it is a question of fact and degree for the fact-finder to resolve whether in practice there is inconsistency between the activities on his land of the owner and the recreational activities of the local inhabitants. In some cases the activities of the owner may "in practice" make no difference to the activities of the local inhabitants in the sense that they will not need to adjust their activities to allow for those of the owner. In such cases, provided that the use has been nec vi, nec clam, nec precario, it is likely that it will be held that the

activities of the local inhabitants have the necessary appearance of asserting a right against the owner.'

142. Other than in one instance, there was, in my view, never any conflict or inconsistency between the activities of the landowner and the recreational activities of the local inhabitants, and even when there was Travel Class evidently gave way to the locals (or at least one local person). This was not a case where the activities of the locals could only be accommodated with those of the landowner by their deferring to the landowner's use. In practice the character of the locals' usage never changed despite the activities of the landowner and their licensees. Having arrived at these conclusions, it seems to me to follow that, in the light of my earlier findings, the activities of the local inhabitants would have had the necessary appearance of asserting a right against the landowner.

Conclusion

143. In light of the above discussion, I am satisfied that, notwithstanding the new evidence advanced by the objector at the re-convened Inquiry, the qualifying criteria laid down in Section 15(4) for a new green in the case of the field (which, as I said before, is known by at least 3 names, namely *Wishings Field*, *Pathfields* and *Weststar Field*, and is shown edged blue on the plan marked A which is attached to the Application Form 44) are still satisfied.
144. Although, in the circumstances, I would normally recommend that the application to register such land in the register of town or village greens should be allowed, at this stage I would advise the registration authority to take no further step in the matter until after the decision of the Supreme Court in the *Redcar* case. A decision can no doubt be expected within say 2/3 months, if not sooner. If the decision of the Supreme Court reverses the decision of the Court of Appeal or otherwise requires me to re-visit my findings then it would be sensible to defer any final decision on the application to register until I have had an opportunity of looking at the decision in *Redcar* and, if necessary, I will be inviting further submissions from the parties. It seems to me that this is the appropriate course to take at this stage rather

than to suspend all work on the report until well into next year by which time my personal recollections of both the field and the witnesses may not be as clear in my mind as they are at the moment. For the present, therefore, my recommendation in favour of registration will remain a provisional one until after the outcome in the Supreme Court in *Redcar* is known.

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Inspector

21st January 2010