

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

3 JUNE 2011

LAND AT CASTLE PARK, WHITBY APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN

1.0 PURPOSE OF REPORT

- 1.1 To report on an application (“the TVG Application”) for the registration of land at Castle Park, Whitby identified on the plan comprising Appendix 1 (“the TVG Application site”) as a Town or Village Green.

2. BACKGROUND

- 2.1 Under the provisions of the Commons Act 2006 (“the Act”) the County Council is a Commons Registration Authority and so is responsible for maintaining the Register of Town and Village Greens for North Yorkshire.
- 2.2 Section 15(2) of the Act provides for land to be registered as green where:
- (a) *a significant number of the inhabitants of a locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years*
- and
- (b) *they continue to do so at the time of the application*
- 2.3 A registration authority needs to be satisfied that on the balance of probabilities all the elements of Section 15(2) have been demonstrated by an application for it to be approved. The onus of proof rests with the applicant.

3.0 APPLICATION AND SUBMISSIONS OF SUPPORT

- 3.1 The application, submitted by Susan Grimoldby, who is a local resident of the Castle Park housing estate within which the land in question is situated, was received by the County Council on 9 June 2009. It relies on the criteria contained in Section 15(2) as having been met.
- 3.2 The application includes the submission of 43 evidence questionnaires together with 24 letters of support and copies of seven letters of objection previously sent to Scarborough Borough Council in relation to an earlier planning application affecting the site. Subsequently a further 26 forms have been submitted and have been received following public notification of the application.

- 3.3 A copy of the TVG Application and the additional completed evidence questionnaires is attached as Appendix 2. Photographs submitted with the TVG Application will be distributed to members at the meeting.
- 3.4 Papers and representations submitted in the application relating to planning strategies, provision of parks and green spaces, etc, including the copy correspondence relating to a previous planning application, are all immaterial and require to be disregarded for the purposes of assessing the TVG application. Assessing the application is a matter of evidential assessment as to whether or not the criteria set out in Section 15(2) have been met. The merits of the site being or not being a village green have no place in that assessment.

4.0 APPLICATION SITE

- 4.1 Indexed photographs of the site taken in July 2009 will be distributed to Members at the meeting.
- 4.2 The TVG Application site comprises a combination of open flat grassland, two former tarmac-surfaced tennis courts and an area of hard standing and play wall. The hard standing is understood to have been formerly equipped with children's play equipment and the tennis courts understood to have at one time been enclosed by fencing.
- 4.3 Sited on a small section of the TVG Application site is what is understood to be currently the office building of the local officer of the Ministry of Defence (MoD) Hive Information Service (see photo 9). This building is not identified on the plan at Appendix 1. An adjacent building and open play area behind it which is used as a children's day nursery does not form part of the TVG Application site though land fronting it, comprising steps and a grass verge, does (see photo 11).
- 4.4 In total the site extends to approximately 1.246 hectares (3.081 acres)

5.0 OWNERSHIP

- 5.1 The TVG Application site comprises part of an area of what was originally farmland known as Parsons Close Farm and which was purchased by the Ministry of Air in 1961. The Ministry subsequently constructed staff housing on the site it is understood to provide largely for staff of RAF Fylingdales. It seems the layout of the estate included the TVG Application site as recreational land, and that its size and characteristics have remained relatively unchanged since the initial construction of the estate.
- 5.2 As part of a nationwide sale of MoD housing stock the ownership of the Castle Park housing estate, including the TVG Application site, was transferred to Annington Property Limited in November 1996. In summary it is understood the terms of the transfer included provision for the leaseback to the MoD of houses that were still occupied by MoD service staff and for houses to be taken "in-hand" by Annington Property Limited when they became vacant.

- 5.3 Annington Property Limited was owner of the TVG Application site at the time of the TVG Application. The TVG Application was prompted by a proposal to develop the TVG Application site for housing which was the subject of a planning application submitted to Scarborough Borough Council.
- 5.4 Subsequent to the TVG Application being submitted, Annington Property Limited sold the land identified on the sales particulars attached as Appendix 3 at public auction in May 2010 to local house builders Yorkshire County Homes Limited. The sale covered most of but not the entire TVG Application site. A small section in the central area of the TVG Application site continues to be owned by Annington Property Limited and is currently leased to the MoD. This comprises the site of the office of the local RAF Hive Information Officer (see para. 4.2 above). The neighbouring children's day nursery (outwith the TVG Application site) is subject to the same lease arrangement.

6.0 OBJECTION

- 6.1 Objection to the TVG Application has been lodged by Yorkshire County Homes Limited in a "Statement of Objections" submitted on their behalf by Walker Morris solicitors together with a covering letter dated 19 July 2010 (all attached as Appendix 4)
- 6.2 In accordance with due process the objection was forwarded to the Applicant for comment and her response is attached as Appendix 5.
- 6.3 Correspondence opposing points raised in the Statement of Objection was also submitted independently by Mr P L Keens, a local resident claiming 30 years' acquaintance with the site (Appendix 6)
- 6.2 Walker Morris subsequently confirmed that their client had no further representations to make and in doing so reaffirmed the objections submitted with their letter dated 19 July 2010.

7.0 EVIDENCE REVIEW

- 7.1 Significant number of the inhabitants of a locality, or of any neighbourhood within a locality
- 7.1.1 The TVG Application relies on the Castle Park Estate as comprising a neighbourhood within the locality of the electoral ward of Mayfield.
- 7.1.2 Government guidance sets out that the term "locality" means a recognised administrative unit. In relying on the Mayfield electoral ward the application appears to meet this element of the criteria.
- 7.1.3 In considering what constitutes a "neighbourhood" for the purposes of Section 15(2) the courts have ruled that:

"a registration authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness"

Therefore a neighbourhood should be recognisable as a community in its own right. It is not required to be a formally designated administrative area.

- 7.1.4 The history and nature of the Castle Park Estate is such that there seems little doubt that it constitutes what amounts to a neighbourhood under Section 15(2). The landowner's Statement of Objection does not raise issue with the adequacy of the "locality" or neighbourhood" submitted by the Applicant for the purposes of Section 15(2).
- 7.1.5 Whilst there is no set formula for calculating what constitutes a "significant number" in any one case it does not need to be necessarily considerable or substantial. The totality of the circumstances of a case blend to help determine what level of use is "significant". The extent of use, in terms of numbers, needs to signify evidence of "general use by the local community." There is no formula as to precisely what number of users will demonstrate that in any one case.
- 7.1.6 At section 4 the Statement of Objection contains a claim that the user evidence does not represent a satisfactory spread across the neighbourhood to demonstrate use by inhabitants of the neighbourhood in general. Attached as Appendix 7 is a plan of the Castle Park Estate. Each of the streets from which claims have been submitted are shown emboldened. Your officers believe the distribution of claims considered with all the other circumstances of the case adequately suggest the evidence claims contained in the TVG Application demonstrate claims of usage from a sufficient spread of residents across the neighbourhood
- 7.1.7 In summary, a total of 94 representations either as a letter or completed evidence of use form have been received from the Applicant in support of the TVG Application. Of those 94 there are eight which appear to be duplicate submissions. Around 20 of those forms and letters require to be disregarded because they either fail to specify either a period of use or a type of use, or simply support the merits of the site being a village green. Appendix 8 comprises a summary spreadsheet of the evidence of those letters and forms submitted by the Applicant.
- 7.1.8 The majority of letters and witness statements submitted in support of the application refer to the length of time those making the submission have lived on the Castle Park Estate (ie, the neighbourhood) but rarely to the consistency of uses mentioned over the period concerned. The landowner highlights this particularly at para 5.9 of the Statement of Objection. It is perhaps arguable witnesses imply consistent use over the time they have been resident. However, fuller scrutiny, for example by cross examination, would provide opportunity to obtain clarification and verification of the precisely what has been claimed.

7.2 As of right

- 7.2.1 In its role as Registration Authority the County Council has to be satisfied the claimed use over the relevant 20-year period has not been by force, stealth nor with the permission or licence of the owner (at the time of use) for it to be satisfied that claimed use was use made “as of right”. Where claimants have been permitted to be on the subject land then their use of the land will have been “by right” and not “as of right”.
- 7.2.2 From the evidence submitted it would appear that the “neighbourhood” in this case when first constructed comprised entirely Ministry of Defence housing, and that the TVG Application site formed part of the layout of that housing provision. In all likelihood residents of the “neighbourhood” at that time were effectively using the site with permission of their employer/landlord and then landowner the MoD. Consequently those residents’ use will not have amounted to a use exercised “as of right.”
- 7.2.3 The Applicant submits (and has backed this up with documentary evidence) that a total of 133 houses in the neighbourhood were progressively sold off between 1973 and 1994. The likely effect of this will have been that, from the date of sale, any user originating from those houses will not then have been making use of the TVG Application site in exercise of an effective permission given to them by the MoD, and so any such user is likely to have amounted to a use “as of right”.
- 7.2.4 At the commencement of the 20-year period preceding the TVG Application it appears at least 108 homes within the neighbourhood had been sold (perhaps more). The remaining sales referred to in 7.2.3 were completed by 1994. There is no indication of whether or not purchasers were or remained employees of the MoD after buying their house.
- 7.2.5 Subsequent to those property sales described in 7.2.4, use of the TVG Application site by residents of “the neighbourhood” is likely to have been by a mixture of users originating both from premises sold off and other houses still leased to the MoD (MoD houses). Consequently from that time groups of users may have comprised a mix from MoD and non-MoD houses with at times the predominant user originating from MoD houses and at other times not. Further, at other times groups of users will have been entirely from either non-MoD premises or alternatively entirely from MoD houses. Users originating from MoD houses are likely to have effectively been using the site by permission of the MoD (“by right” – as opposed to “as of right”). Without full scrutiny and examination of the evidence of user it is difficult to make a clear assessment of the extent of what user if any was “as of right” following the sales of houses in the “neighbourhood”. Prior to that time use by residents of the “neighbourhood” will almost certainly have been effectively at the permission of the MoD arising from their occupation of staff housing.
- 7.2.6 The MoD relinquished any interest in the vast majority of the site in 2002. Clearly any use of the TVG Application site after that time by any persons (ie, whether originating from MoD houses or not) cannot have been with any form of permission from the MoD.

7.2.7 Issues raised by the interested parties concerning signs erected in or around 2006/2007 would appear to be of little significance. In the event that usage subsequent to the sales of housing referred to in paras 7.2.3 and 7.2.4 of this report were accepted to be “as of right” and by a “significant number” then that is highly likely to have been the case for at least 20 years prior to the erection of the signs. In that case, Section 15(7)(b) of the Commons Act would apply and the presence of the signs would have no effect on such use continuing to be “as of right”. In the event the use prior to their erection did not constitute use “as of right” then any issues over their effect would be immaterial as a key element of the Section 15(2) will not in any case have been met.

7.3 Lawful sports and pastimes

7.3.1 The courts have interpreted what constitutes “lawful sports and pastimes” widely. The vast majority of the types of uses referred to in the letters and evidence of use forms submitted with the TVG Application on the face of it comprise “lawful sports and pastimes”.

7.3.2 At Section 6 of the Statement of Objection the landowner contends that claimed walking (including dog walking) is more likely to have comprised the use of routes of a linear nature (more akin to establishing a public right of way) rather than the exercising of a right across the site more widely, though the point is not substantiated with any strong reasoning. For a large part references in the evidence to walking and dog walking are not specific about whether it was lineal or otherwise. There are occasional references to crossing the site to visit other residents, which suggests lineal usage. At the same time there are occasional references to exercising dogs, which suggests non-lineal use.

7.3.3 The landowner also contends that it is not clear from the letters and evidence of use forms what extent of the TVG Application site is claimed to have been used in those representations. Whilst a registration authority does not have to be satisfied that every square inch of an application site has been used, it has the option to register part only of an application site if satisfied that the requirements of Section 15(2) have been met across part only of the site. Further investigation and scrutiny of the evidence is necessary to clarify this point, in particular it is suggested, in respect of the site of the former tennis courts and the hard standing comprising the former site of children’s play equipment. The Applicant’s comments at Appendix 5 seek to add further meat to the bones of the submitted claims, but this could only be fully clarified by further scrutiny of the claimants to test the claims made.

7.4 Period of at least 20 years

7.4.1 The letters and evidence of use forms submitted span a timescale up to around 40 years prior to the date of application though the greater proportion covers a period of up to around 25 years. Issues of the continuity of use and “as of right” are covered elsewhere in this report. None of the user evidence submitted has been the subject of detail scrutiny to date to test the claims being made in those written submissions.

8.0 AREA COMMITTEE

- 8.1 In accordance with standard procedures the application was for information brought to the attention of the County Council's Yorkshire Coast & Moors Committee on 31 March 2011. A copy of the minutes is attached as Appendix 9.

9.0 DECISION MAKING

- 9.1 Determination of the application rests with the County Council in its role as a registration authority. In doing so it must act impartially and fairly. It is not relevant to consider the merits or otherwise of the land being (or not being) registered. How desirable or otherwise it is to have the land remain undeveloped is not a relevant issue. The County Council must direct itself only to whether or not all the criteria set out in section 15(2) have been met. In the event any one element of those criteria is found not to have been met then the Council must refuse the application.

- 9.2 Any challenge by an interested party to the way the Council reaches its decision would be by way of a Judicial Review.

- 9.3 Government guidance contained in the DEFRA "*Guidance Notes for the completion of an Application for Registration of Town or Village Greens outside the pilot implementation areas*" advises intending applicants that the registration authority may decide to hold an inquiry into an application to establish and properly test evidence. Such inquiries have become known generally as "non statutory inquiries". The guidance points out points out:

"the Court of Appeal has ruled that in determining applications where there is a dispute the registration authority should consider convening such a hearing or inquiry."

- 9.4 Further, the Courts have suggested that where there is serious dispute the procedure of conducting a non-statutory inquiry through an independent expert should be followed "*almost invariably*". Usually an inspector (usually a barrister with recognised knowledge of in this area of law) is appointed to hold an inquiry. Having conducted a public inquiry the inspector prepares a report including a recommendation, and the decision ultimately rests with the registration authority. It is estimated that the cost of holding a local public enquiry would be approximately £15,000.

- 9.5 This procedure is widely used by registration authorities across the country, though at the end of the day how matters are to proceed is at the discretion as to the County Council.

- 9.6 In the case which is the subject of this report there appears to be serious dispute between the parties particularly on the issues of consistency of use over 20 years, spread of use across the application site and the whether an appropriate degree of use exercised "as of right" has occurred. Additionally it is important that the County Council is satisfied that all evidence has been properly tested in making its decision particularly in light of the disputes between the interested parties.

10.0 RECOMMENDATION

- 10.1 In view of the serious dispute that exists between the Applicant and the current landowner concerning the evidence before the County Council it is recommended that the Corporate Director (Business & Environmental Services) with advice and guidance from the Assistant Chief Executive (Legal & Democratic Services) be authorised to appoint an independent expert to conduct a non-statutory inquiry into the TVG Application and to then prepare a report to assist the County Council in its determination of the application. The estimated cost of the enquiry is approximately £15,000 and this will be met from existing BES Directorate funding.
- 10.2 Following receipt of the expert's report, that a further report be presented to this Committee to enable it to then determine the application.

DAVID BOWE

Corporate Director, Business and Environmental Services

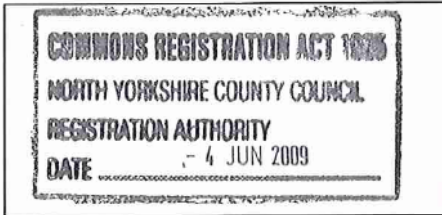
Background papers: Application case file held in County Searches Information, Business and Environmental Services

Contact: Doug Huzzard/Chris Stanford



Commons Act 2006: Section 15
Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:



Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

1. Registration Authority

To the

Note 1
 Insert name of registration authority.



Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

** Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.*

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

* Only complete if the land is already registered as common land.

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

CASTLE PARK

Location:

LAND ADJACENT TO HIGHFIELD RD (EXCLUDING THE NURSERY) AND BEHIND DERWENT RD, BACKING ON TO FIELD CLOSE END HOUSES' GARDENS, WHITBY

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

CASTLE PARK SITE WITHIN THE MAYFIELD WARD OF WHITBY

Tick here if map attached:

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

THE WAND IN QUESTION HAS BEEN USED BY LOCAL RESIDENTS, AS OF RIGHT SINCE THE INCEPTION OF THE ESTATE. IT IS USED REGULARLY BY LOCAL RESIDENTS FOR A VARIETY OF ACTIVITIES AND REPRESENTS AN OPEN, EASILY ACCESSIBLE, RECREATIONAL SPACE ON WHICH USE IS NOT, NOR HAS BEEN IN THE PAST, RESTRICTED BY EITHER THE OWNERS, THE COUNCIL OR ANY OTHER PERSON.

THE LAND IS NOT FENCED OFF AND IN FACT HAD FORMAL PLAY FACILITIES ON SOME AREAS WHICH WERE PREVIOUSLY MAINTAINED BY THE MOD BEFORE THE LAND OWNERSHIP WAS TRANSFERRED TO THE CURRENT OWNERS.

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

ANNINGTON DEVELOPMENTS LTD
1 JAMES STREET
LONDON
W14 1DR

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

10. Supporting documentation

PLEASE SEE ATTACHED

Note 11

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

Note 12

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

11. Any other information relating to the application

I WOULD EXPECT A CHALLENGE FROM ANNINGTON DEVELOPMENTS (AS QUESTION 8) AS THEY HOLD OUTLINE PLANNING PERMISSION & WILL BE SUBMITTING FINAL PLANNING APPLICATION IN THE NEAR FUTURE

Date:

26. MAY 2009

Signatures:

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.


Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ *Insert full name (and address if not given in the application form).*

LEUCAN GRIMMOND,¹ solemnly and sincerely declare as follows:—

² *Delete and adapt as necessary.*

1.² I am ((the person (~~one of the persons~~) who (has) (have) signed the foregoing application)) ((~~the solicitor to (the applicant)~~) (³ one of the  applicants)).

³ *Insert name if Applicable*

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ *Complete only in the case of voluntary registration (strike through if this is not relevant)*

4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

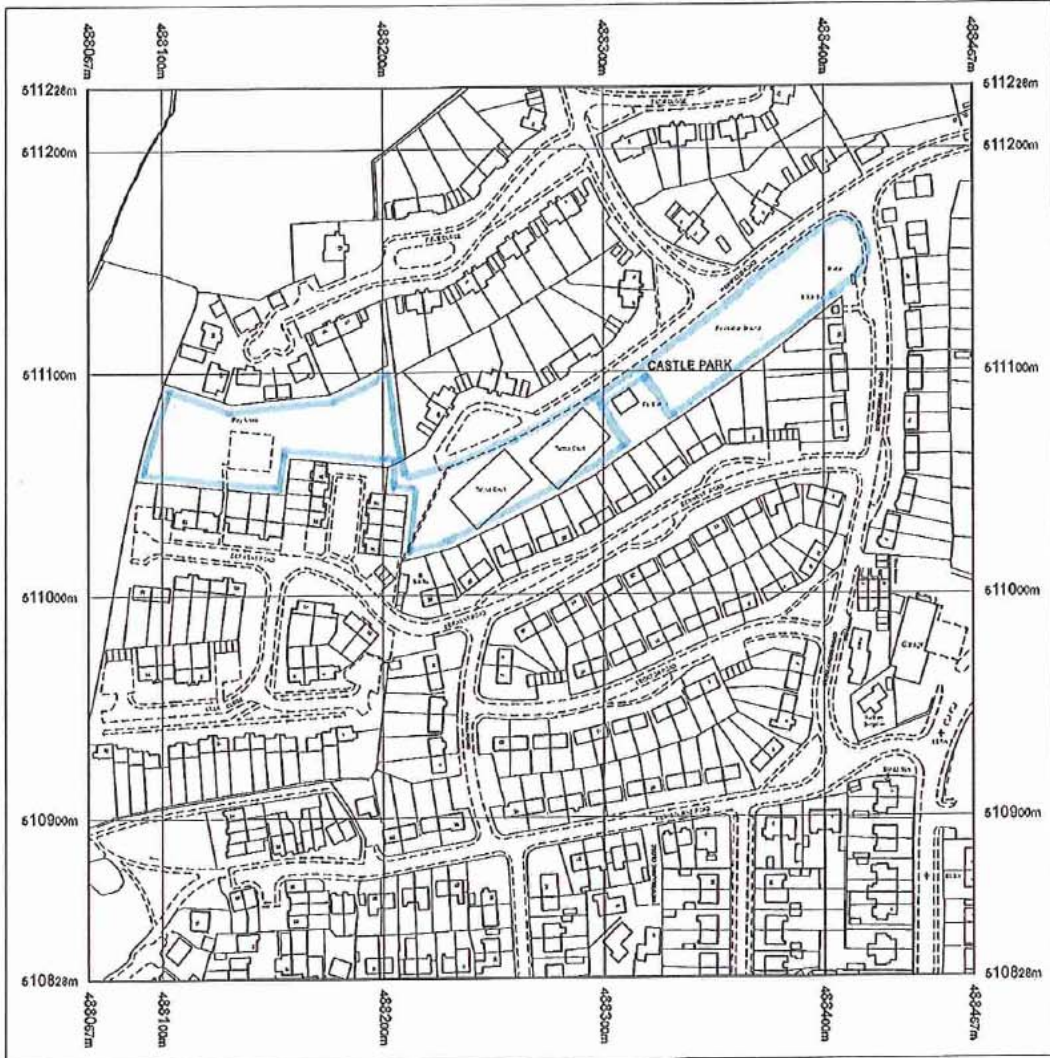
- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

THIS IS THE MAP MARKED 'S91' REFERRED TO IN THE
 Statutory Declaration made by Susan Grimwood on the 28/5/09
 Before me



OS Sitemap™



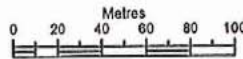
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The representation of features as lines is no evidence of a property boundary.



Scale 1:2500

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www.ordnancesurvey.co.uk

Application for registration of land off Highfield Road, Castle Park Whitby as a town/village Green under Section 15 of the Commons Act 2006

The area described as land of Highfield Road is part of an estate generally known as Castle Park. The estate and hence the open spaces within the estate were designed and built for the RAF in the 1960's (Purchase of the land took place in 1961)¹. The space submitted as a prospective village green site was designated recreational space and managed as recreational space for the service personnel and their families stationed at Fylingdales. The site includes tennis courts, hard play area and wall for ball games. In the past the hard area had play equipment and the tennis courts were well maintained and used. Photographs enclosed show the fenced and equipped areas. From the beginning the land was used by both service personnel and local people. Unfortunately as and when the properties were sold to private owners in the 1970's the play space was no longer a priority for the military due to the reduction in personnel billeted there and the spaces were not kept up for their intended purpose. The land was retained by the military along with some properties until sold on to the current owners Annington Developments. (Annington is the largest private residential landowner in the UK with gross assets of almost £6.4 billion)

'Annington became the largest private owner of residential property in the United Kingdom following the purchase of 57,434 homes from the Ministry of Defence in November 1996. The majority of these homes are leased back to the Ministry of Defence for continued use as service accommodation. Each year houses that are surplus to Ministry of Defence requirements are handed back to Annington. The Ministry of Defence continues to manage and maintain the properties it rents whilst Annington has sole responsibility for the surplus units as they are handed over.'²

The above is included to set the scene of the current area and highlight that the area was designated important recreational land. Prior to that time it was farmland and then from the development of the estate through to current days the land has been used for a variety of sports, tennis, cricket, football, hockey, rugby – both Whitby rugby club and Whitby Hockey club have used the area for training in the past; alongside informal play, the exercising of dogs and on occasion horses, bicycling, picnics and just as an area to walk through. Until recently the area has not had any signs or restrictions placed on it and all users have used it as of right. The erection of recent signage coincided with an application for planning permission in 2007.

Attached to this application are a series of letters which show the land has been used on a regular basis for the above activities and photographs which show usage and the original play landscaping. It is difficult to estimate an average usage as the land is used more frequently in summer and in holidays and the changes to the makeup of the local population means usage fluctuates. However the letters and response forms enclosed shows the range of use, the timespan over which the area has been used and the usage today by many people for both play, dog walking and walking. Currently there is approximately 15 dog walkers from the lower end of the estate alone (Highfield Rd/Parsons Close/Field Close and Farm Close) who regularly use the area, there are a number of local children (estimate around 30) who along with their friends use the area for play and sport, kites are flown and on occasion there are two horses exercised here. In support of this application residents who have lived in the area for as little as 2 years; specifically moving to the area as families because

of the safe play possible on the open areas; to families who have lived in the area for up to 37 years and have used the green space for children and grandchildren to play. Other residents were brought up on the estate and played there as children, returning, once married to bring their children up in the area and use the space for play. To most residents the area represents a safe, (from traffic, strangers and other dangers) area for children and a place to exercise dogs (something which is difficult, and becoming increasing so within the Whitby area – no dogs allowed within all play areas/rugby fields/recreational fields (rightly so)/Pannet Park; the only formal park in Whitby; and on parts of the cliffs and beach). It also represents a part of Whitby which is for Whitby residents – it is not invaded by tourists and sits outside the hectic, traffic ridden tourist hotspots, while other green space within the local Mulgrave ward doubles up for use by tourists or as parking options.

This application has been prompted by a series of events and the context of these is important in shaping the argument for this area to be a town green. In 2007 planning permission was sought for the area at the same time as the area appearing within a consultation document from Scarborough Council as a possible development site.³ This galvanised local residents into action, there were 44 objections⁴ recorded with 2 in favour of the development (one of these is not a resident in the local estate) and a meeting held to discuss the issues by residents at the local rugby club with local councillors present.

While it is understood Government directives expect the development and construction of more properties and that SBC has undertaken its role to research and plan for the future in line with the Regional Spatial Strategy comprehensively, at local level we see the picture very differently. Within in Whitby this is at least the third application for village Green status you will have received, probably all citing similar arguments.

Taking The SBC's own findings Parks and Green Space Strategy

In an audit of the main built areas in the borough, Whitby is shown to have significantly less open space and parks per person than either Scarborough or Filey

Scarborough 87.1 m² per person

Filey 75.7 m² per person and

Whitby 44.3 m² per person

The 1.34 hectares represents almost 6% of the current amenity green space in

Whitby.

The document above lists the advantages of green space

'Valuable green spaces need to be protected from development, improved by new landscaping or play schemes and managed to a high standard. The strategy will explore the need to create new spaces, link existing spaces together or rationalise spaces that do not provide for the community's needs. It will establish a framework within which the future planning, provision, improvement, maintenance and use of these spaces can take place.

The importance of parks and green spaces to our quality of life is enormous, not least by breaking down social barriers and pulling communities and people together and if they are easily accessible, neighbourhoods become better places, giving us more contact with the natural environment. Trees and shrubs reduce pollutants and green spaces allow water to soak away, aiding water management.

There is also a clear link between quality green spaces and the economy. An attractive environment not only provides social, recreational and health benefits

to residents but is also a vital part of attracting commercial investment through industry and tourism.

There are enormous benefits to both mental and physical health in ensuring communities have contact with the natural world and can access areas for exercise. Physical activity in green spaces can give both mental and physical benefits, creating a healthier and emotionally more content population costing the economy less. Parks and green spaces provide a valuable resource for education, both formal and informal, providing outdoor classrooms for people of all ages and abilities. And our green spaces can fill many needs in sport, leisure, relaxation, the growing of food and the creation of habitats for wildlife.

<http://www.scarborough.gov.uk/pdf/Parks-And-Green-Spaces-Strategy-2007-2011-Main.pdf>

Negotiation of Play, Greenspace & Sports Facilities in Association with New Housing Developments

This document indicates that the **current** provision of Parks and Gardens and Natural and semi Natural spaces is sufficient, while outdoor sports facilities and play are below the amounts required. Amenity open space is measured as a requirement of at least 2 hectares per 1000 of the population based on no one living more than 300m from the nearest area of natural green space, 2km from at least one accessible site of at least 20 hectares, 5 km from at least one accessible site of at least 100 hectares and 10km from at least one accessible site of at least 500 hectares⁵. This conclusion has been drawn based on the information collected and recorded above and suggests that current open space forms part of the amounts required to ensure these levels are maintained. In the case of Whitby, where the town is bound by the sea to one side and National Parks to the others, it is essential open space is protected as any loss of space with a future increase in population would shift the balance into deficit and as sports facilities are currently significantly below the National Playing Field Association's minimum standard; area such as this need to be protected to ensure play space is preserved. The estate is bound by none accessible open space – farmland and golf course and so the opportunity to use and access space will be lost with any development here.

While there are alternative *sports* facilities locally – the Whitby Rugby Club is very close by, the land there (owned by SBC) is currently used for park and ride and caravans on occasion as well as formal matches and is further under threat from rental hikes being imposed by SBC. Regardless of this, areas to the opposite side of the Rugby club – Brownfield sites⁶ - are also proposed development sites (and more acceptably so, as they are true Brownfield sites) for which the rugby club has again been nominated as open space area - a combined build area of 2.71 hectares, 200 plus homes adding to the demand for appropriate open space. The rugby club grounds are essentially formal sporting fields, not common land for a multitude of uses, dogs are not allowed, other play activities do not take place there as it is respected as a sporting arena and used as such, when not, it is used as a car park by the council. You can not restrict open space by saying only when there are no matches, no training, no caravans and no dogs at anytime.

Other amenity space in West Whitby is formal play space sited near the sports centre – tennis courts, paddling pool, bowls/pitch and putt which also doubles as park and ride for most of the long Whitby season. The Open Space map of Whitby⁷ shows clearly the few open spaces in the area and density of build in the town.

Although it is understood that the current Government effectively gave a green light to the development of ex MOD land it isn't an absolute. Other MOD land has effectively argued against blanket development in the past protecting recreational space for the good of the residents. To quote the inspector's report in the Church Fenton Airbase enquiry:

'I see no reason why a residential estate in the countryside should have, pro rata, less play area provision than it would in a built up area... I can not accept that the dual use of school playing fields should be seen as an alternative to the retention of recreational space within the site'

Following the premise of the above document, *Negotiation of Play, Greenspace & Sports Facilities in Association with New Housing Developments*, the provision of land in new developments must follow a calculation of space for which the figures are supplied. This document is fundamentally flawed as guidance for development which may take place within infill sites as the provision only takes into account the new build and not the existing residents, hence discriminating against existing residents. The land to which the application refers, using the figures of SBC, and **existing** properties within the estate area would calculate to:

211 properties x average rate of occupancy 2.21	= 466 persons
Sports facilities	1.62/1000 x 466 = 0.76
Children's Play equipped areas	0.30/1000 x 466 = 0.14
Informal play	0.50/1000 x 466 = 0.23
Amenity open space	0.40/1000 x 466 = 0.19
Total	1.32 ha

The land to which this application refers is currently 1.34 hectares! The planning of the Ministry all those years ago seems to support current thoughts on available land as this is exactly the amount which was provided.

A further 36 houses at the average occupancy figure above would result in consideration of a further 80 people and would require the area provided to be increased by approximately another fifth of a hectare!

The greater area of the original estate has gradually been eroded away with infill building sites – 2 small developments and one larger development, increasingly reducing the open space per population. The Highfield Road strip provides the only ribbon of green in an otherwise populated estate, open accessible common land without preconceived or limited usage options.

The Every Child matters framework includes two very pertinent outcome targets be healthy, stay safe. Play is defined as – what children and young people do when they follow their own ideas and interest in their own way. Terminology used in the play review, *Getting serious about play*. Away from parents but safe, socialising with peers on available space not each tucked away in their own back garden isolated. For the obese child, the bullied child, and many normal children and young people formal play/sport is not necessarily what they want or need – the sporty types join the club, travel to facilities etc but those young people disenfranchised with exercise and sport require accessible, local, safe opportunities for play, to ride a bike, kick a ball, let off steam, walk the dog ... Although housing is currently seen as a priority what happens when obesity is the new focus; current headlines 50% obesity by 2050, or teenagers, no where to go - the worst in Europe; there will not be the opportunity to reverse decisions within Whitby, there will be no open space to replace that lost and no open space to enhance the quality of life for residents.

The Neighbourhood Statistics website provides statistical analysis of the Mayfield Ward and lists under physical environment Greenspace thus

Your Neighbourhood (Mayfield Ward)	68%
Scarborough	94.7% and
England	87.5% ⁸

so prior to any build within the area which will obviously increase the requirements of greenspace, the Mayfield ward is below both local and national percentages.

Positioned centrally, as it is in the ward area, the land to which the application refers would provide an ideal position for a Town Green.

While a shortage of affordable housing is recognised as a National issue individual areas reflect different patterns of occupancy and need. While Whitby has a need for affordable houses it also has a large number of second homes and holiday cottages which stand empty for a large portion of the year and affectively have driven the cost of housing within the local area and the local villages to extreme highs – on average house prices are 15% high in rural areas than in urban areas – 7.3x average annual earnings against 6.1x in urban areas. Unfortunately the building of new homes in popular areas such as Whitby rarely succeed in increasing the housing stock for local people but attracts additional incomers to the area and further puts pressure on the local resources, education, health, recreational space, employment and the environment. (Letter 22 from J.A. Holmes expresses concern about this fact and quotes figures on occupancy in a local area – Whitehall Landing - of 157 units only 3 are permanently occupied) Whitby has poor public transport links to other urban areas and poor road transport links – in all directions drivers are faced with single carriage windy roads across Moor land. The capacity for travelling to work is severely reduce while Whitby itself is very limited in its range of employment opportunities. While these arguments in themselves are not specific to this area remaining a green space they are essential considerations of the bigger picture which unfortunately appears to take a back seat against the drive for more and more homes. The infrastructure to ensure good quality of life must consider all elements, homes, employment, education, services, impact on the environment and recreational facilities for vastly increased numbers. Taking into consideration all sites mentioned above; this green site and the three brownfield sites; there could be an influx of 400-500 people (200+homes at the average occupancy of 2.21) a small village. The nature of Whitby means while numbers against recreational space may stack up in the short winter season but being in a tourist area, with visitor numbers at 5000-6000 per day at peak times the pressure on the seafront areas, park areas and play areas is dramatically increased and residents lack quality open space.

Over 50% of the population in the Mayfield ward is either 18 or under or 60 and over; (Neighbourhood Statistics) groups which need good, defined, secure, local and easily accessible open space to enjoy for the whole spectrum of activities, space such as Highfield Road area addressing a need it has addressed for the last 60 years.

We are appealing to save this space because developments are a judgement of the present for financial reward in many cases and sometimes without the application of commonsense, the awareness of the bigger picture. We want to be able to provide a local legacy for future generations, a pause in the noise of life, a space to enjoy. In the western world we criticise developing countries for their destruction of the natural world, oil palms being planted and destroying the equatorial forests (in fact, to feed the western world's supposed civilization) but in this country we wiped out the forest's hundreds of years ago and are now systematically destroying pockets of sanity for policy.

- ¹ A photocopy of this conveyance is attached (original is not held by the applicant)
- ² Quote taken from the Annington Developments website www.annington.co.uk
- ³ The applicant and residents would like to express dismay that a site can be included within a consultation document but then be awarded outlining planning permission prior to the completion of the consultation. It appears to nullify the principles of a consultation and reduce public confidence in the process.
- ⁴ Attached Report to planning development committee 3.9 (page 5)
- ⁵ English Natures Accessible Natural Greenspace Standard
- ⁶ Proposed development sites
- ⁷ Open space map Whitby
- ⁸ Neighbourhood Statistics, Mayfield Ward

APPENDIX 3





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 Email emma.bingham@walkermorris.co.uk Web: www.walkermorris.co.uk

FAO Chris Stanford
 North Yorkshire County Council
 Commons Registration
 Highways North Yorkshire
 County Hall
 North Allerton
 DL7 8AH

N. Y. C. C.
 BES
 20 JUL 2010

Pass to CM Our ref -----
 Ackd -----
 Ansd ----- Your ref -----
 EOD -----
 Filed -----

19 July 2010

ERB/SDG/YOR.770-1

NEW VG50 / CNS / 500672

BY E-MAIL, FAX AND POST

Dear Sirs

**Objections to the Application to register new Village Green - New VG50
 Castle Park Whitby**

We act on behalf of Yorkshire County Homes Limited and enclose a copy of our client's Statement of Objections within the meaning of the Commons (Registration of Town or Village Greens) Interim Arrangements) (England) Regulations 2007.

As we are sure you are aware, if there are any "knock points" in matters such as this, then the Registration Authority could, and should, properly dispose of an application without holding a Public Inquiry.

Whilst we accept that some of the matters contained in the Statement of Objections may turn on the precise evidence, having considering all the material and documentation, it is our opinion that there is a "knock out point"; that any use as from 2006 cannot have been "as of right".

As detailed in the Objections, in around May 2006, Annington Homes Limited, as landowner, erected 6 signs on the application Site with the following wording:

"This is Private Property and there is no Public Access or right of way without the permission of the Owner.

The Owner hereby permits access by members of the public onto the land for recreational purposes only at their own risk.

This permission may be revoked at any time"

A map showing the points at which these signs were erected in 2006, plus a further map showing the points at which these signs remain as of today's date, are exhibited to this letter. In addition, we enclose photographs of the signs taken on 25 June 2010.

There is no dispute between the parties as to the fact that these signs were erected on Site. In fact, at page 1 of the note dated 26 May 2009 accompanying the Application, the Applicant herself refers to the erection of signage, albeit she claims this was in 2007 not 2006. However, whether the signs were erected in 2006 or 2007, as from that date, the exercise of lawful sports and pastimes throughout the Site would have been with permission of the landowner and therefore not "as of right". Further, any lawful sports and pastimes which took place on any part of the Site following removal of any of the signs, constitutes forceful use by

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 H:\WP\Com-L\VERB\CURRENT MATTERS\property\12\CURRENT MATTERS\Yorkshire County Homes Limited - VG Whitby\Correspondence\19 07 10 - let - Chris Stanford.docx

Chris Stanford
19 July 2010
Page 2

reason that it took place following a deliberate attempt to flout the owner's purposes in erecting the permissive signs. Such use cannot qualify as use '*as of right*'. It is on this basis that we ask the Registration Authority to refuse the Application in its entirety without holding a Public Inquiry.

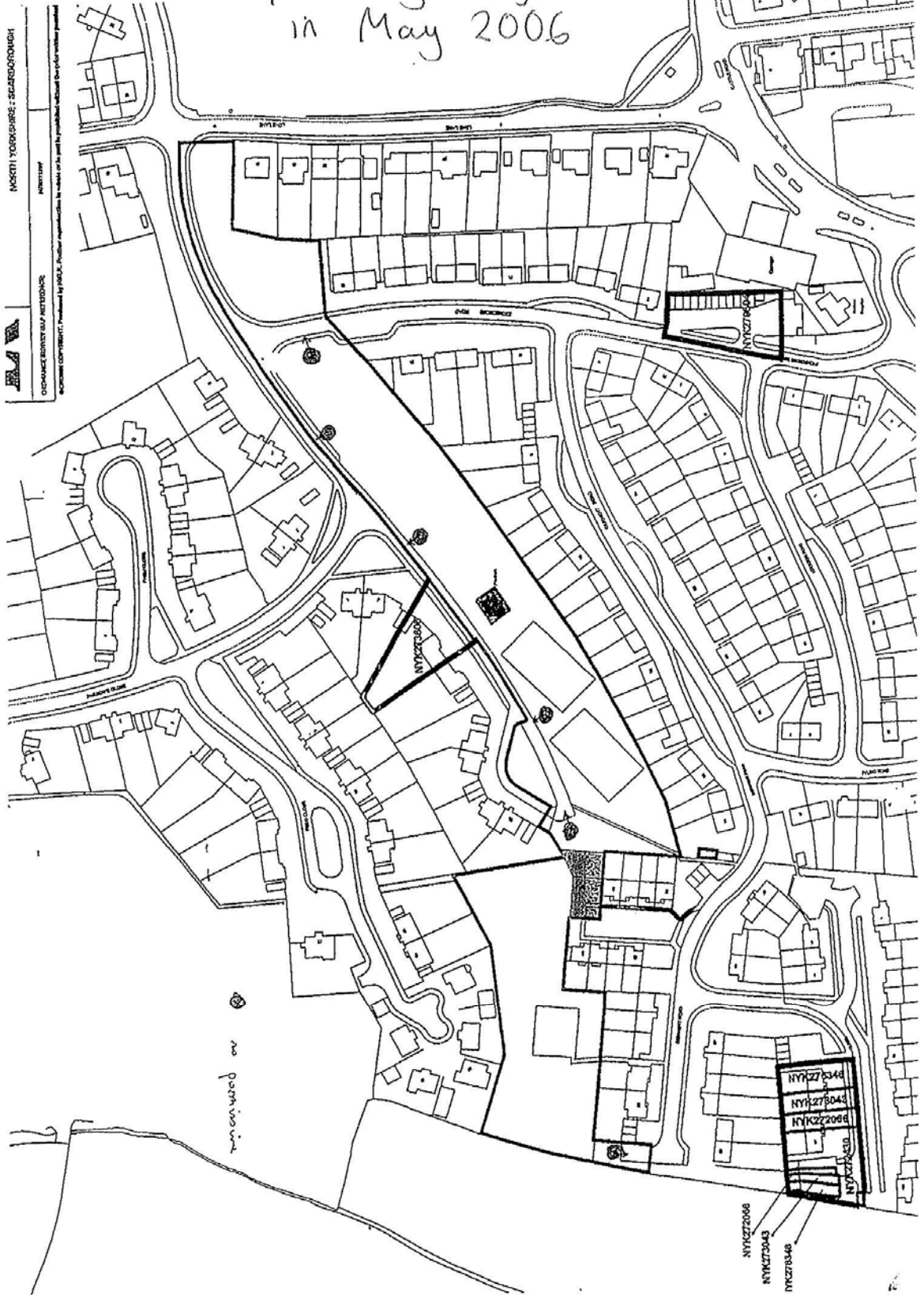
If you have any questions in relation to this matter, please do not hesitate to contact Emma Bingham of these offices.

Please acknowledge safe receipt.

Yours faithfully

Walker Morris

Map showing 6 signs erected
in May 2006





NYCC – 3 June 2011 – Planning & Regulatory Functions Sub-Committee
Land at Castle Park Whitby – Application to Register as Town or Village Green/31



NYCC – 3 June 2011 – Planning & Regulatory Functions Sub-Committee
Land at Castle Park Whitby – Application to Register as Town or Village Green/32

IN THE MATTER OF THE COMMONS ACT 2006

AND IN THE MATTER OF THE COMMONS (REGISTRATION OF TOWN OR VILLAGE GREENS) (INTERIM ARRANGEMENTS) (ENGLAND) REGULATIONS 2007

AND IN THE MATTER OF LAND ADJACENT TO HIGHFIELD ROAD (EXCLUDING THE NURSERY) AND BEHIND DERWENT ROAD, BACKING ON TO FIELD CLOSE END HOUSES' GARDENS, WHITBY

STATEMENT OF OBJECTIONS BY YORKSHIRE COUNTY HOMES LIMITED

1 INTRODUCTION

1.1 This is the Statement of Objections within the meaning of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 by Yorkshire County Homes Limited ("the Objector") to the application ("the Application") made by Susan Grimoldby ("the Applicant") dated 28 May 2009 for the registration of land described as land adjacent to Highfield Road (excluding the Nursery) and behind Derwent Road, backing on to Field Close end Houses' Gardens, Whitby ("the Site") as a town or village green ("a TVG") under section 15(2) of the Commons Act 2006.

1.2 For the purpose of these Objections, the Site is broken down as follows: Section A being the most western part of the Site, abutting the Golf Course; Section B being the middle section of the Site upon which there are two disused tennis courts; and Section C being the most eastern part of the Site and abutting Stonecross Road. A map showing these three sections is shown at enclosure 1.

2 REQUIREMENT FOR REGISTRATION OF A TVG

2.1 The Applicant must show the following in order to satisfy section 15(2) of the Commons act 2006:-

2.1.1 That a significant number of the inhabitants of a qualifying area have indulged in relevant activities on the entirety of the Site.

- 2.1.2 The activities have been indulged in by inhabitants of that qualifying area whose households are sufficiently spread across that qualifying area.
- 2.1.3 The activities in which the inhabitants have indulged may properly be described as lawful sports and pastimes.
- 2.1.4 The activities were of such intensity and quality such as at all times throughout the relevant 20 year period to bring home to the owners of the Site that a right to engage in lawful sports and pastimes "*as of right*" over the entire Site was being asserted.
- 2.1.5 The activities have been indulged in "*as of right*"; that is without force; without stealth; and without permission.
- 2.1.6 The activities have taken place over a period of not less than 20 years and continue to do so at the date of the Application.

3 SUMMARY OF GROUNDS OF OBJECTION

- 3.1 The Applicant has failed to show a sufficient spread of usage across the identified area of the Castle Park Site ("the Qualifying Area") within the Mayfield Ward of Whitby.
- 3.2 The Applicant has failed to show that, in respect of the claimed sports and pastimes "a significant number" of the inhabitants within the Qualifying Area have carried out the claimed activities as required by the Commons Act 2006.
- 3.3 The Applicant has failed to show that the user was of such amount, and in such manner, throughout the 20 year period as would reasonably be regarded by the owner as being the assertion of a right to engage in lawful sports and pastimes over the entire Site (or any part of it).
- 3.4 The Applicant has failed to show that the activities and uses relied upon took place on and throughout the whole of the Site and were not restricted to specific areas or to tracks.
- 3.5 The Applicant has failed to show that the claimed activities were indulged in "*as of right*" in the period 1989 to 2002 when the land was either owned by, or leased to, the Ministry of Defence ("MoD"). During this period any recreational use of the Site was primarily by the occupants of the MoD married quarters on the Castle Park Site and any

use by any other local inhabitants was also with the permission of the MoD, as well as being small scale and sporadic.

- 3.6 In 2006, permissive notices were erected on the Site and any use in the period 2006 to 2009 was not '*as of right*' but with the permission of the land owner. To the extent that any use took place on any part of the Site following destruction to the permissive notices, that use was not '*as of right*' but by force.
- 3.7 The Applicant has failed to show that the activities relied upon have been undertaken for the minimum period of 20 years; and
- 3.8 The Applicant has failed to establish use "*as of right*" for 20 years which continued as at the date of the Application.

4 LOCALITY OR QUALIFYING AREA WITHIN A LOCALITY

- 4.1 The Qualifying Area identified by the Applicant is Castle Park Site within the Mayfield Ward of Whitby as shown edged black on the map shown at enclosure 2.
- 4.2 Whilst the Qualifying Area appears to be a cohesive identifiable and recognisable area, the clear pattern that emerges from plotting the supporters of the Application by reference to their addresses, is that they predominately live on the Northern part of the Qualifying Area and are not sufficiently spread. On this basis, the Objector submits that the Applicant has failed to show a sufficient spread of usage across the Qualifying Area.

5 SIGNIFICANT NUMBER

- 5.1 Whilst "significant number" does not have to be a substantial number, whether a number is significant depends on the context and whether the Site is used not simply by a few individual house holders, but rather by the community of a Qualifying Area.
- 5.2 Further, it is not sufficient, simply to claim, that over the 20 year period, the cumulative total of inhabitants engaging in lawful sports and pastime is significant. Instead, the Applicant must establish that within each year of the requisite period, there have been reasonably frequent occasions where a significant number of qualifying inhabitants have used the Site. The Objector submits that the Applicant has failed to show a "significant number" of inhabitants (who need not necessarily be the same individual inhabitants) have engaged in lawful sports and pastimes throughout the requisite period.

- 5.3 The Objector estimates that there are around 350-400 houses within the Qualifying Area. There are 24 letters ("Letters"), 43 response forms ("Response Forms") and 7 letters submitted against the planning application in 2007 ("Planning Letters"), filed in support of the Application.
- 5.4 It is important that there not be any double – counting of the evidence submitted in support of the Application. There are 7 Response Forms and 3 of the Planning Letters which were submitted by inhabitants who have also submitted a Letter. Further, 2 of the Planning Letters fail to identify who the writer is or where they live.
- 5.5 Therefore, in total there is only evidence from around 62 out of the 350-400 houses within the Qualifying Area.
- 5.6 From the evidence of the 62 inhabitants, only just over half claim to have used the Site personally with the rest either saying nothing about recreational use, or claiming to have only witnessed activities which have taken place on the Site. This is wholly insufficient to found a claim.
- 5.7 At page 1 of the note dated 26 May 2009 accompanying the Application, the Applicant herself states that "*Currently there is approximately 15 dog walkers from the lower end of the estate along..... who regularly use the area, there are a number of local children (estimate around 30) who along with their friends use the area for play and sport, kites are flown and on occasion there are two horses exercised here*". Therefore, the Objector submits that even on the Applicant's own evidence, it is apparent that, at most, relatively few local householders have gone onto the Site from time to time.
- 5.8 The inhabitants of the Qualifying Area already have White Leys Recreational ground and the recreational area north of Chancel Way, which includes swings and slides, in close proximity. This may explain why relatively few local inhabitants have used the Site. In particular, the Objector contends that local inhabitants from the Southern part of the Qualifying Area will use the recreational area north of Chancel Way.
- 5.9 The Applicant has therefore failed to establish that within each year of the requisite period, there have been reasonable frequent occasions where a significant number of qualifying inhabitants have used the Site.
- 5.10 Finally, in any assessment of 'significant number' there must be deducted any user which was with permission of the land owner and therefore not '*as of right*' (see below).

6 **LAWFUL SPORTS AND PASTIMES**

- 6.1 The focus must always be on the way the land has been used and above all the quality of that use, and whether it was of such amount, and in such manner, as would reasonably be regarded as being the assertion of a public right.
- 6.2 To the extent that the Letters or Response Forms refer to activities such as cycling, football, etc. it is the Objector's position that the Applicant has failed to establish which, if any, part of the Site these activities were carried out on. It is the Objector's position that if (which again it is not admitted) there was any lawful sports and pastimes, that such use was not over the entirety of the Site.
- 6.3 Further, to the extent that a number of Letters and Response Forms refer to "walking" and "dog walking", the Objector's contend that the topography and previous use of the Site suggests that any such recreational walking could not reasonably amount to a general recreational wandering over the Site. If the use is over tracks and by specific routes, the Objector contends that this is insufficient to establish an indulgence in lawful sports and pastimes over the whole Site.
- 6.4 If (which again it is not admitted) there was any considerable quantity of walking and dog walking, the message it would have conveyed would have been that certain limited parts of the Site were being used as footpaths and might, after a sufficient passage of time, give rise to a presumption of dedication as a Public Highway. Therefore, the Objector's submission is that there would not have been, and was not, any message that village green rights were being asserted.
- 6.5 It is unclear from the plan accompanying the Application whether it includes the small building between Section B and Section C which is currently used as an information centre/office space for the Hive Information Officer. This building has never been used for lawful sports and pastimes. Furthermore, it was let to the MoD pursuant to a lease dated 24 April 2007 between (1) Annington Property Limited and (2) The Secretary of State for Defence ("the Lease"). A copy of the Lease is shown at enclosure 3.
- 6.6 The Application includes a thin strip of land running directly in front of both the buildings on Section B, and abutting Highfield Road. This land comprises the steps and access to the Pre School Nursery and thereafter the Community Centre, and information centre and office space for the Hive Information Officer and is incapable of use and was not used for lawful sports and pastimes

7 AS OF RIGHT

7.1 The issue of whether the local inhabitants have used the Site "as of right" is whether use has been exercised openly, without force and without permission.

7.2 Until released by the MoD to Annington on 28 March 2002, the entire Site was used by the MoD (as owner until 1996 and as leaseholder from 1996 to 2002) as a recreation ground serving primarily those living in MoD married quarters on the Castle Park Site. Facilities were provided on the recreation ground providing, amongst other things:

7.2.1 an enclosed children's playground (equipped initially with swings a slide and a roundabout) including a play wall on Section A;

7.2.2 two enclosed tennis courts on Section B, which were kept locked from 1989 to approximately 2000. Access was only gained by obtaining a key, and with implied permission to use, from the RAF Fylingdales Personal Training Instructor, with a duplicate set being held in 'Highfield House' (RAF Welfare facility); and

7.2.3 playing fields on Section C.

Particularly in the period 1989 to around 1996, these facilities were well maintained by the MoD. Any use of these facilities by MoD families was permissive; any use by other local inhabitants during the period before 2002 was small scale, sporadic and by permission of the MoD.

7.3 In around May 2006, Annington Homes Limited, as landowner, erected 6 signs on the Site with the following wording:

"This is Private Property and there is no Public Access or right of way without the permission of the Owner.

The Owner hereby permits access by members of the public onto the land for recreational purposes only at their own risk.

This permission may be revoked at any time"

7.4 The signs were erected around the Site at points as identified on the attached map at enclosure 4. As of today's date, four of the six signs remain in place as shown on the attached map at enclosure 5.

7.5 As from around May 2006, the exercise of lawful sports and pastimes throughout the Site would have been with permission of the landowner and therefore not "*as of right*".

7.6 Two of the six signs initially erected in 2006 were removed from their posts at some stage during the period 2006 to 2009. If any lawful sports and pastimes took place on any part of the Site following that removal, and in ignorance of the four other remaining permissive notices, such use constitutes forceful use by reason that it took place following a deliberate attempt to flout the owner's purposes in erecting the permissive signs. Such use cannot qualify as use '*as of right*'.

7.7 By reason of the above, any lawful sports and pastimes that have taken place have not been "*as of right*" or have been wholly insufficient to put the owner on notice that a right to exercise lawful sports and pastimes by local inhabitants was being asserted.

8 NOT LESS THAN 20 YEARS....AND CONTINUE TO DO SO AS AT THE DATE OF THE APPLICATION

8.1 The Applicant has failed to show that they have used the Site continuously for the 20 year period and that they have continued to do so as of May 2009.

8.2 If (which it is denied) the local inhabitants have used the Site, or any part of it, for lawful sports and pastimes, the evidence fails to show for what period this use was carried out.

8.3 Further, as referred to above, the Site could have not been used for the requisite 20 year period because, whilst the land was controlled by the MoD, the use was with the permission of the MoD and in the period 2006 to 2009, it was permissive as a result of the notices erected by the landowner in May 2006. The Applicant has therefore failed to establish use for 20 years which continues as at the date of the Application.

9 CONCLUSION

9.1 For the reasons set out in this Statement of Objections, the Application should be dismissed and the Registration Authority should not register the Site as a TVG.

9.2 Many of the matters relied on by supporters of the Application involve the assertion of alleged planning benefits from using the Site for recreational purposes. Such matters are entirely irrelevant to the determination of this Application. The Objectors contend that it is readily apparent from the surrounding circumstances, that this Application has been

made not in order to obtain legal recognition for 20 years' user "*as of right*", but rather to prevent any future development of the Site.

- 9.3 If, contrary to the submissions above, it is considered that the Application cannot be dismissed outright, the Registration Authority is requested to hold a Local Inquiry so that the Application can be tested.

Signed

Dated 19/07/2010

Walker Morris, Solicitors
Kings Court, 12 King Street, Leeds, LS1 2HL
For and on behalf of the Objector
REF: ERB.LOH.YOR.770-1

NEW VG50 72-50-51080

From: "scooby.sooz@tiscali.co.uk" <scooby.sooz@tiscali.co.uk>
To: <commons.Registration@northyorks.gov.uk>
Date: 23/08/2010 22:53
Subject: New VG50/CNS
Attachments: scan0003.jpg; scan0002.jpg; scan0001.jpg; In response to the Objections by Yorkshire Coast HomesLtd.docx

Dear Mr Stanford

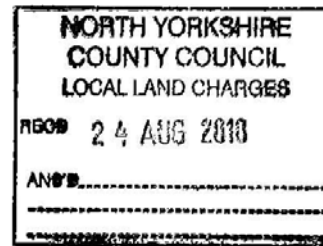
I have sent through supporting evidence for my response to Yorkshire County Homes objection to my Village Green application today to arrive with you tomorrow (24th August 2010) as agreed.

I have attach my comments with regard to the objection and 3 additional pieces of evidence above.

If you require any further information please let me know

Regards

Sue Grimoldby



Village Green Application

23/08/2010

Application for registration of land off Highfield Road, Castle Park Whitby as a town/village Green under Section 15 of the Commons Act 2006.

In response to the Objections by Yorkshire Coast Homes Ltd

While the statement of objections has been divided into many parts, I would just like to qualify the salient issues which I feel address the objector's comments.

Locality (objectors 4)

The area defined in the village green application is geographically clearly defined by the surrounding roads, farmland and golf course. Castle Park appears within the Mayfield ward and is marked on the Office of National Statistics website's neighbourhood breakdown on the map shown there. It is known locally as the Castle Park area and the green area to which the application is concerned is easily and safely accessible for all residents to have the right to use.

Significant Number (objectors 5)

While my name is on the application as the applicant I am merely the conduit for the inhabitants of the local area and I was, and am, acting on their behalf through this Village Green submission. An initial meeting was held on the 26.09.2007 at the local rugby club, attended by approximately 50 people and when the question of Village Green submission was raised it was passed unanimously, the birth of this application. As such I believe that every supporter of the application would consider themselves as a significant number!

In the McAlpine/Staffordshire Case (R on the application of Alfred McAlpine Homes Ltd v Staffordshire County Council, 17 January 2002, Case ref: QBD CO/2653/2001) Mr Justice Sullivan rejected the argument by the claimant that 'significant number' in the context of section 22 (1) of the Commons Registration Act 1965 as amended by the Countryside and Rights of Way Act 2000, means 'a considerable or a substantial number'. *He said that the number of people using the land has to be sufficient to indicate that it is in general used by the local community for informal recreation.*

I suggest it is not for the objector to decide on what constitutes a significant number but for the correct authority to make a balanced and judicious response.

There is of course a difficulty in locating all the people who have been residents of the area and who actively used the land over all, or part of the qualifying twenty year period as people relocate much more widely in modern society. Some used the land regularly whilst living in the vicinity then moved on to be replaced by other residents, so it is difficult to put a definite number on the users, however there are a number of residents in the locality who have lived here all their lives and will testify to the regular use through the years from the mid 1960's. The very nature of the mobility of modern society makes the question of significant number and the relevance of witnesses crucial and as such, a question for the relevant authority.

Additional support for the application has been included with this document². Some are again from existing supporters of the Village Green application who still feel very strongly about the importance of saving land for recreational purposes, while others are additional to those previously submitted.

Note: 5.6 While some supporters of the application are not necessarily current users their evidence is none the less that of eye witnesses and substantiates the evidence of users of the area

Note: 5.7 the objector has misquoted the applicant, the sentence should read alone not along when referring to the dog walkers – this was not meant to imply that all dog walkers were from the lower end of the estate but reflected those known to the applicant. There are further dog walkers throughout the estate who do use the area.

Note: 5.8 The White Leys Recreational ground is not regularly used by the residents of the Castle Park Area and I think this was addressed in my original application:

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While there are alternative sports facilities locally – the Whitby Rugby Club is very close by, the land there (owned by SBC) is currently used for park and ride and caravans on occasion as well as formal matches and is further under threat from rental hikes being imposed by SBC. ... The rugby club grounds are essentially formal sporting fields, not common land for a multitude of uses, dogs are not allowed, other play activities do not take place there as it is respected as a sporting arena and used as such, when not, it is used as a car park by the council. You can not restrict open space by saying only when there are no matches, no training, no caravans and no dogs at anytime.

Since the submission the rugby club has purchased the club house and facilities from SBC on a 999 year lease; added to its remit by incorporating a football club as part of its responsibilities and has recently received funding for floodlighting which will have further bearing on how the land is used. The land also sits outside the Castle Park area for which the application was made.

Finally the existence of the White Leys area has no bearing on the assertion that the land to which the application applies has been used for over twenty years 'as of right' by the local inhabitants.

Lawful sports and pastimes (objectors 6)

The Sunningwell Case (R v Oxfordshire County Council and others, ex parte Sunningwell Parish Council (House of Lords, 1999) case reference UKHL 28; [2000] 1 AC 335; [1999] 3 ALL ER 385; [1999] 3 WLR 160)

'Lawful sports and pastimes

These activities do not need to be either organised sport or have a communal element.

Activities such as dog walking, kite flying, solitary or family activities are sufficient to justify registration as long as there is an established pattern of use and it is not 'trivial and sporadic'

Lord Hoffmann made it clear in his judgement that sports and pastimes does not have to be the traditional activities but means modern sports and pastimes – these do not have to be sports and pastimes but sports or pastimes.

Supporters of the application have shown a variety of uses of the land across the whole area – we do not divide the area up into sections and limit our use accordingly:

- the dog walker will start at one end and cover the length and sometimes breadth of the area, perhaps the term 'exercise' the dog would be more accurate terminology, balls are thrown for dogs, they run free and roam the area.

Children run and play in different sections, kite flying, bicycling, playing ball games, camping.

Note: 6.5 The building which is for the Hive information officer was not added to the site until 2007 and as such was added after the land had been used as of right for over 20 years. It did not appear on the OS site map as purchased for the village green application.

Note: 6.6 The land in front of the hive and the nursery is used regularly by foot traffic to link the two areas of open space.

'As of right' (Objectors 7)

Guidance supplied by Defra February 2007 states that

In some cases, a landowner may grant people permission to use his land after there has already been 20 years' use of the land 'as of right'. If this happens, then section 15(7) says that the grant of permission does not stop continuing use of the land being regarded 'as of right' for the purposes of an application under section 15. There is no time limit by which you must make an application for registration, unless the landowner takes other steps to challenge use (such as fencing off the land to prevent access).

Local people were using the land 'as of right' for more than 20 years before the permissive signs were added to the land, witnesses who still live and use the area confirm this and therefore, I believe the erection of the permissive signs by the then owners Anningtons was to try to either dissuade local use or to avoid such an application for registration from going

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ahead.

Note: 3.5

... 'as of right' in the period 1989 to 2002 when the land was either owned by, or leased to the Ministry of Defence ("MoD")

The land was purchased by The Secretary of State for Air (Conveyance of approximately 37.284 acres of land at Whitby, Yorks. known as Parsons Close Farm – 12 July 1961) and although properties built were initially, primarily for members of the air force stationed at RAF Fylingdales; which was officially declared operational in 1963; the recreational land for which the Village Green status is being sought was never enclosed, fenced or access restricted to other local residents of the area such as the existing homes and residents to the South of the Castle Park estate.

These RAF houses were then sold off over a period of time leaving a few remaining properties which are rented by the MOD for service personnel. The first houses sold were in 1973 and over the period to and including 1986, 108 properties were sold including 31 to Scarborough Borough Council in 1975. I select this date, 1986 as significant as it equates to 20 years up to the time the objector declares the permissive signs were placed on the land. (A further 25 properties were sold between 1987 and 1994) It shows that usage of the land was not predominately service personnel but a significant number of non service personnel within the ex ministry housing as well as users from the greater locality¹.

The recent sale of the land at auction by Anningtons would imply that they conceded the 'as of right' as they chose not to contest the application for Village Green status, despite having erected the signs. Furthermore no action has ever been taken against users of the land by any previous or current owners to restrict the rights of use. Unfortunately the current owner is intent on making the land inaccessible by leaving the land to become over grown and difficult to play on. However as the application form precedes the current owner, his actions (or rather inaction) can have no bearing on the application. The maintenance of the land is currently being undertaken by local residents.

Both the previous owners, Anningtons and the MOD did maintain the land; the MOD also maintained the recreational facilities. In the Beresford Case (R v City of Sunderland ex parte Beresford (House of Lords, 2003), case reference UKHL 60) The local authority Sunderland City Council, who owned the land argued that by mowing the land and erecting seating they had given implied permission for people to use the land. They argued that such implied permission defeated any contention that use was 'as of right' because they had given permission. The Lords rejected this argument and confirmed the land should be registered as a village green. The encouragement of the use of the land by regular cutting of the grass reinforced rather than undermined the impression that local people were using the area 'as of right'.

Note: 7.2.2. I am informed by supporters of the application that they used the tennis courts regularly without obtaining a key, that the courts *when* enclosed were not locked. I have yet to establish the exact date at which the play equipment and fencing were removed (I will endeavour to clarify this). But I am informed by long term residents this was certainly not as late as 2000 as stated by the objector. Letter of support 11B and 26. Additional supporters have verbally confirmed this to me and are prepared to confirm this in writing.

Finally in response to 9.2, the application was instigated in reaction to the planning application (2007) made for the land in question because residents of the Castle Park area were horrified that land they considered recreational and used 'as of right' might no longer be available for leisure pursuits.

Land which they had used since the inception of the estate, and continue to use, was threatened, residents 'as of right' was suddenly to be removed. It simply had not been a consideration prior to that, the land was and always had been available, the general

Village Green Application

23/08/2010

public/residents (unfortunately perhaps) do not consider points of law and the complications of application as a general rule but now want to ensure that 'as of right' which was taken for granted remains for future generations.

Perhaps the question might rather be why the current owner is in fact determined to defeat the application, having purchased the land extremely cheaply (May 27th 2010), in the full knowledge there was a village green application pending, in the hope that the wishes of the residents and the history of the land can be cast aside to provide the owner with an extraordinarily high return on his investment regardless of the impact on current and future residents' 'quality of life'.

¹ Document attached comprised part of the documents supplied with the deeds of the property bought from the MOD by Muscroft

² **Additional response forms**

1. Berenice Readman
 2. Mark Wilson and Helen Radford
 3. Rebecca Hill and Peter Hill
 4. Mr and Mrs Winspear
 5. Christine and Graham Hilton
 6. KM and E Drewery
 7. Stephen and Mandy Purvis
 8. Carol and John Hanson
 9. Susan Birch
 10. Mr and Mrs Coomber
 11. Mr and Mrs Kirk 11b letter of support
 12. Brian and Josie Smithson 12b attached letter
 13. Mr B. Eddon
 14. Pamela Webster
 15. Mrs Joan Dunscombe
 16. The Cox family
 17. Mrs Sue Bailey
 18. Martin Boyes and Colin Walker (note: new frequent user in support of application living in the Castle Park Area) 18b Photo from resident
- The following have already submitted support but have submitted further up to date support
19. Mr and Mrs Nicol
 20. Mr and Mrs A.P. Gissing
 21. John and Ann Woollin
 22. Neil and Audrey Isherwood
 23. Miss S Walker and Mr L Jraisbeck
 24. Karen Sanderson
 25. Miss K Rushworth 25b attached note of support

Email attachments:

26. Mr and Mrs L. Spedding
27. David and Kath Brown
28. List of additional supporters of the Village Green application

New VG 50

72-50-51097

23 August 2010

Ref: NewVG50/CNS/500807

Mr C Stanford
Commons Registration
County Hall
Northallerton
North Yorkshire
DL7 8AH

N. Y. C. C.
BES
24 AUG 2010
Pass to <u>cm</u>
Ackd _____
Ans'd _____
EOD _____
Filed _____

Fairmount
25 Field Close
Whitby
YO21 3LR
01947 604461

Dear Mr Stanford

Re: Village Green Application at Highfield Road Castle Park Whitby YO213LW

I am writing in support of the above Village Green Application.

From 1966 I was employed at RCA Fylingdales in the Motor Pool department and passed the land in question on a daily basis and can confirm that over the thirty years while I was employed at Fylingdales it was a well used play and recreational area for children and adults alike.

I live adjacent to the land in question and can categorically confirm that these activities are still continued today.

Having had sight of the objections we have commented accordingly to help clarify the situation and enclose the attachment.

Because of the urgency I am faxing the correspondence for your perusal and will give copies to the lady who has put in such a lot of time and effort in putting this Village Green Application forward in such a professional manner for the benefit of everyone in the vicinity all of whom I am sure appreciates her dedication in everything she has done for them.

I hope the foregoing is of help.

Yours sincerely

P L Keens

Because many of the points raised by the objector are very largely repetitive not all warrant a reaction individually.

3.1 to 3.5 The objector's claims in this category are hypothetical to say the least.

Fact: from the 1960s families and friends and the general public in the surrounding area have had uninterrupted use of the said land for a variety of sports and pastimes such as football, kite flying, cricket, picnics, dog walking etc., and continued these recreational activities with their children and grandchildren to the present time.

The Village Green application applies to the said land area as a whole it is not divided into three parts as the objectors refer to as A B and C but for the ease of identification only we will use this area segmentation-

Section A was and is used mainly by the older children for more boisterous activities like football and cricket etc., which they cannot play safely amongst the very young children without risk of serious injury, also dog owners play and exercise their pets as they have always done on the whole area plus the occasional pony riders and kids tents.

Section B & C was and is used as a picnic/play area where young mothers with toddlers and even young children on their own can play safely under the watchful eye of the surrounding households which is a great benefit for all concerned.

This said land has always been regarded an amenity for the whole community who have had the peace and enjoyment of using it without restriction of any kind for over forty years and have always done their share by keeping it litter free and child friendly.

The grass has never been cut since the land was auctioned off and the neglected state was upsetting the community so much that only last week the residents started cutting the grass themselves so that the children could play on it once again instead of playing on the roads which was causing greater concern.

3.6 Relating to the "permissive notices" believed to be erected 2007 and not 2006 as claimed the "as of right" was already established by more than twice the required period needed for a Village Green status well before these notices appeared.

I would respectfully draw attention to Section 15(7)(b) of The Commons Act 2006 provides that where local people have already enjoyed 20 years' as of right use, any attempt to permit that use (eg by permissive signs) will not stop the use being as of right.

3.7 and 3.8 Proof required of activities and "as of right" has already been established by the number of letters and signatures many of whom are totally independent and unconnected to the Village Green Application but are keen to support the validity.

5.8 The "inhabitants" of this area certainly do not have any access to the small children's area north of Chancel Way as this is designated for the sole benefit of the new owners on that development and in any case is too far away, White Leys is the

Rugby Field and for that purpose only and not for the benefit of children from other areas, plus the fact it is over a very busy road and quite a way from where the children live (we find this surprising that the anyone would even suggest this which could possibly put children's lives at risk for personal financial gain).

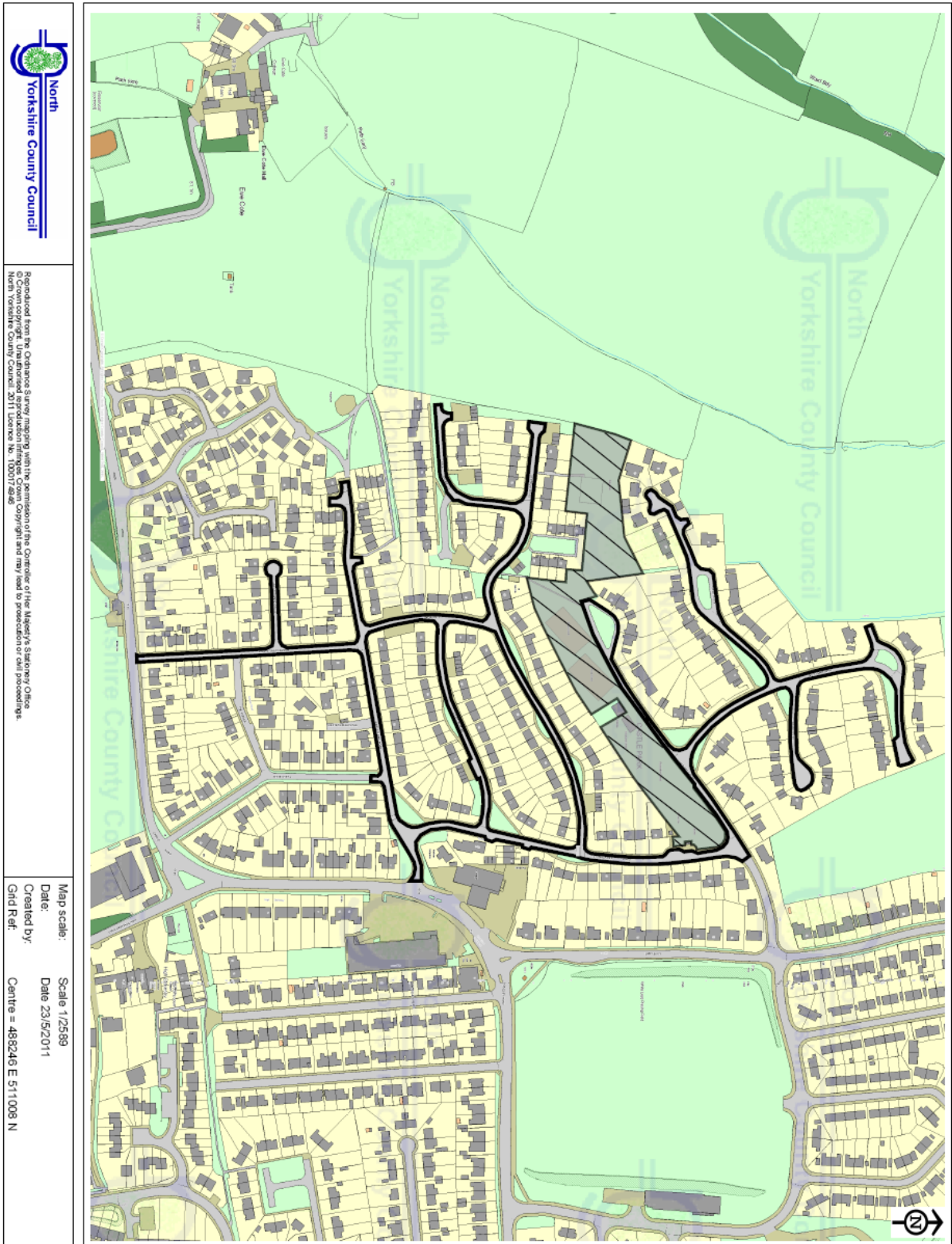
5.9 The objector is actually expecting a list of a significant number of qualifying inhabitants who have used the site in question (spanning twenty years) within the requisite period? It is beyond comprehension that this can be classed as a reasonable request and as such does not even deserve consideration, how can anyone be expected to recall each and every event that happened over all those years ago? Surely the onus is on the objector to prove otherwise.

7.1 The community has continuously used the said land "as of right" for over forty years without restriction or permission of any kind.

8.3 Again I would respectfully draw attention to Section 15(7)(b) of The Commons Act 2006 provides that where local people have already enjoyed 20 years' as of right use, any attempt to permit that use (eg by permissive signs) will not stop the use being as of right.

CONCLUSION

With respect to the negative and constant repetitive statements which are totally without substance and on the grounds of using the said land in quiet enjoyment "as of right for over forty years being twice the requisite time for Village Green Status I as a member of the community respectfully ask that the application for the Village Green be upheld and the objections against the application be dismissed forthwith without leave to appeal.



NAME	CHILDREN	IN PERSON	OBSERVED	ADDRESS	FOOTBALL	CRICKET	ROUNDERS	BIKING	KITE	DOG	PLAYING	TENNIS	ACCESS	TIMING	YEARS	NOTES
VG LETTERS																
BUTLER				DERWENT AVE												all merit based arguments
HARRISON		X	X	DERWENT ROAD						X	X			1995-2007	12	
LODON	X	X	X	DERWENT ROAD							X	X			40	
NICOL			X	DERWENT ROAD							X	X		1977-2007	30	
RUSHFORTH			X	DERWENT ROAD				X			X			1987-2007	20	
SANDERSON				DERWENT ROAD												
TONNAR			X	DERWENT ROAD				X			X			none		
NICHOLAS	X			FARM CLOSE	X				X			X		1972-2007	35	
SNAITH		X		FARM CLOSE	X						X			none		undated letter
GREGSON	X		X	FIELD CLOSE	X	X		X						2000-2007	7	
GRIMOLDBY	X			FIELD CLOSE				X		X	X			2003-2007	4	
SANDERSEN	X	X		FIELD CLOSE	X	X	X				X	X				letter includes opposition to development but also evidence - refers to Hockey club and rugby club use at times
WOOD	X			FIELD CLOSE	X	X		X				X				seems to refer to "enclosed" play area only
UN-NAMED	X			FYLING ROAD										1973	34	
GALLON	X			HIGHFIELD RD	X	X	X							2000-2007	7	re children
JONES			X	HIGHFIELD ROAD	X	X				X	X			1998-2007	9	
SPENCELEYS		X		LOCKTON ROAD						X	X			1973-2007	34	refers to living there 34 years not necessarily USING for all that time
CARVELL	X		X	PARSONS CLOSE	X				X	X				1992-2007	15	
BROWN		X		PARSONS CLOSE							X			1969-2007	38	
ATKINSONS	X		X	STONECROSS ROAD	X			X			X				26	
ATKINSONS				STONECROSS ROAD										1982	25	
B????	X			STONECROSS ROAD							X			none		
HAYTON	X	X		STONECROSS ROAD						X	X			1998-2007	9	
HOLMES				STONECROSS ROAD										1960'S-2007	40ish	no observations on use of the land but interestingly refers to the estate at one time effectively being a no go area to non residents
	<u>12</u>	<u>7</u>	<u>9</u>		<u>9</u>	<u>5</u>	<u>2</u>	<u>6</u>	<u>2</u>	<u>6</u>	<u>14</u>	<u>5</u>	<u>0</u>			

PLANNING LETTERS

SANDERSON	X	X	X
UN-NAMED			
GREEN			X
OGDEN			
UN-NAMED			
DAVIDSONS	X		

2 1 2

FIELD CLOSE				X			X	X	
							X	X	
							X		

0 0 0 1 0 0 3 2 0

1960's-2007	40ish	
		planning merit issues
1979-2007	28	
		planning merit issues
		planning merit issues
none		

FORMS SUBMITTED WITH THE APPLICATION

MANY FORMS INCLUDE COMMENT ON MATTERS OF MERIT

FORMS REFER TO LENGTH OF TIME LIVING IN PRESENT ABODE RATHER THAN YEARS OF USAGE
SOME REF TO USING THE TENNSI COURT FOR GENERAL PLAY/CYCLING

NOT CLEAR WHICH OF THESE WERE MOD PERSONNEL

ASH			
BALDWIN	X	X	X
JONES	X		
NICOL		X	
SANDERSON	X		
SPENCELEY	X	X	
SUTTON			
TENNANT	X	X	X
WALKER			
BRUMSBY	X		
HEARTON			
LEEMAN	X	X	X
NICHOLAS	X		
STONEHOUSE		X	
WOOLIN			
TAYLOR	X	X	
ALLEN			
GALPIN	X	X	X
HOPWOOD & REANEY		X	
HUTCHINSON	X	X	
KEENS			X
SANDERSON		X	X
WHITEHOUSE		X	X
SANDERSON	X	X	
WEBB		X	
ISHERWOOD			X
ACKERS	X	X	X

DERWENT ROAD									
DERWENT ROAD	X	X				X			
DERWENT ROAD							X		
DERWENT ROAD							X	X	
DERWENT ROAD	X				X		X		
DERWENT ROAD						X	X		
DERWENT ROAD						X			
DERWENT ROAD	X								
FARM CLOSE	X	X					X		
FARM CLOSE									
FARM CLOSE	X	X							
FARM CLOSE							X	X	
FARM CLOSE							X		
FARM CLOSE	X	X			X				
FIELD CLOSE	X							X	
FIELD CLOSE								X	
FIELD CLOSE						X	X		
FIELD CLOSE	X	X					X		
FIELD CLOSE	X	X					X		
FIELD CLOSE	X	X					X	X	
FIELD CLOSE	X						X		
FIELD CLOSE	X						X	X	
HIGHFIELD ROAD							X	X	
LILACLOSE	X	X							X
LILLA CLOSE						X			X

	3	no uses specified
	7	
	5	
	8	
	31	
	31	
	2	
	2.5	
	12(20)	
	16	
	N/S	no uses specified
	N/S	
	37	
	8	
	0.5	no uses specified
	40	
	14	
	32	
	25	
	9	
	9	
	17	
	20	
	20	
	17	
	8	
	19	commented on matters of merit as well

SPEDDING	X	X	
ISHERWOOD			X
WILSON & RUDFORD?			
SMITHSON	X		
BROWN			
HILL	X	X	
BAILEY			X
BIRCH		X	
DREWERY	X	X	
EDDON	X		
GISSING			
READMAN	X	X	
WEBSTER	X		

11 12 6

ROAD											
HIGHFIELD ROAD	X	X				X			X		
LILLA CLOSE		X						X	X		
LOCKTON ROAD								X			
SEA VIEW CLOSE								X			
STONECROSS	X							X			
STONECROSS	X				X			X			
STONECROSS ROAD							X				
STONECROSS ROAD								X			
STONECROSS ROAD							X	X			
STONECROSS ROAD								X			
WESTBOURNE ROAD											
WESTBOURNE ROAD					X			X	X		
WESTBOURNE ROAD	X	X									

8 6 1 4 0 8 12 6 3

	15	no permission needed to use tennis courts
	8	
	4	
	45	no uses specified
	5	
	35	
	2	
	14	
	13.5	
	22	
	20	no uses specified
	18	
	24	

Draft Minute of the Meeting of the Yorkshire Coast and Moors County Area Committee held on 31 March 2011

129. APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN – CASTLE PARK, WHITBY

Note:

- **County Councillor Jane Kenyon declared a personal non-prejudicial interest as the Member representing the Electoral Division in which this land was situated.**
- **County Councillor John Blackburn declared a personal non-prejudicial interest as a Member of the Planning and Regulatory Functions Committee Sub-Committee. He took no part in the Committee's debate or voting on this item of business.**
- **County Councillor David Jeffels declared a personal non-prejudicial interest as a Substitute Member on the Planning and Regulatory Functions Committee. He took no part in the Committee's debate or voting on this item of business.**

CONSIDERED –

The report of the Corporate Director – Business and Environmental Services advising that the County Council's Planning and Regulatory Functions Committee Sub-Committee, on 3 June 2011, would be making a decision on an application to register land at Castle Park, Whitby as village green.

County Councillor Jane Kenyon (local Member) advised that there was wide-spread concern, within the community, that the land which was the subject of this application should be retained as green space. She advised that, when the housing estate had been built for the Ministry of Defence, minimal facilities had been incorporated for play. The estate was now predominantly occupied by young families and the only alternative play facility required the main arterial road into Whitby to be crossed. County Councillor Jane Kenyon expressed the hope that the Committee would support local residents and request that the land be registered as village green.

County Councillor Joe Plant highlighted that permission should not be given to build on every green area and expressed support for the comments made by County Councillor Jane Kenyon.

Other Members commented that, based on the information provided by County Councillor Jane Kenyon, they too wished to support local residents.

RESOLVED –

That the Planning and Regulatory Functions Committee Sub-Committee be advised that the Yorkshire Coast and Moors County Area Committee wishes this application to be approved for the reasons put forward at this meeting by County Councillor Jane Kenyon, as recorded in the preamble to this Minute.