‘If this Were to be Lost’: Relating Environmental Justice and an Ethic of Care in Everyday Shared Spaces

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Introduction: matters of environmental justice

‘If this Were to be Lost’ (2016) is the title of a site-specific artwork – a large-scale (1.9 x 19m) sculptural installation in which these words are replicated and enlarged in birch plywood, painted a striking yellow, and held up by scaffolding. This thought-provoking structure, designed and constructed by Jessie Brennan, is located at The Green Backyard, a community garden run by volunteers in Peterborough, and arose from Brennan’s residency there. Until recently, the garden was threatened by development, and the titular plea, forming the body of the artwork, is taken from an interview with one of the gardeners (Brennan, 2016: 9). The artwork can be seen clearly from the East Coast mainline train running between Edinburgh and London and invites viewers to think about – and share via social media - what is at stake should this parcel of land be lost to proposed development.

We use this brief description of an artwork to introduce the idea of the great communal value of everyday shared spaces for local people and the legitimacy of their concerns about their loss. We address the legal treatment of these issues in this article on the role of law in the life and loss of local open green spaces. Working from a socio-legal perspective, we critically assess the current legislative provisions for registering and

designating land as a green. Our analytical framework is based on our consideration of regular and easy access to these areas, and the involvement of local people in decision-aking about the use and potential loss of such spaces, as matters of environmental justice (Agyeman, 2005). In this context, we understand environmental justice to be the aim of achieving fair treatment and meaningful involvement of all people in the development, implementation and enforcement of environmental laws and policies, with such issues being particularly relevant for groups of people considered to be vulnerable and/or unheard – children, the elderly, disabled people, the poor and those lacking in opportunities for political and legal mobilisation, and future generations (Ebbesson and Okowa, 2009).

Taking a historical approach, we recall the strength and radicalism of the environmental justice movement, originating in the United States in the 1960s, and bringing together grassroots protesters and researchers from churches, colleges and community groups, working in close alliance with the civil rights movement. The environmental justice movement identified and explained uneven distributions of harmful land uses (most commonly hazardous waste disposal) according to prevailing racist and segregationist policies, opinions and laws, and labelled as ‘environmental racism’ the disproportionate location of such land uses in black and ethnic minority communities (United Church of Christ Commission for Racial Justice, 1987; Lazarus, 1994). This awareness led to examples of progressive legislation and policy-making, as lawyers, political campaigners, academics and students sought collaboratively to outline the contours and principled content of environmental justice, as well as determine its potential and practical legal import and impact. Later work, from a transnational perspective, reveals the ‘slow violence’ of environmental harms (climate change, deforestation, air pollution)

which exacerbates the vulnerability of impoverished, displaced and disempowered people (Nixon, 2011). These distributional issues, the original focal point of the US environmental justice movement, provide an important way in to thinking about the place of justice in a broad range of environmental contexts, conflicts, and geographies (Ebbesson and Okowa, 2009).

We use the overriding concern of the early environmental justice movement - identifying instances of discrimination, inequality and injustice, as mediated through the distribution of harmful land uses - to highlight the loss of a local green space. This issue provides an important link with the original motivational force of the environmental justice movement, although the focus of our concern is with access to environmental 'goods', rather than uneven and unjust exposure to environmental harms. Our specific aim is to understand the decision-making *processes* relating to registering land as a town or village green from the perspectives of those seeking to protect local land from damaging development or change of use – a search for environmental justice in procedure.

An example of the working of law in this area, and the nature of the consequences for environmental justice, is seen in the following account of a public inquiry held to help a local authority decide whether Smithy Wood, an ancient woodland lying on the outskirts of Sheffield, England, should be registered as a green. We give an overview of the conduct of this inquiry, focussing on how nature is valued and represented, and the potential loss of the site measured, in this legal process. On the part of people local to Smithy Wood, this attribution of value to nature took the form of a deeply held resistance to reductive assessments of the development potential of the land taking priority over more general and intangible interests, such as a community-based concern about the

land providing a home for fauna and flora, and for the benefit of future generations. Our analytical work presented in this article addresses in practical and theoretical terms the great importance of such everyday spaces and the experience of a sense of their potential loss for those seeking to protect local areas of land they use regularly. We consider the extent to which these aspects might be better recognised and accounted for in the registration process with sensitivity and a strong sense of procedural fairness.

Having explained our methodological approach, centred upon analysis of witness statements, and outlined the general procedural challenges experienced by people seeking to protect local open spaces by seeking to register them as a green, we focus upon the Smithy Wood case study, identifying and analysing the values and meanings attaching to this area of land by local people. Highlighting the narrowness of the current legal designation in this study leads us to envisage an expanded version of environmental justice, drawing upon feminist theories and critical geography, and based on an ethic of care. This conception of justice stretches beyond the more familiar sets of distributional, procedural and recognition-based (identity) theories of justice and, being conscious of the nature of a community's collective loss, originates in an ethical awareness and receptiveness towards the entwining of social and ecological integrity in an everyday and familiar, though special, place.

Case study analysis and witness statements as everyday evidence

To address the questions of justice raised in this research we adopted a case study approach. This approach was based upon analysing witness statements submitted to a local authority in support of an application to register land as a green and documenting how local people use, value, and express the likely impact of the loss of such spaces,

and subsequent questioning of witnesses on their statements, at inquiry. Our focus on witness statements, as community-based, historical, and educational texts informing decision-making practices and outcomes, was inspired and shaped by Doreen Massey's influential key propositions of space (Massey, 2005), as explained in greater detail, below ('Decision-making and witness statements as 'stories-so-far'). This emphasis on the role of witness statements in the case study is a deliberate and empirically tested expansion of both methods and sources in environmental law, developed in a broader research context aimed at appreciating the common conditions and consequences of environmental injustices across time and space (Holder and McGillivray, 2017).

Generally, case studies (including single case studies as in this article) support socio-legal inquiry based on the interpretation of a range of materials, events and encounters. Adopting a case study approach in this research allowed us to draw together different views and experiences of how people relate to, and value, a local green space and to judge the extent to which such relational aspects are capable of informing decision-making outcomes in the registration process. This case study does not represent a 'typical' application process. Instead, its value lay in enabling us to analyse how theories, principles or perspectives manifested themselves in a particular set of events or process (Mitchell, 1983: 188), and, importantly, encouraged us to identify instances of environmental injustice by detailing the 'lives people live' (Sen, 2009: 10).

More specifically, witness statements form part of the bundle of supporting documents submitted to a local authority with an application to register land as a green. Prior to a public inquiry to establish whether the legal tests to establish a green are satisfied, the parties exchange these statements which are also made publicly available. Well over

one hundred such statements may support an application. In this case study, there were far fewer (26), largely a consequence of time constraints on the applicant. Late changes to the boundary of the 'locality' meant that only 15 statements were admissible in evidence. In researching this case study we also observed and transcribed recordings of witnesses being questioned at a five-day public inquiry, attended pre-inquiry meetings and a site visit, and collated post-inquiry documents such as the inspector's report and the parties' responses to this; together, these documents and observations constitute an extensive body of research material.

Witness statements provide the procedural and structural backbone of public inquiries: witnesses are cross-examined on the factual content of their statements by barristers representing applicants, supporters and opponents, with the proceedings and exchanges overseen, mediated, and reported upon by an inspector. Placing witness statements (and oral elaborations of these) at the heart of this research allowed us to work with material elicited, written and collated by local people with the aim (predominantly) of protecting land which holds meaning for them. Our analysis of these statements reveals a range of important functions performed by these texts of 'everyday evidence' - indictors of current local thought, records of local history, and archives of resistance, protest, and community action. This last function evokes a sense of the 'politics of poetry' identified in archives made for collective and communal use, rather than being consigned to administration (Walsh, 2017: 19).

We first carried out textual analysis of the submitted witness statements. We sought out the essential expressions of sentiments, values and understandings contained within them, and grouped together the strongest and recurrent themes. We combined this with

observing the significance of the statements in structuring and directing lines of questions at the subsequent public inquiry. Finally, we sought to assess, through textual analysis of inquiry reports and recommendations, supplementary legal opinions and decision letters, the influence of witness statements upon the substance of official decisions. We marked up and judged the weight given to the statements, for example in instances when an inspector relies explicitly on excerpts from these as supporting evidence of the applicant's or opponent's cases, and by evaluating their relative contribution to findings of fact and/or law. Working through these three stages of analysis (from local 'poetic politics' to legal process and legal/administrative decision-making), focussing on witness statements gave us unique insights into the (generally limited) role of local people and community groups in local decision-making about their shared environments and, more broadly, the practical working of local environmental democracy. Before detailing these aspects of the case study, and presenting our analysis of witness statements according to a schema of generalisable and sectional interests, we first develop an environmental justice perspective on the registration and designation of land as a green.

Protecting everyday green spaces via law

Everyday green spaces such as Smithy Wood are sites of 'nearby nature' (Brennan, 2016: 9) occupying a central place in people's lives, helping to maintain good health and encouraging community activities and networks (Public Health England, 2014). Local people describe these spaces as a 'guiding compass', a meeting space for relaxation and conversation and for feeling a part of 'something bigger' (Brennan, 2016: 9). They are places for community and connection. Appropriately, 'community' (from *communitatas*) means 'held in common', providing a strong sense of the relationship

between the existence of common land and the communal use of that land by local people. These pockets of open land, used on a regular and local basis, vary greatly in their scale, nature, ownership, and purpose. They include sites within and between housing estates, playgrounds and parks, unplanned urban or suburban open spaces, rural open spaces in villages and woods, and even beaches. Their ownership and management take various forms, including by local government, wildlife groups and private owners.

The social and ecological value of everyday spaces is now recognised by government (DEFRA, 2011), environmental organisations (London Wildlife Trust, 2015) and celebrated by nature writers (Lewis-Stempel, 2014, Deakin, 2008; Macfarlane, 2008). But the local significance of such sites and growing political profile has not prevented huge losses of this type of land to development of all sorts, as bemoaned by Lawton et al (2010). The recent acceleration of this trend is a consequence of the frequently high economic value of these sites (Minton, 2012). This creates a constant threat of development, increasingly cast as 'sustainable', and therefore deemed acceptable in law and policy (Ross, 2009). This framing of planning processes for gaining development consent within a concept of sustainable development has failed roundly to provide robust protective mechanisms for spaces of nature (Rydin, 2013). As a result, planning and conservation law frequently enables the loss of sites essential for supporting and sustaining biodiversity and community cohesion.

Working alongside (and sometimes in the place of) such regulatory frameworks for development consent and nature conservation, the law relating to the registration of land as a town or village green provides a potentially powerfully protective designation, arising

from the statutory recognition of a valid community held and customary right to continue long-standing use of an area of land. For practical purposes, designation means that most forms of development of the land will not be lawful.[i]

The conditions for establishing a town or village green in England and Wales are set out in the Commons Act 2006. The legal test for establishing a green is a compound: land may be registered as a green if it can be established that a *significant* number of people in a *locality* have used the land '*as of right*' (meaning as if a right existed) for 'lawful sports and pastimes' for at least 20 years (section 15 of the 2006 Act, emphasis added). This test reflects the ancestry of greens: in most cases, the statutory enclosure of common lands included the allotment of land for 'exercise and recreation'. This secured customary rights, but only in the case of 'lawful games and pastimes', which had a 'civilising' and controlling influence on the life of the labouring poor during the eighteenth and nineteenth centuries (McCardle, 1991: 76).

This combination of spatial and temporal conditions imposes a heavy evidential burden on applicants, particularly when judged against the resources commonly deployed by land title holders or developers engaged in opposing such applications. Seeking to register a green is a significant legal affair, triggering administrative and legal processes presenting a great many hurdles and challenges for local groups. The applicant must seek to define the boundary of the 'locality', an exercise which is far from simple, even with guiding case law on the subject.[ii] In practice, the test then requires the applicant to draw up a twenty-year timeline of specific uses and to name local users of the land forming the subject of the application, gleaned from witness statements and other written sources and supported further by photographic evidence of that use. Any gaps in use,

inaccuracies, or lack of supporting evidence, will very likely prove fatal to an application. Finally, the judgement of 'significance' in terms of the number of people having used the land over the twenty-year period is a necessarily subjective evaluation on the part of the inquiry inspector and, ultimately, the decision-making local authority.

Remarkably, these many legal hurdles do not prevent widespread engagement with this area of law: there are approximately 4500 greens registered in England and 220 in Wales. The number of greens applications varies, but on average 120 applications are made each year and approximately one third of these are granted (Defra, 2013), figures which represent a significant, but highly risky, level of community involvement with a complex, time-consuming, and expensive procedure, beset with uncertainties.[iii]

Valuing nature and measuring loss: speech community and Smithy Wood

In 2013, residents of a housing estate close to Smithy Wood sought to register it as a green within the terms of the 2006 Act. The name of the fifteen-hectare wood derives from the ironstone seam lying beneath which was worked, originally by monks, as early as the 1160s (Jones, 2009). The site is now naturalised and considered to be valuable in ecological terms (Sheffield and Rotherham Wildlife Trust, 2017), even though it has suffered neglect and harm due to damaging activities, such as 4x4 racing, seemingly sanctioned by the landowner. The application to register the land was triggered by the site being threatened by the development of a motorway service station (Smithy Wood adjoins the M1 motorway, following the dissection of the wood by its building in the 1960s). The public inquiry held into the registration of the wood in April 2015 offers important insights into how nature is valued in the registration process. The local authority rejected the application to register Smithy Wood as a village green in 2016, but

the prospective developer's application to develop the site remains live. This means that, whilst the witness statements and related documents analysed for this article date from 2013, this documentary material remains relevant and potentially influential in terms of other (development consent) decisions and determinations.

The inquiry into the registration of the wood as a green took place in the grand setting of Sheffield Town Hall and the proceedings, overseen by an inspector, were formal in tone and structure. The inspector welcomed witnesses to the inquiry and listened carefully to their statements and answers to questions. Site visits, primarily for the inspector's benefit, took place at the beginning and end of the inquiry. During the inquiry, the witnesses (the majority being members of the residents' group supporting the registration of the wood as a green) were questioned upon their statements, first, by the opponent developer's counsel and, secondly, by the applicant's counsel.

The statutory test, requiring applicants to establish, precisely, the nature and extent of the use of the land over twenty years, influenced greatly the prior organisation, working, and legal practice of the inquiry. The test creates a heavy administrative load for the applicant and, at inquiry, a considerable evidential burden for witnesses; recalling events from over a long period of time, and in fine detail, proved difficult and frequently stressful. During the opponent counsel's cross-examination, even minor inconsistencies in witnesses' accounts became the subject of strongly adversarial and frequently aggressive lines of questioning. Some of the questions posed aimed at specifically discrediting the veracity of the accounts, and the credibility of the witnesses themselves. Attending the inquiry required considerable resources on the part of the applicants - time, energy, legal expertise, and administrative help.

The content of the applicants' witness statements is analysed according to a thematic schema, set out below. This schema identifies prevalent and recurrent themes in the statements and highlights some of the connections and overlaps between these. Our main finding is that the statements highlight broad environmental protection and legacy reasons for registering the wood, with many witnesses wanting to safeguard the wood for their grandchildren, and, more generally, future generations of children and residents. From observing the proceedings, the witness statements perform an extra-legal function of recording social and community-based declarations about how local people relate to the land from a range of perspectives, and seek to protect and care for it.

The following analysis of witness statements relies upon making a broad distinction between the expression and reception into the legal procedures for registering a green of *generalisable* (public interest environmental advocacy) and *sectional* (private, individual, or vested) interests. These terms describe broadly the potential outcomes of deliberative decision-making, but we consider this broad distinction is relevant also to this case of an adversarial form of decision-making, in which the applicants seek to establish a right to continued use of the land. We acknowledge that decision-making, when informed and guided by generalizable interests (and producing positive outcomes as a result), has been analysed most fully in the literature on deliberative processes governing matters including, in an environmental context, planning, and the release of chemicals and GMOs (Lee, 2009; Armeni, 2016). However, in this case, witness statements, both written and given as oral evidence, align so profoundly with generalist (ecological and inter-generational) interests that analysis of their accommodation and

influence - relative to sectional interests - remains a useful frame by which to conceptualise the interests, and underpinning values, at stake.

Models of deliberative democracy (such as Habermas' communicative ideal of speech community (1970)) are, according to Robyn Eckersley, more likely to privilege generalisable interests over sectional interests. In her view, generalisable interests align with ecological interests, and their alliance creates an important driver for the move from liberal democracy to ecological democracy, a precondition for the founding of a 'green state' (Eckersley, 2004: 117).

Such an outcome – privileging generalisable interests over sectional interests - prevails when, as Eckersley describes, political communication is not distorted by power imbalances and when key, mutually constitutive, features of deliberative democracy are present. These essential features are: *unconstrained dialogue* (mutual understanding through rational assessment of arguments based on 'propositional truth, personal sincerity, and normative rightness' (2004: 116)); *inclusiveness*, in the sense of 'enlarged thinking' or the 'imaginative representation to ourselves of the perspectives and situations of other[s] in the course of formulating, defending, or contesting proposed collective norms' (2004:116); and social learning. The last feature encapsulates the speech community ideal. This is where participants engaged in public dialogue are '*moved* to change their position by the force of the most appropriately reasoned argument rather than by extraneous considerations' (Eckersley, 2004: 117, original emphasis). This capacity to move position, when underpinned by a fundamental moral norm of respect for the autonomy of others, requires that individuals' proposed norms must be acceptable to others. For Eckersley this requirement of acceptability to others

is a vital steering mechanism, engendering moves towards generalisable arguments, and thereby making 'public interest environmental advocacy a virtue rather than a heroic aberration in a world of self-regarding rational actors' (2004: 117).

These key features, providing the basis for deliberative models of democracy, make such models ideally suited to dealing with polycentric and complex environmental concerns and problems (Eckersley, 2004: 117). Importantly, the features also offer pathways for moving towards environmental justice. Such pathways include establishing conditions for the continual public testing of claims and questioning from the perspective of 'differently situated others', including from those most likely affected by a proposed project, policy or practice (Eckersley, 2004: 118). This greater openness of deliberative processes to those most exposed to risk and change, ideally, puts into reverse the ceding of decision-making to alliances of powerful professional, scientific and corporate elites, a regressive process described by Habermas as the 'scientization of politics' (1970: 62). Further still, the 'other-regarding' orientation of deliberative democracy may, for Eckersley, encompass an enlarged community of those who may benefit from public discourse and deliberation - including those yet to be born and non-human species (2004: 120). This ecological ideal of political communication, based on 'representative thinking' on behalf of others, offers a radical reinterpretation of speech community, restricted to communicatively competent subjects in Habermas' original workings. Eckersley conceives of such decision-making, when guided by a strong version of the precautionary principle, as a form of trusteeship held by humans for nature (2004: 127-38). This achieves the goal of protecting those incapable of participating actively in discourse (Eckersley, 2004: 135).

In summary, precautionary, risk-averse, long-term, and public interest principles of decision-making may flow from advancing a deliberative ideal, to the great benefit of a wide circle of communities, generations, and species. Eckersley remains alert, though, to the procedural and institutional challenges associated with trying to realize fully the set of ideal circumstances in which ecological democracy and ecological justice can flourish, recognising that, even in carefully constructed deliberative fora, political resistance and privilege may predominate (2004: 119); arguably, these characteristics are more pronounced in adversarial settings. More specifically, the Smithy Wood case study makes clear that the expression, reception *and* recognition of generalisable (public interest environmental/community) interests is additionally difficult in a situation of speech community in which sectional (private and individual) interests establish the main frame of reference for setting both the legal procedures and the participation and conduct of participants in decision-making processes.

Below, we analyse sets of generalisable interests, expressed by witnesses during the legal proceedings to establish Smithy Wood as a green (with WE referring to written evidence submitted in advance of the inquiry, and OE indicating oral evidence given at inquiry) and analyse the discordance of these with sectional concerns, as represented by interpretations of the substantive law on the conditions for designating greens in legal practice.

Generalisable interests

(i) *Futurity and legacy*

Most witnesses to the inquiry included in their statements a sensitive calculation of what is at stake for future generations, overshadowing statements about their longstanding

use of the wood for 'lawful sports and pastimes'. The following extracts from witness statements provide examples of how local people express their sense of responsibility to future generations:

'…how many trees have to be cut down unnecessarily, what legacy are we leaving our grandchildren and their grandchildren [?]' (WE 13);

'This woodland of Smithy Wood dates back to at least 1200 AD. We really must protect it for future generations, so that they can see nature as it is, and so that we don't lose any more species of wildlife' (WE 14).

'…how important it is to maintain these areas for our future. I want to be able to show my son where my parents took me as a child' (WE 3).

'Doesn't Ancient Woodland and Green Belt mean that these areas are to be preserved for our future generations to enjoy' (WE 1).

'I want to make sure these woods, especially Smithy Wood, is there for the next generation of youngsters as it has been for the last 20 generations and therefore wholeheartedly support this application to make Smithy Wood a Village Green' (WE 11).

The following statement, making the case for registration to the local authority, emphasises this forward-looking gaze: '[P]lease help us to protect this irreplaceable, Ancient Woodland of Smithy Wood from any future development by granting our request to make Smithy Wood our village green, so that it will be there for future generations to enjoy', and asserting that there is a 'significant amount of local residents who are all passionate about keeping this woodland for future enjoyment' (WE 3). Importantly, because only past (20 year) use is relevant, this type of future-looking evidence does not carry weight in the current registration process, with adverse consequences for fostering the 'future generational' elements of sustainability.

(ii) *Knowledge, education, and learning*

Both the witness statements and responses to questions at the inquiry make clear the writers' extensive knowledge of the wood, and its wide range of bird, plant and animal species, as in this example:

'There are many birds which can be seen [there] such as chaffinches, bramblings, flycatchers, tree creepers and nuthatches. I have seen blue tits and great tits, jays, magpies, crows, robins, wrens and chaffinches and heard the woodpeckers in Springtime. Kestrels and buzzards…can now be seen flying over Smithy Woods. There are foxes, shrews, hedgehogs, numerous rabbits and squirrels, and there was a badgers den there previously…Bats can often be seen at dusk in the summer and there is also a diverse population of butterflies. I also believe there are adders living on the site' (WE 3).

Witness statements attest that the wood has long provided local people with an opportunity to educate children about nature, in an otherwise largely industrial landscape. One of the witnesses, a retired teacher, describes having collected leaves, acorns, seeds, and nuts from the wood to take to her class (OE 3). Others linked enjoyment of the wood with learning: 'We all have many memories of walking through this woodland looking for leaves, birds, and enjoying what an ancient woodland can bring to a child and their education in caring for our wildlife' (WE 2); '…I used to go to see many species of birds, bugs and also enjoy being able to run through the leaves and learn from my parents how important it is to maintain these areas for our future' (WE 4). Similarly, a witness recalls tracing fresh animal trails left in the snow in the wood, '[W]hat better way to learn about nature…unlike most things today, it is free and educational' (WE 3). Smithy Wood is remembered as 'an ideal place to teach children about nature…we would go on nature walks, and take nets and jam jars and learnt to draw and identify trees from their leaves' (WE 6).

Also apparent on the part of residents is pride in their knowledge about the distinctive features of the wood, most notably a glade of beech trees stunted by pollution from

nearby coke ovens, built in the 1920s but now disused ('there is a beech coppice there unlike any other' (WE3)). During the inquiry and at the prior site visit, witnesses reminisced about being able to climb easily to their tops, even as children. Likewise, witnesses pointed to distinctive archaeological features in the wood, such as medieval bell pits, used in formative mining, and sawpits, for working timber. As well as equipping children with a vocabulary for learning about nature, and attributing meaning to their experiences in nature (Macfarlane, 2016:9), such embodied learning is capable of forming part of a broader collective and reflective inquiry, and providing the motivation to act on behalf of nature (Orr, 2004): 'In Smithy Wood I learnt the love of nature' (OE 6); '[M]y daughter spent her younger years playing in and around the woods and now takes a keen interest in the environment, which I believe stems from her time exploring the woods' (WE 6).

(iii) *Magic and utopia*

In their statements, witnesses describe the wood as 'peaceful', with 'some very beautiful and irreplaceable old trees' (WE 1), and elaborated at inquiry: 'it was a magical place and still is in places' (OE 4); 'it was right magical' (OE 3), with a 'beautiful bluebell wood' (OE 3); '…richness of its beauty' (OE 6); [I]t was green and pleasant…very, very pleasant' (OE 8); '…wild flowers and bluebells…so peaceful, so lovely' (OE 6); '….the scent of the bluebells' (OE 4); 'watching the wildlife, especially birds, and enjoying the flowers' (OE 8); 'a 'boys' paradise…they just loved it up there' (OE 8); a 'magical woodland that stirred the imagination' (OE 5). The varying special quality of the wood at different times of the year was highlighted: '[I]t is particularly magic in Winter time when the leaves have fallen and there is fresh snow on the ground…' (WE 3); '…the sound of a skylarks song is immediately recognisable and one of the great joys of early Summer'

(WE 8). Many witnesses recorded the 'peace and tranquillity' of the place ('Smithy Woods was a peaceful haven and somewhere to walk alone without feeling isolated and vulnerable' (WE 13)), summed up also by the applicant: 'It was a lovely place to go. That is why…they wanted to put in for a village green' (WE 3). The Wood also provided perspective, enabling visitors to look out over Sheffield, with a sense of being 'on top of the world' (OE 15).

The natural character of the wood was frequently remarked upon: 'It was a very different place (WE 1);' 'secluded woodland is a very different environment to a park' (OE 8); 'I know we have a park but parks are manicured and it is essential to be able to see nature as it is, natural' (OE 8). Witnesses recognised that its accessible and 'everyday' quality contributed to making it so special. In the wood 'time repeats itself' (OE 8) - on a generational basis ('I go to the woods with my grandchildren as I did as a child' (OE 5)), as well as yearly ('[T]here are a lot of blackberries here…some years are better than others' (OE 4), and daily (for dog walking). From social theory, scholarship details the socio-legal construction of such everyday utopias (Cooper, 2013), as refracted in poetry and performance art which flags the epic quality of routine or mundane human experiences (Kerdijk Nicholson, 2015). These include 'singing, playing, dancing, moving, painting life and communicating about that in public spaces' (Tempest, 2017), and, less artistically, but still meaningfully, enjoying 'a lovely, peaceful, safe place to walk and enjoy nature, which is on the door-step for use by everyone' (WE 6).

(iv) *Heritage and identity*

Local residents relied heavily on a historical appraisal of the wood (Jones, 2009) to support their application, adding this to 'our reasons for wanting to retain this area as our

village green, it is our history'.[iv] This strong sense of the wood constituting the community's history is not just a consequence of the wood being deemed 'ancient', with associated topographical features such as medieval bell pits, but also derives from the wood's more recent (1920s) history as the site of coke smelting works, and its consequential significance within a broader industrial landscape. That the site has now naturalised, providing a home to flora and fauna ('the site had gone to nature for over 40 years since the coking plant at Smithy Wood closed in 1972' (WE 3)), provides a further layer of ecological history.

The historical importance of the site also has a personal dimension, with witnesses to the inquiry linking key dates in the wood's history (several fires, changes to entry points, 4x4 racing) to significant points in their own private histories and family timelines – of children leaving home, retiring, falling ill, bereavement, and the arrival of grandchildren, and dogs. The history of the wood is clearly and closely bound up with the identity of local people: 'I still cannot believe that anyone would even consider sacrificing yet another place of history…How many of these historic places do we have to pull down before someone realizes that this is our history we are destroying and stands up and says NO!!!' (WE 1); 'We…are in danger of losing some place of peace and quiet away from the humdrum of modern life and where we can learn about and see nature, our heritage, something so precious' (WE 8).

Smithy Wood dates to the twelfth century. This timescale highlights the limited nature of the legislative protection: the wood has a long and meaningful history and is relied upon not only for 'lawful sports and pastimes', but also because it provides a valuable and valued connection with nature *and* the past which is difficult to measure in quantitative

terms, and impossible to replicate. The twenty years use of the land, which forms the basis of the legislative test, represents no more than a slither of time. In contrast, the wealth of the ancient past and prospect of its use far into the future is what motivated local people to seek to protect the land and to work so hard to amass the body of evidence needed to satisfy the test for registering land as a green.

(v) *Damage and loss*

Witnesses express several meanings of loss in their statements. Prime amongst these is a sense that the loss of nearby woodland further enhanced the natural value of Smithy Wood ('It is even more precious now since the adjacent site of Hesley Woods is to be opencast mined to retrieve the coke' (WE3)). Notably, this sense of loss was registered in terms of wildlife as well as loss of 'recreational space', and, less tangibly, the impact envisaged is extended to future generations: '[T]he wildlife that lived there [Hesley Woods], we were told by the planners, would move to adjacent woodland, so it is imperative that we protect that woodland, Smithy Wood' (WE3); 'I fear this loss for myself and future generations, but mostly for the wood itself' (WE 5). Witnesses also recognise what has already been lost in the wood from damage caused by such vicissitudes as fires, but also more wilfully by the recreational ploughing up of the land by 4x4s. This backward and forward-looking assessment - what has been lost and what will be lost - is bound up with, and reinforced by, an idea that certain species, and the wood itself, are irreplaceable:

'To be able to walk amongst the native trees of England is a wonderful experience and bearing in mind the great loss of our magnificent elm trees and the current threat of Ash die back, please help us to keep this large section of Smithy Wood which could never be replaced' (WE 15).

Sectional interests

At the public inquiry, counsel for the opponent developer questioned witnesses very closely on their statements. This questioning revealed a clear disjuncture between the content of the witness statements, the majority of which conveyed a great depth of feeling and connection with the land, and the opponent counsel's narrower, sectional, frame of reference. This frame of reference was a product of the need to ascertain, in fact and law, whether the statutory test for establishing a green was satisfied. Clearly, communal elements and behaviours can often arise from the conduct of 'lawful sports and pastimes', but, significantly, assessing the satisfaction of this part of the statutory test can be conducted on an individual basis, and without referring to broader concerns extending beyond a local person taking up opportunities of recreation and exercise.

Accordingly, at the public inquiry, assessments of the extent and nature of the use of the land tended to be individualised and were predominantly quantitative and factual, elicited via such questions: 'How often did you walk your dog in Summer?'; 'How often in Winter?'; 'How many people did you see when you walked your dog?'; 'Does your dog walk on a lead?'; 'How did you get to the wood?'; 'Why did you not use the local park to walk your dog?'; 'What footwear did you use?' Such lines of questioning aimed at establishing the extent to which the use of the wood was along established footpaths to reach a destination, suggesting at best a more limited 'right of way' (which is inimical to greens registration) as opposed to untrammelled following of 'lines of desire' (paths that do not necessarily lead anywhere), for recreation, sport or pastimes - activities which could establish a green.

The inspector's final report detailed and interpreted the witness statements and examinations at the inquiry concerned with gauging the fulfilment of the statutory test.

This is a tightly written and factually descriptive document, detailing times and dates of use, names of those who used the site, and even dog breeds. It offers a representation of the inquiry proceedings, but one which edits out the broader concerns detailed in witness statements submitted in support of the application, and volunteered (rather than solicited) during questioning. The adversarial nature of the inquiry, and subsequent record of the proceedings, is very distant from the ideals of speech community, as a means of securing public participation in decision-making. In particular, the strict emphasis upon quantitative assessments of the extent of use of the wood suggests objectivity and rationality, and shifts attention away from possible alternative interpretations of the evidence drawn from witnesses. This lends a sense of legal reasoning as 'an objective, science-based way of knowing' (Conaghan, 2013: 202). This is seen, for example, in the inspector's rejection of the applicant's argument that the very nature of the wood, being impenetrable in places, led necessarily to visitors using established pathways, and that this should not therefore detract from their evidence about using the wood 'as a green'. As a result, the inspector 'stripped out' from his consideration all accounts of use of the land by paths,[v] leading to a significant reduction in the number of people recorded as using the land for lawful sports and pastimes.

The emphasis upon quantitative assessments of use, and with the gaze of the inquiry turned firmly backwards in time, left no opportunity for the consequences of the loss of the wood to development ('[I]f this were to be lost') to be considered, even though this sums up the witnesses' main preoccupation, as detailed in their statements and reiterated whenever possible during questioning. Admission of such consequential reasoning would inevitably introduce a speculative and subjective element to the proceedings, at odds with the apparent objectivity of the inquiry, a factor Conaghan, in

her gendered critique of legal reasoning, recognises as having a highly significant and prejudicial effect upon those attempting to predicate legal debate on the future impacts of an act, policy or decision (2013: 222).

In summary, our analysis of the role and significance of witness evidence during this inquiry establishes that local people tended to express broad-ranging and forward-looking (generalisable) interests in the preservation of this nearby area of open land. When recording these interests, the great majority of local people drew upon ecological and ethically oriented values and principles, particularly a sense of the woodland being irreplaceable and central to people's lives and sense of identity, as well as a related concern for future generations. These expressions of ecological and ethical concern for the wood created the conditions for disconnect and tension with legal procedures seeking primarily to establish the factual fulfilment of the highly specific and backward-looking legal test to register land as a green. This means that the full range and depth of meaning, including a sense of care and responsibility, which the use of Smithy Wood evoked, and a realisation of what is at stake, were not captured by, or recognised in formal terms, in this legal process. This contributed to considerable tension in the inquiry and a sense of unease, unfairness, and anxiety on the part of local people,[vi] faced with the prospect of a radical and disturbing change to their nearby environment.

Decision-making and witness statements as 'stories-so-far'

Rather than bearing witness to a single event, the witness statements provide a remarkable record of the accretion and evolution over time of a depth of feeling and sense of connection with this area of land. This is apparent also in oral evidence, given at inquiry. As Massey describes, ordinary spaces such as this become 'deeply

engrained in peoples' lives' (2005: 13). In similar terms, we consider local people's subjective and personal statements of relation and care towards the land as significant examples of everyday evidence, or knowledge, as shaped by the writers' situation, context and values.

Above, we used the term 'everyday evidence' to describe the rich body of local knowledge and sentiment expressed in witness statements, providing a record of lived experience, and interpreted history of a certain space, often drawn from many sources and spanning generations. Our analysis of witness statements and oral evidence reveals a strong sense of the specificity and intrinsic value of a space, combined with an awareness of the political possibility of pursuing alternative futures for that space, in a way which best cares for it, and protects it for the benefit of future generations. This brings to life Massey's description of space as the 'simultaneity of stories-so-far' (2005:11). This captures succinctly her recognition of the 'contemporaneous existence of a plurality of trajectories' (2005:11), for example, developmental, conservatory, or preservationist, capable of being pursued concurrently in a certain space.

For Massey, the plurality of trajectories shaping the use and development of land arises precisely from the conditions described in her *first key proposition of space*: that 'space is [indeed] a product of relations' (2005:15). In this proposition, 'relations' refers to 'embedded practices' (2005:10) which can shape entities and identities. Massey's relational and spatial understanding of the world (rejecting the unchanging essentialism of individual liberalism and identity politics) is one in which the constitution of identities and the relations through which they are constructed form a central stake of the political world. Massey's *second key proposition of space* flows from this: that for space to be

the product of relations, there must be a multiplicity of interactions and exchanges in relations. In political discourse, this need for multiplicity plays out in recognising difference and heterogeneity and, in advancing plurality, seeing the universalism of western thought, and the concomitant, and increasingly globalised, developmental paths, as a construct, albeit one which has proved powerfully capable of masking and overcoming the simultaneous coexistence of other histories and possibilities (2005:12).

Massey's *third key proposition*, that space is a process, not a closed system, is also a consequence of the first proposition: that the inter-relations and connections producing space are never limited or completed, but instead are complex, diverse, and always evolving. In explaining this proposition, Massey embraces radical political discourses on the genuine openness of the future and the existence of political escape routes from the inexorability of the grand narratives of modernity, such as development and progress (2005:11). In this third proposition, Massey conflates the spatial and the temporal: '[N]ot only history, but also space is open' (2005:11). By this, she envisages that in this open space 'there are always connections to be made and juxtapositions yet to flower…relations which may or may not be accomplished' (2005:11). Massey spells out that the political corollary of coupling a serious commitment to multiplicity and diversity is the recognition of spatiality. She explains: 'a genuine, thorough, spatialisation of social theory and political thinking can force into the imagination a fuller recognition of the simultaneous coexistence of others with their own trajectories and their own stories to tell' (2005: 11), with both 'trajectory' and 'story' referring here to 'processes of change in a phenomenon' (2005:12).

Socio-legal researchers are attuned to the legal corollaries of adopting strong spatial interpretations of the world (Braverman, Delaney and Blomley: 2014, Cooper: 2013). From this perspective, we can identify several potentially important legal contributions to Massey's relational spatialisation of social theory, which are relevant to the analytical work involved in researching and compiling the Smithy Wood case study. In this way, Massey's key propositions of space can be interpreted as opening up points of potential engagement or inter-section with law and legal practice.

In beginning to identify these points of potential engagement between law governing the designation of land and theories of spatialisation, in general terms law conditions and processes relational claims about local, open, green spaces. It does so by setting the ambit of admissible evidence (by demarcating strictly the meaning of 'locality'), and the burden of proof of tests to be satisfied (on the balance of probabilities).[vii] Regulations prescribe, sometimes quite loosely, the routes by which evidence about such spaces can enter decision-making processes, for example via rules about the limits for application and consultation periods, and by establishing that a non-statutory public inquiry can be held.[viii] Less transparently, law provides mechanisms for negotiating offsetting agreements and compensation packages, usually via contracts binding as between planners, developers, and conservation bodies. Law also defines and regulates the charitable aims and practices of organisations charged with managing such spaces after designation. Although not seeming to feature prominently in the foreground of everyday open green spaces, law has a clear and strong role in determining the procedures, places, and parameters within which the inter-action and inter-relation of practices, interests, and values occur.

Relating Massey's second key proposition of space about multiplicity to this area of legal practice and doctrine, a diverse group of participants and publics engage in the decision to register land as a green, each bringing to the decision-maker a range of considerations potentially material to the decision. This state of multiplicity is encouraged by the direct involvement in decision-making procedures of, most obviously, the applicant, opponent, and legal practitioners, but also witnesses, local people, conservation agencies, media, developers and planners. The main condition for involvement in decision-making is spatial, with locality providing a sifting mechanism to determine both who should participate, and whose evidence is material to the decision.

Focussing on the Smithy Wood case study highlights the practical difficulties involved in gathering, and giving voice to, the depth and complexity of meanings underpinning community-based, or 'everyday' evidence, in making decisions about the protection of land via the legal process for registering greens. We contribute to the debate about the balance and privileging of expert/everyday evidence in this forum for decision-making in an empirically focussed and critically informed way by aligning our research design with feminist theory and critical geography research strategies and methodologies. Accordingly, below, we describe witness statements detailing everyday practices as a type of situated knowledge (Whatmore, 2000), which potentially offers a vital ecological dimension to theories of an ethic of care.

Working beyond the surface of these procedural requirements, the lawyers, planners and inspectors who interpret and enforce law on the registration of greens have a profound influence on the substantive core of the decisions arrived at. The intention of Massey's third proposition of space, depicting a genuine openness of future developmental or

conservatory pathways for an area, is not normative. However, using this proposition as a key point of engagement with law, the language and aims of justice can be invoked in its re-telling, so that issues about the resulting distribution of 'harms' and 'goods', and the fairness of the decision-making processes involved, may be registered and reviewed in these terms. Specifically, those most likely to be affected by a decision must have an opportunity to express their concerns, especially people from groups, communities or populations excluded or under-represented in decision-making. We argue that the choice made between multiple and potential trajectories of a space is far from neutral and is shaped by the effectiveness of forms of communication, the interpretation, reception and weight of knowledge from different sources, and the genuine openness of future paths, each of which are flagged up by the case study analysis.

Above, we have explained how Massey's theoretical propositions of space inspired and shaped our research methodology, analytical approach and our critique of public participation provision in the case of registering greens. We have emphasised that Massey's propositions derive from her conception of space as produced by inter-relationships, and that these are best fostered in conditions of multiplicity. This creates an opportunity to interpret broadly Massey's emphasis on the space-creating potential of inter-relationships and exchanges, and so as to encompass people's relationship of care with nature, and, in and through nature, with others. Such an expansive reading of relation evokes the foundational ideas of the deep ecology movement and its legal iteration, Wild Law (Leopold, 1968; Cullinan, 2003; Burdon, 2011), and has potentially far-reaching consequences for legal processes aimed at enhancing and enriching popular deliberation. This last broad reading of Massey's work leads us to consider the importance of relating an ethic of care with sources of justice, recognising a range of

collective claims to protect shared environments, discussed further below. Applying Massey's spatialisation theory to socio-legal research in this way potentially leads not just to recognising justice as a meter of the fairness of decisions arrived at, but also to an expansion of the existing (legally defined) categories of justice. The case study supports this theoretical position by providing an empirical base for analysing critically the reception and recognition in legal proceedings of everyday evidence about a collective sense of care and responsibility for nature.

Developing an ecological dimension to an ethic of care

Feminist theorists have long questioned the nature and production of knowledge, especially its presentation as objective, disengaged, and representing universal truths (Rose, 1997; Whatmore, 1997). Haraway, for example, points to the 'slippery ambiguities' of objectivity and the concomitant depiction of truth as universal by stressing that knowledge is instead embodied, marked and defined by its place and time of origin (1988: 580). Her search for a 'usable' and feminist doctrine of objectivity leads, through an allegory of differential and partial positions in vision, to recognising the privileging of 'limited location and situated knowledge' (1988: 580). Such an emphasis upon the construction and interpretation of knowledge according to its specific contextual background evokes constructivist theories developed by critical geographers about the production and evolution of spaces through highly specific, but multiple, processes of exchange and inter-relation, as outlined above (Massey: 2005).

An important point of contact between these two theoretical approaches – a feminist argument of relational ethics and critical geography's contextual and constructivist reading of space - is an appreciative recognition of an ethical root in how people relate to

and care for each other, and their environments, in a commonplace and everyday way, in response to specific and often communal circumstances of meaning, correspondence, and connection. The evolution of this (Gilligan, 1982; Curtin, 1991) can be applied more generally, so that a politicised version of an ethic of care becomes relevant in conceptualising the problem, as well as the value, of protecting the natural world, including, most recently, as a response to climate change (Okano, 2016), but it also has a long history in writings on ecofeminism (Warren, 1990). Associating feminist theories and critical geography in this way connects and combines a *relational* sense of self with a strong sense of responsibility for others, and the environment. This lends a contextual understanding of the relevance of specific circumstances and places for social relations and interactions, and the conduct and outcome of behaviours and decision-making, having a bearing upon broader threats to nature. This association helps identify complex, but clear, connections between everyday struggles over small parcels of land used on a communal basis and larger scale environmental degradation, and the impact of the widespread loss of such spaces on the state of human physical and mental health.

Working at this point of overlap between feminist theories of relational ethics and a corresponding ethic of care, and critical geography, Whatmore rejects the entrenched divisions and distinctions between nature and society, and between humans and non-humans. She recognises in their place 'relational configurations – living fabrics, spun between humans and nature' (2000: 297). This moves us beyond treating environmental (non-human) relations as 'passive contextual extensions of human well-being' (1997: 14), and towards imagining the non-human realm as completely interwoven with the actions of its human counterparts. This is to understand nature as 'an always already inhabited achievement of heterogenous social encounters' (1997: 270). By identifying

the ethical significance of non-human life forms and ecological processes and systems, Whatmore advances as the basis for justice a 'more relational understanding of ethical competence' (1997: 41). This understanding forces us 'to face up to a suddenly enlarged community that is no longer "other"' (2000: 270), but instead is bound up with shaping 'the business of [our] everyday living' (2000; 297).

Returning to a feminist and politicised version of an ethic of care, Curtin debates a distinction between 'caring *about*' (generalised, intellectualised and lacking direct relatedness) and 'caring *for*' (contextualised and aimed at specified recipients) (Curtin, 1991; 67). She considers that caring *about* may 'lead to the kinds of actions that bring one into the kind of deep relatedness that can be described as caring *for*: caring for particular persons in the context of their histories' (67). By analogy, caring deeply for a specific place in recognition of the histories, identities, and meanings it holds, can translate into a wider appreciation (which may be expressed politically) of its essential and integral connection with wider ecological and social systems. An 'ecological ethic of care' is one way by which environmental justice concerns can become 'scaled up', acting through and beyond particular geographies.

Whatmore's argument for reconfiguring, and enlarging considerably, ethical community has considerable spatial implications and these clearly intersect with, and reinforce, the driving concerns of the environmental justice movement. Most importantly, Whatmore's argument builds a bridge between the recognition of an ethic of care and 'the logic of justice' (Gilligan, 1993:30), in reaction to the close identification of this logic of justice with an abstracted and autonomous (male-oriented) liberalism (Clement, 1996). It is, however, important to distinguish between this logic of individualised justice and the

communal-regarding nature of conceptions of environmental justice (in which harm and loss to a community, or particular groups within a community, is the key concern). In recognition of this distinction, connecting environmental justice and an ethic of care may bring a private, moral imperative of love, attention, and a sense of responsibility out of the private sphere and into the realm of environmental ethics, with a potential to impact upon and challenge politics and law by showing up the great value and general interest of shared nature and the harshness and poverty of a collective loss of shared spaces.

Conclusion: recognising a collective sense of loss

Local open spaces such as the ancient woodland of Smithy Wood help to create and maintain vital connections between biodiversity, social diversity, and enhanced quality of life. People using local land on an everyday basis recognise these connections and find value in them and the relationships that develop as a result. At the centre of the Smithy Wood case study is a question about how communities' concerns about the potential loss of local land are listened to, and respected, by registration authorities and legal professionals. The language of witnesses seeking to register this wood as a green is heavy with powerful and evocative ideas – of legacy, locality and futurity. These ideas, forming the basis of much current environmental thinking, are rooted deeply in peoples' relationship with 'nearby nature'. Sheffield City Council did not register Smithy Wood as a village green, a decision based on the inspector's finding that the number of local people who used the land was not significant – the inspector described its use as 'trivial and sporadic'.[ix] As a result, the natural quality and value of the wood to local people will not be protected from development through designation as a green and may be lost.[x] A planned compensation project aims to 'offset' the resulting loss of biodiversity in the wood, but its scope and likely effectiveness is both a source of considerable controversy

and an unfortunate opportunity to test empirically the limits and potential flaws of such schemes in ecological terms (Sheffield Wildlife Trust, 2017).

In practice, the 'lawful sports and pastimes' test in greens law provides the rationale and organising focus of the greens designation process, but this creates a restrictive and sectional evidential focus which fails to recognise, capture, or connect the broader social, historical and ecological significance of the land for the local community, a case of the 'legal past' continuing to 'exercise a strong influence on the legal present' (Conaghan, 2013: 227). In Smithy Wood, this led the generous and well-founded desire on the part of local people to protect land for ecological reasons and for the enjoyment, use and education of future generations to be stripped away from the core subject matter of deliberation and decision-making in this case.

Significantly, the registration of land as a green is recognition of a *community's* right to continue long-standing use of an area of land. This strongly communal aspect suggests that assessments about the satisfaction of procedural justice in this context should be made according to a *collective* sense of fairness and recognition of the community's concerns about the potential loss of a valued area of land. Clearly, adopting such a measure of justice in this decision-making process is highly challenging to existing practice based on the aggregation of evidence, elicited and written on individualised lines; such a collective approach also involves identifying the mutable boundaries of a community as well as the substantive content and intensity of the values its members hold in common. From feminist theory, an ethic of care, developed in private settings of responsibility, and engaging domestic politics, underpins our argument that people's caring connection with land should be better respected and dignified with attempts to

understand the breadth and depth of their feeling on an individual and collective basis, recognising that this may have broader political and legal ramifications. Planning policy has latterly provided a forum for the reception of such arguments about the collective value of particular places, following the introduction of a discretionary 'local green space designation' to be made by inclusion within a local development plan or neighbourhood plan, following a decision-making process (most commonly an 'examination in public' which bears some of the hallmarks of deliberative 'speech community'). Current guidance on the designation of 'local green spaces' is flagged as 'promoting healthy communities', but, less prosaically, the criteria to be applied include where green areas or open spaces are 'demonstrably special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value…tranquillity or richness of wildlife.'[xi] The experience of designating local green spaces is not yet well documented, although the drafting of tool-kits suggests that both local authorities and pressure groups are getting prepared,[xii] and some examples (of both successful and unsuccessful cases) are emerging, including in parallel with applications to register land as a town or village green.

More fundamentally, an ecological rendering of an ethic of care offers a potentially expansive but firm theoretical underpinning to environmental justice, bringing it towards the centre of environmental debate, deliberation and decision-making. There is, as a result, the prospect of a meaningful broadening, or even recalibration, of categories of justice in law and legal philosophy, grounded in the material world of woods and a multitude of other green and shared spaces.

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[i] Due to the protective effects of s.12 Inclosure Act 1857 and s.29 Commons Act 1876, as confirmed in *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25.
[ii] *Oxfordshire County Council* v *Oxford City Council* [2006] AC 674.
[iii] E.g. on the meaning of 'triggers' which may prevent an application to register land being made, post Sch. 4 Growth and Infrastructure Act 2013.
[iv] CRAG (Cowley Residents Action Group), Summary of application.
[v] Final Report of Inspector, para. 7.16.
[vi] E.g. at least two witnesses were visibly distressed by the harsh questioning they underwent, with one expressing afterwards, 'I can hardly breathe now', and another 'my knees are still knocking.'
[vii] To ensure that each element of the claim is properly and strictly proved (*R* v *Suffolk CC ex parte Steed* (1998) 75 P&CR 102).
[viii] The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.
[ix] Para. 7.11 Inspector's Report.
[x] Although, the developers have asked for the application for development consent for the motorway service station to be put on hold while an application for a similar development in a nearby area is determined. See 'New Twist in Four Year Battle for Smith Wood', 30 March 2017 and comments by Sheffield and Rotherham Wildlife Trust, 'Take Action for Smithy Wood!' http://www.wildsheffield.com/smithywood.
[xi] National Planning Policy Framework (2012), paras. 76-78.
[xii] E.g. Open Spaces Society, https://www.oss.org.uk/new-tool-kit-to-save-open-spaces/