Bushey Museum Property Trust

Comments on evidence presented by Hertsmere Borough Council and the Bushey Heath Residents Association to the Inspector of Hertsmere SADM
The Paddock, Elstree Road, Bushey Heath

1. Hertsmere is still using the wrong methodology, not the one in the NPPF, despite our objections first raised a year ago. Their revised markings and weightings have moved the Paddock from 53rd place in the LGS ranking to 9th. HBC admit their methodology involves an 'arbitrary' cut-off point, and that 'on balance' LGS status is justified. Such variable results based on arbitrary weightings and scorings must be unsound by definition.
2. Our responses to the council's explanation for changes to their scorings are:
   a. **Ruling by the Planning Inspector**. The ruling of the planning inspector to the second development adds nothing to the opinion of the first – exactly the same wording has been used. Inappropriate development was refused without the added protection of a LGS. The Inspectors said that the open nature of the site 'contributes' and 'adds' to the street scene, whereas the council's criteria says it should 'define' or 'separate it from other areas nearby,' to be afforded full marks.
   b. **Shortage of Parks**. The Chapter 6 of the 2011 Open Space study on Parks and Gardens that HBC refers to, defines Parks and Gardens as 'urban parks, formal gardens and country parks, which provide opportunities for various informal recreation and community events'. The private Paddock with no public access can therefore never be a park or garden. It says the Paddock must be protected because there is a general deficit of parks and gardens in Bushey. HBC has no target for parks and gardens per se. Bushey has 0.76 hectares of 'general use space' /1000 people against a local plan target of 0.4 hectares/1000 people and the Field In Trust recommended minimum of 0.55 hectares/1000 people. The Open Space study states there is a park accessibility problem in N and SW Bushey – but clearly not in the SE corner of Bushey where the Paddock is. Residents close to the Paddock have unfettered access to 49 hectares of open space at Stanmore Common – not in Hertsmere but only 0.6 miles away. In addition, there is 76 hectares of open countryside and woodland owned by the Woodland Trust with free public access across the whole of Merry Hill less than a mile away. Designation of the Paddock as a LGS will make no difference to the provision of Parks and Gardens for local residents.
   c. **Historical evidence**. Hertsmere and BHRA believe the Paddock has historical significance because 'there is no doubt that the site lies within the area known as Bushey Heath (identified, together with the Warren as an extensive common) which was enclosed under the 1806 Act of Parliament'[1]. They attach an enclosure map as evidence. However, this is to misunderstand the map, an annotated version of which is attached (see appendix 1).

      The enclosure map had two purposes: to identify those parcels of land that were enclosed as part of the 1806 act; and to confirm the ownership of the other parcels of land that had already been enclosed.

[1] Green Spaces(Policies SADM35 and 36), note 7.13, p. 54

Enclosure – the establishment of legal ownership - was a continuous process over many years, and by 1750, 50% of the land in England had already been enclosed mainly by agreement amongst local landowners for each area. *' The county of Hertfordshire had become one of the most important corn growing counties in England in the 18th century and as a natural consequence enclosure began early and by the 18th century the land was very generally in separate occupation…'.*[2] The Parish of Bushey appears to only have ever had one occupier for each field from 1632 onwards[3], clearly showing that the land had been enclosed for many years.

At the time of the 1806 Bushey Enclosure Act, the appointed Commissioners had to follow the procedure for enclosing a Parish as set out in the 1801 Parliamentary Enclosure Consolidation Act. This states that each landowner had to prove their legal entitlement to the land they farm[4]. The parcel of land numbered 8, in which the Paddock is located, shown as enclosed on the 1799 map of Bushey Parish (see appendix 2), and ownership is to the Manor of Bushey with Thomas Nicholl as the copyhold[5] tenant, as confirmed on the 1806 enclosure map and in the 1809 Enclosure Award Book[6] (see appendix 3). The key fact is that *no new copyhold tenancies were created after the 16th century*[7], including in the Manor of Bushey and the Manor of Bournhall, so the land must have been enclosed, not just since 1799, but since the 1500s.

Was the field known as the Paddock part of 'an extensive common'?
The Enclosure Awards book gives details of the 'waste and commonable land' of Bushey Heath in two categories:

1. "Waste and Commonable Land" allocated to certain local landowners (e.g. the Earl of Essex, The Lord of Bushey Manor, the Rector of St James' Bushey and the Church) in lieu of rights and privileges that became extinct following enclosure, coloured green on the attached map[8] (see appendix 1).
2. "Waste and Commonable Land" that were sold off by the Commissioners to cover their costs, coloured blue on the map (see appendix 1).

The 'common' or waste land was therefore to the West and South of the turnpike road, or Bushey Heath High Road as it is now. That is, nowhere near the Paddock, which is to the North and East.

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[2] *Chapter on Agriculture,* pp. 129-139, Ed. W Page, Victoria County History, Hertfordshire, Pub 1908
[3] Booklet No. 1 Bushey, Then and Now by Grant Longman, 1967, p.4
[4] *The English Village Community and the Enclosure Movement,* WE Tate, 1967, p. 113
[5] Copyhold is a type of ownership of land in England dating back to Feudalism, evidenced by a copy of the Manor Court Roll establishing the title (see appendix 4)
[6] Hertfordshire Archives; HalsRefNo: DP/26/26/1
[7] Copyhold estate had to be a parcel of a manor and its existence required a manor and a manor court. Furthermore, because it was founded on custom immemorial (derived from villeinage), it could not be newly created. *Manorial Records 3 Copyhold Tenure*
http://www.bedfordshire.gov.uk/communityandliving/archivesandrecordoffice/guidestocollections/manorialrecords3copyholdtenure.aspx
[8] HalsRefNo: DP/26/26/1. From the Enclosure Awards Book, 1809, pages 10-19, it is very easy to identify where the waste and commonable land is located in the area known as Bushey Heath. The following parcels of land numbered 100, 101a, 101b, 102, 105 and 106 were allocated in lieu of rights and privileges and those numbered 71,72, 112, 113,, 114, 115 and 116 were sold to cover the Commissioners costs and expenses.

Other evidence is contained in the Victoria County history that states *'Past Sparrows Herne is Bushey Heath, which leads to the county boundary. Before the inclosure of 1809, this district was open heath land'*[9]. Sparrows Herne ends at the fork in the road at the top of the Enclosure map, and the turnpike road leads south from the fork to the county border. The Enclosure map shows that south of Sparrows Herne would have been open common to the west of the turnpike road, including a large gravel pit (now the Mary Forsdyke garden and the Warren Lake), with the smallholdings of the hamlet of Bushey Heath[10] to the east. Past the hamlet, a traveller would cross the county border and ride over Harrow Weald Common and Stanmore Common.

The Victoria County history of Middlesex says that Harrow Weald Common was *'consistently called Bushey Heath in 18C documents*' and for Stanmore Common *'Most of the waste lay in the north west part of the [Great Stanmore] parish. It was originally considered part of Bushey Heath*[11]*'*. This is supported by two other sources. Mr W W Druett states *'Harrow Weald and part of Bushey Heath at one time claimed 1,500 acres of common fields and all that remains today is the 45 acres known as Harrow Weald Common'.*[12] And the Stanmore Society newsletter, Spring 1994, states that Stanmore Common, *'originally considered part of Bushey Heath, it was known as Stanmere heath by 1637, when one acre of land was enclosed as a bowling green, although there are references to the common and the Heath(e) in 1578.*[13]

Most of the waste and commonable land and the Gravel pits in the area known as Bushey Heath, Harrow Weald Common and Stanmore Common, all rest on the Stanmore Gravels[14], and hence have the correct geology for heathland (see appendix 5). Physically, all these areas form a contiguous, extensive common of many acres at the top of the hill, next to Bushey Heath hamlet. It seems very clear, therefore, that the 'extensive common' was to the West and South of the hamlet of Bushey Heath, and was commonly called Bushey Heath.

In contrast, the Paddock does not lie on the road going south to the county border, but to the east, physically nearer to Little Bushey than the hamlet of Bushey Heath. The Paddock has evidence of being farmed, rather than being open heathland or common land. First of all, as land with a copyhold tenant, it had been enclosed centuries beforehand – the Enclosure Award book also said it had '*ancient inclosures'*[15] - and enclosed land was worked because the copyhold tenant had to pay an annual rent to the Lord of the Manor. Secondly, the border of the land has a sinuous outline (see map - appendix 2), a relic of an earlier medieval field system i.e. it is historic farmland – again consistent with copyhold tenancy. Thirdly, the field was on London Clay (the wrong geology for heathland)

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[9] British History Online http://www.british-history.ac.uk/vch/herts/vol2/pp179-186
[10] Described as '*A tiny hamlet on the edge of Stanmore Common'* in Dianne Payne's booklet, 'From Hartsbourne Manor to Frying Pan Alley', Pub.2012, p. 6
[11] British History Online http://www.british-history.ac.uk/vch/herts/vol2/pp179-186
[12] *The Stanmores and Harrow Weald through the ages'* by WW Druett, pub. 1938
[13] Harrow Local History Centre Archives, Pinner View, Harrow, HA7 6PX
[14] British Geographical survey, map E256, North London
[15] 1809 Enclosure Award Book, page 47. HalsRefNo: DP/26/26/1

and was contiguous with a range of fields going down from the top of the hill at Little Bushey. Fields in Middlesex and South Hertfordshire on London Clay were often laid up for hay every year because of their unsuitability for arable farming. Easy access to fertiliser from London allowed several crops of hay per annum for which there was a good market in the capital[16].

Conclusion: In the additional comments by HBC justifying their opinion that the Paddock meets the NPPF Local Green Space Criteria, they state *'the site has been identified as forming part of the original heath or common land which made up Bushey Heath which was enclosed in the early 19th century by a Parliamentary act. As such it constitutes one of the final remaining parts of the original Bushey Heath in the locality'*. The research that we have carried out and set out above shows that this statement is unsound, because:

- It is not part of the original heath or common land, which is to the west and south, rather than the north and east which is where the Paddock is;
- It had been enclosed many years before the 1806 Enclosure Act came into force and was farmland not heath or common land;
- It is not one of the final remaining parts of the original Bushey Heath – but the Mary Forsdyke garden and Warren Lake is, as is Harrow Weald Common and Stanmore Common. *[It should be noted HBC do not cite any historical evidence to justify the Mary Forsdyke Garden being a LGS despite the Council notice board at the park explaining it was an unenclosed part of the original common].*

3. Turning now to the submission by the Bushey Heath Residents Association:
   a. Historical Significance. See 2(c) above.
   b. Artistic heritage. None of the paintings referenced have any provenance that they were painted on or of the Paddock. Just because the Paddock has trees and bluebells does not mean that a painting in or around South Hertfordshire that has trees or bluebells must be of the Paddock. Aside from the large oak tree on the Paddock, most of the other trees on the site are relatively young silver birches, probably dating back to 1929. In his diary entry of 26th January 1929, Albert Chewett writes 'Inspected the Paddock and measured for planting trees' with further entries in March 1929 to say that trees had been planted. The paintings referenced by BHRA are heavily wooded, more in keeping with trees on Stanmore Common than a small grove of what would have been saplings.
   c. Memories of local residents. Whilst we appreciate that the outlook over the field is nice, and that some residents have fond memories of the ponies kept on the field, it is apparent that there was no community interest in the field until development was mooted.
   d. Appeal decision. See 2 (a).
   e. Mrs Chewett's wishes. BMPT fully acknowledge that she would prefer the Paddock to remain as it was. However, whilst she said she did not want Reveley Lodge 'disposed of', she did not attach the same condition to the Paddock. Indeed, by saying that she wished it to be used as grazing, 'when not required by the trust', she envisaged that use for grazing might not be possible. It should also be remembered that in 1986 she sold half of the Reveley Lodge garden for

[16] *Chapter on Agriculture,* pp. 129-139, Ed. W Page, Victoria County History, Hertfordshire, Pub 1908

development (The Briars) to fund the restoration of parts of the house. The Trust therefore believes that its action is consistent with both Mrs Chewett's wishes as set out in her will, and her past actions that prioritised her house over land.

4. The Bushey Museum Property Trust contends that the Council has not applied the NPPF criteria correctly and our research has conclusively shown that the evidence they have provided is incorrect. Hertsmere Borough Council therefore cannot demonstrate a 'particular local significance' because of the unique history of the site as one of the last remaining parts of the original Bushey Heath.

In conclusion: The Council state in their Hearing Statement at para 7.6 that:
"any site which scored less than 2 in both the "Amenity benefit and sense of place" and "Cultural and heritage benefits" is deemed not to be demonstrably special and thus disqualified from LGS designation."

The evidence we have presented has demonstrated that the Council's assessment of the heritage considerations bearing on the site is fundamentally flawed and therefore unsound. In the Assessment Matrix, The Paddock is accorded a Cultural and Heritage benefits score of 2, increased by weighting to 10, thereby contributing to the Council's score attributed to The Paddock of 30, the lowest possible score that would warrant the site's designation as a LGS.

However, given the evidence now produced which unequivocally demonstrates that the Council's assessment of the site's heritage is incorrect, the weighted Cultural and Heritage benefits score of 2 must, on the basis of the Councils own methodology, be reduced. If the Cultural and Heritage benefits score of the site were reduced to (say) 1, two consequences necessarily follow:

- Firstly, as the site has a Cultural and Heritage benefits score of less than 2, it axiomatically is not demonstrably special and must be disqualified from LGS designation; and
- Secondly, if the site is accorded a Cultural and Heritage benefits score of 1, increased by weighting on the basis of the Council's methodology to 5, The Paddock's aggregate score would then total 25, less than the minimum score of 30 required for a site to be designated a LGS.

Adopting the Councils own methodology the evidence therefore clearly shows that The Paddock cannot soundly be designated as a LGS.

Granville Taylor MA CEng MIET, Chairman
Katharine Whitaker BA (Hons), PGCE, Trustee

For and on behalf of Bushey Museum Property Trust

Acknowledgements:
Historical research by Katharine Whitaker. Katharine has a first class honours degree in History from the University of Westminster and was Head of History at Sir John Lawes School, Harpenden until she retired. She is a member of the South West Hertfordshire Archaeological and Historical Society and has lived in Bushey since 1970.

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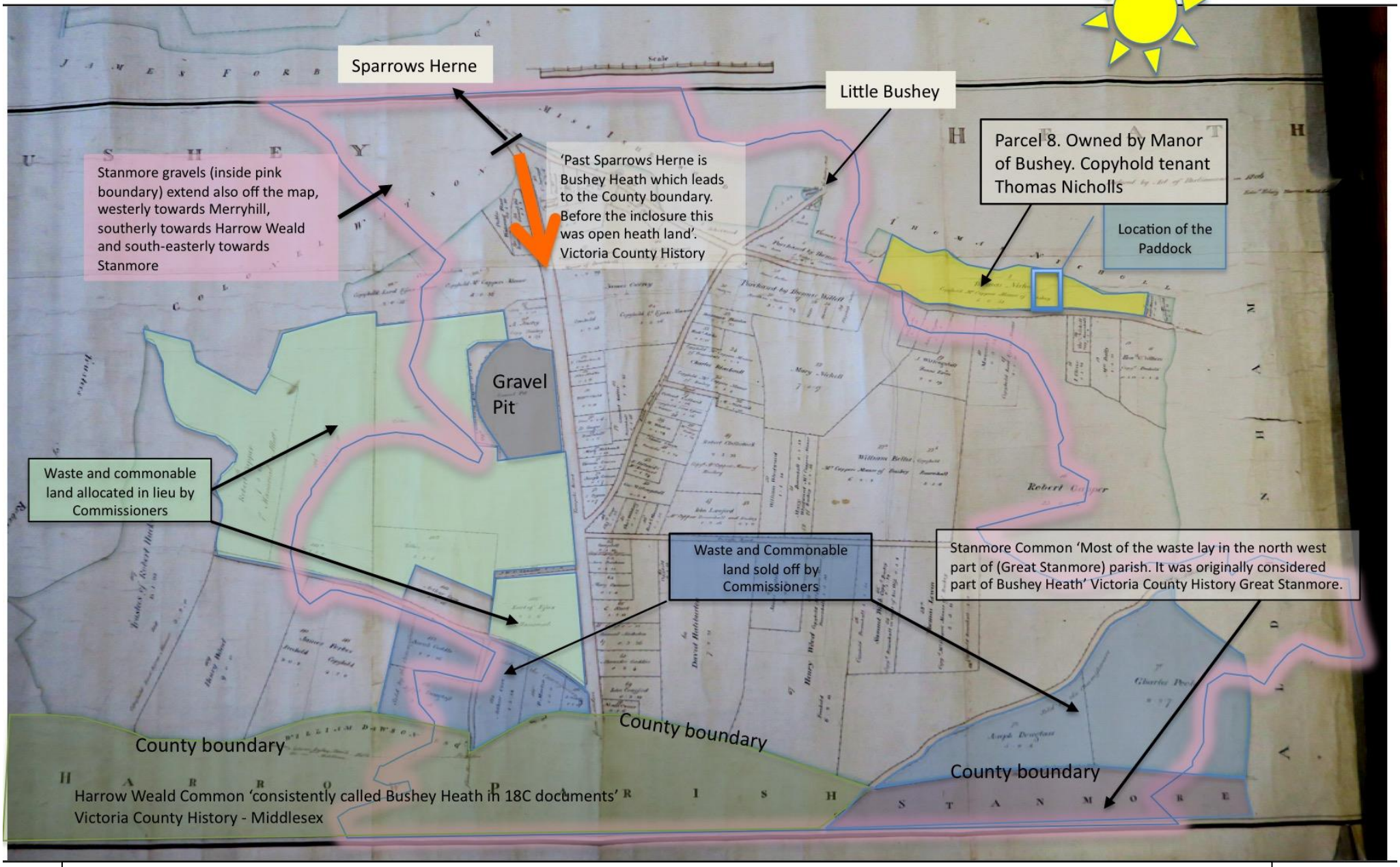
University of Nottingham
https://www.nottingham.ac.uk/manuscriptsandspecialcollections/researchguidance/deedsindepth/copyhold/copyhold.aspx
Bedfordshire archives and record office:
http://www.bedfordshire.gov.uk/communityandliving/archivesandrecordoffice/guidestocollections/manorialrecords3copyholdtenure.aspx

Maps:

1799 Plan of the Parish of Bushey in the County of Hertford, HalsRefNo: DP/26/29/1
1806 Bushey Enclosure Map, HalsRefNo: DP/26/26/1
British Geographical Survey, Map E256, North London

Appendix 1

1806 Bushey Enclosure Map



1806 Enclosure Map – Courtesy of Hertfordshire Archives and Local Studies Centre, RefNo: DP/26/26/1. Annotation by Granville Taylor

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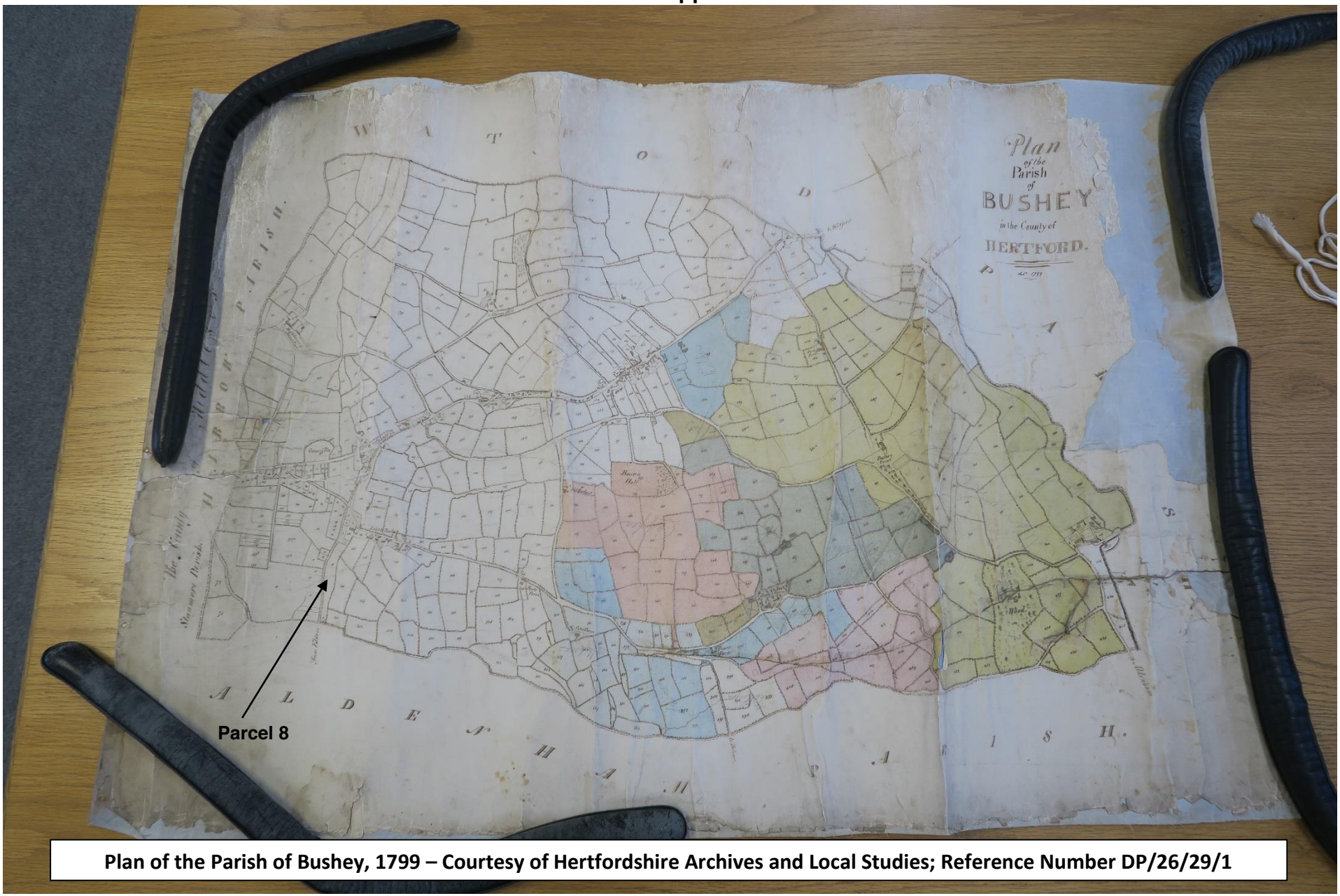
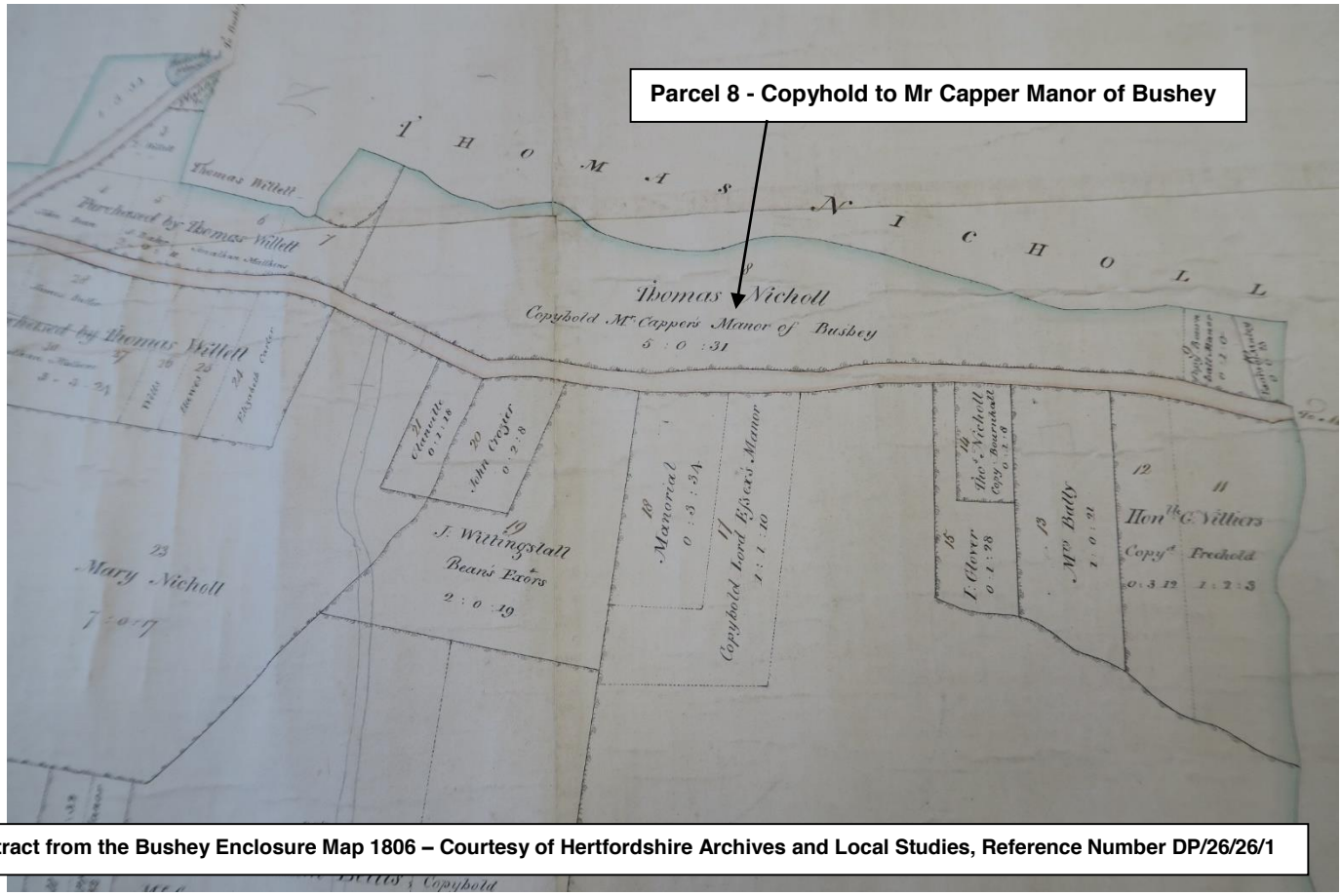
Appendix 2

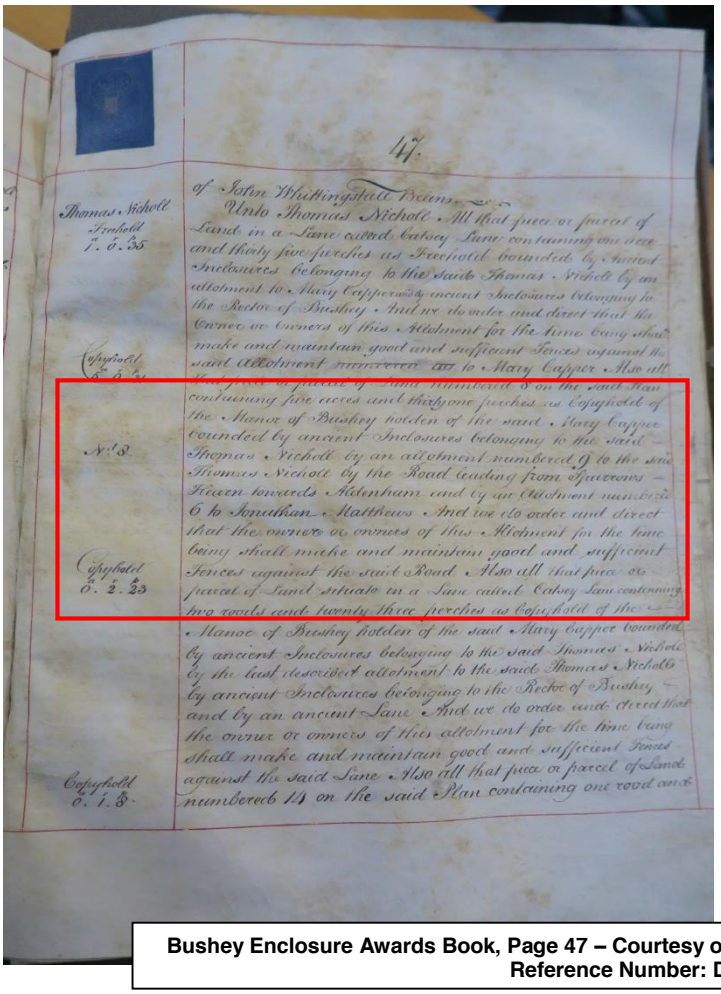


Plan of the Parish of Bushey, 1799 – Courtesy of Hertfordshire Archives and Local Studies; Reference Number DP/26/29/1

Appendix 3



Extract from the Bushey Enclosure Map 1806 – Courtesy of Hertfordshire Archives and Local Studies, Reference Number DP/26/26/1



Extract from page 47 reads:

'All that piece of land or parcel of land numbered 8 on the said Plan containing five acres and thirty one perches as ***Copyhold of the Manor of Bushey holden of the said Mary Capper*** *bounded by* ***ancient inclosures*** *belonging to the said – Thomas Nicholl by an allotment numbered 9 to the said Thomas Nicholl by the Road leading from Sparrows Hearn towards Aldenham and by an Allotment numbered 6 to Jonathan Matthew And we do order and direct that the owner or owners of this Allotment for the time being shall make and maintain good and sufficient Fences against the* ***said Road'***

Bushey Enclosure Awards Book, Page 47 – Courtesy of Hertfordshire Archives and Local Studies, Reference Number: DP/26/26/1

Appendix 4

Definition of Copyhold

A type of ownership of land in England dating back to feudalism, evidenced by a copy of the Manor Court Roll establishing the title. Smaller landholdings within manors were held by copyhold tenure. Title deeds for these pieces of land do not exist in quite the same form as the freehold land. This is because the freehold of copyhold land was owned by the Lord of the Manor. The people who actually lived on and farmed manorial lands were only tenants of the manor. They held their land by custom, which varied between manors. Copyholders (the tenant) did not have legal protection under common law and were burdened with many obligations.

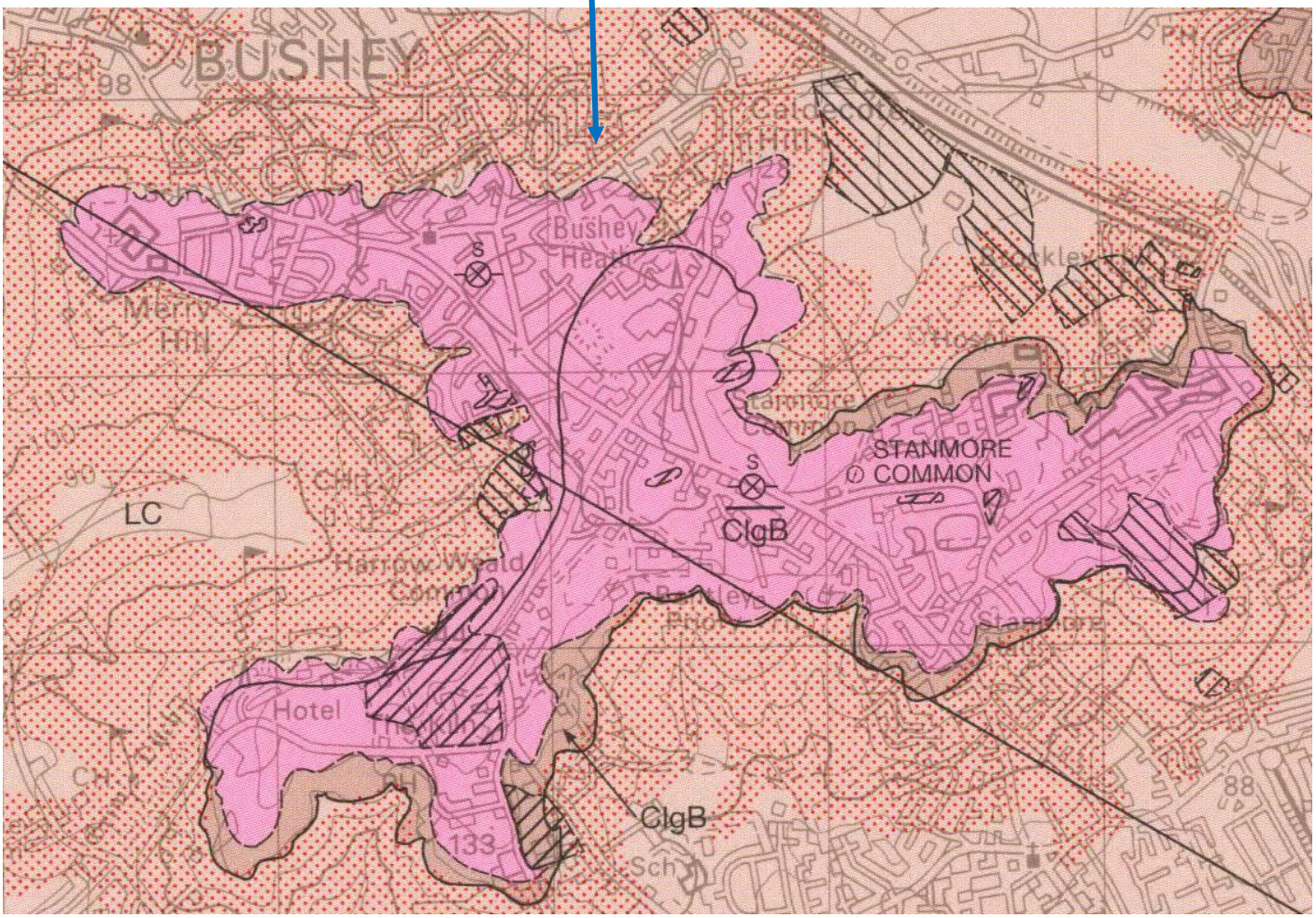
However, most copyhold land could be bought and sold, inherited by descendants, left in a will, mortgaged, and settled, just like freehold estates. But, every transfer of land had to go through the Lord of the Manor. The land was surrendered back to him and the official record of transfer of copyhold was written up in the Manorial Court Rolls and a copy of that record given to the new tenant before he was admitted. The Lord of the Manor had the right to take fees from new tenants, and to receive a payment called a 'heriot' on the death of one of his old tenants. Copyhold land tenue was abolished by Act of Parliament in 1922 and came into effect in 1926.

Source: University of Nottingham
https://www.nottingham.ac.uk/manuscriptsandspecialcollections/researchguidance/deedsindepth/copyhold/copyhold.aspx

Appendix 5

Extract from map E256, North London
Courtesy of the British Geographical Survey

Location of
Paddock



KEY:

Stanmore Gravels

Claygate

London Clay

Superficial Deposits
Head Propensity – is based on the geotechnical properties of the London Clay.