

## Recognising an Ecological Ethic of Care in the Law of Everyday Shared Spaces

### Abstract

Law plays a vital role in the life and loss of open shared spaces, used and enjoyed on an everyday basis by local people. In this article, we adopt an analytical framework based on an ethic of care to critique the registration of land as a 'town or village green', using the example of an inquiry into the greens status of an ancient woodland. Analysing written and oral witness statements in this inquiry makes clear the centrality of such places in many people's lives, giving rise to community-based, and forward-looking, interests. However, the legal focus upon quantitative assessments of individuals' use of land in the recent past means that the prospective consequences of losing such valued areas are currently poorly acknowledged, and accounted for, in the registration process. This leads to the question whether an ethic of care towards everyday shared spaces may be better recognised via more deliberative plan-making regimes.

**Key words:** Everyday shared spaces, local greens, knowledge claims, ethic of care, feminist theories, deliberative theories, witness statements.

## Introduction

Easily accessible and shared areas of land hold great communal value for local people and the prospect of losing such places through development and decline is often a matter of serious concern and distress, leading to protests and legal action. In this article, we address the role of law in the life and loss of such spaces, specifically town or village greens, and critically assess the current legal provisions for registering and designating land as a green. This analysis is rooted in the law on greens in England and Wales. This may evoke an archetypal grassy village green, characteristically featuring a cricket ground or football pitch and other communal pursuits. However, the 'green' designation also, less typically, embraces coppiced woods, unplanned urban and suburban spaces, sites within and between housing estates, and beaches (Farley and Symmons, 2012; Grindrod, 2017), owned and managed by local government, land trusts, or private owners (Clarke, 2006, Pieraccini, 2010, Mackay, 2014).

In this article, we examine the significance and meaning of such areas of land for people living nearby, and their use of law to protect them. These issues arise in many different contexts, frequently forming part of, or triggering, broader social and environmental movements of protest and resistance, and calls for justice (Blomley, 2004, Beitel, 2013, Cooper, 2013). In short, 'greens' have considerable polemical and political power, offering a physical site within which battles over the desirability of alternative and future lived environments are envisaged and played out (Kirwan, Dawney and Brigstocke, 2015).

An example of the working of law in this area, and the nature of the consequences for

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3 local people and communities, is the following case study of a public inquiry to help a  
4 local authority decide whether to register as a green Smithy Wood, an ancient woodland  
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6 lying on the outskirts of Sheffield, England. This case study approach, supporting socio-  
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8 legal research based on interpreting a range of materials, events and encounters,  
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10 allowed us to draw together different perspectives of how people relate to, and value, a  
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12 local green space and to judge the extent to which such relational aspects can inform  
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14 decision-making outcomes. The aim of this case study is not to represent a 'typical'  
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16 application process; instead, its value lies in enabling analysis of how certain theories  
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18 and perspectives manifest themselves in a set of events and procedures (Mitchell, 1983:  
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20 188), with consequences for the 'lives people live' and the injustices they are subjected  
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22 to (Sen, 2009: 10).  
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31 Analysis of the witness statements submitted as an essential part of the inquiry into the  
32 registration of the wood as a green revealed a close and multi-faceted relationship with  
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34 'nearby nature' (Brennan, 2016: 9), characterised by longevity, depth of feeling, and  
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36 resistance to reductive assessments of the development potential of the wood. In  
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38 particular, during the inquiry, it became clear that the statements perform an important  
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40 function of recording social and community-based declarations about how local people  
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42 relate to the land and seek to protect and care for it. In this article, we present several  
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44 dominant and recurrent themes drawn from the witness statements: futurity and legacy;  
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46 knowledge and learning; heritage and identity; and care and responsibility, and relate  
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48 these to theories of environmental and ecofeminist ethics.  
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56 In analysing these themes schematically, we identify a broad distinction between the  
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58 expression and reception into the legal procedures for registering a green of  
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3 *generalisable* (ecological and future generation) interests, and *sectional* interests  
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5 (representing private or individual concerns). Whilst the majority of witnesses expressed  
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7 generalisable interests, significantly, the legal test for registering a green is predicated  
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9 upon a set of narrow, sectional, criteria aimed at establishing individuals' use of land for  
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11 'lawful sports and pastimes' over the preceding twenty-year period. As well as making  
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13 fulfilling this test a considerable challenge for the applicants, this tension between the  
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15 temporal scale and object of interests created a mismatch of expectations and  
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17 experiences of the registration process as between legal professionals and local people,  
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19 making the inquiry a highly contested and unconstructive decision making forum. This  
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21 insight contributes to debates about giving voice to everyday (lay) evidence in decision-  
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23 making by interweaving empirical data with feminist theories and critical geography  
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25 approaches.

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33 Mapping out this article, we first explain the main form and features of the legal  
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35 framework because of the strong influence on the work of the public inquiry of the law  
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37 governing the registration of land as a town or village green. We then identify and  
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39 analyse the breadth and depth of values and meanings attaching to this area of land by  
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41 local people, drawn from written and oral witness statements. Working from feminist  
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43 theory and critical geography perspectives, we identify within the statements an 'ethic of  
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45 care', arising from the regular use and enjoyment of the wood. More practically, we  
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47 consider as a further route for local communities wishing to protect areas of nearby land,  
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49 the relatively recently promulgated designation of local green space, advanced in  
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51 planning policy (National Planning Policy Framework (NPPF), 2019: 28-29). Relating  
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53 deliberative theory and planning practice, our suggestion is that local people's sense of  
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55 care and responsibility for everyday shared spaces may be better recognised and acted  
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3 upon for protective purposes using this form of spatial designation in plan-making, at  
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5 least when this is characterised by deliberative elements.  
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### 10 **Legal framing of town or village greens**

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14 Land may be registered as a town or village green if it can be established that a  
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16 *significant* number of people in a *locality* have used the land '*as of right*' (meaning as if a  
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18 right existed, or, in other words, without permission, force, or secrecy) for 'lawful sports  
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20 and pastimes' for at least 20 years (Commons Act 2006, s.15). This test reflects the  
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22 ancestry of greens by which the statutory enclosure of common lands generally included  
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24 some allotment of 'waste' land for use and enjoyment by local people, for example for  
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26 exercise, recreation, and gathering wood, nuts and fruits. The granting of wasteland  
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28 softened some of the blows and brutality of the enclosure movement, which for centuries  
29  
30 pursued the privatisation and consolidation of small, subsistence landholdings, and tracts  
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32 of common land, to create larger farms. Greens are therefore one product of radical  
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34 land reform: a private property right, akin to an easement, held by groups of local people,  
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36 to enjoy rights over land, whether owned by a private individual or public body.  
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44 This legal root explains the unusual, hybrid (public/private) nature of the town or village  
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46 green designation. It also helps to give this corner of law the appearance of an  
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48 anachronism, for example the 'lawful sports and pastimes' requirement has its origins in  
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50 attempts to exercise a 'civilising' and controlling influence on the life of the labouring poor  
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52 through land use during the eighteenth and nineteenth centuries (McCardle, 1991: 76).  
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54 Notwithstanding this long history, greens carry considerable contemporary resonance  
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56 and significance, providing important reservoirs and corridors for nature (Lawton, 2010;  
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3 European Commission, 2013), as well as maintaining and improving social cohesion,  
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5 mental and physical health (Public Health England, 2014), and conditioning child  
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7 development (Alcock, 2014).  
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12 The statutory recognition of a valid community-held and customary right to continue long-  
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14 standing use of an area of land as a green issues a powerful protective designation by  
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16 invoking nineteenth century statutes preventing encroachment or enclosure on a green;<sup>i</sup>  
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18 together, these render unlawful most forms of development. Although the greens  
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20 designation has powerful effects, the combination of spatial and temporal conditions for  
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22 designation set out in the 2006 Act imposes a heavy evidential burden on applicants,  
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24 particularly when judged against the resources commonly deployed by land title holders  
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26 or developers engaged in opposing such applications (Open Spaces Society, 2014).  
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28 This makes seeking to register land as a green a significant legal affair, triggering  
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30 administrative and legal procedures presenting a great many hurdles and challenges for  
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32 local groups.  
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40 First, when making an application to a registration authority to recognise the existence of  
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42 a green, the applicant must define the boundary of the 'locality', a far from simple  
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44 exercise. The test then requires the applicant to draw up a twenty-year timeline of  
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46 specific uses and to name local users of the land forming the subject of the application,  
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48 gleaned from witness statements and other written sources, ideally supported by  
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50 photographic evidence of that use (newspaper reports, private photos). Any gaps in use,  
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52 inaccuracies, or lack of supporting evidence will very likely prove fatal to an application.  
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54 Finally, the judgement of 'significance' in terms of the number of people in the locality  
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56 who have used the land over the twenty-year period is necessarily a subjective  
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3 evaluation of fact and degree on the part of the inquiry inspector and, ultimately, the  
4 decision-making local authority, albeit that such findings are constrained by legal  
5 parameters.<sup>ii</sup>  
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11 Remarkably, these many legal hurdles do not prevent widespread engagement with this  
12 area of law: on average 120 applications are made each year and approximately one  
13 third of these are granted (DEFRA, 2013),<sup>iii</sup> figures which represent a significant, but  
14 highly risky, level of community involvement with a complex, time-consuming, and  
15 expensive procedure. The application procedure is now also subject to some  
16 uncertainty, the product of relatively recent legislation (the Growth and Infrastructure Act  
17 2013, schedule 4) aimed at speeding up the planning process by preventing  
18 development from being thwarted by a late ('rear guard'), community-based application  
19 for greens status.  
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35 More generally, the application of law relating to greens has the effect of restricting  
36 greatly the scope of spaces to which it applies. The Supreme Court's judgment in  
37 *Barkas*<sup>iv</sup> decided that land cannot be registered as a green where its use by the public  
38 was permitted by a statute – making the use 'by right', rather than, as required by the  
39 2006 Act test, 'as of right'. This judgment disrupted abruptly a flow of judicial opinion  
40 and findings offering an expansive and facilitative reading, 'in the public interest', of the  
41 legal requirements by which land be registered as a green (Open Spaces Society, 2014).  
42 Specifically, in *Sunningwell* (1999),<sup>v</sup> the House of Lords made irrelevant the subjective  
43 belief of users about their right to use land 'as of right'; and in *Beresford* (2004),<sup>vi</sup> that a  
44 local authority's acceptance of the use of its land by the public did not necessarily mean  
45 that it had given permission for this use (and thereby preventing a greens application).  
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3 In contrast, *Barkas* amounts to a serious barrier to groups and individuals seeking to  
4 register land as a green, and indicates the capacity of this area of law to generate  
5 controversy and strength of feeling on the part of both developers and campaigners  
6 (Meager, 2010). *Barkas* has also brought about a shift in thinking about how best to  
7 allocate and protect green spaces (Open Spaces Society, 2014). The designation of  
8 local green spaces in the course of neighbourhood plan making (NPPF, 2019: 28-19)  
9 now appears, at least superficially, a more attractive option for some communities who  
10 wish to preserve green spaces, as discussed further below.  
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24 The influence of the legal test and legal framing of town or village greens law on the  
25 registration process is highly significant for local communities wishing to see their  
26 applications translated into protective designations. As a sub-class of common land,  
27 greens act not just as valuable signifiers of the public interest in shared land; they  
28 provide a physical and material base for community and connection. 'Community' (from  
29 *communitas*), meaning 'held in common', provides a strong sense of the relationship  
30 between the existence of common land and the shared use of that land by local people.  
31 Such spaces provide means of connecting with nature, and, through nature, with one  
32 another. We return to these powerful signals of commonality and mutuality conveyed by  
33 the presence, use and protection of greens, below, in the context of analysis of the  
34 witness statements submitted in support of the application to register Smithy Wood as a  
35 green.  
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## 56 **Valuing nature and measuring loss in the Smithy Wood inquiry**

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3 In 2013, residents of a housing estate close to Smithy Wood sought to register it as a  
4 green within the terms of the 2006 Act. The name of the fifteen-hectare wood derives  
5 from the ironstone seam lying beneath which was worked, originally by monks, as early  
6 as the 1160s (Jones, 2009). The site is now naturalised and considered to be valuable  
7 in ecological terms (Sheffield and Rotherham Wildlife Trust, 2017), even though it has  
8 suffered neglect and harm due to damaging activities, such as quad bike racing,  
9 seemingly sanctioned by the landowner. The application to register the land was  
10 triggered by the site being threatened by the development of a motorway service station  
11 (the wood adjoins the M1 motorway, following its dissection by the motorway in the  
12 1960s).

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28 A public inquiry into the application took place in 2015 and the proceedings, chaired by  
29 an inspector, were formal in tone and structure. The inspector welcomed witnesses to  
30 the inquiry and listened carefully to their statements and answers to questions. Site  
31 visits, primarily for the inspector's benefit, took place at the beginning and end of the  
32 inquiry. During the inquiry, the witnesses (the majority being members of the residents'  
33 group supporting the application to register the wood as a green) were questioned  
34 closely on their statements, submitted in support of the application.  
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47 Analysis of this set of witness statements forms the basis of the Smithy Wood case  
48 study. These statements document how local people use and value land, and offer an  
49 opportunity for people to express concerns and fears about the possible loss of such  
50 spaces. Our focus on the role of witness statements, as community-based, historical,  
51 and educational texts informing decision-making practices and outcomes, was inspired  
52 by Doreen Massey's research detailing how ordinary spaces become 'deeply engrained'  
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3 in people's lives' (Massey, 2005: 13). Accordingly, our emphasis is upon how local  
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5 people's subjective and personal statements of relation and care towards the land  
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7 constitute significant examples of 'everyday evidence', as shaped by the writers'  
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9 situation, context and values.  
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14 This focus on witness statements also brings to life Massey's description of space as the  
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16 'simultaneity of stories-so-far' (2005:11). This now celebrated phrase describes  
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18 succinctly the 'contemporaneous existence of a plurality of trajectories' (2005:11), for  
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20 example, developmental, conservatory, or preservationist, capable of being pursued  
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22 concurrently in a certain space, with these paths determined by the outcomes of many  
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24 different relationships and interactions. Finally, the accent upon witness statements  
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26 represents a deliberate and empirically tested expansion of both methods and sources in  
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28 environmental law, developed in a broader research context aimed at appreciating the  
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30 common conditions and consequences of environmental injustices across time and  
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32 space (Holder and McGillivray, 2017).  
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40 Practically speaking, witness statements make up a vital part of the bundle of supporting  
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42 documents submitted with an application to register land as a green, and subsequently  
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44 provide a structural backbone to public inquiries convened to assist the decision maker in  
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46 finding whether the test to establish a green is satisfied. Witnesses face questioning on  
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48 the factual content of their statements by lawyers (usually, counsel) representing the  
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50 applicant community group and opponent and an authority appointed inspector oversees,  
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52 mediates, and reports these proceedings. Well over one hundred such statements may  
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54 support a single application. In the Smithy Wood case study, there were far fewer (26),  
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56 largely because of time constraints on the applicant. Late changes to the boundary of  
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3 the 'locality' (for the purposes of the test for greens in the 2006 Act) meant that only 15  
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5 statements were admissible as evidence, a decision which led to much legal debate, but  
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7 was ultimately upheld.  
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12 The first stage of research was a textual analysis of the witness statements, seeking out  
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14 the essential expressions of sentiments, values and understandings contained within  
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16 them, and grouping together the strongest and recurrent themes. We combined this  
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18 with observing the significance of the statements in structuring and directing lines of  
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20 questions at the subsequent five-day public inquiry. Finally, we assessed the influence  
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22 of witness statements on the substance of official decision-making via inquiry reports and  
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24 recommendations, supplementary legal opinions and decision letters, for example in  
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26 instances when the inspector relied explicitly on excerpts from these as supporting  
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28 evidence of the applicant's or opponent's cases, and by evaluating their relative  
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30 contribution to findings of fact and/or law. Working through these stages of analysis,  
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32 focussing on witness statements gave us unique insights into the (generally limited) role  
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34 of local people and community groups in local decision-making about their shared  
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36 environments and, more broadly, the practical working of local environmental  
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38 democracy. This documentary analysis, when combined with observing the inquiry and  
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40 attending pre-inquiry meetings and a site visit, amounts to an extensive body of research  
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42 material.  
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### 58 **Witness statements as everyday evidence**

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6 The content of the witness statements supporting the greens application and related  
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8 documentary material is analysed according to a thematic schema presenting key  
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10 themes in the statements and highlighting some of the connections and overlaps  
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12 between these. This schema distinguishes between generalisable (ecological and inter-  
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14 generational) interests and sectional (private, individual or vested) interests. These  
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16 terms describe broadly the potential outcomes of deliberative decision-making, as  
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18 analysed most fully in literature on planning, and the release of chemicals and GMOs  
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20 (Lee, 2009; Armeni, 2016). Models of deliberative democracy (such as Habermas' ideal  
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22 speech situation (1970)) are, according to Robyn Eckersley, more likely to privilege  
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24 generalisable interests over sectional interests. In her view, generalisable interests  
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26 more closely align with ecological interests, and their alliance creates an important driver  
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28 for the move from liberal democracy to ecological democracy, a precondition for the  
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30 founding of a 'green state' (Eckersley, 2004: 117).  
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38 Such an outcome – privileging generalisable interests over sectional interests - prevails  
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40 when, as Eckersley describes, political communication is undistorted by power  
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42 imbalances and when key, mutually constitutive, features of deliberative democracy are  
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44 present. These essential features are: *unconstrained dialogue* (mutual understanding  
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46 through rational assessment of arguments based on 'propositional truth, personal  
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48 sincerity, and normative rightness' (2004: 116)); *inclusiveness*, in the sense of 'enlarged  
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50 thinking' or the 'imaginative representation to ourselves of the perspectives and  
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52 situations of other[s] in the course of formulating, defending, or contesting proposed  
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54 collective norms' (2004:116); and *social learning*. The last feature encapsulates the  
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56 ideal speech situation. This is where participants engaged in public dialogue are '*moved*  
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3 to change their position by the force of the most appropriately reasoned argument rather  
4 than by extraneous considerations' (Eckersley, 2004: 117, original emphasis). This  
5 capacity to move position, when underpinned by a fundamental moral norm of respect  
6 for the autonomy of others, requires that individuals' proposed norms must be  
7 acceptable to others. For Eckersley this last requirement is a vital steering mechanism,  
8 engendering moves towards generalisable arguments, and public interest environmental  
9 advocacy (2004: 117).

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12 These key features, providing the basis for deliberative models of democracy, make  
13 such models well suited to dealing with polycentric and complex environmental concerns  
14 and problems (Eckersley, 2004: 117). In particular, deliberation provides conditions for  
15 the continual public testing of claims and questioning from the perspective of 'differently  
16 situated others', including from those most likely affected by a proposed project, policy or  
17 practice (Eckersley, 2004: 118). This greater openness of deliberative processes to  
18 those most exposed to risk and change ideally puts into reverse the ceding of decision-  
19 making to alliances of powerful professional, scientific and corporate elites, a regressive  
20 process described by Habermas as the 'scientization of politics' (1970: 62).

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23 Furthermore, the 'other-regarding' orientation of deliberative democracy may, for  
24 Eckersley, encompass an enlarged community of those who may benefit from public  
25 discourse and deliberation - including those yet to be born and non-human species  
26 (2004: 120). This ecological ideal of political communication, based on 'representative  
27 thinking' on behalf of others, offers a radical reinterpretation of speech community,  
28 restricted to communicatively competent subjects in Habermas' original workings.  
29 Eckersley conceives of such decision-making, when guided by a strong version of the  
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3 precautionary principle, as a form of trusteeship held by humans for nature (2004: 127-  
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5 38). This achieves the goal of protecting those incapable of participating actively in  
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7 discourse (Eckersley, 2004: 135).  
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12 In summary, precautionary, long-term, and public interest principles of decision-making  
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14 may flow from advancing a deliberative ideal, to the great benefit of a wide circle of  
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16 communities, generations, and species. The communicative ethic, extended by  
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18 Eckersley to include nature, enhances deliberation for the preservation of the  
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20 environment (Brulle, 2002: 7). Eckersley remains alert, though, to the procedural and  
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22 institutional challenges associated with trying to realize fully this set of ideal  
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24 circumstances in which ecological democracy and ecological justice can flourish,  
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26 recognising that, even in carefully constructed deliberative fora, political resistance and  
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28 privilege may predominate (2004: 119). Arguably, in adversarial settings such as the  
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30 Smithy Wood inquiry these latter characteristics are more pronounced.  
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38 In the inquiry, witness statements, both written and given as oral evidence, aligned  
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40 profoundly with generalisable interests, with many witnesses wanting to safeguard the  
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42 wood for their grandchildren, and, more generally, future generations of children and  
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44 residents. In contrast to this orientation, *sectional* interests establish the main frame of  
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46 reference for setting both the legal test and legal procedures and the participation and  
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48 conduct of participants in the decision-making process. Analysis of the relative  
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50 expression and influence of these interests therefore provides a useful frame by which to  
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52 conceptualise the concerns and underpinning values at stake, in this case of an  
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54 adversarial form of decision-making, in which applicants sought to establish a right to  
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56 continued use of the land. In the following presentation of this analysis, WE refers to  
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3 written evidence submitted in advance of the inquiry, and OE indicates oral evidence  
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5 given at inquiry.  
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## 10 **Generalisable interests**

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### 14 (i) *Futurity and legacy*

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16 A substantial number of witnesses to the inquiry included in their statements a sensitive  
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18 calculation of what is at stake for future generations, overshadowing statements about  
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20 their longstanding use of the wood for 'lawful sports and pastimes'. The following  
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22 extracts from witness statements provide examples of how local people express this  
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24 sense of responsibility to future generations:  
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28 '...how many trees have to be cut down unnecessarily, what legacy are we leaving our  
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30 grandchildren and their grandchildren [?]' (WE 13).  
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32 'This woodland of Smithy Wood dates back to at least 1200 AD. We really must protect it  
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34 for future generations, so that they can see nature as it is, and so that we don't lose any  
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36 more species of wildlife' (WE 14).  
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38 '...how important it is to maintain these areas for our future. I want to be able to show my  
39  
40 son where my parents took me as a child' (WE 3).  
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42 'Doesn't Ancient Woodland and Green Belt mean that these areas are to be preserved  
43  
44 for our future generations to enjoy' (WE 1).  
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46 'I want to make sure these woods, especially Smithy Wood, is there for the next  
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48 generation of youngsters as it has been for the last 20 generations and therefore  
49  
50 wholeheartedly support this application to make Smithy Wood a Village Green' (WE 11).  
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52 '[P]lease help us to protect this irreplaceable, Ancient Woodland of Smithy Wood from  
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54 any future development by granting our request to make Smithy Wood our village green,  
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56 so that it will be there for future generations to enjoy...there is a significant amount of  
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58 local residents who are all passionate about keeping this woodland for future enjoyment'  
59  
60 (WE 3).

Importantly, because only past (twenty year) use is relevant, this type of future-looking  
evidence, which both understands and respects the ecological 'timescape' (Richardson,

1  
2  
3 2017) is of no relevance. This has seriously adverse consequences for giving voice to  
4  
5 the 'future generational' elements of sustainability - the ability of natural systems to  
6  
7 continue indefinitely to sustain and nurture life' (Shiva, 1992: 189) - and jars with recent  
8  
9 attempts to oblige decision makers to retain biodiversity and ecological integrity for future  
10  
11 generations, through imposing statutory duties, overseen by a 'future generations'  
12  
13 commissioner.<sup>vii</sup>  
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19 Scales of time are also significant in the statements, making clear that the accessible  
20  
21 and 'everyday' quality of use of the wood contributed to making it so special. In the  
22  
23 wood, 'time repeats itself' (OE 8) - on a generational basis ('I go to the woods with my  
24  
25 grandchildren as I did as a child' (OE 5)), as well as yearly ('[T]here are a lot of  
26  
27 blackberries here...some years are better than others' (OE 4), and daily (for dog  
28  
29 walking). Such statements emphasise the seemingly arbitrary nature of the 20-year time  
30  
31 limit, and give weight to arguments about the need to better synchronise environmental  
32  
33 governance with nature's temporalities, fostering 'a slower, more flexible and holistic  
34  
35 understanding of time' (Richardson, 2017: 8).  
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#### 42 (ii) *Knowledge and learning*

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44 Both the witness statements and responses to questions at the inquiry make clear local  
45  
46 people's extensive knowledge of the wood, and its wide range of bird, plant and animal  
47  
48 species, as in this example:  
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50  
51 'There are many birds which can be seen [there] such as chaffinches, bramblings,  
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53 flycatchers, tree creepers and nuthatches. I have seen blue tits and great tits, jays,  
54  
55 magpies, crows, robins, wrens and chaffinches and heard the woodpeckers in  
56  
57 Springtime. Kestrels and buzzards...can now be seen flying over Smithy Woods. There  
58  
59 are foxes, shrews, hedgehogs, numerous rabbits and squirrels, and there was a badgers  
60  
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).



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5 This naming and locating of species in the wood provides a set of vocabulary for its  
6 protection and markers of the loss and displacement of species (Macfarlane, 2016). The  
7 knowledge held by local people about the wood further portrays a sensitivity to the  
8 seasons: '...the sound of a skylark's song is immediately recognisable and one of the  
9 great joys of early Summer' (WE 8), fostering a close connection between place and  
10 time.  
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21 Also apparent on the part of local residents is pride in their knowledge about the wood's  
22 distinctive features, most notably a glade of beech trees stunted by pollution from nearby  
23 coke ovens, built in the 1920s but now disused ('there is a beech coppice there unlike  
24 any other' (WE3)). During the inquiry and at the prior site visit, witnesses reminisced  
25 about being able to climb easily to their tops, even as children. Likewise, witnesses  
26 pointed to distinctive archaeological features in the wood, such as medieval bell pits,  
27 used in formative mining, and sawpits, for working timber.  
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40 The wood offered opportunities to educate children about nature, in an otherwise largely  
41 industrial landscape. One of the witnesses, a retired teacher, describes having collected  
42 leaves, acorns, seeds, and nuts from the wood to take to her class (OE 3). Another  
43 witness recalls visiting the wood for a school project on local history and paying attention  
44 to the bell pits (OE 1). In less formal terms, other witnesses linked enjoyment of the  
45 wood with learning:  
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54 'We all have many memories of walking through this woodland looking for leaves, birds,  
55 and enjoying what an ancient woodland can bring to a child and their education in caring  
56 for our wildlife' (WE 2).  
57

58 '...I used to go to see many species of birds, bugs and also enjoy being able to run  
59 through the leaves and learn from my parents how important it is to maintain these areas  
60

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3 for our future' (WE 4).  
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5

6 Similarly, a witness recalls tracing fresh animal trails left in the snow in the wood: '[W]hat  
7 better way to learn about nature...unlike most things today, it is free and educational'  
8  
9 (WE 3). Smithy Wood is remembered as 'an ideal place to teach children about  
10  
11 nature...we would go on nature walks, and take nets and jam jars and learnt to draw and  
12  
13 identify trees from their leaves' (WE 6).  
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20 These examples point to a form of environmental education firmly established in a place,  
21  
22 with an associated quality of personal connectedness (Holder, 2013; Howe, 2017). As  
23  
24 well as equipping children with a vocabulary for learning about nature, and attributing  
25  
26 meaning to their experiences in nature (Macfarlane, 2016:9), such embodied learning is  
27  
28 capable of forming part of a broader collective and reflective inquiry, providing the  
29  
30 motivation to act on behalf of nature (Orr, 2004), as these statements suggest:  
31  
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35 'In Smithy Wood I learnt the love of nature' (OE 6)  
36

37 '[M]y daughter spent her younger years playing in and around the woods and now takes  
38 a keen interest in the environment, which I believe stems from her time exploring the  
39 woods' (WE 6).  
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42

43 Mostly, the environmental education or learning from being in the wood was informal,  
44  
45 differing markedly from more organised forms of challenge-based ('outward bound')  
46  
47 education programmes. Instead, the wood offered children a place to build dens, camps  
48  
49 and tree houses (witnesses talked about having to 'pull their children' away at dusk for  
50  
51 tea). The picture drawn by witnesses was one of themselves, and their children, of  
52  
53 feeling 'at home' in the wood. Finding such a tangible connection to the natural world is  
54  
55 to feel 'at home in nature' (Cajete, 1994).  
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6 (iii) *Heritage and identity*  
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8 Rather than bearing witness to a single event, the written and oral evidence provides a  
9 remarkable record of the accretion and evolution over time of a depth of feeling and  
10 sense of connection with this area of land. Local residents relied heavily on a historical  
11 appraisal of the wood (Jones, 2009) to support their application, adding this to 'our  
12 reasons for wanting to retain this area as our village green, it is our history' (CRAG,  
13 2014). This strong sense of the wood constituting the community's history is not just a  
14 consequence of the ancient quality of the wood, revealed by topographical features such  
15 as bell pits, but also derives from its more recent history, such as coke smelting. The  
16 wood thereby contributes to the history of the area's broader industrial landscape. That  
17 the site has now naturalised, providing a home to flora and fauna ('the site had gone to  
18 nature for over 40 years since the coking plant at Smithy Wood closed in 1972' (WE 3)),  
19 provides a further layer of ecological history.  
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38 The historical importance of the site also has a personal dimension, with witnesses to  
39 the inquiry linking key dates in the wood's history (several fires, changes to entry points,  
40 quad bike racing) to significant points in their own private histories and family timelines –  
41 of children leaving home, retiring, falling ill, bereavement, the arrival of grandchildren,  
42 and ownership of dogs. The history of the wood is clearly and closely bound up with the  
43 identity of local people:  
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52 'I still cannot believe that anyone would even consider sacrificing yet another place of  
53 history...How many of these historic places do we have to pull down before someone  
54 realizes that this is our history we are destroying and stands up and says NO!!!' (WE 1).  
55  
56

57 'We...are in danger of losing some place of peace and quiet away from the humdrum of  
58 modern life and where we can learn about and see nature, our heritage, something so  
59 precious' (WE 8).  
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Smithy Wood dates to the twelfth century. As identified above, 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 legal test for registering land as a green.

(iv) *Care and responsibility*

The witness statements provide 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. The statements describe how local people perform a role of guardian or steward towards the wood, especially by monitoring and reporting to the local wildlife trust damage to the wood and loss of species, as indicated, for example, by not hearing cuckoo calls, even in springtime (OE 4).

A sense of care and responsibility flows from recognition of the damage suffered by the site in the recent past and the prospect of further damage, and eventual loss of the wood to development. 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

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3 is in terms of wildlife as well as loss of 'recreational space'. Less tangibly, the impact  
4  
5 envisaged, and a sense of care, is extended to future generations:  
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7  
8 '[T]he wildlife that lived there [Hesley Woods], we were told by the planners, would move  
9 to adjacent woodland, so it is imperative that we protect that woodland, Smithy Wood'  
10 (WE3).  
11

12  
13 'Having lost so much already I fear this loss for myself and future generations, but mostly  
14 for the wood itself' (WE 5).  
15

16  
17 Witnesses recognise what has already been lost in the wood from damage caused by  
18  
19 such vicissitudes as fires, but also more wilfully by the recreational ploughing up of the  
20  
21 land by quad bikes. This backward- and forward-looking assessment (what has been  
22  
23 lost and what will be lost) is bound up with, and reinforced by, an idea that certain  
24  
25 species, and the wood itself, are irreplaceable:  
26

27  
28 'To be able to walk amongst the native trees of England is a wonderful experience and  
29 bearing in mind the great loss of our magnificent elm trees and the current threat of Ash  
30 die back, please help us to keep this large section of Smithy Wood which could never be  
31 replaced' (WE 15).  
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34  
35 In this practical context of inquiry proceedings, the expression of care and responsibility  
36  
37 forges an important point of contact between two theoretical approaches – a feminist  
38  
39 argument of relational ethics and critical geography's contextual and constructivist  
40  
41 reading of space. It also forces recognition of an ethical root in how people relate to  
42  
43 and care for each other, and their environments, in a commonplace and everyday way,  
44  
45 in response to specific and often communal circumstances of meaning, correspondence,  
46  
47 and connection, as developed originally in feminist theory (Gilligan, 1982; Curtin, 1991).  
48  
49 Developing a feminist and politicised version of an ethic of care, Curtin debates a  
50  
51 distinction between 'caring *about*' (generalised, intellectualised and lacking direct  
52  
53 relatedness) and 'caring *for*' (contextualised and aimed at specified recipients) (Curtin,  
54  
55 1991; 67). She considers that caring *about* may 'lead to the kinds of actions that bring  
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3 one into the kind of deep relatedness that can be described as caring *for*: caring for  
4 particular persons in the context of their histories' (67). By analogy, caring deeply for a  
5 specific place in recognition of the histories, identities, and meanings it holds, can  
6 translate into a wider appreciation (which may be expressed politically) of its essential  
7 and integral connection with wider ecological and social systems. An 'ecological ethic of  
8 care' therefore provides one way by which environmental protection concerns can  
9 become 'scaled up', acting through, and beyond, particular geographies.

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21 Applying feminist theories in this way connects and combines a *relational* sense of self  
22 with a strong sense of responsibility for others, and the environment (Warren, 1990;  
23 Plumwood, 2002). This lends a contextual understanding of the relevance of specific  
24 circumstances and places for social relations and interactions, and the conduct and  
25 outcome of behaviours and decision-making, having a bearing upon broader threats to  
26 nature. As a result, complex, but clear, connections may be seen between everyday  
27 struggles to protect small parcels of land used on a communal basis and larger scale  
28 environmental degradation, and the impact of the widespread loss of such spaces on the  
29 state of human physical and mental health. This ecological orientation of a feminist  
30 conception of an ethic of care is capable of politicisation, so that it becomes relevant in  
31 conceptualising the problem, as well as the value, of protecting the natural world. For  
32 example, radical responses to climate change have become associated with an ethic of  
33 care, directed at safeguarding the lives of future generations (Okano, 2016).

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54 As a critical geographer working at the point of overlap between feminist theories of  
55 relational ethics and a corresponding ethic of care, Whatmore rejects the entrenched  
56 divisions and distinctions between nature and society, and between humans and non-  
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3 humans. She recognises in their place 'relational configurations – living fabrics, spun  
4 between humans and nature' (2000: 297). This moves us beyond treating environmental  
5 (non-human) relations as 'passive contextual extensions of human well-being' (1997:  
6 14), and towards imagining the non-human realm as completely interwoven with the  
7 actions of its human counterparts. By identifying the ethical significance of non-human  
8 life forms and ecological processes and systems, Whatmore advances as the basis for  
9 justice a 'more relational understanding of ethical competence' (1997: 41). This forces  
10 us 'to face up to a suddenly enlarged community that is no longer "other"' (2000: 270),  
11 but instead is bound up with shaping 'the business of [our] everyday living' (2000; 297).

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25  
26 Whatmore's argument for reconfiguring, and considerably enlarging, ethical community  
27 has significant spatial implications and these clearly intersect with, and reinforce, the  
28 driving concerns of various environmental protection movements. In particular,  
29 recognising an ecological dimension to an ethic of care brings a private, moral  
30 imperative of love, attention, and a sense of responsibility out of the private sphere and  
31 into the realm of environmental politics. This has potential to impact upon and challenge  
32 politics and law by showing up the great value and general interest of shared nature and  
33 the harshness and poverty of a collective loss of shared spaces. From this perspective,  
34 arguing for the protection of Smithy Wood, as a matter of care and responsibility, in the  
35 context of legal proceedings, becomes a highly significant and political act,  
36 notwithstanding that this argument failed to satisfy the legal test for establishing a green,  
37 which is more representative of sectional interests.

### 56 **Sectional interests in the inquiry**

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3 The main work of the inquiry was to establish, as a matter of law and fact, the  
4 satisfaction of the legal test - that the use of the wood for lawful sports and pastimes  
5 had been by a significant number of inhabitants<sup>viii</sup> of the neighbourhood and that the  
6 'quality of user' was sufficient.<sup>ix</sup> In ascertaining this evidence, counsel for the opponent  
7 developer cross-examined witnesses on the extent and nature of their use of the land  
8 via questions that were individualised, and predominantly quantitative and factual, such  
9 as the following:

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19 'How often did you walk your dog in Summer?'  
20 'How often in Winter?'  
21 'How many people did you see when you walked your dog?'  
22 'Does your dog walk on a lead?'  
23 'Does your dog come back when you call him?'  
24 'How did you get to the wood?'  
25 'Why did you not use the local park to walk your dog?'  
26 'What footwear did you use?'  
27  
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30  
31 These lines of questioning aimed at establishing whether the use of the wood was along  
32 established footpaths to reach a destination. Such use of footpaths suggests a linear  
33 'right of way', rather than more widespread untrammelled following of 'lines of desire'  
34 (paths that do not necessarily lead anywhere) for recreation, sports or pastimes,  
35 evidence of which could help to establish a green.<sup>x</sup> However, such cross-examination  
36 was also frequently strongly adversarial and aggressive in style, such as including  
37 questions aimed at discrediting the veracity of the accounts, for example by highlighting  
38 minor inconsistencies, and, more seriously, overtly questioning the credibility of the  
39 witnesses. This manner of advocacy had the effect of inhibiting responses, leading  
40 witnesses to make defensive or incomplete statements and to become distressed: one  
41 witness exclaimed 'I can hardly breathe now', and another, 'my knees are still knocking'.  
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Further negative consequences flowed from the requirement that applicants establish,



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3 precisely, the nature and extent of the use of the land over twenty years. These included  
4  
5 creating a heavy administrative load for the applicant and, at inquiry, a considerable  
6  
7 evidential burden for witnesses; recalling events from over a long period, and in fine  
8  
9 detail, proved difficult and frequently stressful. Witnesses appeared caught 'off guard'  
10  
11 when faced with lengthy lines of questions, particularly when these aimed at establishing  
12  
13 the existence of a 'right of way' rather than, as expected, a 'green'. Such cross-  
14  
15 examination revealed a disjuncture between the content of the witness statements, the  
16  
17 majority of which conveyed a great depth of feeling and connection with the land, and the  
18  
19 opponent counsel's narrower, sectional, points of reference, framed by the legal test. In  
20  
21 summary, attending the inquiry required considerable resources on the part of the  
22  
23 applicants - time, energy, legal expertise, administrative help, and emotional support –  
24  
25 and the need for these resources was exacerbated by the nature of the legal test,  
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27 demanding highly precise, and backward-looking, evidence of past use and enjoyment of  
28  
29 the wood.  
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### 38 *Inspector's findings of fact and law*

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42 The Inspector's report is a tightly written and factually descriptive document, recalling  
43  
44 times and dates of use, names of those who used the site, and even dog breeds. It  
45  
46 offers a representation of the inquiry proceedings, but edits out many of the broader  
47  
48 concerns detailed in witness statements submitted in support of the application, and  
49  
50 volunteered (rather than solicited) during questioning. In particular, the strict emphasis  
51  
52 upon quantitative assessments of the extent of use of the wood suggests objectivity and  
53  
54 rationality, and shifts attention away from possible alternative interpretations of the  
55  
56 evidence drawn from witnesses.  
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5 This is seen, for example, in the inspector 'stripping out' from his consideration all  
6  
7 accounts of use of the land by paths (Sheffield City Council, 2015: para. 716), leading to  
8  
9 a significant reduction in the number of people recorded as using the land for lawful  
10  
11 sports and pastimes. In response, the applicant argued that the very nature of the  
12  
13 wood, being impenetrable in places, led visitors to use meandering pathways, and that  
14  
15 this should not detract from their evidence about using the wood 'as a green'; nor should  
16  
17 it be considered indicative of the use of a 'right of way' (which more usually links two  
18  
19 points) (CRAG, 2015). The applicant considered the matter of paths and inaccessibility  
20  
21 of parts of the Wood should be 'approached in a common sense rather than a  
22  
23 mathematical way' (CRAG, 2015: 1). However, such arguments did not lead the  
24  
25 inspector to alter his finding that the 'vast majority of the use was for a footpath type use'  
26  
27 (Sheffield City Council, 2015: para. 6.31), with this having particularly harsh  
28  
29 consequences for the applicant's case.  
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38 Turning to the other findings of fact, as applied to the legal test, the inspector concluded  
39  
40 that the use of the Wood was insufficient to indicate general use by the local community  
41  
42 for informal recreation, rather than occasional use by trespassers. In this part of the  
43  
44 report, the inspector adopts a dismissive tone about the reliability of the witnesses'  
45  
46 accounts:  
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49 'Whilst all the witnesses were trying to assist the Inquiry I do not accept that the totality  
50  
51 of the use of Smithy Wood was very great. The frequency of use and the number of  
52  
53 people typically who use the site are difficult to recollect going back over a 20 year  
54  
55 period. There were some of the witnesses who were imbued with the idea that it would  
56  
57 be beneficial to "save" Smithy Wood from development. ... These factors whether  
58  
59 consciously or unconsciously led to some overstatement of the frequency of visits and  
60  
the consistency of visits over a period.  
... I accept the evidence of [an opponent witness] that people are often lazy about where  
to go for recreation and if it is not close they will not use it very regularly. There are of  
course exceptions to this and those with a motive to go further like dog walkers or nature

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3 enthusiasts may go further. However the distance leads me to suspect that the use of  
4 Smithy Wood was not as great as some suggested' (Sheffield City Council, 2015: para.  
5 7.6).  
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9 The specificity of the legal test, whilst posing considerable challenges for witnesses,  
10 clearly does not prohibit such broad assertions and assumptions on the part of the  
11 inspector. In addition, the emphasis upon quantitative assessments of use, and with the  
12 gaze of the inquiry turned firmly backwards in time, left no opportunity to consider the  
13 consequences of the loss of the wood to development, even though this was many of the  
14 witnesses' prime concern. Admission of such consequential reasoning would inevitably  
15 introduce a speculative and subjective element to the proceedings, at odds with the  
16 apparent objectivity of the inquiry.  
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30 Sheffield City Council decided not to register Smithy Wood as a village green, a decision  
31 based on the inspector's finding that the number of local people from the local  
32 neighbourhood who used the land was 'trivial and sporadic' (Sheffield City Council,  
33 2015: para. 7.11). In summary, local and ecological values were overrode by sectional  
34 interests, which were able to speak more to the legal criteria. The prospective  
35 developer's application to develop the site remains live since the application for  
36 development consent for the motorway service station is on hold while an application for  
37 a similar development in a nearby area is determined. This means that the documentary  
38 material and evidence gathered for the purpose of the greens application remains  
39 relevant and potentially influential in terms of other, pending (development consent)  
40 decisions and determinations. In particular, the local residents' group and wildlife trust  
41 have used the witness statements written to support the registration of the wood as a  
42 green to strengthen their continuing case against the service station development, most  
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3 recently taking the form of a petition calling on Government to protect all ancient  
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5 woodland.<sup>xi</sup> In this context of likely development, a planned compensation project aims  
6  
7 to 'offset' the resulting loss of biodiversity, offering an unfortunate opportunity to test  
8  
9 empirically the limits and potential flaws of such schemes in ecological terms (Sheffield  
10  
11 Wildlife Trust, 2017).  
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### 17 **Community-identified local green spaces in plan-making**

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21 Above, we used the term 'everyday evidence' to describe the rich body of local  
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23 knowledge and sentiment expressed in witness statements. These statements provide  
24  
25 an intimate record of lived experience, and interpreted history of a certain space, often  
26  
27 drawn from many sources, spanning generations, and with a gaze more upon the future,  
28  
29 than the past. Our analysis of witness statements and oral evidence reveals a strong  
30  
31 sense of the intrinsic value of a space, combined with an awareness of the political  
32  
33 possibility of pursuing alternative futures for that space, in a way which best cares for it,  
34  
35 and protects it for the benefit of future generations. This analysis of witness statements  
36  
37 emphasises also the construction and interpretation of knowledge according to its  
38  
39 specific contextual background. This is in line with feminist theorists' questioning of the  
40  
41 production and presentation of knowledge as objective, disengaged, and representing  
42  
43 universal truths (Rose, 1997; Whatmore, 1997). Haraway, for example, points to the  
44  
45 'slippery ambiguities' of objectivity and the concomitant depiction of truth as universal by  
46  
47 stressing that knowledge is instead embodied, marked and defined by its place and time  
48  
49 of origin (1988: 580). Her search for a 'usable' and feminist doctrine of objectivity leads,  
50  
51 through an allegory of differential and partial positions in vision, to recognising the  
52  
53 significance of 'situated knowledge' (1988: 580).  
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5 The Smithy Wood case study highlights the considerable practical difficulties involved in  
6 gathering, and giving voice to, the depth and complexity of meanings underpinning  
7 community-based, or 'everyday' evidence, in making decisions about the protection of  
8 the environment, in this case, via the legal process of registering greens. From feminist  
9 theory, an ethic of care, developed in private settings of responsibility, underpins our  
10 argument that people's caring connection with a local area, on an individual and  
11 collective basis, should be better respected and dignified, with specific political and legal  
12 consequences flowing from this recognition.  
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26 English national planning policy has latterly provided a forum for the reception of such  
27 arguments about recognising the collective value of local spaces, with the introduction of  
28 a discretionary 'local green space' designation in planning policy. This new designation  
29 forms one aspect of a far-reaching programme of 'democratic renewal' of the planning  
30 system, based on principles of localism and neo-liberalism (Gallent and Robinson, 2013;  
31 Allmendinger, 2016). The 'local green space' designation is reserved for spaces which  
32 are 'demonstrably special to a local community and hold[s] a particular local significance,  
33 for example because of its beauty, historic significance, recreational value...tranquillity or  
34 richness of wildlife' (NPPF, 2018: 29). Although presented in policy as forming part of a  
35 drive to 'promote healthy and safe communities' (NPPF, 2018, para. 99), the designation  
36 arose more specifically from the practical need to mitigate the increased difficulty of  
37 registering greens following enactment of the Growth and Infrastructure Act 2013 (HM  
38 Government, 2014).  
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58 The 'local green space' designation embeds in procedures to develop local and  
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3 neighbourhood plans. Aspects of these procedures bear some of the hallmarks of  
4 deliberative decision-making, discussed above, particularly encouraging public  
5 participation and discussion on the merits of attributing this status to a particular place.  
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7 The experience of designating local green spaces has not yet been subject to sustained  
8 scrutiny, although the drafting of tool-kits suggests that both local authorities and  
9 pressure groups are getting prepared,<sup>xii</sup> and some examples of both successful and  
10 unsuccessful cases are emerging, including in parallel with an application to register land  
11 as a town or village green. In principle, the 'specialness' criteria is broad enough to  
12 embrace the broad categories of generalised interests outlined above in the analysis of  
13 witness statements (the headlines of which are legacy, identity, learning and care).  
14  
15 However, early signs suggest that demonstrating that land is special to the local  
16 community is not straightforward, leading some local authorities to design quantitative  
17 criteria and 'tick box' methodology to signal 'specialness', as a proxy for deliberation  
18 (Elmbridge Borough Council, 2016).  
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38 Importantly, the local green space designation opens up a prospect of legal recognition  
39 of a broader category of 'greens' than that corresponding to the slender set of legal  
40 criteria which must be satisfied in order that land be registered as a 'town or village  
41 green' under the 2006 Act. However, local green space designation may prove far  
42 weaker in terms of legal protection because of the requirement that allocations of such  
43 spaces should be 'consistent with local planning of sustainable development...and  
44 complement investment' for example in home building and other infrastructure (NPPF,  
45 2019). Perhaps most problematically, policies for managing development within a  
46 designated local green space should be 'consistent with those for green belts' (para.  
47 101), a land designation latterly coming under increasing pressure from developmental  
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### 8 **Conclusion: recognising a collective sense of care**

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12 Local open spaces such as the ancient woodland of Smithy Wood help to create and  
13 maintain vital connections between biodiversity and social diversity, and to enhance  
14 quality of life. People using and sharing such spaces on an everyday basis recognise  
15 these connections and find value in them and the relationships that develop as a result.  
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17 Our analysis of the role and significance of witness evidence during the Smithy Wood  
18 inquiry establishes that local people there tended to express broad-ranging and forward-  
19 looking (generalisable) interests in the preservation of this nearby area of open land.  
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21 The language of witnesses seeking to register Smithy Wood as a green is heavy with  
22 powerful and evocative ideas – of legacy, locality, and futurity. These ideas, forming the  
23 basis of much current environmental thinking, are rooted deeply in people’s relationship  
24 with ‘nearby nature’.  
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40 In contrast, the ‘lawful sports and pastimes’ test, providing the organising focus of the  
41 greens designation process, creates a restrictive and sectional evidential focus which  
42 fails to recognise, capture or connect the broader social, historical and ecological  
43 significance of the land for the local community. In the case of the Smithy Wood inquiry,  
44 the generous and well-founded desire on the part of local people to protect land for  
45 ecological reasons and for the enjoyment, use and education of future generations was  
46 missing from the core subject matter for deliberation and decision-making. This  
47 contributed to considerable tension in the inquiry and a sense of unease and unfairness  
48 on the part of local people, faced with the prospect of a radical and disturbing change to  
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3 their nearby environment.  
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8 Working from feminist theories, an ecological rendering of an ethic of care offers a  
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10 potentially expansive but firm theoretical underpinning to environmental debate,  
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12 deliberation and decision-making. This theoretical development recognises the  
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14 significance and special quality of relationships embedded in the material world of  
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16 woods and a multitude of other green and shared spaces. A potentially important and  
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18 recent representation of this is the ability of communities to attribute 'specialness' to land  
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20 in the very practical domain of policy setting and local plan-making when seeking to  
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22 designate areas of land as local green spaces.  
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28 Local plan making offers also an opportunity to deliberate the changing nature and  
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30 significance of shared spaces as the ecological imperatives of renewable and micro-  
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32 energy generation and local food growing come clearer into focus. Alongside such  
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34 strategic planning, this designation may further be a reactive and lobbying tool to counter  
35  
36 the loss of sites designated for their 'special' quality, as suggested by the flurry of local  
37  
38 plans opposing the periodic use of planning as a vehicle for rapid economic growth  
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40 (Gallant and Robinson, 2013: 158). This quality is reminiscent of groups seeking town  
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42 or village green registration to protect land from development, an ability now more or  
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44 less arrested. In summary, town or village green registration and 'local green space'  
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46 designations are not mutually exclusive decision making processes, but the greater  
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48 scope for public participation and deliberation may make local green space designation  
49  
50 more amenable to the expression and recognition of a broader range of relational  
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52 attributes, reflecting interests of a general, communal and ecological nature. Positively,  
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54 the coordination and collaboration of community members, engaged in the demanding  
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3 legal enterprises of greens registration or plan making, can have fruitful consequences  
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5 for civil society, regardless of outcomes (Gallent and Robinson, 2013: 162).  
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10 In this article, we have highlighted how the process of registering greens can elicit  
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12 precise documentation of practices of everyday life and small actions of community,  
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14 relation and responsibility, and we have sought to draw out the meaningful nature of  
15  
16 these examples of 'everyday evidence'. These practices and actions constitute the  
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18 material basis for 'better future histories' in ecological terms (Gear and Grant, 2015: 1),  
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20 with multiple and highly specific processes of exchange and inter-relation constructing  
21  
22 and shaping spaces (Massey, 2005; Keenan, 2015: 55), in this case by demarcating the  
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24 boundaries of protection for valued shared spaces. Of course, recognising relations of  
25  
26 care and other ecological subjectivities within these boundaries raises the need to  
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28 consider broader and more far-reaching ethical, legal and political responsibilities to  
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30 nature and community, *outside* these areas, and on a range of geographical scales.  
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39

#### 40 **Bibliography**

41  
42  
43  
44 Alcock, I. et al (2014) 'Longitudinal Effects on Mental Health of Moving to Greener and  
45  
46 Less Green Urban Areas', 48(2) *Environmental Science and Technology* 1247.  
47  
48  
49

50  
51 Allmendinger, P. (2016) *Neoliberal Spatial Governance* (Routledge).  
52  
53

54  
55  
56 Armeni, C. (2016) 'Participation in Environmental Decision-Making: Reflecting on  
57  
58 Planning and Community Benefits for Major Wind Farms' 28(3) *Journal of Environmental*  
59  
60

1  
2  
3 Law 415.  
4  
5  
6  
7

8 Beitel, K. (2013) *Local Protests, Global Movements: Capital, Community and State in*  
9 *San Francisco* (Temple University Press).  
10  
11  
12  
13

14 Blomley, N. (2004) *Unsettling the City: Urban Land and the Politics of Property*  
15 (Routledge).  
16  
17  
18  
19

20  
21 Brennan, J. (ed) (2016) *Re: Development: Voices, Cyanotypes and Writings* (Silent  
22 Grid).  
23  
24  
25

26  
27  
28 Brulle, R. (2002) 'Habermas and Green Political Thought: Two Roads Converging',  
29 11(4) *Environmental Politics*, 1.  
30  
31  
32

33  
34  
35 Cajete, G. (1994) *Look to the Mountain: An Ecology of Indigenous Education* (Kivaki  
36 Press).  
37  
38  
39

40  
41  
42 Campaign for Real Village Greens

43  
44 [http://www.campaignforrealvillagegreens.org.uk/index\\_files/CRVGHoWItWorks.htm](http://www.campaignforrealvillagegreens.org.uk/index_files/CRVGHoWItWorks.htm)  
45  
46  
47

48  
49 Clarke, A. (2006) 'Creating New Commons: Recognition of Communal Land Rights  
50 within a Private Property Framework' 59(1) *Current Legal Problems*, 319.  
51  
52  
53

54  
55  
56 Cooper, D. (2013) *Everyday Utopias: The Conceptual Life of Promising Places* (Duke  
57 University Press).  
58  
59  
60

1  
2  
3  
4  
5 CRAG (Cowley Residents Action Group), (2015) *Reply to Inspectors Report*

6 <http://democracy.sheffield.gov.uk/documents/s20183/3%20Appendix%20C.pdf>

7  
8  
9  
10 - (2013) *Summary of Application*.

11  
12  
13  
14 Curtin, D. (1991) 'Towards an Ecological Ethic of Care' 6(1) *Hypatia* 60.

15  
16  
17  
18  
19 DEFRA (2013) *Survey of Town and Village Green Applications under s. 15 Commons*

20  
21 *Act 2006* [file://ad.ucl.ac.uk/homeH/ucltjhb/Documents/pb14190-town-village-green-](file://ad.ucl.ac.uk/homeH/ucltjhb/Documents/pb14190-town-village-green-survey-results-2013.pdf)  
22 [survey-results-2013.pdf](file://ad.ucl.ac.uk/homeH/ucltjhb/Documents/pb14190-town-village-green-survey-results-2013.pdf)

23  
24  
25  
26  
27  
28 Eckersley, R. (2004) *The Green State: Rethinking Democracy and Sovereignty* (MIT  
29 Press).

30  
31  
32  
33  
34  
35 Elmbridge Borough Council (2016) *Local Green Space Designation Study* [,accessed via](http://elmbridge.gov.uk/planning)  
36 [elmbridge.gov.uk/planning](http://elmbridge.gov.uk/planning)

37  
38  
39  
40  
41  
42 European Commission (2013) *Green Infrastructure: Enhancing Europe's Natural Capital*  
43 COM(2013) 249 final (CEC).

44  
45  
46  
47  
48  
49 Farley, P. and Symmons Roberts, M. (2012) *Edgelands: Journeys into England's True*  
50 *Wilderness* (Vintage).

51  
52  
53  
54  
55  
56 Gallent, N. and Robinson, S. (2013) *Neighbourhood Planning: Communities, Networks*  
57 *and Governance* (Policy Press).

1  
2  
3  
4  
5 Gilligan, C. (1982) *In a Different Voice* (Harvard University Press).  
6  
7  
8  
9

10 Gear, A. and Grant, E. (2015) 'Introduction: Thought, Law, Rights and Action in an Age  
11 of Environmental Crisis – in Search of Better Future Histories', in A. Gear and E. Grant  
12 (eds), *Thought, Law, Rights and Action in the Age of Environmental Crisis* (Edward  
13 Elgar).  
14  
15  
16  
17  
18  
19

20  
21 Grindrod, J. (2017) *Outskirts: Living Life on the Edge of the Green Belt* (Sceptre).  
22  
23  
24  
25

26 Habermas, J. (1970) *Toward a Rational Society: Student Protest, Science and Politics*  
27 (Beacon Press).  
28  
29  
30  
31

32  
33 Haraway, D. (1988) 'Situated Knowledges: the Science Question in Feminism' 14(3)  
34 *Feminist Studies* 575.  
35  
36  
37  
38  
39

40 Holder, J. (2013) 'Identifying the Points of Connection and Engagement between  
41 Environmental Education and Legal Education' 40(3) *Journal of Law and Society*, 541.  
42  
43  
44  
45

46 Holder, J. and McGillivray, D. (2017) 'Bringing Environmental Justice to the Centre of  
47 Environmental Law Research: Developing a Collective Case Study Methodology' in A.  
48 Philippopoulos-Mihalopoulos and V. Brooks (eds) *Research Methods in Environmental*  
49 *Law: A Handbook* (Edward Elgar).  
50  
51  
52  
53  
54  
55

56  
57  
58 Howe, H. (2017) 'Making Wild Law Work – the Role of "Connection with Nature" in  
59  
60

1  
2  
3 Education and Developing an Ecocentric Property Law' 29(1) *Journal of Environmental*  
4  
5 *Law* 19.

6  
7  
8  
9  
10 HM Government (2014) *Registration of New Town or Village Greens* (Ministry of  
11  
12 Housing, Communities and Local Government).

13  
14  
15  
16  
17 Jones, M. (2009) *Sheffield's Woodland Heritage* (4<sup>th</sup> edition) (Wildtrack).

18  
19  
20  
21  
22 Keenan, S. (2015) *Subversive Property: Law and the Production of Spaces of Belonging*  
23  
24 (Routledge).

25  
26  
27 Kirwan, S., Dawney, L. and Brigstocke, J. (eds) (2015) *Space, Power and the Commons*  
28  
29 (Routledge).

30  
31  
32  
33 Lawton, J. H. et al (2010) *Making Space for Nature: A Review of England's Wildlife Sites*  
34  
35 *and Ecological Networks* (DEFRA).

36  
37  
38  
39 Lee, M. (2009) *EU Regulation of GMOs: Law and Decision-Making for a New*  
40  
41 *Technology* (Edward Elgar).

42  
43  
44  
45 Mackay, D. 'New Commons: Reconnecting People and Nature' (2014) 16  
46  
47 *Environmental Law Review* 1.

48  
49  
50  
51 McCardle, D. (1991) "A Ruling Class Conspiracy": Law, Enclosure and the Politics of  
52  
53 Leisure' 8 *Nottingham Law Journal* 69.

54  
55  
56  
57 Macfarlane, R. (2016) *Landmarks* (Penguin).

- 1  
2  
3 Massey, D. (2004) 'Geographies of Responsibility', 86(1) *Human Geography* 5.  
4  
5 - (2005) *For Space* (Sage).  
6  
7  
8  
9  
10 Meager, R. (2010) "'The Village Green Industry": Back in Business' 69 *Cambridge Law*  
11  
12 *Journal* 238.  
13  
14  
15  
16  
17 Mitchell, C. (1983) 'Case and Situation Analysis' 31(2) *Sociological Review* 188.  
18  
19  
20  
21  
22 Okano, Y. (2016) 'Why Has the Ethics of Care Become an Issue of Global Concern?'  
23  
24 25(1) *International Journal of Japanese Sociology* 85.  
25  
26  
27  
28  
29 Open Spaces Society (2014) 'Opinion: The Tide has Turned' 30(1) *Open Spaces* 1.  
30  
31  
32  
33 Orr, D. (2004) *Earth in Mind: On Education, Environment and the Human Project* (Island  
34  
35 Press).  
36  
37  
38  
39  
40 Pieraccini, M. (2010) 'Sustainability and the English Commons: A Legal Pluralist  
41  
42 Analysis' 12(2) *Environmental Law Review* 94.  
43  
44 Plumwood, V. (2002) *Feminism and the Mastery of Nature* (Routledge).  
45  
46  
47  
48  
49 Public Health England and UCL Institute of Health Equity (2014) *Local Action on Health*  
50  
51 *Inequalities: Improving Access to Green Spaces* (PHE).  
52  
53  
54  
55  
56 Richardson, B. (2017) *Time and Environmental Law: Telling Nature's Time* (Cambridge  
57  
58 UP).  
59  
60

1  
2  
3  
4  
5 Rose, G. (1997) 'Situating Knowledges: Positionality, Reflexivities, and Other Tactics'  
6  
7  
8 21(3) *Progress in Human Geography* 305.  
9

10  
11  
12 Sen, A. (2009) *The Idea of Justice* (Allen Law).  
13  
14

15  
16 Sheffield and Rotherham Wildlife Trust (2019) 'Take Action for Smithy Wood!'  
17

18  
19 <http://www.wildsheffield.com/smithywood>.  
20  
21

22  
23 Sheffield City Council (2015), *Report of Inspector*,  
24

25  
26 <http://democracy.sheffield.gov.uk/mgAi.aspx?ID=11540>  
27  
28

29  
30 Shiva, V. (1992) 'Recognising the Real Meaning of Sustainability' in D.E. Cooper and  
31  
32 J.A. Palmer (eds) *The Environment in Question* (Routledge).  
33  
34

35  
36  
37 Warren, K. (1990) 'The Promise and Power of Ecofeminism' 12(2) *Environmental Ethics*  
38  
39 125.  
40  
41

42  
43  
44 Whatmore, S (2000) 'Heterogeneous Geographies: Reimagining the Spaces of  
45  
46 N/nature', in I. Cook, D. Crouch, S. Naylor and J. Ryan (eds) *Cultural*  
47  
48 *Turns/Geographical Turns: Perspectives on Cultural Geography* (Routledge).  
49  
50

51  
52  
53 Whatmore, S. (1997) 'Dissecting the Autonomous Self: Hybrid Cartographies for a  
54  
55 Relational Ethics', 15 *Environment and Planning D: Society and Space* 37.  
56  
57  
58  
59  
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55  
56  
57  
58  
59  
60
- i S.12 Inclosure Act 1857 and s. 29 Commons Act 1876. UKHL 25.
  - ii *R (McAlpine) v Staffs CC* [2002] EWHC 76 (Admin).
  - iii More up to date statistics are lacking, although the Open Spaces Society deals with approximately 600 such cases a year.
  - iv *R (Barkas) v North Yorkshire County Council* [2014] UKSC 31, overturning *R (Beresford) v Sunderland CC* [2003] UKHL 60.
  - v *R v Oxfordshire County Council ex parte Sunningwell Parish Council* [2000] 1 AC 335, 349D-351H.
  - vi *R (Beresford) v Sunderland CC* [2003] UKHL 60.
  - vii Well-Being of Future Generations (Wales) Act 2016.
  - viii *McAlpine* (n. ii).
  - ix *R (Lewis) v Redcar and Cleveland BC* [2010] UKSC 11.
  - x *R (Laing Homes Ltd) v Buckinghamshire CC* [2003] EWHC 2803, paras. 105-111.
  - xi “New twist in four-year battle for Smithy Wood”, *The Yorkshire Post*, 30 March 2017; ‘New front opened in fight to prevent motorway service station from being built on ancient woodland in Sheffield’, *The Star*, 5 January 2018.
  - xii E.g. Open Spaces Society, <https://www.oss.org.uk/new-tool-kit-to-save-open-spaces>.