

NORTH YORKSHIRE COUNTY COUNCILPLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE13 JANUARY 2012LAND KNOWN AS AUNUM'S FIELD, THORNTON LE DALE  
APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN

Report of the Corporate Director – Business and Environmental Services

**1.0** PURPOSE OF REPORT

- 1.1 To report on an application (“the Application”) for the registration of an area of land at Aunum’s Field, Thornton Le Dale identified on the plan at **Appendix 1** (“the Application Site”) as a Town or Village Green.

**2.0** LEGAL CRITERIA

- 2.1 Under the provisions of the Commons Act 2006 (“the Act”) the County Council is a commons registration authority and so responsible for maintaining the Register of Town & Village Greens for North Yorkshire.

- 2.2 Section 15(1) of the Act sets out that

*Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies*

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*

Section 15(3) 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 ceased to do so before the time of the application but after the commencement of this section;*

and

(c) *the application is made within the period of two years beginning with the cessation referred to in paragraph (b)*

2.3 A commons registration authority needs to be satisfied that on the balance of probabilities all the relevant elements of section 15 have been demonstrated by an application for it to be approved. The onus of proof rests with the applicant.

### **3.0 APPLICATION SITE**

3.1 That part of the Application Site shown hatched on the plan at **Appendix 1** is owned by Sanctuary Housing Association and the remainder by Alwyn Dudley Smith. Sanctuary Housing Association purchased the land it now owns from Alwyn Dudley Smith in February 2011. Public rights of way cross the Application Site as depicted on the plan.

3.2 That part of the Application Site still owned by Alwyn Dudley Smith comprises rough pasture and is currently occupied by tenant farmer John Shepherd.

3.3 Planning permission has been granted for the construction of low cost housing on the land now owned by Sanctuary Housing Association and in February 2011 the land was fenced off pending construction work. Work subsequently commenced and is continuing. The land owned by Sanctuary Housing Association formerly formed part of the same field that is retained by Alwyn Dudley Smith.

3.4 Photographs of the Application Site will be displayed on screen at the committee meeting.

### **4.0 APPLICATION (see Appendix 2)**

4.1 The Application submitted by "Westgate Protest Group(c/o Mr A.C.James)" ("the Applicant") was received by the County Council on 13 May 2011. It relies on the criteria contained in section 15(2) of the Act as having been met in respect of that part of the site owned by Alwyn Dudley Smith and section 15(3) of the Act having been met in respect of the remainder of the site owned by Sanctuary Housing Association. The Westgate Protest Group was initially formed to oppose development of low cost housing at Aunum's Field.

4.2 The application comprises :-

- i a completed Form 44 in the standard format (including continuation sheets, a statutory declaration and maps)
- ii a covering letter from Mr James on behalf of the Applicant
- iii 79 witness statements – (see summary spreadsheet **Appendix 3**)
- iv various photographs of the site

- 4.3 The witness statements are all in the same format an example copy of which is included at the end of Appendix 2. Of particular relevance each form includes provision for the witness to set out the time period over which they claim to have used the land and to identify the uses that they have taken part in. What is unclear for those witnesses evidencing a familiarity with the Application Site in excess of twenty years is to what extent if at all their claimed uses have taken place in the last twenty years.
- 4.4 The forms also make provision for witnesses to identify activities they claim to have observed others taking part in and are generally silent on when those observations occurred and to what extent (e.g. where “rounders” has been said to be observed it is not possible to determine whether that was as a result of one event when it was seen played or whether it has been seen for example being played every week of the last 10 years). No indication on the part of the observer is provided of any knowledge of the basis on which people were seen on the land (eg whether with or without permission or as a consequence of using one of the public rights of way).
- 4.5 Whilst the age of the witnesses is not included on the forms it appears a small proportion of them may be children.
- 4.6 Determining an application of this kind is a matter of assessing evidence to determine whether or not the relevant criteria set out in section 15 the Act have been met. Any representations which might be made relating to the alleged merits or otherwise of a site being a village green are immaterial and must be ignored in considering the application.

## **5.0 OBJECTIONS**

### **5.1 Grays (Appendix 4)**

- 5.2 Objection to the Application was received from Grays (solicitors) on behalf of Alwyn Dudley Smith and John Shepherd. In objection Grays state that claimed historic use predating the minimum 20 year period relevant to the Application ceased in advance of the 20 year period and that in any case was undertaken with the consent of the then tenant farmer (thus not amounting to use “as of right”). However there is nothing significant advanced in support of either of those statements.
- 5.3 Further, Grays suggest that much of the more recent claimed user is of use which either would be consistent with use of public rights of way which cross the Application Site (so not qualifying as use “as of right” but use “by right”) or actually took place not on the Application Site but on adjacent land.
- 5.4 Additionally it is suggested that it would not have been possible for some of the claimed uses to have taken place because of the characteristics of the site.

5.5 The objection submitted by Grays is supported by witness statements from :-

- Alwyn Dudley Smith(owner)
- John Shepherd (current tenant)
- Rachael Cook (partner of John Shepherd)
- Michael Harper (building site manager)
- Richard Gray (local resident.)
- Karen Hustler(former school worker)
- Leigh Holliday

5.6 The chief witness statement of the objection is that of Alwyn Dudley Smith. In it he expresses concern about the influence of a briefing note produced by the Applicant which accompanied witness statements when they were circulated (that is covered elsewhere in this report). He details that he believes some of the claimed uses to be consistent with use of the public rights of way and also claims that alleged sledging took place on land other than the Application Site.

5.6.1 That there may have been deference to the grazing of sheep on the land by a number of claimants, as suggested by Mr Dudley Smith, is not in itself reason why such claims could not have merit. It is possible for land to be registered as village green even where use in exercise of village green rights may be shared with other uses.

5.6.2 The point that claimed uses by those who are not inhabitants of Thornton Le Dale is not qualifying use is correct. Any such use should be disregarded. Whilst he acknowledges that the local football team used the field around fifty years ago he gives reasons as to why use for football of any of the site either formally or informally has not taken place in the twenty year periods of relevance to the Application.

5.6.3 Doubts that claims of use by the Ryedale Forum 50+ Group and of kite flying should be given any weight appear to have sound basis. That any bird watching or picnicking may have been incidental to use of the public rights of way is a matter of conjecture which would require the further testing of that evidence to come to a clear judgement. Equally so the issues about the picking of autumn fruits. Representations questioning the merits of the need for Aunum's Field to be a village green seem irrelevant save to act as a means of trying to substantiate doubts that that certain claimed uses actually ever took place. A large portion of the statement refers to historical uses predating the 20 year periods relevant to the application. With regard uses during the 20 year period he expresses doubt about them having taken place.

5.7 John Shepherd explains his lifelong acquaintance with the Application Site and how regularly he has to visit it. In short he does not accept that any of the uses claimed in the Application have taken place other than as a consequence of use of the public footpaths that cross the site.

- 5.8 For the most part Rachael Cook's statement covers issues of animal husbandry which are largely immaterial other than to demonstrate why she might also have reason to visit the site regularly. Rachael again denies ever having witnessed people taking part in any of the activities claimed in the Application.
- 5.9 Michael Harper has only been familiar with the Application Site since February 2011 and so his evidence is of no value in respect of that part of the site owned by Sanctuary Housing in respect of which the Application relies on use pre dating that time. It carries little weight in respect of the remainder of the site. That said he notes only having witnessed activity on the public rights of way during that time. By his own admission he has not been on site in the evenings or weekends during that time.
- 5.10 Richard Gray (aged 62) has lived in Pickering all his life. His aunt ran a youth club in the town and activities of the youth club, albeit prior to the 20 year periods of particular relevance to the Application, are mentioned in the Applicant's evidence. Mr Gray is convinced that use of land by the youth club would not have taken place without the prior consent of the tenant farmer of the time. Such uses thus being exercised "by right" (and so not satisfying section 15 criteria).
- 5.11 Karen Hustler a volunteer at the neighbouring school between 1997 and 2001 does not recall the school accessing the Application Site at all during that time.
- 5.12 Leigh Holliday was born in Thornton le Dale in 1975 and lived there until 1999 returning again 3 years ago. She does not recall anyone playing on the Application Site and in particular recalls that sledging took place on adjoining land and not on the Application Site itself.

## **6.0 WRAGGE & CO (Appendix 5)**

- 6.1 Objection was received from Wragge & Co (solicitors) on behalf of Sanctuary Housing Association
- 6.2 The objection acknowledges that the housing association has only been familiar with the site since 2010 and so cannot offer any great witness evidence of its own although Michael Harper is given similar reference as in the objection from Grays
- 6.3 In an assessment of the Application and objector's evidence Wragge & Co conclude that it is evident the Application Site has always been rough pasture and that public use of the site has been limited to use only of the public footpaths across the site. That 60% of the witnesses produced by the Application evidence individually less than the full twenty year use of the site is not in itself a significant issue. It is not unusual that the weight of user

evidence put forward in cases such as this leans toward the latter part of the twenty year period. The more critical issue is whether or not the claimed uses actually took place in the manner claimed. Wragge & Co also suggest that there may be some confusion amongst witnesses as to exactly where some activities took place in the past.

- 6.4 Inferences as to motivation for the application in the objection from Wragge & Co are immaterial.
- 6.5 In conclusion Wragge & Co request that either the Application is refused or that a non statutory inquiry is held and for the inspector of such an inquiry to then report back to the County Council.

## **7.0 PARISH COUNCIL(Appendix 6)**

- 7.1 The local parish council has made two submissions by letter. Initially on 3 August 2011 and secondly a brief follow up on 7 October 2011. Reference to a lack of representation that the Application Site was common land during the planning process which led to permission for the Sanctuary Housing Association development is largely immaterial and of little evidential weight.
- 7.2 The parish council also acknowledges the existence of public rights of way across the site and suggests that the presence of sheep on the site will have limited the potential for dog walking (one of the more popular claimed uses) on the site.
- 7.3 The parish council states that it has concluded the Applicants have not established a right to use the whole of the land but it does not explain how that conclusion has been reached.
- 7.4 In its letter of 7 October 2011 the parish council effectively questions whether use by a significant number of inhabitants is demonstrated by the Application. Assessment of this point is not, as suggested by the parish council, an issue of determining what proportion of inhabitants has submitted evidence as explained elsewhere in this report.

## **8.0 APPLICANT RESPONSE (Appendix 7)**

- 8.1 The County Council followed due procedure by offering the Applicant the opportunity to comment on objections received and further representation was submitted dated 23 September 2011. In it the Applicant requests that in the event that the County Council is not minded to approve the Application at this stage that it appoints an inspector to hold a non statutory inquiry.

- 8.2 The Applicant questions the weight to be given to points made by objectors regarding uses made of the site prior to the 20 year periods of significance to the Application. This is most likely in particular to relate to allegations of permission having been given at that time for any use of the land. Whilst evidence of use made pre the twenty year period might, for example, help to add some credibility(or otherwise) to use which may have subsequently occurred it is the twenty year period that is of most relevance to applications of this kind.
- 8.3 In defending accusations concerning credibility of evidence the Applicant in particular points to the volume of user evidence questioning the potential for so many witnesses to offer evidence without basis. There may be some argument to this which needs to be balanced against opposing evidence from the objectors and accounting for the possible influence of elements of the briefing note that was distributed with the witness forms.
- 8.4 The Applicant suggests presumption on the part of objectors that certain claimed uses were actually consequent upon use of the public rights of way on the Application Site. On the one hand there has to be some potential that claimed uses such as bird watching could have been exercised whilst walking on the public rights of way. At the same time it would seem there is similar potential that they were not.
- 8.5 The claimed familiarity by Alwyn Dudley Smith with occurrences on site is challenged by the Applicant pointing to his alleged absence from the country for significant periods.
- 8.6 It is appropriate for the Applicant to point to the planning history of the Application Site as being separate from the question of whether or not town or village green status should be appointed to it. The objector pointing to an apparent lack of previous representation(i.e. during the planning process) of the land concerned being the subject of public use is understandable and could have some influence on assessing credibility of subsequent claims but it would not, at this stage, be appropriate to attach too much weight to the point.

## **9.0 FURTHER REPRESENTATION (Appendix 8)**

- 9.1 Further points were exchanged between Grays (17 October 2011) and the Applicant (24 October 2011) following the abovementioned initial submissions.
- 9.2. For the most part those comprise an exchange of comments on questions of fact on which members of the committee will take a view or otherwise points which are dealt with throughout this report. Issues raised regarding the question of whether or not sheep grazing would be possible in the event of registration of the land as a village green are immaterial with regard to determining the Application. In the exchanges Grays are correct to point out that objectors do not need to be residents of the locality.

## **10.0 EVIDENCE REVIEW**

### **10.1 Witness statements**

When distributed for completion by potential witnesses it is understood the witness statement forms were accompanied by the briefing note (**Appendix 9**). Whilst in part the note can be said to provide helpful general background information there is a substantive element of the note which aims to prompt the answers to be given to certain questions on the form. Additionally the forms contain pre-completed answers to some questions. It is difficult to judge how much of an influence the promptings contained in the note had on witnesses but it has the potential to introduce doubt to the credibility of witness evidence produced from it. Should witnesses have chosen to deliberately access the Application Site subsequent to receipt of the briefing note as urged to in the note that will only have had potential for evidencing use at the very tail end of the 20 year period concerned.

### **10.2 inhabitants of a locality, or of any neighbourhood within a locality**

In answer to Part 6 of the application form the Applicant has referred to “The Village of Thornton Dale within the Parish of Thornton Dale” thus indicating in the context of the Act the application to be in respect of the “neighbourhood” of Thornton Dale within the “locality” of the Parish of Thornton Dale. The witness statement forms however refer to Thornton le Dale as being the “locality” of the Application.

10.3 Whilst not entirely clear whether the application is relying on use by inhabitants of a “neighbourhood within a locality” or of a “locality” it is considered that the former is probably the intention and that consequently Thornton le Dale is being relied upon as a neighbourhood within a wider locality.

10.4 In considering what constitutes a “neighbourhood” for the purposes of section 15 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 in law.

10.5 There has been and continues to be technical debate in legal circles both within and beyond the courts on the meaning of “neighbourhood” and “locality”. However, what amounts to more or less the entire village of Thornton le Dale appears to be at the extreme end of what might be considered to be a cohesive community that amounts to a neighbourhood for the purposes of the Act.

10.6 Where use by inhabitants of “locality” is relied on (rather than “neighbourhood within a locality”) that locality needs to be an administrative unit recognised in law. “The Parish of Thornton Dale” meets that criteria.



## 10.7 Significant number

What constitutes a "*significant number*" in any one case does not need to be considerable or substantial. The characteristics of the neighbourhood concerned determine what is likely to be considered to constitute being a significant number from that neighbourhood. To constitute use by a significant number the usage needs to signify evidence of general use by the local community. There is no formula as to precisely what number of users will constitute a significant number in any one case.

10.8 Suggestion by Alwyn Dudley Smith in his witness statement to the number of claimants not amounting to a significant "proportion" of the population of Thornton le Dale is an inappropriate interpretation section 15. It is not an issue of proportion.

10.9 What the County Council needs to be satisfied of in this case is that the evidence signifies general use by the community of Thornton le Dale.

## 10.10 As of right

A large proportion of the claimed usage appears to relate to walking both with and without dogs. It is difficult without fully testing those claims to be clear how much if any of the said walking has been a consequence of use of the public footpaths crossing the site. Use of a footpath would comprise the exercise of a legal right and so be use "by right" rather than "as of right". For example a dog straying from owners using a path is unlikely to comprise qualifying use for the purpose of the Application. Even an owner straying from a path can still amount in essence to use of the path rather than something else.

10.11 Further, walking, where not on the public rights of way, may amount to something which more appropriately might be viewed as possibly establishing further public rights of way rather than a town or village green. Particularly where such use has followed say a relatively common or defined linear route or routes which are not already public rights of way.

10.12 The courts have interpreted "as of right" to be use which has not been by "*force, stealth nor with the permission or licence of the owner*". Almost without exception the Application Witness Statements make no reference to consent having been granted in order to use the site or to any challenges made either verbally or by for instance signage having been erected by landowner or tenant. The landowner's evidence offers little hard evidence of permissions being granted despite claims that was what happened in the past.

### 10.13 Lawful Sports and Pastimes

The courts have interpreted what constitutes "lawful sports and pastimes" widely. Most of the types of uses referred to, submitted by witnesses on the face of it comprise "lawful sports and pastimes" though observing sheep/lambs would seem to be stretching a point. That said a large proportion of the claimed usage appears to relate to walking both with and without dogs. It is difficult without fully testing those claims to be clear how much if any of the said walking has been a consequence of use of the public footpaths and so to be disregarded.

### 10.14 period of at last 20 years

Given that the Application is relying on two different elements of section 15 in respect of the different parts of the Application Site there are two 20 year periods to be considered. That dating back from February 2011(the time from which access was prevented) in respect of that part of the site owned by Sanctuary Housing Association and the 20 years dating back from May 2011(the time of the Application) in respect of the rest of the site. There is not a major difference in the two periods and given that no material differences occurred regarding accessibility of land retained by Mr Dudley Smith in the interim period then assessment of evidence should not significantly differ in respect of the two parts of the Application Site.

10.15 Taken at face value there are a significant number of witnesses who claim to have been using the site at various times over the twenty years concerned and prior to that. What is less clear from the evidence is how consistent use may have been over twenty years.

## 11.0 DECISION MAKING

11.1 The decision whether or not to approve the Application and so register the land concerned rests with the County Council in its role as a commons registration authority. In doing so it must act impartially and fairly.

11.2 It is not relevant to consider the merits or otherwise of the land being (or not being) registered. The County Council must direct itself only to whether or not all the relevant criteria set out in section 15 have been met.

11.3 Any challenge to the decision reached by the County Council would need to be by way of application for permission for that decision to be the subject of a Judicial Review.

## 12.0 CONCLUSIONS

12.1 For the Application to be approved the County Council must be satisfied that on the evidence available to it ALL the criteria contained in section 15 of the Act are met.

- 12.2 Whilst the Application relies on two different elements of section 15 the difference in the two relevant 20 year periods is short and circumstances across the whole of the site otherwise similar over the 20 years that there is no requirement for any significant difference in the assessment of evidence of past usage between the two parts of the site concerned. There was no material change to the accessibility of that part of the site retained by Alwyn Dudley Smith in the time between the fencing off of the Sanctuary Housing Association land and the date of the Application.
- 12.3 Whilst the courts have resisted suggestion that to demonstrate general use by a community it is necessary for witnesses to comprise an even “spread” of inhabitants from across the locality concerned it is still necessary for a commons registration authority to be satisfied the evidence signifies that the Application Site has been in general use by the local community concerned (in this case Thornton le Dale). When taken at face value evidence tends on balance not to indicate general use by inhabitants of the whole of Thornton le Dale but more use from a smaller geographical area than that.
- 12.4 The Application Site is crossed by two public rights of way. A large element of the use claimed to have been exercised by witnesses comprises walking or a walking related activity which may be associated with use that could be conducted on public right of way. Given the extent of public right of way across the site it seems there is likely to be a relatively high potential for layman witnesses to have unwittingly recorded user experiences which amount to no more than a valid use of the public rights of way and so not comprise use “as of right” of the Application Site.
- 12.5 Overall the high number of witnesses is persuasive of the use of the Application Site for lawful sports and pastimes having taken place. However, it is unclear as to whether such use, even taken at face value, has been consistent enough across the relevant twenty year periods to constitute the 20 year rule having been met. There must be some question over the credibility of user evidence offered against the background of the briefing note distributed with the user evidence forms and the answer to some of the questions on the forms having already been completed by the Applicant for the witnesses.
- 12.6 On the basis of the evidence submitted it is on balance doubtful there are currently grounds on which to approve the Application.
- 12.7 That said 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 that a commons registration authority may decide to hold an inquiry into an application to establish and properly test evidence. Such inquiries have become known as “non statutory inquiries”. The Guidance 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.”*

- 12.8 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*”.
- 12.9 The procedure is widely used by commons registration authorities across the country. In summary an inspector (usually a barrister with recognised specialist knowledge of in this area of law) is appointed to hold an inquiry.
- 12.10 Inquiries provide opportunity for interested parties on all sides to fully explain, explore and test relevant evidence and so ultimately help an authority to arrive at a fully informed decision.
- 12.11 Where an inquiry is held an appointed inspector will prepare a report including recommendation. The decision as to whether or not an application is approved ultimately rests with the Commons Registration Authority. The cost of conducting an inquiry is likely to be in the region of £15,000. At the end of the day the decision and discretion as to how to proceed to reach that decision rests with the County Council.
- 12.12 It is your Officers view that all the relevant criteria of Section 15 of the Act are not satisfied and the application should be refused. The following recommendation reflects this view. However, in the event that Committee is not minded to refuse the Application at this stage 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 and to then prepare a report to assist the County Council in determining the application thereafter. Following receipt of the independent expert’s report, that a further report be presented to this Committee to enable it to determine the application.

### **13.0 RECOMMENDATION**

- 13.1 That Committee resolves to refuse the Application on the grounds that it is not satisfied that all the relevant criteria of section 15 of the Act are evidenced by the Application

DAVID BOWE  
Corporate Director Business & Environmental Services

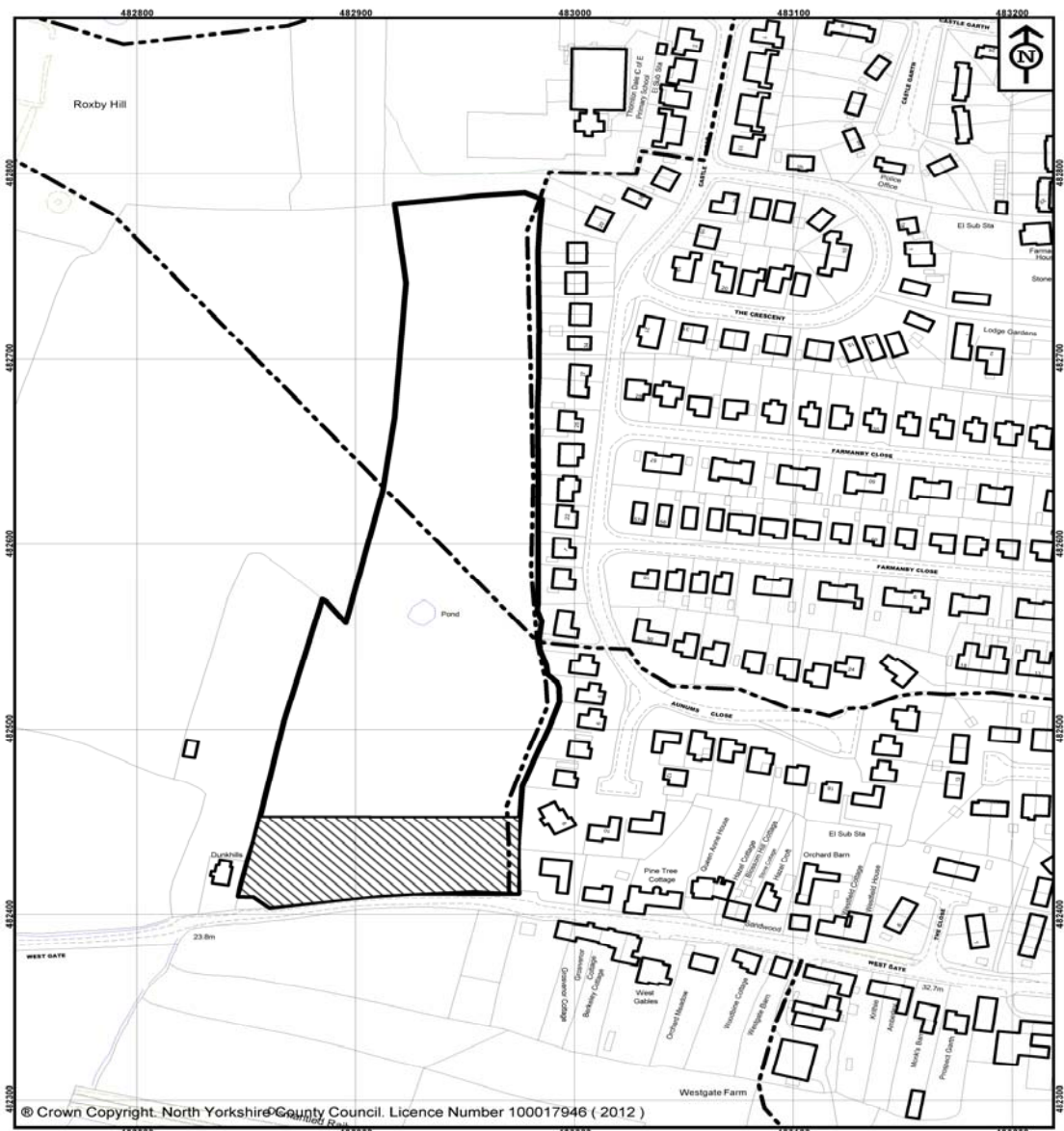
Author of Report: Doug Huzzard/Chris Stanford

Background Documents: Application case file held in County Searches Information - Business & Environmental Services

## **LIST OF APPENDICES**

Appendix 1	Location Plan
Appendix 2	Application
Appendix 3	Summary of Witness Statements
Appendix 4	Objections of Mr Alwyn Dudley Smith and Mr John Shepherd
Appendix 5	Objections of Sanctuary Housing Association
Appendix 6	Observation of Thornton Le Dale Parish Council
Appendix 7	Response of Westgate Protest Group
Appendix 8	Observations of Westgate Protest Group
Appendix 9	Village Green Witness Form – Briefing Note

THORNTON LE DALE – LOCATION PLAN



© Crown Copyright. North Yorkshire County Council. Licence Number 100017946 ( 2012 )

**North Yorkshire County Council**  
 Public Rights of Way  
 Waste and Countryside Services  
 County Hall  
 Northallerton  
 DL7 8AH

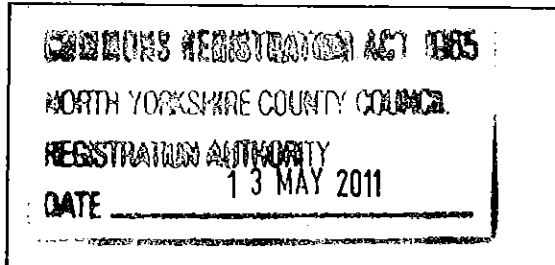
**Key:**  
 Public footpaths ————  
 Village Green application   
 Map drawn on 12 December 2011  
 Drawn by JRP Scale 1:2500

**North Yorkshire County Council**  
 Plan prepared for the  
 Planning & Regulatory Functions  
 Sub-Committee  
 on 13 January 2012  
**LOCATION PLAN**  
 File Ref No.

## 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:

NEW VG57

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

North Yorkshire County Council

**Note 1**  
Insert name of registration authority.

**Note 2**

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

**2. Name and address of the applicant**

Name:  c/o

Full postal address:

Telephone number:   
(incl. national dialling code)

Fax number:   
(incl. national dialling code)

E-mail address:

**3. Name and address of solicitor, if any**

Name:

Firm:

Full postal address:

Telephone number:   
(incl. national dialling code)

Fax number:   
(incl. national dialling code)

E-mail address:

**Note 3**

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.



**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.

15/2/11

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

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

Name by which usually known:

Locally known as Aunums Field.  
Shown on OS maps as Roxby Hill (at the northern end).

Location:

Approx. centre of claimed land is OS Grid Ref  
SE 829 824 THREE NUMBERED MAPS ATTACHED

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:

The Village of Thornton Dale within the Parish of Thornton Dale

Tick here if map attached:  **Map 1**

**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 to 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.

**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).*

**SEE CONTINUATION SHEET ATTACHED**

## CONTINUATION SHEET - SECTION 7

This land is claimed because a significant number of inhabitants of Thornton Dale have used this land for lawful leisure pursuits and pastimes for a period of at least 20 years under Section 15(2) and Section 15(3) of the Commons Act 2006 as witnessed by the enclosed 76 signed statements showing use for activities including: blackberry & sloe picking, golf practice, kite flying, children's games, tree climbing, picnicking, dog walking, bird watching, sledging, horse riding, snowballing, Easter egg rolling, bat watching, enjoying spring lambs by a total of 79 (3 couples have jointly signed a form) people over a period extending from 1991 to May 2011. .

Many of these 79 people have used the land since the 1960's, 1970's & 1980's, as well as the last 20yrs.

Residents continue to use the land at the time of this application - Section 15(2) (except for the portion of land now occupied by Sanctuary Housing Association - Section 15(3)), but they have continuously enjoyed these activities on the whole of the claimed land. Neither landowner or tenant have attempted to stop or curtail these activities (except again for Sanctuary Housing since 15/2/11) and nor, as far as I am aware, have any of the witnesses sought permission for the described activities. There are a number of properties on the eastern side of the claimed land with gates directly from their gardens into the field. These have never been challenged and thus demonstrate acquiescence by the landowner and tenant. One example of such a gate is shown in a photograph - see section 10.

### **Rationale for applying under both Section 15(2) and 15(3)**

The total area of claimed land has belonged to the same landowner (Thornton Dale Estates) for many decades but a portion of the area (see Map 3) was sold to Sanctuary Housing Association in January 2011 after controversial planning permission was approved by North York Moors National Park Authority for construction of affordable homes. Sanctuary's agents started work on 15/2/11 and thus this portion of the land was enclosed on that date and became relevant to Section 15(3). This application is made within the 2yrs qualifying period since cessation - Section 15(3).

The whole of the claimed land has however been regarded for decades as a single entity for leisure purposes. The field slopes from North to South. (In snow the challenge for sledging is to make a competitive run in order to reach the hedge at the southern boundary next to Westgate lane in one go!)

The 2 allied photos attached (See Section 10 of this form) when put

side by side show the Southern half of the claimed land with one of the ancient Ash trees to the right hand side. Obviously the building site is intended to be replaced by the houses. The background of the right side picture shows the swampy ground/reeds, the left hand side of which has now gone because it is part of the building site. The metal fence to the left hand side of the building site is adjacent to the hedge which forms the southern boundary of the claimed land.

Two ancient ash trees in the centre of the claimed land are a focal point for children and picnickers.

The South West corner is a swampy area and produces much insect life creating the food chain for wildlife and thus is the area of interest for bird watching and bat watching in the evenings.

The hedgerows to the south and west boundaries are habitat for the less common bird species especially the renowned barn owls that have hunted and reared young for 30/40 yrs in this area. These are also the areas for autumn fruits. Spring lambs are always a source of interest for all generations and there is no evidence that the farmer has ever attempted to discourage enjoyment of this typical annual cycle showing the countryside at work.

English heritage are currently investigating the site from their York office (application no. 2962) to consider whether this claimed land, thought to have been, in part, the ancient village of Roxby (Rozebi in the Domesday survey), is of value relative to the remains of the original Thornton Manor which was occupied until the late 1600's.

These remains are to the north west of the claimed land shown on the OS map ( Map 1) delineating the locality of Thornton Dale.

The Commons Registration Dept. of NYCC gave leave to apply under both Sections 15(2) & 15(3) in one application (See copy of confirmatory email attached to this application - Section 10)

The respective landowners were informed of our intention to submit this application before Sanctuary Housing commenced building work on 15/2/11.

**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**

**SEE CONTINUATION SHEET ATTACHED**

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

N/A

**10. Supporting documentation**

**SEE CONTINUATION SHEET ATTACHED**

## **CONTINUATION SHEET - SECTION 8**

1) Owner for area shown on Map 4 = Thornton Dale Estates,  
Mr A. Dudley-Smith, The Old House, Priestmans Lane, Thornton Dale  
YO18 7RX

(address for correspondence Grays Solicitors Duncombe Place York  
YO1 7DY)

2) Tenant farmer for same area shown on Map 4 = Mr J Shepherd,  
Manor Farm, Beck Isle, Thornton Dale YO18

This part of the application under Section 15(2)

3) Owner & Occupier for area shown on Map3 - Sanctuary Group,  
Chamber Court, Castle St, Worcester WR1 3ZQ

This part of the application under Section 15(3)

## **CONTINUATION SHEET - SECTION 10**

- Maps 1 - 4 as previously indicated.
- Selection of letters nominating Mr A C James as spokesman for Westgate Protest Group
- 2 allied photos showing building site and Southern part of claimed land referred to in Section 7 - See annotations on reverse
- 3 Photos showing views of claimed land - see annotations on reverse.
- Google earth map of claimed land submitted to provide context.
- Photo attached to witness statement from Mrs N Arnold-Craft showing children in snow - annotated on reverse.
- 2 Photos attached to witness statement from Mrs. B M Bates showing horse riders - annotated on reverse
- Photo attached to witness statement from Mr C Hill showing archery- annotated on reverse.
- 2 photos attached to witness statement from Mrs C James showing child at play - annotated on reverse.
- 2 photos attached to witness statement from Mr A C James showing ball play - annotated on reverse.
- Copy of email to NYCC Commons registration Department confirming agreement to conditions for application.



**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.*

**11. Any other information relating to the application**

It appears that Mr Dudley - Smith (Thornton Dale Estates) will wish to challenge this application because he has already requested that all future correspondence should be addressed to his Solicitor - Grays of York

We suppose that Sanctuary Group will also challenge the application since they have invested money into developing the site since 15/2/11 -to date. Planning permission was formally awarded on 1/4/11 and work is continuing.

**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.*

Date:

12/5/11

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.

<sup>1</sup> Insert full name (and address if not given in the application form).

*Cominsh Acf*

1. Anthony James solemnly and sincerely declare as follows:—

<sup>2</sup> Delete and adapt as necessary.

1.<sup>2</sup> I am ((the person (~~one of the persons~~) who (has) (~~have~~) signed the foregoing application)) ((~~the solicitor to (the applicant) (<sup>3</sup> one of the applicants)~~)).

<sup>3</sup> 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.

<sup>4</sup> Complete only in the case of voluntary registration (strike through if this is not relevant)

4.<sup>4</sup> ~~I hereby apply under section 15(9) 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/

~~been received and are exhibited with this declaration; or  
(iii) where no such consents are required, a declaration to that effect.~~

~~And I make this solemn declaration, conscientiously believing the  
same to be true, and by virtue of the Statutory Declarations Act 1835.~~

Declared by the said

ANTHONY CORNISH (NAME)


at 8 KALLGARTH, PICKERING  
NORTH YORKSHIRE

this 12th day of May 2011

  
Signature of Declarant

Before me \*

Signature:

  
(HELEN E. SKIFFE)

Address:

8 KALLGARTH  
PICKERING  
NORTH YORKSHIRE  
YO18 7AP

Qualification:

COMMISSIONER FOR OATHS

\* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

EVIDENCE QUESTIONNAIRE IN SUPPORT OF REGISTRATION AS A VILLAGE GREEN

NAME	MRS A. D. ARNOLD - CRAFT		
ADDRESS	2 AUNUMS CLOSE THORNTON DALE		
POSTCODE	YO18 7TP	TELEPHONE NO	01751476095

1. Address when you used the land. (The land in this form means 'the claimed land'.)	1978.
2. Address when you knew the land was used by the local inhabitants.	1978.
3a. Did you sign the reverse side of 'Map A' confirming it relates to this evidence provided by you? (Map A is the map showing the claimed land, and the claimed locality which uses the land, which should accompany the form and which will subsequently accompany the application: see Form 44 part 5 & 6 (and note 5 & 6).)	Yes/No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
3b. Please confirm that you agree with the boundaries of the locality (or neighbourhood within a locality) on 'Map A' edged in ...RED..... (state the colour)	
4. Please mark the location of your house on 'Map A' with an X.	
5. By what, if any, name is the land shown on 'Map A' known?	THE AUNUMS FIELD
6. Has it ever to your knowledge been known by any other name? If so, what name?	THE AUNUMS.
7. For how many years have you known the land?	From 1978 to PRESENT DAY
8. Between which years did you use it?	From 1978 to PRESENT DAY Then from ..... to .....

9. Do you consider yourself to be a local inhabitant in respect of the land?  
 YES

10. During the time you have used the land, has the general pattern of use remained basically the same?  
 YES

11. What recognisable facilities are available to the local inhabitants of your locality? Please tick all boxes that apply and add any OTHER additional matters not covered.

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> SCHOOL CATCHMENT AREA            | <input checked="" type="checkbox"/> AREA POLICEMAN    |
| <input checked="" type="checkbox"/> LOCAL SCHOOL                     | <input checked="" type="checkbox"/> DOCTOR'S SURGERY  |
| <input checked="" type="checkbox"/> RESIDENTS' ASSOCIATION           | <input checked="" type="checkbox"/> COMMUNITY         |
| ACTIVITIES   |   |
| <input checked="" type="checkbox"/> COMMUNITY CENTRE                 | <input checked="" type="checkbox"/> NEIGHBOURHOOD     |
| WATCH  |   |
| <input checked="" type="checkbox"/> LOCAL CHURCH OR PLACE OF WORSHIP | <input checked="" type="checkbox"/> A CENTRAL FEATURE |
| <input checked="" type="checkbox"/> SPORTS FACILITY                  | <input type="checkbox"/> SCOUT HUT ?                  |
| <input checked="" type="checkbox"/> LOCAL SHOPS                      | <input type="checkbox"/> OTHER (Please state)         |

12. To your knowledge are there any public paths crossing the land?  
 YES

13. How do/did you gain access to the land?  
 FROM A GATE IN MY GARDEN INTO THE FIELD

14. Why do you go on to this piece of land?  
 ① TO GET TO WESTGATE. ② TO TAKE PHOTOGRAPHS. ③ TO PAINT PICTURES. ④ COMING BACK FROM VILLAGE SHOPS I WALK BACK, WEATHER PERMITTING VIA THE FIELD

15. How often do/did you use the land (apart from the public paths)?  
 SOMETIMES I HAVE TAKEN MY GRANDCHILDREN TO PLAY IN THE FIELD. (They are grown up now)

16. What activities do/did you take part in?  
 AT SLEDGING, BALL GAMES. WITH OUR KITES. ALL THESE AS LONG AS IT WAS WITHOUT THE SHEEP.

17. Does your immediate family use the land?  
 THEY LIVE FAR AWAY NOW BUT WHEN THEY COME THEY GO FOR WALKS.

18. If so, what for? TO GO AND SEE THE VIEW FROM THE TOP OF THE HILL

19. Do you know of any community activities that take place or have taken place on the land?  
 I OFTEN SEE GROUPS OF WALKERS.

19a. Please list them and state when and for how long they have taken place.  
 D/K WHAT GROUP AS I NEVER ASK.

20. Do you participate in any of them?

21. Do any organisations use the land for sports or pastimes? If so please specify.

22. Do any seasonal activities take place on the land?  
 YES. EVERY YEAR I SEE FAMILIES SLEDGING.

23. Please tick all the activities that you have seen taking place on the land.  
 CHILDREN DURING SUMMER HOLS. SOMETIMES GATHER UNDER THE BIG TREES OPPOSITE MY BUNGALOW

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> CHILDREN PLAYING               | <input type="checkbox"/> FOOTBALL                  |
| <input type="checkbox"/> ROUNDERS                                  | <input type="checkbox"/> CRICKET                   |
| <input type="checkbox"/> FISHING                                   | <input type="checkbox"/> BIRD WATCHING             |
| <input checked="" type="checkbox"/> DRAWING AND PAINTING           | <input type="checkbox"/> PICNICKING                |
| <input checked="" type="checkbox"/> DOG WALKING                    | <input checked="" type="checkbox"/> KITE FLYING    |
| <input type="checkbox"/> TEAM GAMES                                | <input checked="" type="checkbox"/> PEOPLE WALKING |
| <input type="checkbox"/> PICKING BLACKBERRIES                      | <input type="checkbox"/> BONFIRE PARTIES           |
| <input type="checkbox"/> COMMUNITY CELEBRATIONS                    | <input type="checkbox"/> BICYCLE RIDING            |
| <input type="checkbox"/> FETES                                     | <input type="checkbox"/> CAROL SINGING             |
| <input type="checkbox"/> OTHER (Please state) SEE UP AND SLEDGING. |  |

24. Do you know who is the owner of the land?  
 Thornton Dale Estates, Mr A Dudley Smith, The Old House, Priestmans Lane, Thornton Dale Sanctuary Group, Chamber Court, Castle Street, Worcester, WR1 3ZQ

25. Do you know who is the occupier of the land? <u>Mr. J Shephard (farmer) Manor Farm, Beck Isle, Thornton Dale</u> Sanctuary Group, Chamber Court, Castle Street, orcester, WR1 3ZQ
26. Has the owner or occupier seen you on the land? YES
27. What did he or she say? THE FARMER'S SHEEP CAME INTO MY GARDEN. AND HE PUT UP A STRONGER FENCE
28. Was permission ever sought by you for activities on the land? NO
28a. If so, from whom and when.
29. Did anyone ever give you permission to go onto the land? NO
29a. If yes, when and the reason.
30. Have you ever been prevented from using the land? NO (Except the southern part now owned by Sanctuary Housing Association was enclosed on 15/2/11)
30a. If yes, when and the reason.  Sanctuary Housing obtained planning permission for development and began construction work in February.. Thus the building site was laid out and access for the public was no longer possible
31. Has any attempt ever been made by notice or fencing or by any other means to prevent or discourage the use being made of the land by the local inhabitants?  NO - But see 30a relating to Southern portion only
31a. If yes, give examples and dates.

32. Do you have any photographs or any other evidence of use of the land by local inhabitants?	<input checked="" type="radio"/> Yes/No
33. Are you willing to lend them to us? I HAVE SENT AN E-MAIL TO YOU RECENTLY OF SLEDGING	<input checked="" type="radio"/> Yes/No
34. If you have additional information please attach a separate statement.	Yes/No
35. If you have knowledge of others who may be in a position to complete an evidence form, would you please write their names and addresses upon the reverse of this form.	Yes/No
36. I have carried on the activities referred to in this questionnaire for <u>33</u> years without anybody trying to stop me and I believe the activity should be treated by the law as having a lawful origin.	
37. <i>I understand that the evidence form I have completed in relation to this application may become public knowledge and I authorise the applicant to disclose this form to anyone reasonably requiring access to this application.</i>	
38. <i>I also understand that this evidence may be presented at a non-statutory inquiry and I authorise the applicant to use this form for that purpose.</i>	

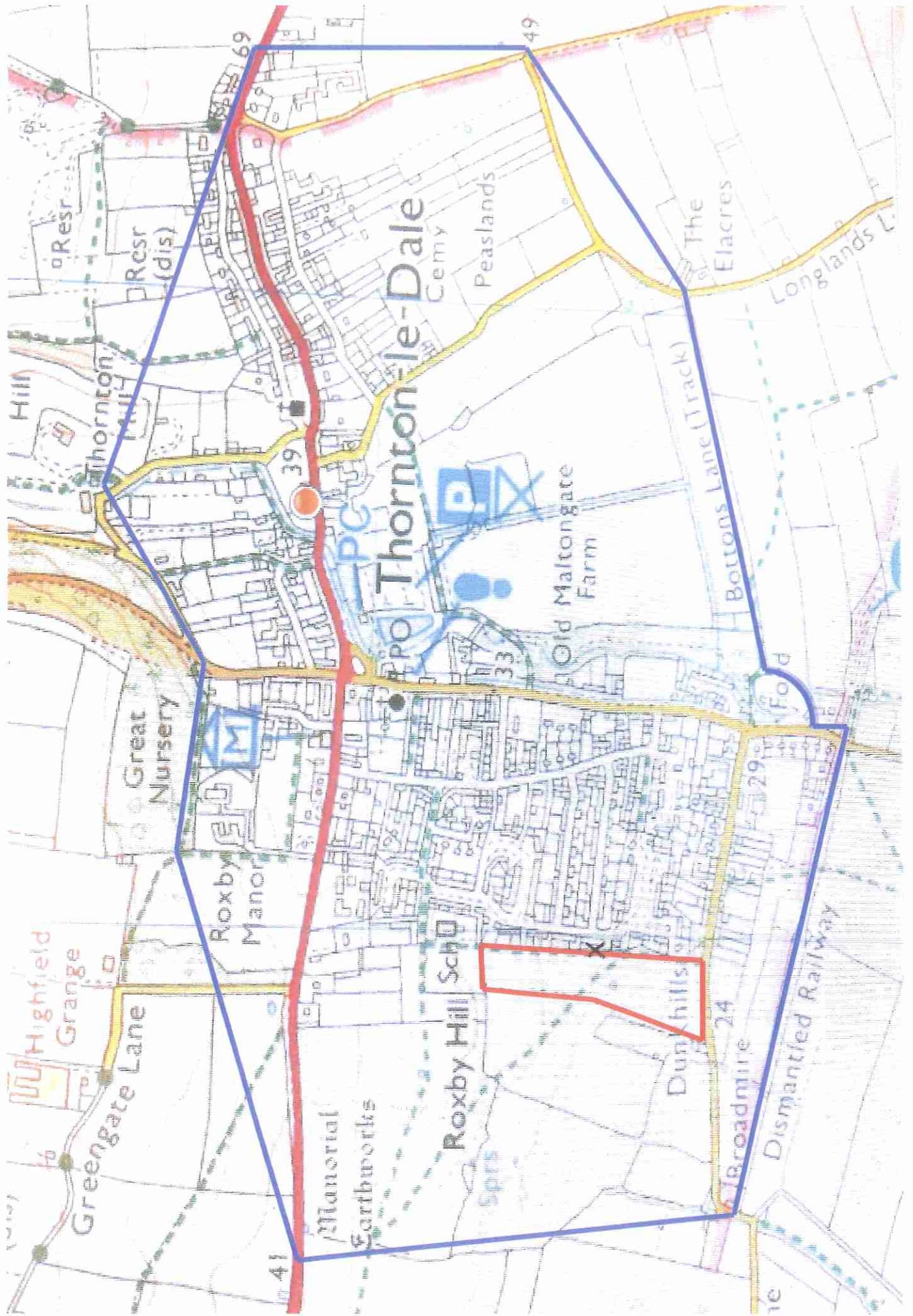
Signed



Date

4. Apr 2011





MERRY CHRISTMAS



05/03/2005

Taken by Nancy Arnold-Craft

From the north looking  
south west.

Address 2 Aunums below  
Thornlon Dale.

I converted it into a business card.

<u>NAME</u>	<u>TIMING</u>	<u>MEANS OF ACCESS</u>	<u>PAINTING</u>	<u>WALKING KITES</u>	<u>SLEDGING</u>	<u>BALL</u>	<u>GAI</u>	<u>ARCHERY</u>	<u>BIRD</u>	<u>WAT</u>	<u>GAMES</u>	<u>PICNICS</u>	<u>FRUIT PIC</u>	<u>OTHER</u>	<u>REGULARITY</u>
STEPHEN	2009	GATE		X											daily
SENES	2009	GATE		X											daily
PEARSON	2008	PUBLIC FOOTPATH		X				X							daily
BARTLETT	2008	LOCAL PATH/GARDEN GATE	X		X			X							weekly
CLAXTON	2007	STILE		X					X						once or twice a month
CLAXTON	2007	STILE		X					X						twice a month
TURNER	2006	STILE		X				X							once or twice a week
FLEAR	2006	STILE			X										six times a year
BEECHAM	2006	STILE		X				X							4-5 times per week
BEECHAM	2006	STILE		X											4-5 times per week
GRIFFITH	2006	PUBLIC FOOTPATH		X		X									daily
LANGAN	2006	STILE		X											once a week
SAUNDER	2006	STILE		X											once a week
McKEAND	2004	STILES		X		X									once or twice a month
RHODES	2004	FOOTPATH		X											
STENT	2003	STILE		X		X								X	daily during school term/weekly otherwise
HERRING	2003	STILE/GATE		X											weekly
STENT	2003	STILE		X											weekly
STENT	2003	STILE		X										X	weekly
CONNELL	2003	WESTGATE		X		X									regular basis
CONNELL	2003	WESTGATE		X		X									regular basis
CONNELL	2003	WESTGATE		X		X									regular basis
CONNELL	2003	WESTGATE		X		X									regular basis
THOMAS	2001	STILE/PASSAGE		X				X							2/3 times per year
LUNN	2001	STILE		X											
HILTON	2001	STILE						X							often
HILTON	2001	STILE		X		X									frequently
BAKER	2001	GARDEN GATE		X											often
SHINMAN	1999	STILE/GATE		X							X	X			daily when had a dog
MUSGRAV	1998	STILE/GATE		X											fortnightly
MIDGLEY	1998	GARDEN GATE		X		X		X						X	nearly everyday
DICKSON	1998	VIA WESTGATE		X		X									every winter
AUCKLAN	1998	STILE		X											variable
AUCKLAN	1998	STILE		X											variable
AUCKLAN	1998	STILE		X											variable
AUCKLAN	1998	STILE		X										X	variable
ALGER	1998	GATE		X											weekly
ALGER	1998	GATE		X											weekly
BATES	1997	GARDEN GATE		X											frequently
WALKER	1997	STILE		X				X				X	X		fortnightly
WESTON	1997	FOOTPATH		X		X									occasionally
CROFT	1996	STILE		X										X	very often
WHALLEY	1996	VARIOUS PATHS & GATES		X								X			quite often
WHALLEY	1996	PUBLIC FOOTPATH/GATE		X		X									3/4 times per week
GOODLAC	1992	STILE/GATE		X		X		X							mainly during school holidays
GOODLAC	1992	GATE		X		X									weekly
HELLIWEL	1992	STILE		X											previously quite a bit
JAMES MF	1991	STILE/GATE		X	X	X	X	X	X	X	X				2/3 times per week
JAMES MF	1991	STILE/GATE		X	X	X	X	X	X	X					2/3 times per week
OGG	1991	GATE		X		X									twice a month
OGG	1991	STILE/GATE		X	X	X									twice a month
MALEY	1988	STILE		X											2/3 times per week
SNAGGE	1986	STILES		X		X									several times a year
FLETCHER	1986	STILE/GATE		X		X			X						from time to time

ANDERSC	1984	STILE/GATE		X	X	X	X														X	4 times a week p to 1998
MONKMAI	1984	STILE		X	X	X	X															once a month when grandchildren visited
GIBBONS	1984	STILE		X	X																X	daily
GIBBONS	1984	STILE		X	X	X					X										X	daily
LEDGE	1983	GATE		X																		occasionally
KEMP	1981	STILE		X																		quite often
MORLEY	1980	STILE		X			X															not very often
ARNOLD C	1978	GARDEN GATE	X	X	X	X	X															n/a
GRAHAM	1976	PUBLIC FOOTPATH		X																		weekly
ANDERSC	1976	PUBLIC FOOTPATH		X																		weekly
ANDERSC	1976	PUBLIC FOOTPATH		X																		weekly
PLAYER	1975	STILE/GATE		X																		occasionally
WILSON	1975	STILE/GATE		X																		daily in the past
RYNEHAR	1974	STILE				X	X															weekly
CASS	1972	STILE/GATE		X			X				X											fortnightly
SCHULZE	1972	STILE	X	X			X															regularly
SHEARD	1971	STILE/PATH			X	X	X					X	X									once or twice a month
FLOREY	1971	STILE/GATE		X																		regularly
HALL	1961	STILE		X	X	X	X															regularly
HILL	1954	STILE/GATE		X			X	X	X													weekly to monthly
ROBSON	1949	GATE				X	X					X										often

OBSERVED

CHILDREN ROUND DRAWING & PAINTING	WALKING FRUIT PIC	FOOTBAL	CRICKET	BIRD WAT	PICNICS	KITE	SLEDGING	MODEL A	HOSERIDI	SCHOOLS	RUNNING	EASTER E	COMMUNITY	CELEB	ARCHERY	BICYCLE RIDING	CAROL SINGING	
26	2	7	26	3	9	3	20	10	15	11	1	1	3	3	2	2	4	1

**APPENDIX 4**

72-50-52827

**GRAYS**  
SOLICITORS

Our Ref: GHB/21281/041 *New VG57*

Your Ref: NEW VG57

Direct email: GillianBlick@grayssolicitors.co.uk

Date: 1 September 2011

Duncombe Place York YO1 7DY  
Telephone: (01904) 634771  
Fax: (01904) 610711  
DX: 61505 YORK

Email: enquiries@grayssolicitors.co.uk  
Web site: www.grayssolicitors.co.uk

Mr Chris Stanford  
NYCC Commons Registration  
Highways North Yorkshire  
County Hall  
Northallerton  
North Yorkshire  
DL7 8AD

Dear Sir

**NEW VG57 - APPLICATION TO REGISTER NEW VILLAGE GREEN**  
**at Aunums Field, Thornton le Dale.**

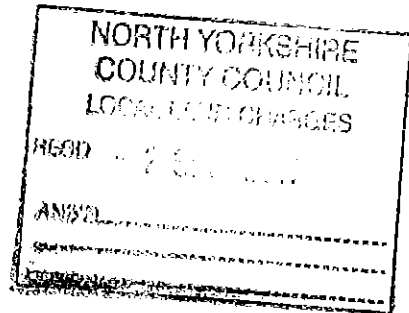
Please find enclosed the Objections to the registration of Aunums Field as Village Green on behalf of Mr Alwyn Dudley Smith and Mr John Shepherd supported by witness statements from:

1. Mr Alwyn Dudley Smith;
2. Mr John Shepherd;
3. Ms Rachael Cook;
4. Mr Michael Harper;
5. Mr Richard Gray;
6. Mr Leigh Holliday... *to follow*
7. *Mrs Karen Hustler*

Yours faithfully



**Grays**



Enc

21281\041\3982GHB LET

Partners:	Christopher Goodway	Lyn Rickatson	John Knowles	Brian Mitchell	Ben Williams
Solicitors:	Angela Reinholz	Gillian Blick	Catherine Goodway	Emma Grandison	Conveyancing Executive: Janet King

**Objection**

submitted to

**North Yorkshire County Council**

on behalf of

**Mr Alwyn Dudley Smith and Mr John Shepherd**

in relation to an application for registration of a

Town or Village Green at

**Aunums Field, Westgate, Thornton le Dale**

under the provisions of the

**Commons Act 2006**

**GRAYS**  
S O L I C I T O R S

---

Duncombe Place York YO1 7DY  
Telephone (01904) 634771

Fax (01904) 610711  
DX 61505 YORK

[www.grayssolicitors.co.uk](http://www.grayssolicitors.co.uk)



# **Objection**

submitted to

**North Yorkshire County Council**

on behalf of

**Mr Alwyn Dudley Smith and Mr John Shepherd**

in relation to an application for registration of a

Town or Village Green at

**Aunums Field, Westgate, Thornton le Dale**

under the provisions of the

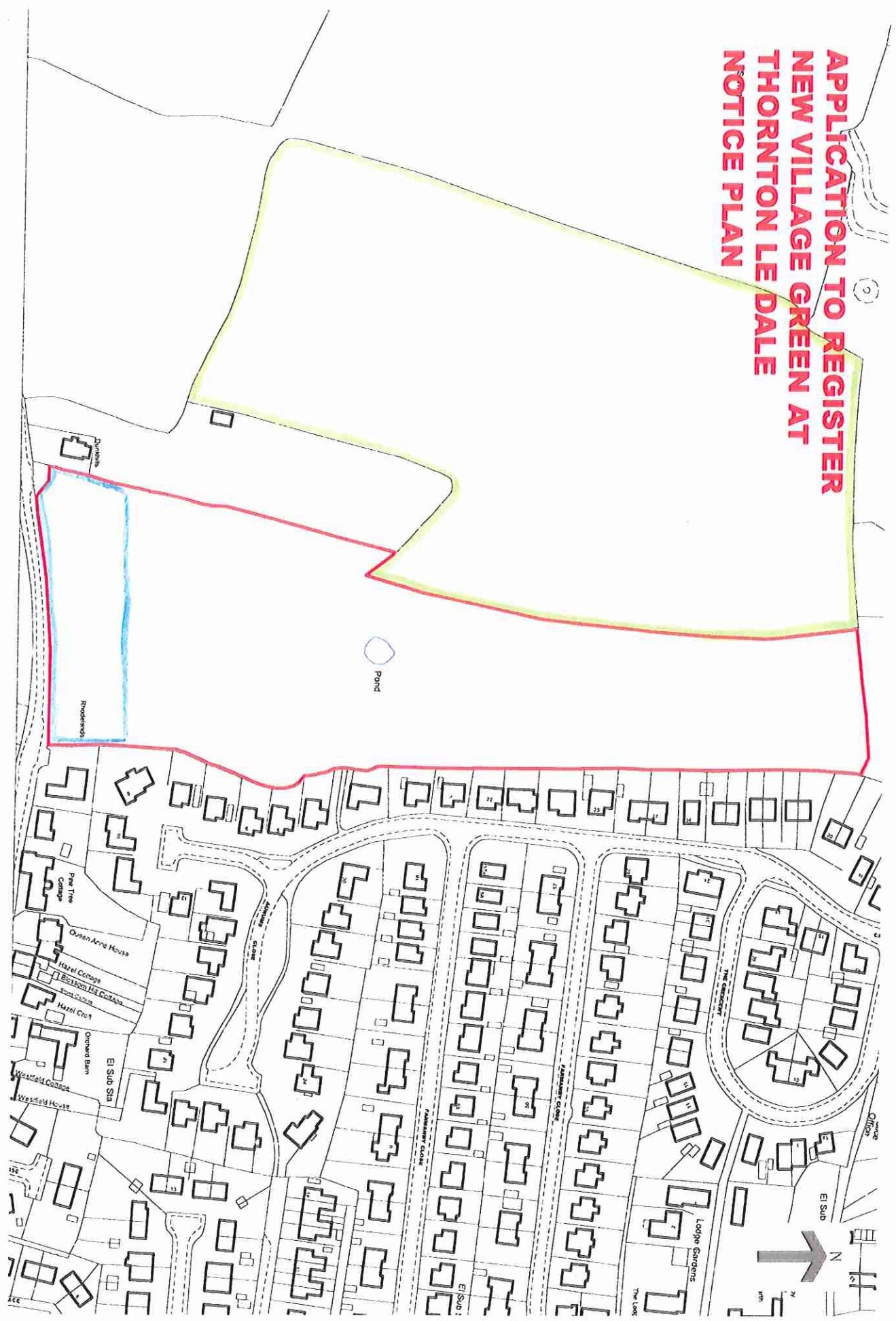
**Commons Act 2006**

---

1. Mr Alwyn Dudley Smith is the freehold owner of the land known as Aunums Field which is shown edged red on the plan annexed hereto ("The Plan"), save for that part also edged blue which was sold by him to the Sanctuary Housing Association on 11 February 2011.
2. Mr John Shepherd is the tenant farmer in occupation of Aunums Field which he farms together with other land.
3. The applicant, Mr James, has to show on a balance of probabilities that:
  - i. a significant number of the inhabitants of Thornton Dale have indulged as of right in lawful sports and pastimes on the land known as Aunums Field, shown edged red on the Plan;
  - ii. for a period of at least 20 years; and
  - iii. they continue to do so in relation to Mr Dudley Smith's land at the

**APPLICATION TO REGISTER  
NEW VILLAGE GREEN AT  
THORNTON LE DALE  
NOTICE PLAN**

②



time of the application; and

- iv. they ceased to do so less than two years before the application was made in relation to the land owned by the Sanctuary Housing Association.
4. In his application for registration of Aunums Field as Town or Village Green Mr James asserts that many of the 76 statements in support of the application show that people have used the land since the 1960s, 1970s and 1980s. The historic uses of the land have been with the consent of the tenant farmer in occupation at the time, and in any event these uses ceased more than twenty years ago.
  5. The majority of statements in support have people claiming to walk on Aunums Field, or walk their dogs on Aunums Field. These are not inconsistent with using the public footpaths and although in the briefing note sent out with the evidence questionnaires Mr James states that anyone who completes the evidence questionnaire needs to be sure that they have deviated from the public footpath, it is probable that people have not understood this point. People have clearly not understood that it is only the land edged red on the plan which is the subject of the application. Many allege that they have sledged, tobogganed or flown kites in Aunums Field when if they have done so at all it has been in the adjacent field.
  6. Taking the air, bird watching, photography, observing nature, walking and walking the dog are all activities which are consistent with the use of the public footpaths across the land.
  7. Aunums Field is a rough field which has been mainly used for grazing sheep by Mr Arthur Croft, his son Mr Arthur Croft and more recently by Mr Geoff Shepherd and now his son Mr John Shepherd. It has only been used for other activities with the consent of the tenant farmer.
  8. Aunums Field is not suitable for many of the alleged uses and some of the alleged uses are impossible.

9. It is admitted that some properties have gates from their gardens which open on to the public footpath. As this is a public right of way it does not show acquiescence on the part of either Mr Dudley Smith or Mr Shepherd because they have not challenged the existence of these gates.
  
10. The effect of registration of a Town or Village Green has serious consequences for a landowner and farmer. Aunums Field has always been grazed by sheep belonging to a tenant farmer and no-one has had rights of common since the time of the inclosures. If it is registered as Village Green Mr Shepherd will no longer be lawfully able to graze his sheep there, and as there is no other person with the right to graze stock, the land will go to waste unless it is actively maintained.
  
11. It is submitted that the applicant has not discharged the burden of proof and that on a balance of probabilities a significant number of the inhabitants of Thornton Dale have not indulged as of right in lawful sports and pastimes on the land known as Aunums Field, shown edged red on the Plan for a period of at least twenty years.
  
12. The registration authority is respectfully requested to decline to register Aunums Field as a Town or Village Green.

  
Grays Solicitors

dated this 1<sup>st</sup> day of September 2011

## **WITNESS STATEMENT**

**in relation to**

**Land at Aunums Field, Westgate, Thornton-le-Dale**

I, Alwyn Dudley Smith of The Old House, Thornton le Dale, Pickering, North Yorkshire, YO18 7RX will say as follows:

### **Objection**

1. Save for the land shown outlined in blue on the plan annexed hereto and marked "Plan 1", I am the freehold owner of the land known as Aunums Field which is shown outlined in red on Plan 1, and which has been in my family for generations. I hereby object to the registration of Aunums Field as Village Green.

### **Background**

2. I was born and bred in Thornton le Dale and have been acquainted with this land all my life. As a child, I lived with my mother and sister at Grosvenor Cottage, which is the last house on Westgate on the left hand side as you travel towards Pickering.
3. I go down Westgate to walk my dogs on most days and have done so for the last twenty years.
4. Save where mentioned in this statement, I have never seen anyone apart from the farmers who have occupied the land (currently Mr John Shepherd), in Aunums Field doing anything other than walking on the public footpaths which run up Aunums Field from Westgate towards the stile by the primary school and cutting across Aunums Field diagonally from the stile by Aunums Close towards Roxby Hill and the Pickering Road.

### **Footpaths**

5. I am shown a copy of a 1912 edition Ordnance Survey map which is annexed hereto and marked "Plan 2". It can be seen from Plan 2 that the two footpaths which cross Aunums Field have done so for a very long time.

### **Application for Registration as Village Green**

6. A number of people have come forward to support an application for registration of Aunums Field as a Village Green. The application is based on a claim under section 15 of the Commons Act 2006 that a significant number of the inhabitants of any 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.
7. I believe that some people have been mistaken and others have set out to deliberately mislead.
8. I understand that there are nearly two thousand inhabitants of Thornton Dale, the seventy six people who have supported the application do not seem to be a significant proportion of the local inhabitants.
9. I believe that this application for registration of Aunums Field as village green has been made in order to prevent the completion of the affordable homes being constructed on Westgate and to prevent any future development of the remainder of the field rather than because there has been any actual use of the land for lawful sports and pastimes without consent.
10. I have been shown a letter from Mr Anthony James addressed "Dear Resident" and entitled "Briefing Note" a copy of which is annexed hereto and marked "ARDS1". This will have been passed to every person who

completed an evidence questionnaire on which many of the panels had been pre-populated by Mr James.

11. Mr James exhorts residents "not to exaggerate" and "to be honest" but as expressed so well in the words of Shakespeare from his play Hamlet "*The lady doth protest too much, me thinks*". I am left with the impression that he intends precisely the opposite. In particular, Mr James tells people to "GO NOW" to the field because that way they can complete the form and be honest at the same time! He also tells people not to complete questionnaires which provide evidence that this land has been used only by permission.
12. Annexed to the evidence questionnaires of Mr and Mrs James are five photographs taken on 24<sup>th</sup> and 25<sup>th</sup> April 2011. These all show their grandson in various poses with one or other of his grandparents and whilst charming are of no evidential value as they have so obviously been taken for the purpose of annexing to their application rather than because they are in the habit of indulging in lawful sports and pastimes on Aunums Field.

#### **Westgate Protest Group**

13. Mr James has been appointed spokesman of the Westgate Protest Group. The name says it all really. They are protesting about the affordable homes - they did not form this group to "preserve a right claimed by them for local inhabitants to indulge in lawful sports and pastimes on Aunums Field".
14. In his letter to the North York Moors National Park Authority in November 2010, a copy of which is annexed hereto and marked "ARDS2", Mr James states that "We will continue to fight with every means at our disposal (including the wildlife)." This evidences his intention to do whatever he can to prevent the construction of the affordable homes.

### **Snowballing**

15. Children, particularly boys, will make and throw snow balls wherever they are when there is snow on the ground. The making and throwing of snow balls is consistent with and incidental to the use of the public footpaths.

### **Tobogganing and Sledging**

16. There have historically been two main hills in Thornton le Dale suitable for tobogganing or sledging when there is sufficient snow. The primary one was on land belonging to Mr Ashley Burgess near Millers Hill, until the land was enclosed to form part of his garden when he built his new house nearby. The secondary one is in the field adjacent to Aunums Field, shown edged green on Plan 1, which has only really become popular since the land at Millers Hill was closed off around ten years ago.
17. There are reasons why no-one would sledge or toboggan down Aunums Field. Firstly, it is not as good as the steeper hill in the field adjacent. Secondly, there are two large ash trees and going at any speed would be potentially dangerous as toboggans and sledges can be difficult to steer. (See Plan 4)
18. No-one uses Aunums Field for sledging or tobogganing and those people who have claimed to do so have been mistaken. People cross Aunums Field on the footpath to reach the hill in the adjacent field down which the sledging is reasonably good.
19. I notice that in her evidence questionnaire Mrs A D Arnold - Craft of 2 Aunums Close says "Sometimes I have taken my grandchildren to play in the field. (They are grown up now)" She lists the activities they took part in as "at sledging, Ball games. With our kites. All these as long as it was without the sheep. "



Mrs Arnold - Craft admits that none of these activities were undertaken when the sheep were in the field, thereby acknowledging that the farmer's rights take precedence over any rights claimed by her.

20. Mrs Arnold - Craft has kindly provided a photograph which she has dated 05/03/2005 which she had converted into a Christmas Card. This photograph clearly shows children with sledges enjoying the snow, but not in Aunums Field. The photograph is taken in the adjacent field which is shown edged green on Plan 1.
21. I believe that Mrs Arnold - Craft is similarly mistaken about where her grandchildren flew kites for the reasons set out below.
22. Even if Mrs Arnold - Craft's grandchildren played in Aunums Field, as they are not inhabitants of Thornton Dale their activities cannot be relevant under section 15.

#### **Horses**

23. In her evidence questionnaire Mrs Bates of 20 Castle Road says that she "enjoys taking her dog for a walk, but not when the lambs are there". This is an admission that the farmer's rights take precedence over whatever rights she may claim.
24. Mrs Bates also says that her immediate family use the land "when they are here" which indicates that they visit her and are not inhabitants of Thornton Dale and whatever activity they may indulge in on Aunums Field cannot be relevant for the purpose of section 15.

25. Mrs Bates has kindly produced a photograph of some horses and riders dated February 2005, and also says that they broke the stile over the field behind them. If the stile was broken by the horses or their riders then they have used force to gain access to the land and this use cannot therefore be relevant for the purpose of section 15.
26. The photograph shows the horses on the field edged green on Plan 1 not on Aunums Field which is shown edged red. This does not provide evidence that these horses were ever in Aunums Field, but in any event if they were they may well have had permission to enter the land, especially if they were connected with the Hunt.

#### **Photography**

27. I note that in her evidence questionnaire Mrs Edna Schulze of 24 Farmanby Close claims to have used Aunums Field for, amongst other things, photography. Later in the questionnaire in panel 32 she answers the question "Do you have any photographs or any other evidence of use of the land by local inhabitants?" with a "No". That would seem to cast doubt on her earlier answer. If she used Aunums Field for photography, where are the photographs? Has she really none whatsoever?

#### **Skiing**

28. Two supporters of the application have mentioned a relative skiing down Aunums Field. I believe that if this happened at all it is more likely to have been on the field adjacent to Aunums Field where the tobogganing and sledging activities take place.
29. However, and more importantly, the person or persons in question were obviously visitors to Thornton Dale not inhabitants, and whatever activity they may have indulged in is not relevant for the purpose of section 15.

## **Football**

30. The surface of Aunums Field is level at the end closest to Westgate, but is low lying with abundant marsh grasses and thistles. I can remember that for one season about fifty years ago it was laid out as the Thornton Dale football team's pitch. Mr Arthur Croft (Senior) was the farmer in occupation of Aunums Field then and he offered the football team the use of part of Aunums Field. I played for the team in those days when Mr Croft's son, Mr Francis Croft, was one of the team's star players and we did not have a permanent pitch, but various farmers around the village would offer the use of part of a field for a season at a time on a rotational basis.
31. The Westgate end of Aunums Field was really too soft underfoot to be suitable in the winter months and the football team did not return to that venue. Furthermore, unless the surface was regularly mown the marsh grasses and thistles would encroach making it inaccessible for ball games of any sort and there has been no mowing in the last 30 years save for one cut of hay taken from the Aunums as a whole including the Aunums field in about 1994 or 1995. Although the land is grazed by sheep, they eat around the marsh grasses, stinging nettles and thistles which thrive in sheep pasture for that reason. The assertion that people have played games here in recent years is simply not credible.
32. The upper part of Aunums Field although firmer is on a relatively gentle slope and has been laid out in ridge and furrow pattern as permanent pasture for centuries. For these reasons, I believe it to be unsuitable for playing ball games of any sort.

## **Archery**

33. Aunums Field may have been used for archery by members of the youth club, but if so they would have done so with the permission of Mr Arthur

Croft Senior. In 1960 the youth club and the scouts were both run by Miss Annie Margaret Wharrick who was quite formidable and very keen on imposing discipline and behaving properly. I believe that she would never have entered or used a farmer's land without first obtaining consent to do so.

34. I note that in his evidence questionnaire Mr Charles Hill says that he used the land from weekly to monthly for archery, football, sledging and walking. Having been the local butcher for many years, Mr Hill probably knows much of the local gossip and report. He also says that the archery and football were community activities and that organisations do not use the land any longer to his knowledge. This is almost certainly true.
35. He says that as a youth he used Aunums Field for archery and football, which would have been by permission. His walking in Aunums Field is consistent with the use of the public footpaths, and the sledging referred to by him was not on Aunums Field but on the adjacent land.
36. I do not believe the photograph showing Mr Charles Hill and others in 1960 with a bow and arrows was taken in Aunums Field as we know it today. As I have already stated, I lived in Grosvenor Cottage during my childhood and therefore know it well. Grosvenor Cottage has been extended since that time with a two storey extension on the western end of the building. I believe that this photograph may have been taken in a field adjacent to Aunums Field, but which now forms part of the gardens of the new houses in Aunums Close and on the north side of Westgate. All these fields were known generally as "The Aunums" in those days.
37. I am now shown a copy of the 1929 edition of an Ordnance Survey Map annexed hereto and marked "Plan 3" on which the field where I believe the

photograph to have been taken is numbered "561". You can see Grosvenor Cottage on Plan 3, where its footprint was the same as in 1960; it is the last house on the southern side of Westgate as you head towards the west. The angles in the photograph make it more likely that the photograph was taken there.

### **School**

38. Thornton Dale Church of England Primary School moved to its present location in or around 1969/1970 where it has a playing field on site with a grassy bank sloping down on to the playground and a well planned nature study area. I do not believe that the school takes pupils off-site for nature walks or to roll Easter eggs. The facilities for both these activities are available within the school grounds and the additional risk assessments and precautions which schools have to implement when taking pupils off the school premises would almost certainly prevent any such activities taking place.
39. Not surprisingly, the surface of Aunums Field is generally covered in sheep droppings. It is not unusual for there to also be dog mess, as dog walkers do not always pick up after their dogs. I do not believe that the school children would be encouraged to roll Easter eggs down this field between the sheep droppings and the dog mess.
40. I understand that before moving to its present location, when the school was housed in the "Old School" near the alms houses on Chestnut Avenue, the children were taken to play sports on land up Westgate. This may well have been on the field we now call Aunums Field but it would have been done with the permission of the farmer.

41. Even in the unlikely event that children were taken to play sports on a farmer's field without his consent, this use ceased in 1969/1970 when the new school opened.

### **Walking Groups**

42. In his evidence questionnaire, Mr David Musgrave of Hazel Cottage Westgate says that the walking group led by him takes a lunch stop in Aunums Field. In support of this assertion, Mr Musgrave attaches a copy of the walking programme which indicates that the group will meet in the Thornton Dale car park at 10:30 am on every fifth Tuesday from April to September 2011, the first one being on 3 May 2011.
43. Mr Musgrave's evidence questionnaire was dated 19 April 2011 and this programme does not therefore provide evidence of any activity which had taken place on Aunums Field prior to that date.
44. I understand that the walkers in this group are part of the Ryedale Forum 50+ which is open to all residents of Ryedale aged 50 and over. A copy of a web page from the Ryedale District Council website is attached and marked "ARDS3". This means that it is unlikely that the walkers will also be inhabitants of Thornton Dale and that their activities cannot be relevant for the purpose of section 15.
45. Further, the programme of walks are stated to be "town walks" which will "on occasion take you along local country lanes and the walks will vary from 1.5 to 3 miles in length avoiding any long steep inclines." The average person over fifty will walk 3 miles in between 1 hour and 1 hour 20 minutes. Which means that if they set off as intended at 10:30 am and walk for 3 miles a lunch stop will not be required. Even if, which is seriously doubtful, the walkers are inhabitants of Thornton Dale taking a break for refreshments

would merely be incidental to the use of the public footpaths which cross Aunums Field.

46. None of this provides evidence that the walking group will go into Aunums Field or that if it does so it will do more than walk on the public footpaths. There is no recommendation in the programme that walkers should bring refreshments with them, which would be expected if there was an intention to take a lunch stop.

### **Kite flying**

47. I have never seen anyone flying a kite in Aunums Field.
48. Apart from the proximity of the houses adjacent to the public footpath and the risk of crash landing a kite on one of the houses or its garden, there are two sets of overhead electricity cables which cross Aunums Field and it would not be safe to fly a kite there. (See Plan 4)
49. Furthermore, the optimal winds for kite flying are not found in the lee of a hill or in a built up area. The obvious place to fly a kite would be either towards the top of the hill in the adjacent field shown edged green on Plan 1 or on the site of the castle ruins.

### **Birdwatching**

50. We are blessed in Thornton Dale with an abundance of bird-life. There are wild fowl on the tench pond and the beck, the stands of woodland provide habitats for many species including two species of woodpecker. Sky larks can be seen and heard in summer months on the higher ground and many of us hear owls in our gardens at night as well as occasionally seeing them hunting at dusk along the road out of the village towards Malton.

51. I have no doubt that many of these birds can also be seen or heard in Aunums Field, but there is no need to step off the footpath in order to do so. I believe that bird watching is consistent with and incidental to the use of the public footpaths which cross the field.

#### **Picnicking**

52. I have never seen anyone picnicking in Aunums Field, and with so many more attractive places nearby I would be surprised to see people doing so.

#### **Picking Autumn Fruits**

53. Firstly, I do not believe that foraging for a "wild harvest" can amount to a lawful sport or pastime for the purpose of section 15. If it does, every farmer and landowner who has made no objection to people collecting hedgerow fruits or picking mushrooms will be vulnerable to having their land registered as village green, which cannot have been the intention of parliament.

However, if such foraging may be regarded as a pastime for the purpose of section 15, I make the following points:

- a. **Sloes** - There are very few blackthorn bushes (on which sloes grow) in the hedge of Aunums Field. There are some straggly blackthorn bushes adjacent to the stile near the school, but these have grown leggy through being shaded by nearby trees and do not fruit well if at all, and what little fruit there is is out of reach.

There are a few blackthorn bushes in the south hedge of Aunums Field, but as this hedge has for the last 24 years been cut hard back with the flail cutter in the back end of each year, there is rarely any fruit to collect.



In the hedge between Aunums Field and "Dunkhills" there are some blackthorn bushes. Unfortunately for those who wish to gather sloes this area of Aunums Field is carr land ie low lying and boggy. The bog grasses are knee high and the thistles are waist high. It is improbable that anyone would fight their way through to the meagre sloe harvest in Aunums Field when there is an abundance of excellent fruit available on easily accessible blackthorn bushes in the far hedge of the adjacent field.

- b. **Blackberries** - There are no blackberries in Aunums Field, because the brambles are eaten by the sheep.
- c. **Damsons** - There are some damson trees in the eastern hedge adjacent to the footpath. It is not necessary to step away from the public footpath to pick these. However, they are the property of the home owner on the other side of the hedge and it is probable that these are not picked by foragers.

There are several damson trees and a greater abundance of fruit growing in the far hedge of the adjacent field. It is more probable that the gathering of autumn fruits has taken place in the adjacent field.

#### **Other available land**

- 54. Not only do I not believe many of the assertions made about the "use of Aunums Field as of right" for recreation and lawful sports and pastimes I deny that inhabitants of Thornton Dale need Aunums Field for any such uses as have been alleged since land has been provided, by me and by others, elsewhere in the village for such activities. I set out below some of the facilities which are available within Thornton Dale:

### **The Sports Field**

- a. When I started taking over management of the estate from my mother in 1991, I made available to the village 12 acres of good level land, adjacent to the public car park operated by North York Moors National Park Authority ("the NYM car park"), and including the existing cricket pitch, for use as a sports field. With a combination of local fundraising and a national lottery grant a state of the art pavilion has been erected for the benefit of sports players and spectators.
  
- b. In the winter season we now have two football pitches in operation and in the summer season cricket is played on two cricket squares. In addition to these formal pitches there is other flat grass land adjacent to the pitches on which villagers can play informal games or picnic with permission from The Thornton Dale Sports Association.
  
- c. Four separate football teams now train and play here as their home pitch, including a girls' football team.
  
- d. In the last decade the sports field and pavilion facilities have been booked through the Sports Association by a variety of outside interests in addition to the obvious sporting ones. There is an annual barbecue after the Thornton Dale Show, and the Ryedale Motor Cycle Club holds a barbecue annually. The Scouts have booked the pavilion and sports field for an event. My niece booked the field to erect the marquee for her wedding reception.

### **Wildlife and Birds**

- e. On the village side of the NYM car park is the Tench Pond which has recently been the subject of conservation works. There are many species of wild fowl which nest around the pond and on the island

and a variety of woodland and field birds are also to be seen in the vicinity. I often see people watching the birds when I pass that way. A choice of picnic tables and park benches surround the pond for the use of picnickers and patrons of the fish & chip shop. These are very popular with visitors and local residents alike.

- f. I have opened up the Walks giving permissive access to the woodland on the east side of Thornton Beck between the ford and the NYM car park. I have also made permissive access available through the small wood off Dog Kennel Lane from where people can walk on down a path to the NYM car park.
- g. From the Walks it is common to hear woodpeckers and a few lucky people have seen the kingfishers here.

#### **Playing Field**

- h. Within the last five years, the playing field association has constructed an all weather basket ball and football area together with new playground equipment on the playing field on Roxby Road. Before the recent improvements there was always an array of standard playground equipment and an area for ball games as well as a sandpit and play-house.
- i. I estimate that the playing field covers an area of about half an acre and has always been popular with local children and supported by an active playing field committee. I often see youngsters playing there, whereas I have never seen people playing in Aunums Field.

### **Bowling**

- j. Thornton Dale Estates lets land at a nominal rent to the village Bowling Club which means that there is a bowling green available.

### **Planning**

- 55. At the time when the planning application for the affordable homes was being considered by the North York Moors National Park Authority letters of objection were sent by a number of local inhabitants. Not one of them mentioned that they had a right to use the land for recreation and were at risk of being deprived of this right. I believe that the reason why no such assertions were made was because firstly, they would not have been true and secondly, the Westgate Protest Group only thought of making a strategic village green application when their earlier objections failed.

### **Francis Croft**

- 56. I have spoken to Mr Francis Croft whose father Mr Arthur Croft farmed Aunums Field, as did his brother (also Arthur Croft) after him. I went to visit him at his home accompanied by my solicitor.
- 57. Mr Francis Croft was born in 1928 and grew up in Thornton Dale and has always known this land well. He has always been keen on football and played for the Thornton Dale football team both man and boy. I remember him as a team mate from my youth.
- 58. Mr Croft remembers that for one season, he thinks in the 1950s, his father gave permission for the Thornton Dale football team to mark out a pitch on Aunums Field at the bottom end by Westgate. He says that the ground was slightly too soft for playing in winter and that the team moved on after that one season.

59. Mr Croft also told me that his father was a great one for activities and entertainments, and everyone in Thornton Dale knew that if they wanted a venue for some games or sports they just needed to ask Arthur Croft and he would give permission for them to use Aunums Field. He was also very clear that no-one would have used it without his consent.
60. I specifically asked Mr Croft about the following:
- a. **School** - When the school was in the old school building on Chestnut Avenue, Arthur Croft gave permission for the children to play rounders and other games on one of his fields.
  - b. **Bonfires** - he recalled there were two bonfire sites in the village for celebratory bonfires. One was up by Caulklands Quarry and the other was down near the railway line on the other side of the tracks. He said there had never been a bonfire in Aunums Field when his father or brother farmed it and he could not recall there being one since, either.
  - c. **Horses** - He said that Aunums Field was never very good land but it was always grazed by sheep when his father and brother farmed it. When he was a boy his grandfather had horses to work the farm and some riding horses as well. He has not seen horses turned out to graze in Aunums Field since Mr Geoff Shepherd became the tenant, which was after his brother Arthur.
  - d. **Hunt** - Both his father and his brother consented to the hunt and the beagles coming across Aunums Field.

- e. **Fishing** - He was puzzled by the question of whether there was ever any fishing on Aunums Field. He said he has known Aunums Field for over 80 years and there were never any fish in the "dew pond", which was really no more than a damp patch after heavy rain. He was adamant that there was never any fishing to be had in Aunums Field.
- f. **Brambles** - He does not recall there being any blackberries in Aunums Field at all. When he was young they used to lay the hedges which made them very dense and that might be why there were never any blackberries.
- g. **Bog grass & thistles** - As long as he can remember the lower part of Aunums Field nearest to Westgate has had a tendency to grow bog grasses and thistles.
- h. **Tobogganing and sledging** - He said that the place for tobogganing and sledging always used to be up by Millers Hill. Occasionally as a boy he would go on the field next door to the Aunums Field. He has never known anyone to use Aunums Field for tobogganing or sledging.

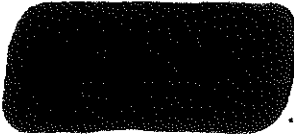
61. I am out and about around the village on most days and have a good idea about what is happening locally. I do not believe that inhabitants of Thornton Dale have been indulging in lawful sports and pastimes on Aunums Field for the last twenty years, or at all. It is simply not credible that such activities had been taking place without my knowledge and without the knowledge of my tenant.

62. For the reasons set out above I ask that the application to register Aunums Field as village green be rejected.

**STATEMENT OF TRUTH**

I believe the facts stated in this witness statement are true.

signed

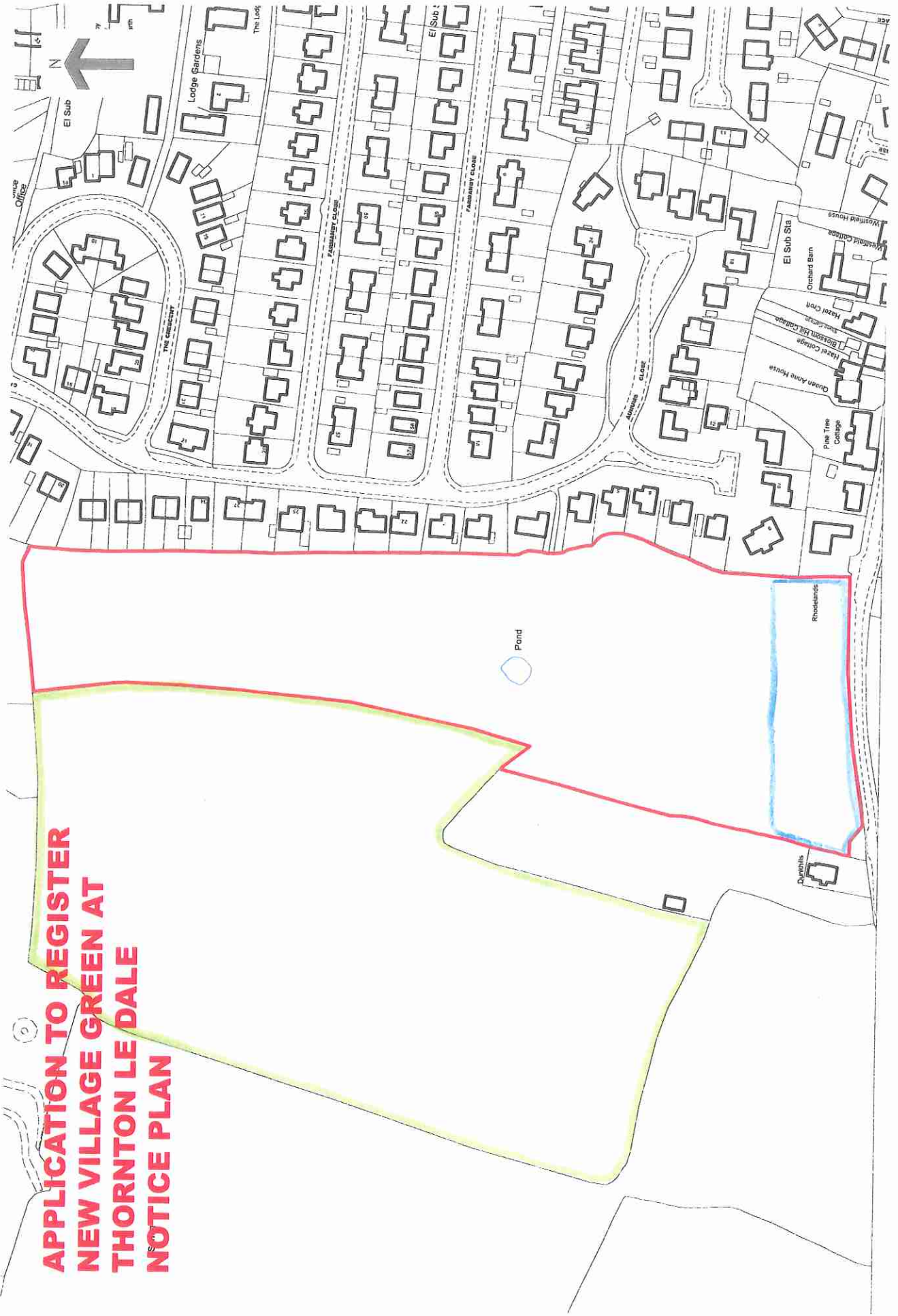
.....  .....

Alwyn Dudley Smith

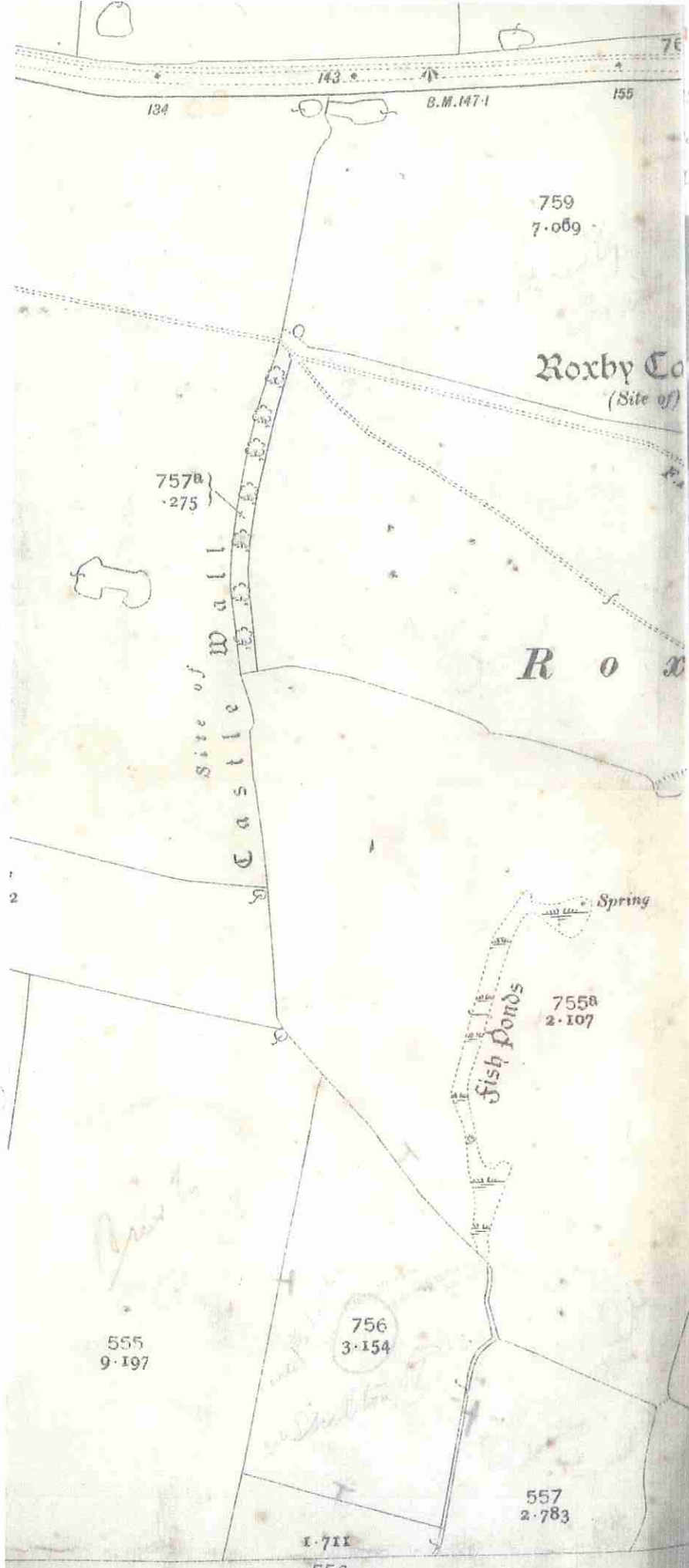
dated

this 2<sup>nd</sup> day of September 2011

**APPLICATION TO REGISTER  
NEW VILLAGE GREEN AT  
THORNTON LE DALE  
NOTICE PLAN**







CHARACTERISTICS AND SYMBOLS FOR BOUNDARIES.

W	Change of Boundary indicating the point
---	---

Every parcel is numbered thus	27
Its area is given underneath in Acres, thus	4.370
Braces indicating that the spaces so connected are	

Printed and Published by the Director General at the Ordnance Survey Office, Southampton.

The Altitudes are given in Feet above the assumed Mean Level of the Sea at Liverpool.

Altitudes indicated thus (B.M. 54.7) refer to Bench Marks on Buildings.



**APPLICATION TO REGISTER  
NEW VILLAGE GREEN AT  
THORNTON LE DALE  
NOTICE PLAN**

KEY

○ = POLE

— = OVERHEAD  
ELECTRICITY  
CABLE



○ = TREE



## VILLAGE GREEN WITNESS FORM

**Briefing note**

Dear Resident,

I do hope you are willing to help us by taking a few minutes to complete the enclosed questionnaire. Most of the answers are yes, no or tick box. Some tips are written below.

Our purpose is to make an application to North Yorkshire County Council to register the field beside Aunums Close, just outside the village boundary so that it is protected for the use of villagers in the future, for leisure activities such as sledging - just as it has been used for many years gone by. The area in question is the whole of the field (see red line on map attached) from the school to Westgate, so it includes the new building site for the Sanctuary Homes. We hope to preserve this piece of countryside from any future development, so that children, country lovers and the next generations can continue to enjoy it.

If you are willing to help then you must show that you are, a resident of Thornton Dale on the day you sign it.

Thank you

Tony James ( for Westgate Protest Group)

## Guidance for completion of evidence questionnaire

**1. This is NOT a petition.**

Each person completing this form is signing a witness statement in support of the field to the immediate west of Aunums Close (please see map) being designated a 'village green' This is a legal term not to be confused with the image of a traditional green in a village centre.

**2. Be honest - don't exaggerate.** If you have not been to the field recently, then take the dog or a pair of binoculars and GO NOW! That way you can complete the form and be honest at the same time!

**3. Fill the form in yourself (if you feel justified) and pass it on to others - try to talk them through it; or give yourself or me as a contact for help because there are some ambiguities. However, some initial guidance follows. I have already completed some boxes but they can be scored out if you or others don't agree.**

**4. Spread the word!** From here on, ask everyone you meet in the village if they have ever used the field. Our oldest residents may have useful experience from 20yrs ago. We need this to become a source of gossip around the village, but be wary of those we are likely to upset!

Newspaper and radio publicity is in the pipeline.

**5. Husbands/wives/partners from the same household can each fill in the form. Children can also do the same, so long as they understand what they are signing. Children are a useful source because they have an emotional impact on the adjudicators**

**6. We are concentrating on a 20yr period 1991-Feb 2011, but evidence pre 1991 will be useful as an historic picture. If in doubt get the form filled and it can be discarded at a later time.**

**7. On the enclosed map, you must mark where you live - inside the blue line. The area marked in red is the field we are claiming for 'village green'.**

**Advice on form questions - by section**

5. Shown on Ordinance Survey maps as 'ROXBY HILL'

6. Some call it 'AUNUMS FIELD'

14 List one or all activities. Add in your own Eg. Tobogganing or snowballing etc

19a. Maybe applicable pre 1991 if you have lived in the village a long time. PTO

20. Perhaps you might answer - yes or used to but no longer  
21 probably - no - unless anyone has evidence from the 70s or 80s  
22 Tobogganing, blackberry picking, picnicking or rolling eggs at Easter time are good examples.  
23 Other items mentioned so far are;- tobogganing, snowballing, tree climbing, mushroom picking and recreational walking 'taking the air'  
Car Parking does NOT count  
28/29/30 Say NO to all of these (already completed). The application is nullified if express permission has been given by the farmer. You have to believe you have been on the field 'as of right'. Anyone asked to sign this form on the basis that they asked the farmer and he gave permission - THEN DON'T SIGN - our application would fail.  
31 The answer to this needs to be NO, but if anyone has seen such an instruction then please ring 474594

Although there is no box on the form; anyone who completes it needs to be sure they have deviated from the public footpath. Eg If you walk your dog, the dog roams but you stay on the path then it does not count. If you throw a ball for the dog and need to move about the field, then it DOES count! Seems daft but true! The dog is not an inhabitant of the village!

We do not have to show the field has been used every day for 20yrs but that it is available when needed. It makes no difference if the farmer keeps us out for a day whilst sheep shearing. What we need are statements, which when taken cumulatively, make up a 20yr period.

Use of the field for sheep grazing makes no difference to the validity of the application. However if a potential witness has been caught bothering the sheep and kicked out by the farmer - then DON'T FILL IN THE FORM.

Try to get people to lend photographs especially if they show children. Name and address should be written on the back and where taken from Eg. From bottom of field facing north. It helps if they can also say who is in picture and when taken

**DON'T FORGET TO MARK YOUR HOUSE ON THE MAP AND SIGN ON THE BACK OF THE MAP**

**DEADLINE FOR RETURN OF FORMS IS - 5pm 21/4/11**

Return to person who gave it to you or if in doubt to:-

Mr A James,  
Hazel Croft  
Westgate  
Thornton Dale  
YO18 7SG  
01751 474594

ARDS 2

MR & MRS A. C. JAMES  
HAZEL CROFT  
WESTGATE  
THORNTON-LE-DALE  
N. YORKS YO18 7SG

NYM/2010/0866/FL

NYMNPA  
26 NOV 2010  
68

Dear Mr France,

We all know now that the Sanctuary architect has made the inexcusable mistake of forgetting about the Highways Dept. You will recall from our meeting in August that we raised exactly this issue and you yourself expressed some caution about the potential impact on Westgate itself. This is the primary reason why we have always said from the outset that this development is in the wrong place. (I refer you to paras 9&10 of our meeting minutes from 16/8/10 -when incidentally Mr Boyne had already written his report).

I perceive that the NPA officers themselves, have now invested so much in this application that the NPA is too motivated to face the embarrassment of its refusal. Sanctuary have become so molly coddled by their preferential treatment from the NPA whereas any self respecting architect would by now have been punished for his negligence. We will continue to fight with every means at our disposal (including the wildlife).

If we are eventually forced to put up with the 'carbuncle' situated in the field, then that is one thing. If however changes are made to the character of Westgate then it escalates the whole issue beyond that of reasonable compromise.

If the architect now revises his proposals after the obligatory survey 100m west of the site and includes pavements, loss of green verges, curbing, interference with amenities currently enjoyed by properties (three of which do not have off street parking) or additional lighting, then I for one will object in the strongest possible terms. These items are precisely the things we feared at the beginning.

The highways Dept. will no doubt either accept or reject from an empirical perspective remembering the presence of heavy construction traffic during the building period. Ours is an aesthetic concern and if our wishes are not taken into account then there will be outrage. In the meantime we have photographic evidence of the current situation. There is time for some interaction on this controversial area and I hope you will feel able to talk to us rather than expect us to wait for the bureaucracy of an entry on your website.

Please register this letter as an objection to the application. I have no discomfort about my name being released on the website. I will however write a more comprehensive objection about the whole application at a later date.

Yours Sincerely,

## Activities for Older People

There are a number of organisations in Ryedale that provide activities specifically for older people, including the Ryedale Older People's Forum and Age Concern. Ryedale Voluntary Action can also provide further information, please contact them on 01653 600120.

### Swimming

Both swimming pools in Ryedale hold '50 Plus' swimming sessions, on Mondays from 1.45 to 2.45pm. Prices are:

Age 60+ Discount Pass (15 swims for the price of 12)	£17.40
Age 60+ Ticket	£1.45

For further information, contact:

#### Derwent Pool

Church Street, Norton, Malton, YO17 9HP  
Tel: 01653 693407

#### Ryedale Pool

Mill Lane, Pickering, YO18 8DJ  
Tel: 01751 473351

### Ryedale Forum 50+

The forum is open to all residents aged 50 and over, and membership is free. A varied programme of events is arranged, with events including talks about issues particular to the over 50's, outings to a variety of places, concerts and theatre, and coffee mornings. Transport to enable people to attend many events is often organised.

To find out more about the Ryedale Forum 50+, please contact:

Anna Salkeld - Hon.Secretary 01944 759123  
David Musgrave - Membership 01751 474315

Ryedale District Council, Ryedale House, Malton, North Yorkshire, YO17 7HH, Tel: (01653) 600666, Fax (01653) 696801, Email: [enquiries@ryedale.gov.uk](mailto:enquiries@ryedale.gov.uk)

Rate this page

Information

Downloads  
None

Form Links  
None

Useful Links

[Find your local Age Concern office.](#)

Related Content





Page Info

Contact:  
Customer Services

Telephone:  
01653 600666

Email:  
[info@ryedale.gov.uk](mailto:info@ryedale.gov.uk)

Last Updated:  
15 August 2011

[+](#) Share / Save    

**WITNESS STATEMENT**  
**in relation to**  
**Land at Aunums Field, Westgate, Thornton-le-Dale**

I, Rachael Cook of Manor Farm, Beck Isle, Thornton le Dale, Pickering, North Yorkshire, YO18 7RS will say as follows:

1. I oppose the application for registration of the field known as Aunums Field, which is shown edged red on the plan annexed hereto, as village green.
2. I am the partner of the farmer, John Shepherd, who is the tenant of Aunums Field and other land. We have been together for 7 years and I lived in Thornton Dale for 8 years before that.
3. I spend a good part of each day out and about on the farm, when our daughter is at school and on weekends..
4. Our lambs are born between mid-March and the end of April each year.
5. If a ewe runs about vigorously during the last weeks of her pregnancy, it can cause a number of problems. Firstly sheep do not have a very strong will to live at the best of times and the stress of running about can cause the ewe to drop dead and her lambs with her. Secondly, the closer the ewe is to term the greater the risk that the position of the lamb or lambs in the uterus is altered by the vigorous shaking which often leads to an abnormal presentation for lambing and a more difficult labour for the ewe and more risk to her lambs.
6. It is therefore of real importance to a farmer that ewes are kept relaxed and undisturbed during the last few weeks of pregnancy in order to avoid stress to the ewe and the need for intervention during labour.
7. The easiest way to upset a whole field of pregnant ewes is to let a dog into the field to chase them. In late February 2011 this is precisely what happened.



8. I was in Aunums Field when I noticed the ewes were all running across the field and I saw they were being chased by Louise Russell's dog which was off the lead. Ms Russell provides dog training classes to dog owners and she was accompanied by a group of dog owners, all of whom had their dogs under control and on a lead. Unfortunately, Louise Russell's own dog was not on a lead and I had words with her.
  
9. I know that people are entitled to use the footpaths, but they are not entitled to allow their dogs to worry our sheep. Whenever I see a dog off the lead in Aunums Field I speak to the dog owner about it, and explain about the vulnerability of ewes.
  
10. I see that some people have said they have picked blackberries. There are no blackberries in Aunums Field, because the sheep eat the brambles right back before they have the opportunity to get established.
  
11. I have never seen anyone in Aunums Field indulging in any of the lawful sports and pastimes which people have alleged, apart from walking on the footpaths. I do not believe that these activities can have taken place during the last 15 years without my knowledge.

STATEMENT OF TRUTH

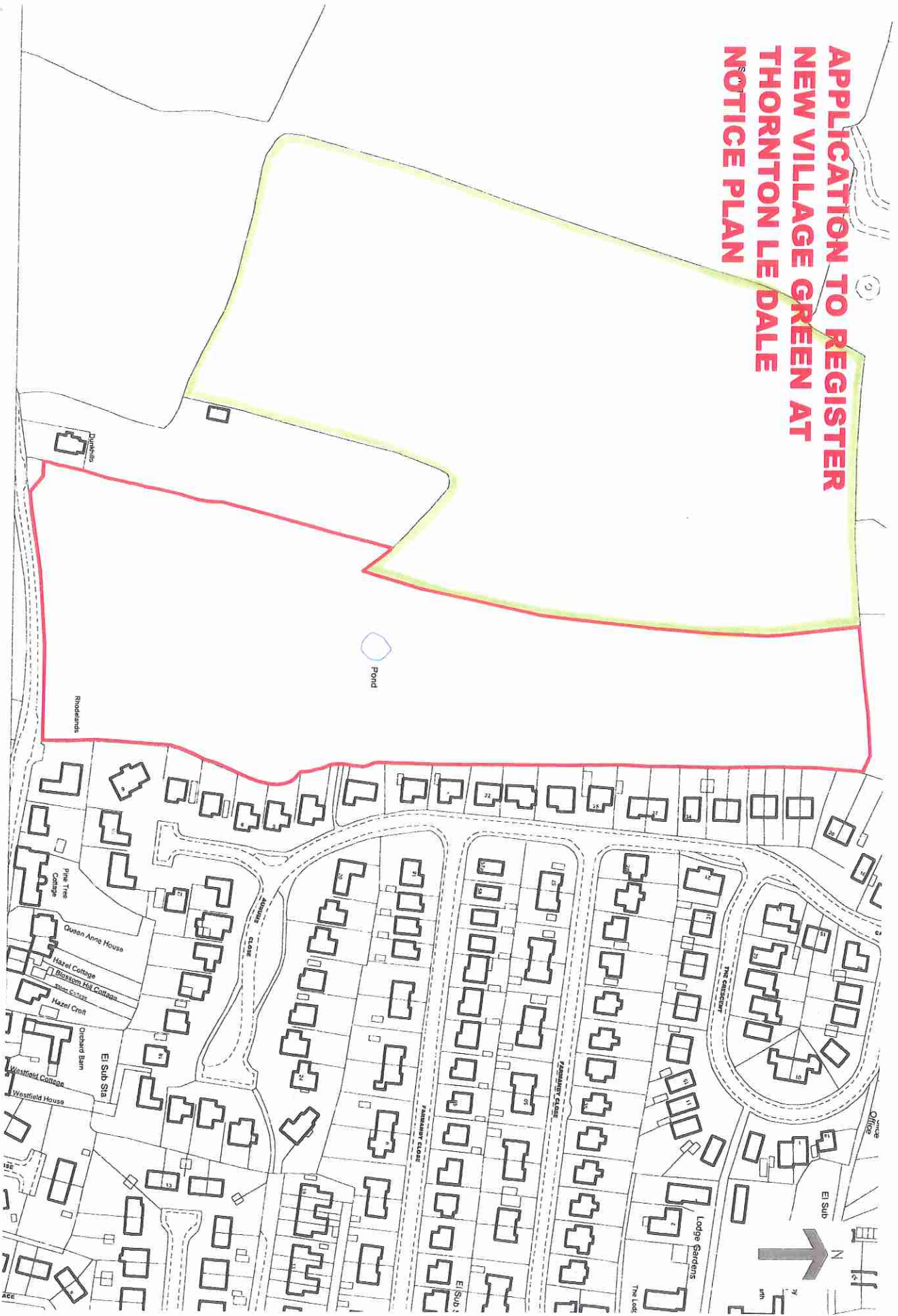
I believe the facts stated in this witness statement are true.

signed . . . .  . . . . .

Rachael Cook

dated: . . . . 1/9/11 . . . . . 2011

**APPLICATION TO REGISTER  
NEW VILLAGE GREEN AT  
THORNTON LE DALE  
NOTICE PLAN**



**WITNESS STATEMENT**

in relation to

**Land at Aunums Field, Westgate, Thornton-le-Dale**

I, Michael Harper of 19 Fieldfare, Bridlington Road, Drifffield, YO25 5HL will say as follows:

1. I am the site manager at the building site where the affordable homes are being built for the Sanctuary Housing Association on Westgate, Thornton Dale.
2. I have been on site since late February 2011 since which time no-one has been permitted access to the land shown edged blue on the plan annexed without my knowledge and consent.
3. I have had the opportunity to observe all the comings and goings between the hours of 08:00 to 17:00 Monday to Friday on the land known as Aunums Field which is shown edged red on the plan annexed.
4. During this six month period I have seen occasional walkers or runners using the public footpath. Otherwise, apart from the farmer, I have not seen anyone else on Aunums Field.

**STATEMENT OF TRUTH**

I believe the facts stated in this witness statement are true.

 .....

Michael Harper

dated: 29 / 8 / ..... 2011

**APPLICATION TO REGISTER  
NEW VILLAGE GREEN AT  
THORNTON LE DALE  
NOTICE PLAN**



## **WITNESS STATEMENT**

**in relation to**

**Land at Aunums Field, Westgate, Thornton-le-Dale**

I, Richard Gray of Rookwood, Maltongate, Thornton Dale Pickering YO18 7SD will say as follows:

1. Having been born in 1949, I have lived in Thornton Dale not only during my childhood but all my adult life. I am acquainted with the land shown edged red on the plan attached ("the Plan"), it is known as Aunums Field.
2. I used to attend a youth club run by my aunt, Miss A M Wharrick. Occasionally the youth club would meet at Aunums Field for archery or to play cricket. Auntie Margaret was a stickler for doing things "the right way" and I believe that she had permission from Mr Arthur Croft, who was the farmer in occupation of Aunums Field at that time, before we used the land for youth club activities.
3. I can also recall that for at least one season the village football team used the land at the bottom of Aunums Field, properly marked out and with goalposts set up for a football pitch. I am sure this use would also have been by consent.
4. To the best of my knowledge, during my youth, Aunums Field was not generally used as of right for informal activities, pastimes or sports.
5. My children have also grown up in Thornton Dale and I do not believe that they ever played on Aunums Field.

6. I am not aware of anyone using Aunums Field for lawful sports and pastimes without the permission of the farmer either now or at any time in the past.

STATEMENT OF TRUTH

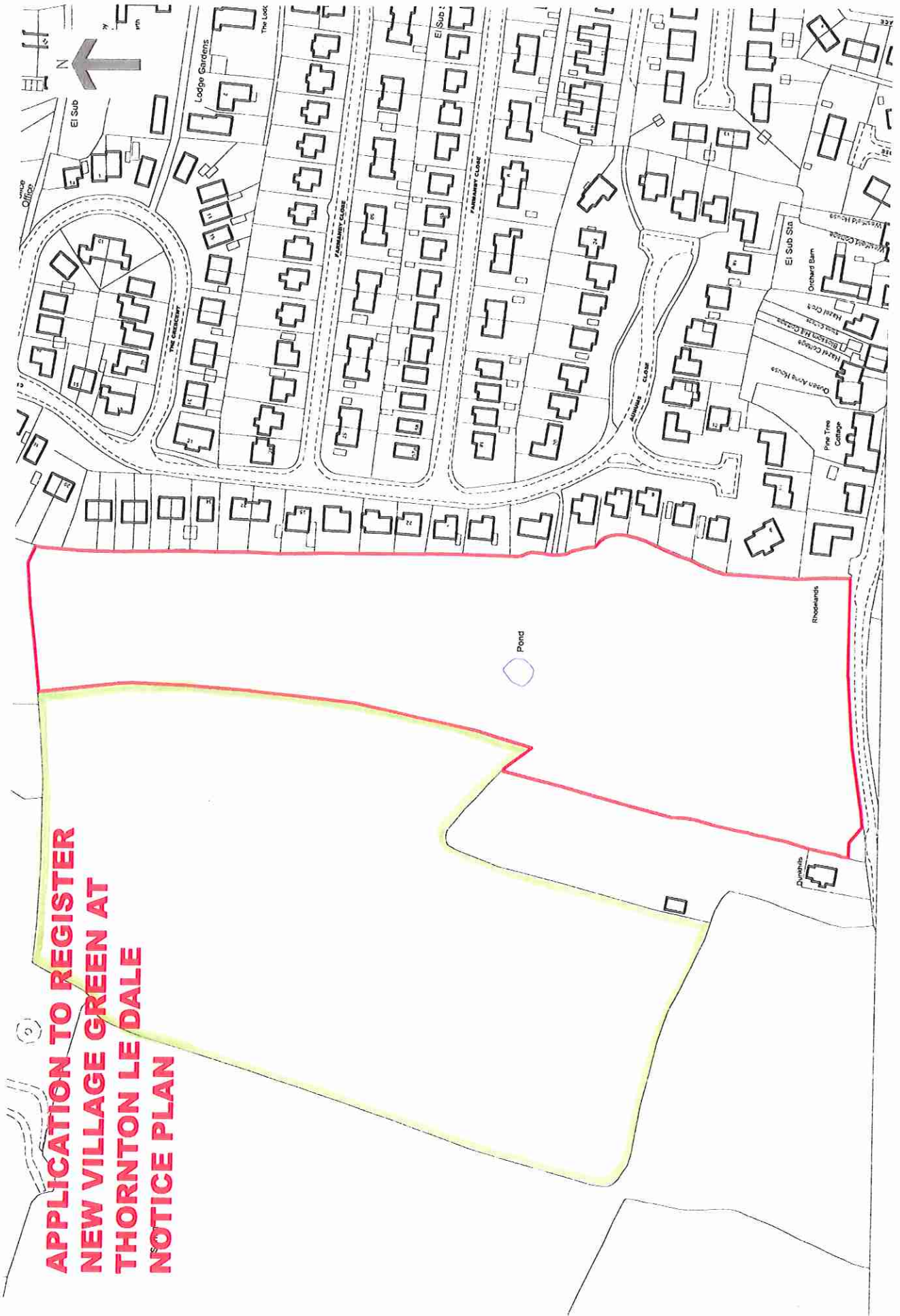
I believe the facts stated in this witness statement are true.

signed .....  .....

Richard Gray

dated: ..... 31 - 8 - ..... 2011

**APPLICATION TO REGISTER  
NEW VILLAGE GREEN AT  
THORNTON LE DALE  
NOTICE PLAN**



Witness Statement – Re: Aunums Field, Thornton Dale

I Karen Hustler, of the Old Rectory, Middleton will say as follows:

1. I qualified as a teacher in June 1985. Whilst my children were at Thornton Dale Church of England Primary School, between the years of 1997 to 2001, I volunteered at the school on a regular weekly basis as well as being an active member, and for a time Chair, of the Friends of the School committee for a three year period.
2. During this time I can confirm that I did not take children from the school into Aunums Field, which for the avoidance of doubt is shown edged in red on the attached map.
3. During this time I can confirm that I did not see children from the school using Aunums Field for any purpose.

STATEMENT OF TRUTH

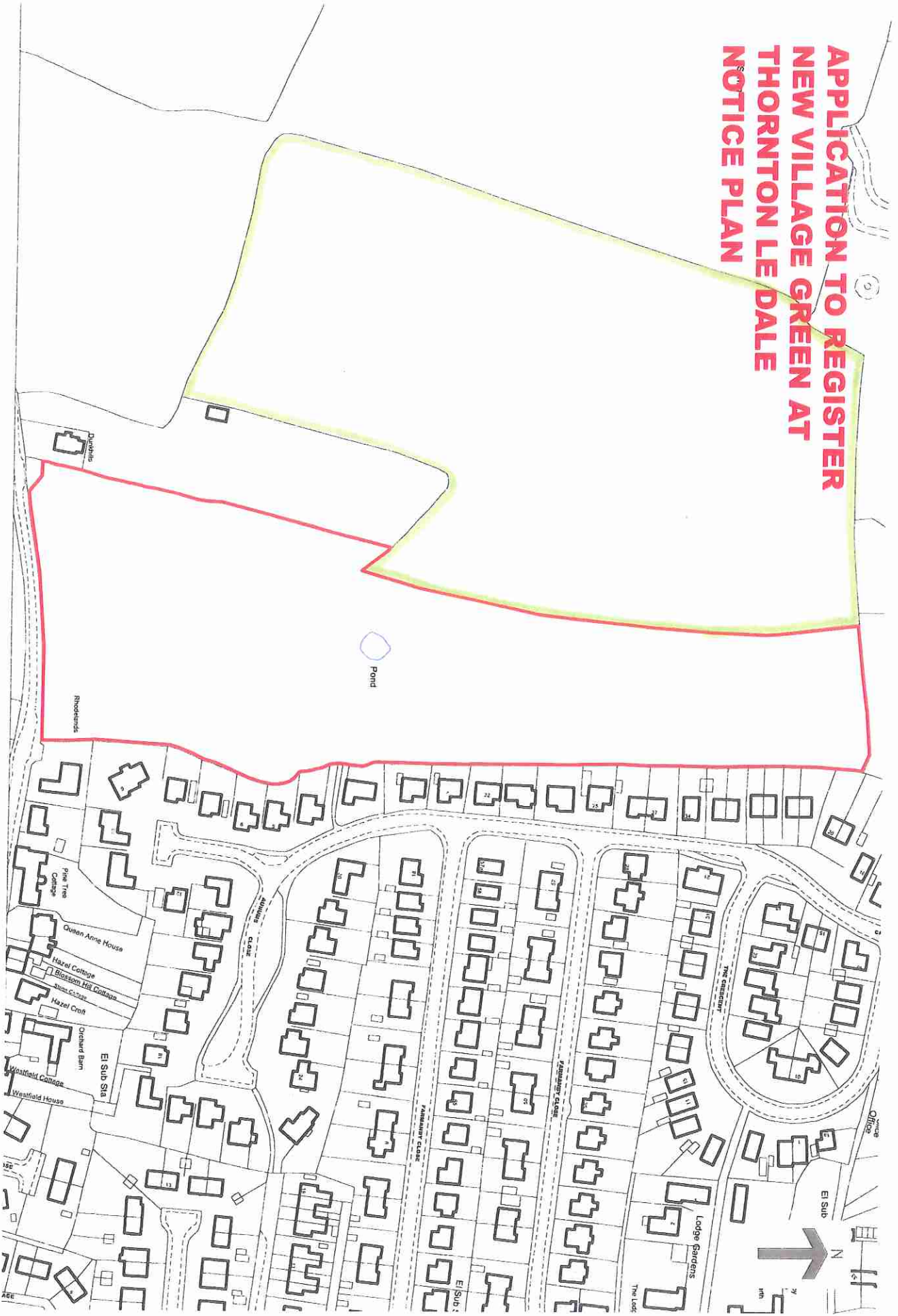
I believe the facts stated in this witness statement are true.



Karen Hustler  
1<sup>st</sup> September 2011



**APPLICATION TO REGISTER  
NEW VILLAGE GREEN AT  
THORNTON LE DALE  
NOTICE PLAN**



Our Ref: GHB/SW/21281/041

Your Ref: NEW VG57/CNS

Direct email: gillianblick@grayssolicitors.co.uk

Date: 2 September 2011

# GRAYS

SOLICITORS

Duncombe Place York YO1 7DY

Telephone: (01904) 634771

Fax: (01904) 610711

DX: 61505 YORK

Email: enquiries@grayssolicitors.co.uk

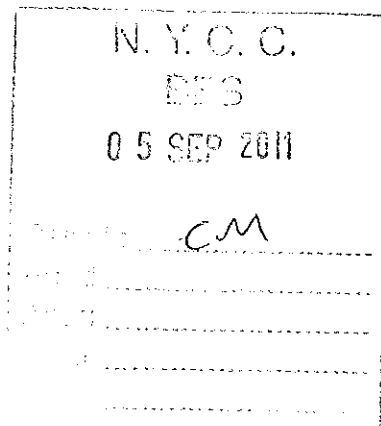
Web site: www.grayssolicitors.co.uk

Mr Chris N Stanford  
Common Land and Village Green Officer  
Commons Registration  
Highways North Yorkshire  
County Hall  
Northallerton DL7 8AH

## *With Compliments*

Application to Register New Village Green  
Aunums Field Thornton le Dale

Please find enclosed the witness statement of Mr Leigh Holliday.



21281104115303GHBSW.COM

Partners: Christopher Goodway Lyn Rickatson Brian Mitchell John Knowles Ben Williams  
Solicitors: Angela Reinholz Gillian Blick Catherine Goodway Emma Grandison Legal Executive: Janet King

Regulated by the Solicitors Regulation Authority Registration no 50119

## WITNESS STATEMENT

in relation to

**Land at Aunums Field, Westgate, Thornton-le-Dale**

I, Leigh Holliday of 2 Brookfield Gardens, Thornton Dale Pickering YO18 7SU will say as follows:

1. I was born in October 1975 and lived in Thornton Dale throughout my childhood, but had to move away as an adult in order to get started on the property ladder. I support the building of affordable homes in this village and object to the registration of Aunums Field as village green.
2. On winters when it snowed, I used to sledge with friends up by Miller's Hill but occasionally we would go to the field shown edged green on the plan attached ("the Plan"). This field is adjacent to Aunums Field which is the subject of an application to be registered as village green. No-one used to sledge on Aunums Field itself, and the better sledging was to be had up by Miller's Hill.
3. When I played out with friends in summer time we used to go into the woods near the village car park and around the duck pond. We also used to take our bikes up towards Ellerburn.
4. Occasionally, I used to use the footpath on Aunums Field, which is shown edged red on the Plan, but we never played there and I did not see anyone else doing so.
5. I left Thornton Dale in 1999 to work in Malton, but houses in Ryedale were too expensive to purchase. Eventually, I was able to buy a house in

Scarborough and in 2008 I was able to afford a house in Thornton Dale and I have come back to raise my family here.

STATEMENT OF TRUTH

I believe the facts stated in this witness statement are true.

signed

A large black rectangular redaction box covering the signature of Leigh Holliday.

Leigh Holliday

dated:

*26-08-11* ..... 2011

**APPLICATION TO REGISTER  
NEW VILLAGE GREEN AT  
THORNTON LE DALE  
NOTICE PLAN**



## WITNESS STATEMENT

in relation to

Land at Aunums Field, Westgate, Thornton-le-Dale

I, John Shepherd of Manor Farm, Beck Isle, Thornton le Dale, Pickering, North Yorkshire, YO18 7RS will say as follows:

### **Objection**

1. I hereby object to the registration as Village Green of the land known as Aunums Field which is shown edged red on Plan 1, annexed hereto, and which I now farm together with other land under a Farm Business Tenancy.

### **Background**

2. At the time when I was born on 25 May 1967 my father, Mr Geoff Shepherd, had been the tenant of Brook Farm, Thornton le Dale for about 5 years. I grew up on the farm and as a boy not only helped my dad at Brook Farm but also helped Mr Arthur Croft with his sheep. Until 1987, Mr Croft was the tenant of the land known as Aunums Field together with other land.
3. You can tell that Aunums Field is permanent pasture because it is in a broad ridge and trough formation. This was done historically for several reasons; one was to increase the area of grass by increasing the surface area of the field and another was to ensure that there was good grass in the troughs during dry spells and good grass on the ridges in wet spells. Aunums Field has always been used for sheep grazing.
4. During school holidays or at weekends, whenever Mr Croft needed to round up his sheep and move them, I would go with him to give him a hand. The sheep were quite often driven through the village and several people were needed to ensure that gates were closed and that none of the sheep strayed. I became experienced at sheep handling and also became thoroughly

acquainted with the various areas of pasture grazed by Mr Croft's sheep which included Aunums Field.

5. I left school in 1983 and went to work for my dad on the farm. I also carried on helping Mr Croft with his sheep when asked which means that I was frequently on Aunums Field.
6. In 1987 my dad took over some of the land which had previously been farmed by Mr Croft which included Aunums Field, which meant that from 1987 onwards, I spent part of every day on Aunums Field.
7. In 1993 my dad retired, and I took a tenancy of Manor Farm which includes Aunums Field.

#### **Hay**

8. In or around the summer of 1994 or 1995 when my stocking levels were still on the low side, as I had only been farming on my own account for a short while, the grass was allowed to grow so long in Aunums Field that I had to take a cut of hay from it before the sheep could be let back in there. None of the activities people have suggested they have enjoyed could have taken place on Aunums Field that summer when the grass was so long.
9. I go to Aunums Field at least twice a day on most days. I go early in the morning and again in the evening.
10. From mid-March to the end of April each year I take my ewes indoors for lambing. Once a ewe has successfully lambed, and I am happy that they are settling in well together I take her and her lambs out to Aunums Field to turn them out. This means that during lambing I visit Aunums Field several times each day in addition to my morning and evening rounds.

### **Walkers**

11. I occasionally see walkers or dog walkers on the footpath that goes up the field alongside the houses. People are entitled to use the footpaths which cross Aunums Field and I only find it necessary to speak to them about it if they have dogs which are not kept on a lead.

### **Lambs**

12. When I have been in the field with ewes and new born lambs people have occasionally come across from the footpath to talk to me about the lambs and how the lambing is going. If someone wants to talk to me when I am on the field and they step off the footpath to do so, I think there is an implied licence for them to do so. I do not believe this can possibly be a use of the field which entitles anyone to register it as village green.

### **Kites**

13. I have occasionally seen people flying kites, although it is several years since I saw any, but I have never seen kites flown from Aunums Field. I have only seen kites being flown from the site of the old castle. When you think about it, the reason is obvious, apart from not wanting to crash land the kite in someone's garden which would be a risk if you were in Aunums Field, there are several overhead electricity cables in Aunums Field and it would not be safe to fly a kite there.

### **Parties**

14. I am sure that since 1987 there has never been a marquee put up or a party of any sort held in Aunums Field. When he is holding a party Mr Ian Breeze, who lives at Grosvenor Cottage, parks cars on the field with my consent and by arrangement with my landlord Mr Alwyn Dudley Smith. I believe that previously he used to make such arrangements with my father and before him Mr Arthur Croft.



### **Sports & Pasttimes**

15. I have never seen anyone do anything in Aunums Field apart from using the public footpaths. For avoidance of doubt, I have never seen anyone:
- i. play football;
  - ii. play cricket;
  - iii. play rounders;
  - iv. play ball;
  - v. climb trees;
  - vi. meditate;
  - vii. paint or draw;
  - viii. fishing or dipping in the pond;
  - ix. rolling Easter Eggs.

I do not believe that people could have taken part in such activities on Aunums Field since 1987 without me being aware of it.

### **School**

16. Children from the school do not come on to the field except on the public footpaths. I have a good relationship with the school, because occasionally one or other of the ewes gets through the fence on to the school field and they always call me and help me to get her back where she belongs.

### **Pond**

17. There is a pond marked on the map, but it is really little more than a boggy hollow. Sometimes when there has been heavy rain in autumn there are a couple of inches of standing water for a short while, but never more than this and it is certainly not somewhere for fishing or "pond dipping" as it is too transitory.

### **Sloes & Blackberries**

18. There are some blackthorn bushes in the hedges on some boundaries of Aunums Field, but there are far more abundant and accessible sloes in the

hedge of the adjacent field. I have never seen anyone collecting sloes from Aunums Field. There are no brambles in Aunums field, so there are no blackberries to pick. The reason for this is simple - the sheep eat brambles right back so they never have a chance to take hold, or blossom or fruit.

19. The bottom hedge which runs alongside Westgate contains some blackthorn but it has always been cut hard back with the flail cutter in October time. This has kept it dense and compact, but it has also prevented the blackthorn from fruiting appreciably. I understand that sloes are best collected after the first frost and the hedge has generally been cut hard back by then.

#### **Bonfires**

20. No bonfires have been held on Aunums Field since 1987 when my father became the tenant, and I cannot remember any before that either. It would be impossible for there to have been a bonfire on Aunums Field since 1987 without my knowledge

#### **Sledging and Tobogganing**

21. In winters when it snows some kids come to the field adjacent to Aunums Field to sledge or toboggan, but they do not sledge or toboggan on Aunums Field itself. The better slope is on the adjacent field and on Aunums field itself there would be a serious risk of hitting one of the two large ash trees.

#### **Hunt**

22. It is over 6 years since the Derwent Hunt came into Aunums Field when running a fox, because they have not been able to hunt foxes since the ban came into force in 2005. When hunting was permitted, the hunt had a general consent to run across our land but the master would always telephone in advance when they were planning to hunt over our land to give me the opportunity of asking him to avoid certain fields. The hunt has never met or trained on Aunums Field.

**Ponies**


23. We have never had horses or ponies. I have never seen anyone riding or leading a horse or pony on Aunums Field.

**Easter Egg hunt & Easter Egg rolling**

24. Aunums Field always has a good surface covering of sheep manure. In addition to this, I have noticed that some dog walkers do not "pick up" after their dogs have defaecated on the field. I have never seen anyone roll Easter Eggs in Aunums Field. I have never seen anyone hunt Easter Eggs in Aunums Field. As a parent myself, I would not want my child to handle let alone eat any Easter Egg which had been either rolled or hunted in Aunums Field because of the dog mess.

**STATEMENT OF TRUTH**

I believe the facts stated in this Witness Statement are true.

signed .  .....

John Shepherd

dated 31/08/11 .....

**APPLICATION TO REGISTER  
NEW VILLAGE GREEN AT  
THORNTON LE DALE  
NOTICE PLAN**

3



**APPENDIX 5**

# **Objection**

submitted to

**North Yorkshire County Council**

on behalf of

**Sanctuary Housing Association**

in relation to an application for registration of a

Town or Village Green at

**Land off Westgate, Thornton le Dale**

under the provisions of the

**Commons Act 2006**

**Wragge & Co LLP**

Tel: 0121 233 1000

Fax: 0121 214 1099

Ref 2056503/AZT/JHE

## Contents

1. Introduction
2. Legal Framework
3. Assessment of Application
4. Evidence of SHA
5. Submissions
6. Conclusions
7. Appendices

In this objection document the following abbreviations have been used:-

SHA	Sanctuary Housing Association
TVG	Town or Village Green
NYCC	North Yorkshire County Council
The Site	the land forming the subject of the application
The SHA Site	land within the ownership of SHA
The Applicant	Westgate Protest Group C/o Mr A C James
The 2006 Act	the Commons Act 2006
LSP	lawful sports and pastimes

1. **Introduction**

- 1.1. SHA is the owner of part of the land forming the subject of the Application as shown on the plan at Appendix 1 ("the SHA Site").
- 1.2. The remainder and larger part of the application land is owned by Alwyn Dudley Smith who sold the SHA Site to SHA ("the Site").
- 1.3. This objection is based on the copy documents provided by NYCC to SHA comprising
  - (a) Evidence Questionnaires
  - (b) Statutory declaration of Anthony Cornish James
- 1.4. The Applicants are local residents who are concerned that the SHA Site is being developed and submitted the current application for registration of the Site as a TVG, in May 2011.
- 1.5. The effect of registration as a TVG has serious consequences for a landowner. Briefly, once registered as a TVG any operational development of land (ie in the planning sense, by the erection of buildings or structures) or any action by the landowner which interferes with the rights of the inhabitants to carry out LSP, is a criminal offence. The land can only cease to be a TVG by the operation of some statutory provision.
- 1.6. The issue of TVGs has been the subject of numerous court cases in recent years, during a period when the statutory provisions establishing the TVG regime have been used by groups of residents and objectors, seeking to prevent the development of land by landowners.
- 1.7. The burden of proving that the Site should be registered as a TVG is on the Applicants; it is not for SHA to prove that the land has not been so used. Any failure to do so, must result in a refusal to register the Site as a TVG by the registration authority
- 1.8. This document with its appendices sets out the criteria for the registration of land as a TVG, tests the evidence submitted in support of the application against those criteria, and the grounds for SHA's objection. We request that the Council considers the objection together with that of Mr. A D Smith



and rejects the application on the basis that there is insufficient evidence to support a valid claim. If however, the Council is not minded to reject the application at this stage, we request that the Council appoints an inspector to hold a non-statutory public inquiry to hear oral evidence, and to report his/her findings to the Council. If the Council is not minded to take either course, we would request that we are notified at the earliest opportunity of the Council's proposed method of determining the application and that we are given an opportunity to make representations to the Council on that issue.

## **2. Legal Framework**

The ingredients of the definition of a TVG:

- use as of land
- as of right
- for lawful sports and pastimes
- by a significant number of the inhabitants
- of a locality or neighbourhood within a locality
- for 20 years

In order to succeed in their application the Applicants must provide satisfactory evidence of each of these ingredients. The evidence must be sufficient to enable the registration authority to conclude that on the balance of probabilities, the land has been used as a TVG.

### **Use of the Site**

It is clear from the decided cases that the onus is on the Applicant to demonstrate that generally, the land which is claimed to be a TVG, has been so used.

Use may consist of any activity provided it is lawful and not business related.

### **As of right**

This issue was considered by the House of Lords in the *Sunningwell* case<sup>4</sup>. It was held that “as of right” was shorthand for the common law expression *nec vi, nec clam, nec precario* - without force, secrecy or permission. What mattered was the way in which the landowner viewed the use, not the subjective belief of the users. The users must have used the land .....

“in a way which would suggest to a reasonable landowner that they believed they were exercising a public right”.

“Without permission” is clear. “Without force” would include not only the breaking down of fences or gates, but also the use of a gap created by a previous visitor.

### **Lawful Sports and pastimes**

There is nothing technical in this requirement, which is a matter of fact supported by evidence. However, where users of the land clearly carry out activities which are not lawful, then their entire presence on the land is not to be taken into account in assessing whether a significant number of inhabitants of the locality have enjoyed LSP on the Site

### **Significant number of inhabitants**

The requirement for a “significant number” of inhabitants does not involve a mathematical exercise, but simply requires that more than a few individuals from within the relevant geographical area used the claimed site.

### **A locality or neighbourhood within a locality**

The concept of a locality or a neighbourhood within a locality has been the cause of some debate in the Courts. Carnwath J stated in *R v Suffolk County Council ex p Steed* [1995]

“Whatever its precise limits it should connote something more than a place or a geographical area- rather a distinct and identifiable community ....”

It is clear that the locality cannot be some arbitrary line drawn on a map.

---

<sup>4</sup> R -v- Oxfordshire County Council ex p Sunningwell Parish Council [2000] AC 335

## Twenty years

An applicant for registration of a TVG must show twenty years use of the land for LSP. The registration authority needs to be satisfied that there is a pattern of use by the inhabitants indicating that they consider their use to be "as of right" over the required period.

### 3. Assessment of Application

- 3.1 The Applicants are applying for registration of the Site as a TVG and claim that it has been used for lawful sports and pastimes for a period of twenty years. The claim is, of necessity, in two parts because a different provision within s15 of the 2006 Act applies to the SHA Site. In relation to the SHA Site, the qualifying period ended with the date on which fencing was erected prior to the start of development and which effectively prevented any use of the SHA Site for purposes other than construction. The fencing was erected in February 2011. Therefore, the TVG claim is for use of the SHA Site from February 1991 to February 2011.
- 3.2 The applicants rely on the fact that despite the formal use of the land for agricultural purposes, inhabitants of the area used the land for informal recreation. However an analysis of the evidence submitted as part of the application reveals a different story.
- 3.3 It is clear from that evidence of the claimants, and Mr A D Smith that the use of the Site has been consistently limited to rough pasture. There is a history of dog walking but limited to the footpaths and this is shown by many of the responses to the questionnaires submitted with the application. Appendix 2 is an extract from an ordnance survey map showing the routes of footpaths through the SHA Site and the Site.
- 3.4 Of the 73 questionnaires submitted with the Application, 44 (60%) show use of less than twenty years. Whilst it is not reasonable to expect that every user has used the Site for the full twenty years, it is significant that the majority of respondents have used the site for a more limited period.

3.5 There appears from the questionnaires to be two names for the Site, "Aunums" or "Roxby Hill". It is apparent from the evidence of Mr AD Smith and others that there may be some misunderstanding about where various activities took place and this would be borne out by the different names attributed by the respondents to the questionnaires.

#### 4. SHA evidence

4.1 It is clear that SHA cannot produce evidence earlier than its acquisition of the SHA Site and therefore adopts the evidence submitted in support of Mr A D Smith's objection.

4.2 SHA has had knowledge of the Site since 2010. The SHA Site was identified as suitable for affordable housing following an assessment process carried out by the North York Moors Planning Authority which examined a number of sites in the Thornton area during 2007 and 2008. Plans showing the location of the potential sites are at Appendix 8. The Site is marked "2". Since the SHA Site was identified as the most suitable potential development, a number of consultants have visited the SHA Site at various times and for various periods. None of these consultants has seen anyone on the SHA Site other than the farmer and those using the footpaths on the Site.

4.3 Colin Huby is the Rural Housing Enabler with Ryedale District Council (the Local Authority) and has known the Site since 2007 when it was one of several sites in Thornton-le-Dale which were identified as having the potential to contribute affordable housing to the area. In June 2010, Colin assisted in arranging a Public Consultation Open Day in Thornton-le-Dale to discuss the affordable housing proposals at the Site. The TVG claim was not raised by the local residents at the Open Day. Colin has made numerous visits to the Site since 2007 and has never seen anyone on the Site, except those using the footpaths on the wider Site.

4.4 A description of Colin's role in affordable housing is at Appendix 3 and a list of key dates. It is notable that he involved the Parish Council in discussions about the provision of affordable housing in October 2007. During 2008 the Parish Council was kept informed of the site selection process and in early

2009 was introduced to SHA as the housing provider. In October 2009 the Parish Council received a copy of the parish housing needs survey and it was agreed to hold an Open Day. The Parish Council and Colin distributed flyers and posters around the village. The Open Day was held on 21 November 2009 and the results were presented to the Parish Council in January 2010. Discussions were held with the Parish Council and amendments were made to the proposed scheme to take account of comments raised. A further meeting was held with the Parish Council in February 2010. At no time was any comment made, or complaint or objection raised in relation to the use of the SHA Site as a proposed site for affordable housing on the basis that the Site had been used for LSP.

- 4.5 In July 2010, Mr James representing the Applicants, wrote to SHA following a presentation in the village hall in June 2010 - Appendix 4. It is clear that Mr James is wholly opposed to the development itself and states his desire to protect the countryside. No mention is made of any of any use of the land for LSP or at all.
- 4.6 Appendix 5 contains the bundle of objections to the planning application made by SHA for the residential development of the SHA Site. The application was considered by the planning authority, and ultimately granted planning permission. Of the 35 objections, only one refers to any use which might qualify as LSP. Lucy Graham of Maltongate refers to "quiet country walks and leisure pursuits". Ms Graham completed a questionnaire included in the application bundle and stated that she used the footpath. All other objections were silent as to use of the land for any of the purposes identified in the application.
- 4.7 Val Dilcock is the former Head of Planning at the North York Moors National Park Planning Authority and has known the Site for many years. From previous discussions between SHA and Val Dilcock, she was unaware of use of the Site for LSP.
- 4.8 There are references in the Applicants bundle to previous planning applications for affordable housing. SHA has made inquiries into these applications and understand that they were made by another housing

association on a site to the north of the Site, adjoining the school. There have been no previous residential planning applications on the Site or the SHA Site

- 4.9 Michael Harper is the Site Manager for SHA's contractor, Mansell Construction Services and has been on the SHA Site since February 2011 between the hours of 08:00 and 17:00, Monday to Friday. Since this time, he has seen occasional walkers or runners using the public footpath, otherwise, apart from the farmer, he has not seen anyone else on the Site.
- 4.10 The documentary evidence described below and included in the appendices provides clear evidence that the Site has been used for grazing sheep and has not been used as a TVG.
- 4.10 Appendix 6 is a pack of extracts from Google Earth dated 2010. The photos clearly show the land being used for grazing of sheep. The worn areas of land near the gate to the south of the Site are a result of farm traffic accessing the Site.
- 4.11 Appendix 7 is a collection of photographs taken by Smith Smalley Architects Ltd during Site visits undertaken on 10 and 12 February 2010 and 24 August 2010. The photographs depict sheep grazing on the Site and there is no evidence of use of the Site by members of the public.

## 5. Submissions

- 5.1 Use of the paths by dog walkers does not qualify as TVG use. Use of a path from one point to another is not use of land as a destination in itself and is inconsistent with TVG use. Even if dogs were let off the lead to run (unlikely and unacceptable where there are grazing sheep) the use of the path by the dog owner is not use for LSP and the loose dog would be incidental to use of the path, not use for LSP.
- 5.2 Similarly, bird watching from the path is an ancillary use to the use of the footpath. In relation to the use of the path, P G Fletcher in his/her submission states that permission was not needed because the land was a public footpath - this indicates that the use referred to was of the footpath not of the Site for LSP

5.3 There is considerable agreement between those supporting the application and those objecting in that the SHA Site is consistently referred to as being boggy, marshy and rough. It is not conceivable that such land would lend itself to activities such as children's games, "Easter egg rolling" or picnicking. There are no blackberry or sloe bushes on the SHA site and therefore there could be no blackberrying or sloe picking on the SHA Site.

## 6. Conclusions

6.1 SHA submits that the application is technically defective because:-

6.2 The Applicants have failed to demonstrate:-

6.2.1 Use of the SHA Site or the Site "as of right" by a significant number of inhabitants of the locality or a neighbourhood within a locality. SHA adopts the evidence of Mr D A Smith which states that any games etc played on the Site were with permission of the landowner at the time

6.2.2 Use of the SHA Site or the Site for LSP or at all

6.3 It is not accepted that if there was any unauthorised use of the Site, it has been carried out for the required period of time nor at the level of intensity required to discharge the burden of proof on the applicant.

6.4 The registration authority is requested to decline to register the SHA Site or the Site as a TVG or if that action cannot be taken, to appoint an inspector to conduct a non-statutory public inquiry, to hear oral evidence and to report to the registration authority

Wragge & Co LLP

2 September 2011

## 7. Appendices

1. SHA Site layout plan
2. Ordnance Survey extract showing the footpaths across the Site and the location of Roxby Hill
3. Key dates document and description of Colin Huby's role in relation to affordable housing
4. Letter A C James to SHA 14 July 2010
5. Objections to the SHA planning application
6. Google earth extracts dated 2010
7. Photographs by Architect
8. Planning Authority plans showing the locations of the potential housing sites identified in 2008



16 JUL 2010

P G Church  
Rhodelands  
Westgate  
Thornton Dale

A C James  
Hazel Croft  
Westgate  
Thornton Dale  
YO18 7SG  
(reply address)

Bob Harrow  
from Andy W

→ Tony ~ pl.  
reply obo David +  
copy letter to me for  
info.  
Thank JJ

14/7/10

Dear Sir,

You may be aware that the proposal your staff presented at the village hall on 12/6/10 in Thornton Dale has caused much anger and upset across the whole village. We are writing on behalf of the protestors who are now campaigning against the proposal.

The purpose of the campaign is to protect a valued piece of open countryside which is outside the current village boundary. We have made it clear (and are now doing so to you) that this is a campaign to protect the countryside and is NOT aimed at preventing affordable housing per se. The Parish council seem unable to comprehend this message and are not interested in consulting anyone in order to seek an amicable solution.

We wish you to know that your proposal is exceedingly unpopular, especially as a similar scheme was suggested 10yrs ago and was withdrawn because of public objection. Once these houses are built they will remain a permanent source of irritation to the local residents for generations to come. We will fight to prevent this scheme at every possible level of the planning process and will take it to the Dept. of the Environment, if necessary. We are organised and financed in order to carry out this threat even if it causes extra delay and costs to Sanctuary.

In the meantime we would like to raise three particular issues:-

1. We would like to be reassured that you have been given a full story regarding the particular site selected. How did you opt for this particular choice when it seems there may be other more central and less controversial options available elsewhere in the village? You did not present a full picture at the open day. Which sites were rejected before selecting Westgate and for what reasons?


2. Of the few people we have been able to find that are in support of the scheme there seems to be considerable misunderstanding about the allocation/availability of houses. They seem to think they will have an automatic right to a house because they live in the village regardless of their personal circumstances. You have certainly failed (or deliberately withheld) to get your message across to both us and the potential tenants. For the sake of clarity therefore, could you please give us an account of the entry criteria that will apply TO THIS PARTICULAR SCHEME. We are aware of such things as

'historical connection to the village' or 'coming to work in the village' etc. but it has been 'billed' as for local people only. We really do need the details in order to prevent any further public misunderstanding. Even members of the parish council who have erroneously sponsored your proposal, are clearly confused and the information seems to vary depending on which member you talk to.

3. Why do you choose the controversy of building new houses on open countryside when the existing housing stock in the locality is plentiful and below a price of £150k. Such a method would be quicker, less controversial, would boost the local housing market and at the same time make you a great deal more popular than you are at present. You are currently seen simply as 'the enemy'. If you have rules of engagement that prevent such an option then you really need to sell yourselves better by explaining your reasons.

We do hope you will feel able to reply to this letter in factual and conciliatory terms. If however, you are not inclined to do so then you must accept that our position in trying to protect this open countryside will become more public, more acrimonious and more directed towards you in failing to respond to what is clearly a matter of grave concern to the majority of local residents.

Yours Faithfully,

A large black rectangular redaction box covering the signature of A C James & P G Church.

A C James & P G Church

Chief Executive Officer  
Sanctuary Housing  
Chamber Court  
Castle St  
Worcester  
WR1 3ZQ

PS. If you think it would be beneficial to meet face to face with either yourself or someone who can discuss your policies, then we are happy to make ourselves available. We are not ogres even though it might seem that way!

**APPENDIX 6**

NEW VJG 57

F2-50-70063

# THORNTON LE DALE PARISH COUNCIL

07/10/11

Chris Stanford  
North Yorkshire County Council  
Commons Registration  
Highways North Yorkshire  
County Hall  
Northallerton  
North Yorkshire  
DL7 8AD


Dear Mr Stanford

**Re: Application for the registration of land as a Town or Village Green, Aunums Field, Thornton le Dale.**

The Parish Council notes the comments passed by the WPC regarding their response to the application. The Parish Council would make one other observation:

In the WPC response, "SECTION 2- INTRODUCTION", reference is made to the application being, "a community wide structure to this application", it is difficult to understand this statement, as 79 supporters equates to approximately 5.25% of the community, hardly community wide.

Yours sincerely

  
Faye Snowden, Parish Clerk,  
On behalf of Thornton le Dale Parish Council.

N. Y. C. C.
BES
11 OCT 2011
Pass to <u>CM</u>
Accl _____
Appl _____
EOD _____
Filed _____

**Parish Clerk:** Faye Snowden, 1 Orchard Court, Wrelton Cliff Road, Wrelton. YO18 8PJ  
**Tel:** 01751 472362 **E Mail:** tledclerk@btinternet.com

72-50-52710

# THORNTON LE DALE PARISH COUNCIL

03/08/11

Chris Stanford  
North Yorkshire County Council  
Commons Registration  
Highways North Yorkshire  
County Hall  
Northallerton  
North Yorkshire  
DL7 8AD

N. Y. C. C.
BES
12 AUG 2011
Post to <u>CMA</u>
Addr <u>Eack</u>
Area
SOO
Post

Dear Mr Stanford

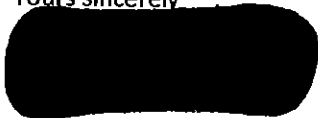
**Re: Application for the registration of land as a Town or Village Green, Aunums Field, Thornton le Dale.**

At the meeting of Thornton le Dale Parish Council 02/08/11, Councillors discussed the application above, by the Westgate Protest Group and would like to express the following comments:

- When the affordable housing was proposed to be situated at Aunums Field the above group's reason for objecting was inter alia that these properties would reduce the price of their property and that it should be sited elsewhere and 'not in their back yard' No mention was ever made to suggest that the land was common land.
- The owner of the land has allowed tenant Farmers to graze flocks of sheep in the field and the sheep have also had their young in the field. This meant that dog walkers had to keep their dogs on a lead as not to lead to a charge of sheep worrying, thereby restricting their use of the land.
- It is true that there is a right of way, leading from Aunums Close either to Westgate or to a point adjacent to the local school
- The Parish Council was reminded of the case of R v Buckinghamshire County Council ex parte Laing Homes (2003) EWHC 1578 and feel that that case has striking similarities with the Protestor's case. The Protestor's did not acknowledge at the time when the planning application was being heard by the North Yorkshire National Park, that this land was common land. The Parish Council also have reached the conclusion that the Protestor's have not established that they have a right to use the whole of the land. Furthermore to allow this application to go through would mean that the affordable housing development which is adjacent to Westgate on Aunums Field would have to be demolished.

I trust that the reasons stated above will be taken into account when the decision is made relating to the proposed registration of land as a Town or Village Green in Aunums Field Thornton le Dale. If you require any further information please do not hesitate to contact me.

Yours sincerely



Faye Snowden, Parish Clerk,  
On behalf of Thornton le Dale Parish Council.

<p><b>Parish Clerk:</b> Faye Snowden, 15 Paddock Close, Pickering. YO18 8BH  <b>Tel:</b> 01751 472362  <b>E Mail:</b> tledclerk@btinternet.com</p>
--

## APPENDIX 7

72-50-70033

MR & MRS A. C. JAMES  
HAZEL CROFT  
WESTGATE  
THORNTON-LE-DALE  
N. YORKS YO18 7SG  
TEL: 01751 474594

23/9/11

REF: NEW VG57/CNS

Dear Sir,

Application to register a village green  
Aunums field Thornton Dale

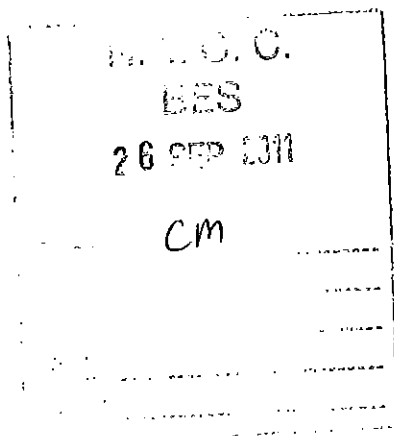
I enclose the Westgate Protest Group response to the recent bundle of objection which you sent me. I hope this gives you everything that you require in an appropriate format. If you need corrections or more information please do not hesitate to ask.

My group would be appreciative if you can soon give an indication of when your committee might consider this matter.

Yours Faithfully,

  
A C James  
(spokesman for Westgate Protest Group)

Commons Registration  
Highways North Yorkshire  
County Hall  
Northallerton  
N Yorks  
DL7 8AH



**RESPONSE**

submitted to

**NORTH YORKSHIRE COUNTY COUNCIL**

on behalf of

**WESTGATE PROTEST GROUP**

in answer to objections made to village green application

**WESTERN BOUNDARY OF THORNTON DALE**

**Westgate protest group**

**c/o Mr AC James**

**Hazel Croft**

**Westgate**

**Thornton Dale**

**YO18 7SG**



## **CONTENTS**

**SECTION 1 – ABBREVIATIONS**

**SECTION 2 – INTRODUCTION**

**SECTION 3 – OVERALL SUMMARY**

**SECTION 4 – SANCTUARY HOUSING ASSOCIATION (WRAGGE & CO)**

**SECTION 5 – A DUDLEY-SMITH ET AL (GRAYS SOLICITORS)**

**SECTION 6 – THORNTON DALE PARISH COUNCIL**

**SECTION 7 – PHOTOS**

**APPENDIX 1 – ADDITIONAL STATEMENT FROM AC JAMES**

## SECTION 1 – ABBREVIATIONS

Throughout this document for convenience the following abbreviations have been adopted

WPG	Westgate protest group (except where individual names are mentioned)
SHA	Sanctuary Housing Association, objection via Wragge & co.
ADS (et al)	Objection from Mr A Dudley-Smith (and 6 other statements) via Grays solicitors (except where individual names are mentioned)
NYCC	North Yorkshire County Council
Widmer End	R v Laing Homes Ltd & Buckinghamshire County Council 2003
AF	Aunums field
FP	Footpath
VG	Village Green
PC	Thornton Dale Parish Council

## SECTION 2 – INTRODUCTION

The following response relates to objections made by Thornton Dale parish council, Sanctuary Housing Association (via Wragge & co), Mr A Dudley-Smith et al (via Grays solicitors).

Each will be dealt with in turn by specific or numbered paragraphs though some sections also contain a general statement.

Where there is no response to a particular paragraph it may be for the sake of brevity or because there is no perceived need. If some responses appear terse in tone it is not intentional but rather for brevity.

The objectors have in some elements raised similar or duplicatory objections. Nevertheless, at the risk of repetition, but in the pursuit of clarity, comments are recorded for each in turn. WPG attempts to avoid too much cross referencing.

The response begins with an overall summary. This focuses on the main/common themes in all the objections but allows the reader to obtain essential detail contained in each section. The conclusion paragraphs in section 5 are considered worthy of attention.

It should be noted that WPG consider there to be 79 signatures as witnesses and not other slightly different numbers quoted by the objectors.

If NYCC is not minded to accept this application WPG also request that an inspector be appointed to hold a non-statutory enquiry in order that findings may be reported to NYCC.

There are various and in some respects overzealous references throughout this document to me (Mr AC James). To some extent this is not surprising as I had become the spokesman for the group. Were I a solicitor, such formal representation would have been taken for granted. I am not, so in places it appears to have become somewhat personalised. Perhaps this is inevitable but to mitigate this situation the letters WPG have been used in the hope that this will bring to mind for NYCC that there is a community wide structure to this application.

Signed.

  
A C James (Spokesman)

### **SECTION 3 – OVERALL SUMMARY**

#### **Ephemeral or inadmissible evidence**

In most of the objectors statements there is information that WPG consider to have been supplied mostly for historical or contextual 'education' to NYCC. In some cases this is considerable in volume but WPG suggest that much of it is not germane to the main issue at hand. Eg SHA spend time on giving background to the planning application process. Planning permission has been given. It is past and gone. In addition much of the lengthy historical descriptions from ADS et al, whilst of background interest are not admissible as evidence because they are outside the 20 year qualifying period. We respectfully ask NYCC to take this into account when assimilating the overall evidence.

#### **Consistency of evidence**

It is a legitimate role of an objector to attempt to discredit the validity of the applicant. Some of the objectors' statements imply exaggeration bordering on dishonesty in some of the WPG witness statements. It is inconceivable, either legally or logistically to contrive an orchestrated campaign where 79 people might collectively behave in such a manner. Such statements were sought by a 'blanket' recruitment, whereas objectors have sought out 6 (plus SHA's more general statement) by name for a specific purpose. How much evidence is there which casts doubt, to a greater or lesser extent in witness statements either for the WPG or ADS et al or SHA? (WPG do in fact offer some evidence of doubt in the text that follows)

WPG therefore believe it becomes a balance of probabilities and respectfully ask NYCC to consider the relative weight, by number and content of the opposing statements.

#### **Agricultural use of Aunumns field**

Not surprisingly the main objections on this topic have come from ADS et al. There are two apparent prongs – that lawful activities cannot take place as there are sheep in AF; and that use of AF is/has been restricted to the FPs. WPG contest both these issues.

The Sunningwell case – 'rough grazing is not necessarily incompatible with use of the land for recreational purposes'. See more detail on this in rebuttal of statements for ADS et al and SHA.

There is no requirement on witness forms to say whether any person(s) has or has not deviated from the FPs. Some have volunteered this information. Some have not. However WPG believe that objectors' statements have made a presumption, without evidence that the likes of bird watching and walking (with or without dogs) have only taken place on the FPs. Of course the FPs have been used but not exclusively.

There are detailed references in rebuttal of individual statements but in general it is inherently impossible for many of the lawful activities quoted in the application to take place on the FPs, eg climbing trees.

Further, in Widmer End 'it is accepted that not all of the activities would be going on at all times and that some of the activities waxed and waned according to fashion and the predominant age groups of local people using the field at any particular time. However the overall period is one of substantial use for recreational activities'.

#### **Fruit picking**

Most objectors' statements refer to the belief that there is no wild fruit in the hedges/boundaries of the two plots of land which make up AF. WPG disagree with these statements and provide photographic evidence of the presence of blackberries and sloes as at 10/09/2011 – see photos 1 – 5 attached in section 7 and further detail in response to each objection.

#### **Mr A Dudley-Smith**

WPG wish NYCC to be aware that ADS lived in Australia during the 1980's and did not return until autumn of 1992. In addition he has spent between one and half and three months in Australia each year since then. He is therefore unable to testify for the whole of the qualifying period. He has chosen not to disclose this information instead preferring to imply continuity for the whole term. This must therefore call into question the accuracy with which ADS can make certain statements with confidence if he was not actually living in the locality to witness activity at any particular time. At the very least such extended periods of absence must impact on the first hand knowledge expressed in his statement, and the resultant likelihood that some of his information has been provided second hand by other people, thus creating a cessation in his continuity of record. This is the situation as WPG understand it and ask NYCC to consider the extent to which this information may cast doubt on the overall veracity of his statement.

#### **Planning application for housing v VG application**

Much reference has been made as to why WPG did not mention a VG application at the time of the controversial planning application. WPG came into being in order to vigorously resist the application. WPG lost that fight. So be it. WPG moved on to a VG application. At the time the hint was in the WPG's effort 'to protect the open countryside'. The VG application became nothing more than a natural 'downstream' corollary to the failed planning protest.

As it happens WPG was advised not to show its hand prematurely lest the then single landowner be provoked into immediate enclosure of part or all of AF, thus generating the need for a VG application wholly under section 15 (3).

The motives for SHA in objecting to WPG's VG application are self evident. ADS has successfully made income from the sale of a portion of AF. He is however under no obligation to express his motive for objecting to the VG application in respect of the remaining portion of AF which he still owns.

By the same token WPG was not obliged to express its motives at the time of the planning application – Sunningwell p354 ‘an enquiry into the subjective state of mind of the users of the field would be contrary to the whole English theory of prescription which depends upon evidence of acquiescence of the landowner’ further ‘it was accepted that the court was concerned with “outward appearance” to the landowner and not the individual state of mind of the users or with their inward belief’. WPG therefore respectfully ask that NYCC dismiss this issue as a relevant objection to the application.

### **The future**

Notwithstanding the pros and cons put forward in the application and objections, WPG consider that if NYCC are minded to approve all or part of the application, then in practice the current use of AF would be unchanged. Local inhabitants would continue to enjoy countryside activities on the edge of an attractive national park village, whilst the tenant farmer would remain unhindered to carry on with his present farming methods.

### **Conclusion**

WPG request NYCC to accept on the balance of evidence offered by the application, along with 79 witness signatures, that it outweighs the strength of objections put forward, by SHA, PC and ADS along with 6 supporting witness statements.

## SECTION 4 – Sanctuary Housing Association

**3.3.** Existence of FP's is not a barrier to lawful activities. A presumption without evidence that only the FP was used. Sunningwell – 'rough grazing is not necessarily incompatible with use of land for recreational purposes'.

**3.4 and 4.11.** see reference to Widmer End in overall summary. The use must be continuous in the sense of not being interrupted for any significant time. WPG is not required to show that the land has been used every day or even every month.

**3.5.** WPG do not regard this as an issue. The witness form requests a name 'if any'. Various names have been ascribed eg Toboggan Hill. Other witnesses have left box 5 or 6 blank. The majority of application witnesses and objectors alike seem to accept the informal name of Aunumns field (AF).

**4.3 and 4.7.** WPG consider these unsupported offerings (hearsay) as inadmissible. They are not supported by evidential statements and do not come from local residents.

**4.5.** See overall summary and reference to Widmer End

**4.9.** Mr Harper has submitted a statement under ADS et al and his comments are rebutted therein. However it is not surprising for him to perceive lower levels of activity during noisy working hours of a building site.

**4.10.** As noted in Sunningwell this is not necessarily an issue and is given excessive emphasis without supporting case law. Various witness statements emphasise responsible dog ownership and sensitivity regarding sheep. Some quote the pleasure of enjoying spring lambs which makes it a lawful pursuit in its own right.

**5.3.** At time of housing development planning application WPG perceived boggy ground as a **detractor** to prudent building. In the VG application it becomes a potential **attractor** for mushroom picking and promotion of insect life for birds, bats and species of mammals, for their own sake and for the food chain for raptor birds. (Hence the wish to protect open countryside) This is acknowledged in SHA's planning application with the promise to erect swift and owl boxes. Eater egg rolling is a specious comment since the presence of a hill is a prerequisite and there is no hill on SHA site.. WPG consider the last sentence to be incorrect see photos 1 and 2 in Section 7 which clearly relate to SHA's site.

### **General**

WPG conclude that much of the voluminous bundle from SHA is offered to NYCC as background information but adds little substantive evidence. WPG have no comment regarding SHA appendices except in relation to the photos in their Section 7, the following quote is offered from Widmer End case law - 'there is abundant evidence of regular, continuous use of the field by local people for a variety of lawful recreations and pastimes for the purposes of the Act. I do not consider that the fact that this field does not look like the conventional "picture postcard" village green is relevant to whether they meet the requirements for that status'.

WPG wish to disregard SHA's evidence for some of the reasons explained. In paragraph 6.2.1 WPG perceive this as a 'catch all' in an attempt to tag onto the coat tails of other objectors in order to give the appearance of strengthening their own relatively weak objection. After all, SHA's knowledge of the site is limited to a few months relative to a 20 years qualifying period. It appears to show a lack of confidence in their own limited situation.

SHA were informed by WPG, before building work commenced, of the intention to apply for a VG. SHA did not acknowledge the letters and chose to proceed with building. It is not surprising therefore that the Association expresses concern at such a late stage.



## SECTION 5 – A. DUDLEY – SMITH ET AL

### **Grays solicitors**

This submission repeats much of what has already been said elsewhere about the grazing of sheep and use/non use of the FPs. There is no need for reiteration – see overall summary.

4. Some witness statements do indeed quote residents from 1960's to 80s (outside 20 years) but at the same time include current use (inside 20 years). Just as ADS has lived in the village for many years, so have others, and these same people (even though they also are ageing) continue to remain as active as ADS. This does not make their statements invalid.

8. Is an unsubstantiated supposition

10.. WPG do not agree with this statement and are not aware of any case law which would ban sheep grazing on the award of a VG. On the contrary Sunningwell confirms that it is not incompatible with lawful activities.

WPG respectfully suggest that Grays submission does not offer fresh evidence to counter balance the VG application.

### **Statement from Leigh-Holliday**

No fresh evidence. No comment to make.

### **Statement from Richard Gray**

An ephemeral minor statement much of which relates to history outside the qualifying period.

### **Statement from Karen Hustler**

A minor statement from someone who is not a resident of the locality and only relates to restricted school times over 4 years of the qualifying period.

### **Statement from Michael Harper**

Limited value as evidence. Shouldn't he be too busy to look for activity at the Northern end or under the Ash trees? He has only attested to working hours when some activities would be at weekends and longer evenings. He can only relate to the site from late February 2011 to 23<sup>rd</sup> May 2011 which WPG consider is not a representative period.

It is not clear whether he is a supporting witness to ADS or an employee witness of SHA (unsigned) or both.

#### **Statement by Rachel Cook**

Rachel Cook has devoted 50% of her statement to describing the lambing process which is not fresh evidence as an objector.

In relating the incident of a dog running loose she has encapsulated the ongoing vigilance of all sheep farmers up and down the land. It 'goes with the turf'. It does not of itself overturn the case law previously quoted. It does however justify her strong motivation in wishing to resist the VG application. WPG suggest this is an isolated incident recalled for its obvious purpose in this context. There are two sides to every story and discussion with Louise Russell reveals that as a professional dog trainer, her dog was under control. It was in fact Rachel Cook's abusive shouting and running which upset the sheep. (Louise Russell is on holiday at the time of writing but a statement can be made available on request).

WPG contend that this statement is written for the purpose of hyperbole rather than substantive content.

If there is/was an ongoing problem with irresponsible dog ownership, then the farmer would have erected prohibition notices such as 'Keep dogs on lead' etc. This he/she has not done and begs the question was he/she even aware of the 'as of right' issue before the VG application.

#### **Statement from John Shepherd**

Again much of this statement relates to history outside the qualifying period. However he admits (para 4 and 10) there are times when the sheep are moved from the field and sometimes they migrate to the North West outside the area of claimed land. WPG therefore believe it is self evident (even notwithstanding Sunningwell) that there is no impediment real or imagined, regarding use of the field without dogs or with them on/off the lead.

There are a few witness statements quoting throwing sticks/balls for the dog. It is inherently not possible to do this on the FPs. Also, sensible dog owners will circumnavigate the field whenever appropriate to minimise disturbance to sheep. Some witness statements also quote the pleasure of going to enjoy the spring lambs. This becomes an attractive 'lawful activity as of right'. It does not require the farmer to be present or require consent, nor does it assume that everyone remains on the FP.

Mr Shepherd has been known for his tolerance and corporation which is reciprocated by some field side residents who contact him when an animal might be in difficulty. WPG perceive this mutual local respect for Mr Shepherd as an example of the working countryside 'cheek by jowl' with country dwellers, which

has hitherto been thought to be generally free from friction. WPG is therefore surprised at the implication in his objection, even allowing for the natural concern of any farmer for his livestock.

The number of sheep normally in AF including lambs is not perceived by WPG as especially intensive relative to the size of the field and so does not preclude lawful activity. Once again the Sunningwell ruling is apposite.

His reference to one year of hay cutting is weak because; i) he is not sure of the year, ii) the Widmer End case is apposite, iii) WPG do not consider that one hay cut in part of the field indicates a cessation of lawful activity or causes a break in the qualifying period, iv) no 'keep off' notices were displayed.

Despite his contention that he visits the field twice per day, even assuming it to be true 365 days per year, his total time in the field is by definition limited, so there is a significant likelihood of not witnessing activities during the day and in longer evenings. In para 18 – sloes and blackberries WPG refer to section 7, photographs 1 – 5 which show abundance of these fruit in AF. Sheep have limited 'eating height' and so WPG disagree with this statement as proved by the photos. If Mr Shepherd is not sufficiently aware of what grows on the perimeter of AF (since before SHA's arrival) there is room for doubt about his awareness for what other activities may have happened in AF.

Some witnesses, whilst engaged in lawful pursuits acknowledge passing the time of day with him without demur.

It is difficult to conceive that Mr Shepherd's quoted list of activities (or absence of them) is sufficient to outweigh 79 statements.

#### **Statement from Alwyn Dudley –Smith**

**3.** It has not been possible to find any local resident of Westgate who has ever seen ADS walking his dog in Westgate in the last twenty years, especially when there have been extended periods when he was not resident in the locality (supporting statements available on request).

**8.** Vice versa, 6 objectors seem an even less significant proportion. Some are not local inhabitants.

**11.** WPG see this as a thinly veiled vexatious and cynical attempt to discredit a genuine community enterprise. Whatever words were used in the briefing notes they would have been open to criticism by a defensive objector.

Of necessity, this was a 'blanket' distribution to parts of the village. It attempts to recruit honest and trustworthy statements in a tone to be expected from any group running such a campaign. It was done without malice or intention to mislead. It is a 'no win' situation when portrayed by ADS with cynicism in a vain effort to cast doubt on the probity of WPG's process. ADS had the luxury of individually seeking his 6 supporting witnesses whereas WPG did not.

**12.** This is supposition by ADS. It matters not whether the photos were posed, but they do show that the individuals were undertaking lawful activities, as of right, without secrecy, without forced entry and away from the FPs. If viewed as an exemplar, it is reasonable to extrapolate that other witness statements, with or without photos, were offered with honesty and in good faith. It is difficult to offer a credible objection against such visual evidence when the law does now require individuals to express their motives (Widmer End), even if ADS has exposed his own motives in attempting such defence.

**14.** The implication against Mr James as an individual is inappropriate. Of course it was clear that WPG objected to the planning application but more careful perusal would reveal that it was not to 'prevent the construction of affordable homes' – it was to prevent the construction of affordable homes *in this location*. The purpose was to attempt to preserve open countryside. Therefore, as mentioned elsewhere it became a natural consequence to seek to save the remainder of this piece of countryside. ADS is only demonstrating his dislike to the principal of democratic and legal protest. Many people protest for many things and accept the win or the loss when they occur. This is the structure of our society. In any event, the history of the housing development application is not germane to the evidence for a VG application under Section 15 (2) which is the portion relating to ADS's objection.

**15.** On the contrary, it is unconceivable that a group of children will conduct a linear snow ball fight along a FP (even if ill defined). More likely they will adopt random movement in all directions.

**17 and 18.** NYCC must decide on the balance of probability whether witness statements to sledging within AF are believable. Yes, there is also sledging in the adjacent field but **not confined** to that field. Sledging for small children being pulled by parents/siblings also takes place in the Southern half of AF when the boggy ground becomes frozen. The adjacent field is not part of the claimed land and thus not part of the VG application. NYCC are asked to consider only what activities take place in the area included in the application.

**19.** Mrs Arnold –Craft is simply showing respect for the farmer. Besides it has been acknowledged in other objection statements that sheep are not always in the field, or that part of the field.

**20.** Again, NYCC are asked to consider the balance of probability that Mrs Arnold –Craft is telling the truth.

**22 and 24.** WPG contest this view. There is scope on the witness form to state whether an inhabitant of the locality is accompanied by family members (question 17)

**23.** WPG do not agree – it has shown nothing more and nothing less than responsible dog ownership.

**25.** Acknowledged, even if accidental.

**26.** Mrs Bates has signed a statement relating this photo to AF. She has not made any reference to the hunt or confirmed that it is the same horse that broke the style. ADS is attempting to stretch his conclusion.

**28.** WPG consider this to be inadmissible because it is unsubstantiated supposition in contradiction of a signed witness statement.

**29.** Question 17 of the witness form applies.

**30.** WPG perceive this to be outside the qualifying period and therefore is not relevant

**31 and 32.** WPG have acknowledged that formal games have dwindled in recent times but there remains plenty of space for other countryside activities included in the application not to mention the scope for an informal 'kick about'.

**35.** Once again, the balance of probability, Mr Hill has signed a statement relating to the claimed land.

**36 and 37.** The application clarifies that this photo 'included for context only'. Comments therefore not relevant. Outside qualifying period.

**39.** This is taking political correctness too far for the purpose of objection. We are addressing a country school in a country setting. Given suitable attire children have enjoyed a myriad of activities in country fields all over the national park/country. If we adopt this stance 50% of the footpaths in the national park would need to be closed because of some minor perceived risk. If children are brought up in the country it is expected they will come into contact with dirt from time to time.

**40 and 41.** Outside qualifying period

**42.** List of activities obviously submitted as a typical exemplar

**44.** Mr Musgrave is a resident of the locality and therefore qualifies. It is supposition to assume that none of the other walkers might be local residents.

**45.** In one paragraph ADS suggest that walkers would not stop for a refreshment break, in the next he indicates the notion that they might sit in a string along the linear line of an ill defined FP. It is not credible. NYCC are asked to consider the greater probability of a scenario where walkers would gather around the bole of a beautiful ancient tree to engage in sociable conversation.

WPG consider that at this stage of ADS's statement there is inconsistency and a tone of desperation emerging which does not promote the cause of a rational objection.

47 – 49. Witnessed have attested to kite flying. Much of his comment is supposition and the adjacent field does not have a monopoly on wind. See additional supporting statements from AC James attached in Appendix 1.

51. ADS is entitled to this belief but it contradicts many of the witness statements. Avid or even casual birdwatchers will always seek to be close to a possible viewing and since many of the less common species in AF are to be seen in the 'non trimmed' South Western hedge line, the greater probability is that watchers will move across the field or observe from under one of the Ash trees.

53. Case law has established differently. Sloes – ADS uses the word 'improbable' which is unsubstantiated supposition in contradiction of signed witness statements. Blackberries and Sloes are at fruit in September and are present in various hedges/boundaries of AF. See photos 1 – 5 in Section 7. If Blackberries are present on Westgate roadside then it is a given that they will also grow on the field side of the same hedge (which is now enclosed). WPG consider ADS is unaware of what wild fruits are present on his land, as demonstrated by the photos. WPG contend that flailing of the Southern hedge is not as frequent as ADS would have everyone believe. If it is flailed in the back end as he suggests then sloes and blackberries will have been harvested before flailing. The Southern hedge is the only one which has ever been flailed. The remaining three hedges are left free to grow a variety of plants.

54. WPG consider this range of information is not germane to the VG application. Sports such as football, cricket and bowls as described by ADS are not open to all inhabitants of the locality. It is necessary to be a registered fee paying member of the clubs. All such activities are with permission of the landowner who charges rent for lease of the land. AF is used predominantly for countryside activities which are inherently impossible in a formal setting such as in the sports clubs or children's playground available elsewhere in the locality.

55. Once again as already quoted the Sunningwell ruling applies.

56, 59 and 60. Incidental historical information outside qualifying period.

61. 79 witness statements indicate to the contrary and WPG ask that NYCC consider the balance of probability bearing in mind that ADS and his tenant farmer are two residents only and cannot be everywhere at all times.

#### **Conclusions from statements of section 5**

ADS and J Shepherd were both informed of the intention to make a VG application. They then had the opportunity to seek a declaration from the court that the land is not a green, in order to thwart WPG's application before it was submitted or determined. They have not done so, indicating their underestimation of the potential impact. In these circumstances WPG perceive this objection as a 'rearguard action' producing a few hurried low key statements to attempt to ward off an adverse outcome.

There is a theme in these statements relating to the use/non use of the FPs. It is expected that this would be a feature of an objection. Modern OS maps and the one marked plan 2 attached to ADS's statements, plus the OS map in section 2 of SHA's bundle, show the North/South footpath hard by the very Eastern boundary of AF. In day to day practice those who believe themselves to be walking on the FP actually walk some meters to the West of the OS marked line – there being various obstacles to negotiate such as a running water gully on the very edge of the field where the FP is officially routed. In this context the new kissing gate installed by SHA at the North of their site is not technically positioned on the line of the footpath. WPG believe that ADS et al have not noticed or complained about this.

There are witness statements which describe activities which inherently could not take place on the FP itself. In reality all FPs are ill defined. ADS et al have not realised for many years that some walkers have not actually been using the North/South FP. ADS et al have never sought to correct this anomaly by delineating the proper routes. Therefore local inhabitants have simply walked in areas which were convenient to them. WPG therefore submit that ADS et al were oblivious to the situation and (in the context of the objection) had a duty to make it clear to users what was expected relative to the official routes of the FPs. They have not defined the N/S route, not fenced it, and not erected any prohibition notices. In practice there is a triangular matrix of paths across AF and it would be difficult for farmer, landowner or resident to be sure when any person was or was not on an FP even if they truly intended to stick to it. As a consequence it is not surprising that users by custom and practice have felt 'free to roam'.

This situation is not unusual in countryside settings and farmers usually accept the reality – until it suddenly becomes necessary to object to a VG application.

WPG ask NYCC to consider that the objectors have failed to satisfactorily demonstrate that use of AF has been confined to the FPs.

The ADS et al statements contain substantial sections of extraneous information relative to the requirements of section 15 (2) and WPG ask NYCC to consider to what extent this might influence the balance of probabilities when assessing the opposing sets of witness statements.

## **SECTION 6 – THORNTON DALE PARISH COUNCIL**

WPG consider that, in the main, the PC have misunderstood the terms of the Commons Act 2006 and do not appreciate the difference between common land and VG.

The issue of dogs v sheep has been addressed elsewhere in this response.

WPG are confused by the PC reference to the Widmer End case. This concerned the matter of an annual hay crop which is not relevant to AF.

The Sunningwell ruling is once again an appropriate defence regarding the PC's supposition as to the motives of WPG.



10th September 2017

1



Tall Blackberry Bushes..too high for sheep



10th September 2011

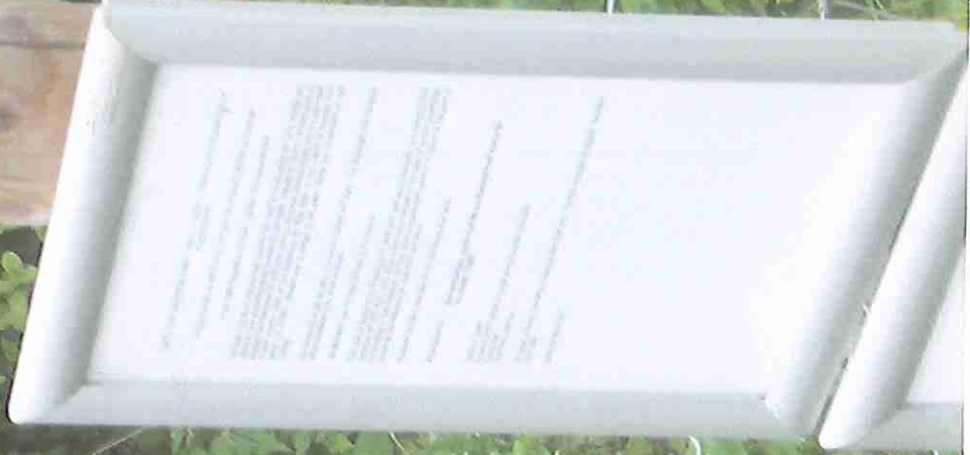
CAUTION  
STATE  
ENTRANCE

Blackberry Bushes



10th September 2011

SLOES



10th September 2011

Sloes



10th September 2011

blackberries



**APPENDIX 1 ADDITIONAL STATEMENT FROM ANTHONY JAMES**

I Anthony James of Hazel Croft, Westgate, Thornton Dale, YO18 7SG hereby certify that on occasions in the last 12 years I have taken my grown up children to fly kites in the Southern Half of the Aunumns field (between the Ash trees and hedge abutting Westgate). These were sophisticated stunt kites which fly in relatively gentle winds. It is not uncommon to practice stunts with this type of kite in preparation for competition.

Signed

A large black rectangular redaction box covering the signature of Anthony James.

date

23/9/11

**APPENDIX 8**

72-50-7009

MR & MRS A. C. JAMES  
HAZEL CROFT  
WESTGATE  
THORNTON-LE-DALE  
N. YORKS YO18 7SG  
TEL: 01751 474594

24/10/11

NEW VG57/CNS

Dear Sir,

**Application to register new village green - Aunums Field Thornton Dale**

On behalf of the Westgate Protest Group, I enclose the latest response in the iteration of documents relating to this application.

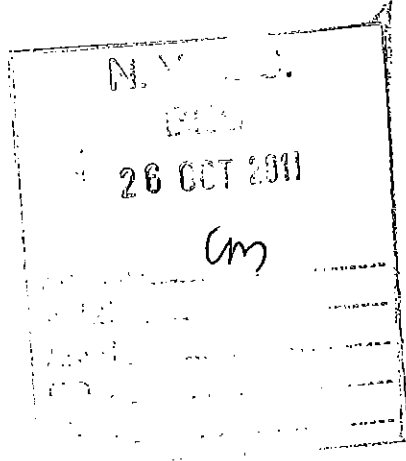
I trust this is in order and look forward to hearing from you in due course.

Yours Faithfully,



A C James

Commons Registration  
Highways North Yorkshire  
County Hall  
Northallerton  
North Yorkshire  
DL7 8AH







Unkempt land owned by  
A. Dudley-Smith - Field to the  
south of Westgate/Annans Field.

Photo taken August 2010

**[Redacted]**

p.p. complainant.

# Observations

Submitted to

North Yorkshire County Council

On behalf of

Westgate Protest Group

In relation to

Response of objectors, A Dudley-Smith & J Shepherd

In respect of

Village Green Application, Aunums Field, Thornton Dale

Westgate Protest Group

C/O Mr A C James,  
Hazel Croft  
Westgate  
Thornton Dale  
YO18 7SG

In making this further rejoinder the WPG note that only one of the original objectors has decided to make further significant comment.

WPG consider that these comments do not offer meaningful fresh evidence.

All matters have now been explored and there is nothing further to be gained by ongoing adversarial exchange. The key issues are clear and WPG feel that NYCC should not be burdened by more 'tit for tat' arguments.

WPG would refer NYCC back to the overall summary of its first response (dated 23/9/11). It is considered (with a few additional points for clarification set out below) that this summary (including the summary in Section 5) encapsulates the main issues.

WPG invite NYCC to decide that, on the evidence provided, the balance of probability rests in favour of the applicant.

#### **Clarification – by numbered or named paragraphs in Grays Solicitors response dated 17/10/11**

##### Observations on Section 2

'Community wide structure' is not a numerical concept. It is geographic. Witness statements were provided from different parts of the designated locality.

##### Observations on Section 3

The witness form used is a nationally adopted standard and the law does not require bespoke statements.

There is a legitimate fear of further development, but there is no reference in the application to devaluation of homes.

##### Fruit Picking

A mistake was made when the wrong photo was inadvertently included in the bundle of 23/9/11. This was corrected 24hrs after submission when the correct photo was posted to the Commons Registration.

In a country setting, it is surprising that Grays/ADS seem unable to tell the difference between damsons and sloes. Damsons do not fruit in September. Photos 3&4 (+ replacement number 5) undoubtedly show sloes (and in the particular, species – *prunus spinosa*)

New photo 5 on the western hedge line demonstrates the abundance of sloes within easy reach. His assertion that a ditch prevents access to the sloes is stretching the definition of a ditch to the limit of credibility. It begs the question as to when ADS last visited AF.

In the same hedge, and others, brambles have (and have had over 20 years) ample opportunity to grow from the base of deep 'untrimmed' hedges where sheep cannot reach. Photo 4 also shows considerable lichen growth which is slow to grow and therefore indicates that the hedge has not been cut back for many years. Is this to be assumed as good quality farm management?

It is critically important that NYCC understand when assessing the competing arguments, especially in relation to the credibility of ADS, that the following be taken into account (quote from para 14, Grays recent rejoinder – 'If the credibility of any witness is suspect, it is a matter to be taken into account'):-

- 2/9/11 statement - 'I go down Westgate most days to walk my dog'
- Is now metamorphosed into - 'he walks his dogs in one of the adjacent fields'.
- It has not been possible to find a local resident, some of whom also walk dogs in the adjacent fields, who have ever seen him walking his dog at the south west end of the village. He does occasionally drive his land rover along the road.
- Whilst not wishing to imply a personal attack on ADS, he attempts to portray himself (in the latest rejoinder and his original statement of 2/9/11) as a 'reasonable landowner', when there is irrefutable evidence which contradicts this assertion. His latest photo showing AF, was taken from a field to the south of Westgate, which he says he farms himself. The point from which his latest photo is taken is adjacent to a field which he also owns and is a mere 150 metres from Aunums field. The attached photograph shows the cause of an original complaint about his failure to properly maintain his land, along with a letter from Natural England. This letter is the outcome of the complaint after he had been given a warning about the requirement to take action. It states that the file remained open until 30/4/11. It is believed that he rents this field to a tenant, but Natural England still regard the landowner as culpable because he should have been watching over his tenant. This incident is an exemplar which is contrary to what might be expected of a responsible landowner.
- It is understandable why, given it is not inconceivable in the future that ADS stands to gain financially from AF, that he would attempt such a robust, pedantic and detailed objection.
- However when taken individually many of his points are minor/trivial. When taken collectively, they amount to inconsistency.

There is, in the iteration of documents, case law dissention about the continuation of sheep grazing in the future if VG status were awarded. It is worth noting that as of today, activities continue in AF without apparent let or hindrance to either party. WPG do not accept that sheep grazing would 'interfere with the recreational rights of inhabitants'. This might be the case if 'organised sports' were included but the application is confined to 'country side pursuits'. Mr Shepherd states that he keeps his ewes and new borne lambs in AF, when turned out after being indoors for sometime during lambing, plus the adjacent field (no physical barrier between them), yet he also confirms that he believes sledging only takes place in said adjacent field. He must therefore be happy for sledging and 'grazing' (winter

feed) to take place concurrently. It therefore becomes probable that the same applies to AF. Other pastimes and activities, aside from sledging, Eg. Picnicking or fruit picking, might be regarded as less 'intrusive' to farming activities and commensurate with country side pursuits.

#### Paragraph 12

The objectors have fallen into the trap of drawing conclusion from supposition. In point of fact, the photos in question were not posed, but were part of a series (which happened also to include pictures of the grandson feeding carrots to a horse in a nearby field) of not very good, typical family snaps. It simply became fortuitous to use them in the application.

#### Paragraphs 22 & 24

WPG disagree. Q14 of the witness form asks 'were you accompanied by your immediate family?' Ergo the inhabitants must also have been present.

#### Paragraphs 28 + 35, 36 & 37 (page 10 of rejoinder)

WPG interpret these two paragraphs as an attempt to show that all objectors statements are assumed to be entirely free of mistakes, whereas only applicant statements might be likely to contain mistakes.

09 November 2010  
Our Ref:W48-0210

ENGLAND

  
Thornton Dale  
North Yorkshire  
YO18 7SG

Natural England  
4<sup>th</sup> Floor  
25 Queen Street  
Leeds  
LS1 2TW

T 0300 060 4180  
F 0300 060 1126

Dear Mr ,


**WEEDS ACT 1959 COMPLAINT**  
**Land at Thornton Dale**

As you are aware I wrote to the owner / occupier of the above land on 18<sup>th</sup> October asking him to take action to control the Spear Thistle, Creeping or Field Thistle and Broad Leaved Dock thought to be growing there.

I have now received his response. You will be pleased to note that he intends to adopt a herbicide programme as advised by an agronomist which will entail spraying in the spring and autumn to control the spread of weeds on the above land.

I would be grateful if you would write to me at the above address by 30<sup>th</sup> April 2011 confirming whether the owner / occupier has taken the action to control the spread of the weeds described above. If I do not hear from you by this date the complaint will be closed. I appreciate that this may be too early to be confident of any effect (especially if the spraying is delayed due to weather conditions), so a letter by this date to update me of any progress (or lack of it) will be sufficient to keep the case open until the effects can be observed.

Yours sincerely,

  
Edward Craggs  
Injurious weeds section  
Natural England  
Leeds

Natural England  
Head Office  
1 East Parade  
Sheffield S1 2ET

[www.naturalengland.org.uk](http://www.naturalengland.org.uk)

F2-50-70073

**GRAYS**  
SOLICITORS

Duncombe Place York YO1 7DY  
Telephone: (01904) 634771  
Fax: (01904) 610711  
DX: 61505 YORK

Email: enquiries@grayssolicitors.co.uk  
Web site: www.grayssolicitors.co.uk

Our Ref: GHB/21281/041  
Your Ref: NEW VG57  
Direct email: GillianBlick@grayssolicitors.co.uk  
Date: 17 October 2011

Mr Chris Stanford  
NYCC Commons Registration  
Highways North Yorkshire  
County Hall  
Northallerton  
North Yorkshire  
DL7 8AD

**BY SPECIAL DELIVERY**

Dear Sir

**NEW VG57 - APPLICATION TO REGISTER NEW VILLAGE GREEN**  
**at Aunums Field, Thornton le Dale.**

Further to our recent exchanges of correspondence, we now enclose the Observations of the Objectors on the Response to the Objection to the Application in this matter.

Yours faithfully



Grays

Enc

N. Y. C. C.	
BFS	
18 OCT 2011	
Pass to	UM
Acld	
Appd	
EOD	
Filed	

21281\041\562GHBSW .LET

Partners:	Christopher Goodway	Lyn Rickatson	John Knowles	Brian Mitchell	Ben Williams
Solicitors:	Angela Reinholz	Gillian Blick	Catherine Goodway	Emma Grandison	Joanna Leslie

## **Observations**

submitted to

**North Yorkshire County Council**

on behalf of

**Mr Alwyn Dudley Smith and Mr John Shepherd**

in relation to

**the Response of the Applicant to the Objections**

made in relation to an application for registration of a

Town or Village Green at

**Aunums Field, Westgate, Thornton le Dale**

under the provisions of the

**Commons Act 2006**

### **Summary**

For the reasons set out in the Objection and the Observations below North Yorkshire County Council is respectfully requested to reject this application for registration of Aunums Field as Village Green

If there has been any use of Aunums Field outside the right to use the public footpaths it has been so trivial and sporadic as not to carry the outward appearance of user as of right.

The Applicant criticises the objection because it is supported by only six witness statements. Whilst he had months to put together his application, the objectors had only seven weeks to put together their objection.

North Yorkshire County Council will be aware that in the case of *R (on the application of Lewis) - v - Redcar and Cleveland Borough Council and another* [2010] UKSC 11 similar issues arose as in this case. However the user of the local inhabitants in Redcar was found to be "extensive and frequent", which distinguishes the facts significantly from those in this case as does the fact that the golfing use in that case had ceased in 2002 and so any question as to whether walkers had given way to golfers and how this relationship would be affected by registration as village green was merely hypothetical.



## Observations on Section 1

Abbreviations list - no comment

## Observations on Section 2

At the end of his introduction, Mr James asserts that "there are various and in some respects overzealous references throughout this document to me (Mr A C James)" and that "to mitigate this situation the letters WPG have been used in the hope that this will bring to mind for NYCC that there is a community wide structure to this application".

Firstly, it is believed to be more courteous to refer to a party by name than by a defined term, however in response to his expressed sensitivities we refer hereinafter to Mr James as "the Applicant". The "Westgate Protest Group" is not regarded as an appropriate term to use, as it has no legal identity.

Secondly, the Applicant asserts that there is a "community wide structure" to the application. This assertion is not borne out by the facts. There has been a very limited support for the application from within the community, mostly from those who fear that their homes will be de-valued either by the presence of low cost housing in their immediate neighbourhood, or by development in other parts of Aunums Field taking their "view" over open fields.

## Observations on Section 3

### **Evidence**

The Applicant asserts that evidence is inadmissible because it falls outside the 20 year qualifying period. This cannot be so; where supporters of the application have put in evidence of "community and organisation" team games taking place on the land the objectors have a right of response. The evidence in support of the objection is that not only were such uses with the consent of the farmer but that they ceased more than forty years ago which is very germane to the issues in consideration.

The statements in support of the application are a series of inherently implausible accounts in standardised form - these are not bespoke witness statements. There is a global assertion of common rights but there is a consistent lack of particularisation about where on the land they say they have been, save that the Applicant has asserted that he has accompanied his adult children flying kites on the land between the building site and the ash trees, which is itself extremely improbable. Even if they did so, there is no evidence that the user was "as of right" and, as submitted previously, activities by visitors are not relevant. The Applicant's adult children are not inhabitants of Thornton Dale.

Apart from the above there is a complete lack of particularity about where the supporters of the application say that they have indulged as of right in lawful sports and pastimes. If they are saying that they have done it all over the part of Aunums Field outlined in red on the application then this is fanciful at best.

### Fruit picking

It is to be noted that at the height of the brambling season, the best the Applicant can produce is a photograph of some straggly brambles on the road side of the southern hedge, which has nothing to do with the disputed land.

In Photograph 1 the Applicant has labelled a single stem of bramble as "Tall Blackberry Bushes.. too high for sheep". As most folk will be aware, blackberries grow from the ground up and any which emerge from the ground on the field side of the hedge are eaten back by the sheep before they have a chance to take hold.

Photograph 2 shows another irrelevant bramble on the road side of the hedge.

Photographs 3 & 4 are labelled "sloes" and show photographs of the damsons described in the witness statement of Mr Dudley Smith dated 2 September 2011. Incidentally, there is a very small blackthorn bush nearby with a few sloes on it, but in any event these are all immediately adjacent to the public footpath and there would be no requirement to step off the footpath to pick these fruits.

Photograph 5 is blurry and indistinct. If it is a photograph of a small cluster of blackberries as asserted by the Applicant and which is by no means certain, there is no evidence given of this actually being on the field side of the boundary.

This seems to be a suitable point to deal with the question of activities being "as of right", which is summarised clearly by Gray & Gray in the fifth edition of their "Elements of Land Law" at paragraph 10.7.42:

*The case law indicates that the focus of the statutory formula falls on the predictable reaction of the land owner to the particular user rather than on the state of mind of the members of the public whose activities generate the statutory presumption. "User as of right" denotes a form of user which would suggest to a reasonable landowner that [the persons concerned] believed that they were exercising a public right.*

In his speech, Lord Hoffmann sets out his basis for deciding the meaning of the words "as of right" in R -v- Oxfordshire County Council ex parte Sunningwell Parish Council [2000] 1 AC 335 at 354. The ratio of this case (taken from the head note of R -v- Oxfordshire County Council ex parte Sunningwell Parish Council [1999] 3 All ER 385) being:

- (i) *Where an application for registration of a village green was grounded on user as of right within the meaning of s22 of the Commons Registration Act 1965, it was not necessary to establish that the inhabitants of the village knew or believed that they had a legal right to use the land for sports and pastimes. Rather the term "as of right" in s22(1) had the same meaning as in s5(c) of the Prescription Act 1832 and s1(d) of the Rights of Way act 1932, namely user that was nec vi, nec clam, nec precario and there was no additional requirement of subjective belief;*
- (ii) *The term "sports and pastimes" in s22(1) of the Commons Registration Act 1965 did not comprise two classes of activities, but was a single composite class which used two words in order to avoid arguments over whether an activity was a sport or a pastime. . . . "sports and pastimes" included those activities which would today be regarded as such, for example informal recreation.*

In this case neither the freehold owner Mr Alwyn Dudley Smith, nor the tenant farmer Mr John Shepherd have seen any evidence of *any* use of Aunums Field which is inconsistent with the public right to use the public footpaths. There has been *no* use of the land which indicated to either Mr Dudley Smith or Mr Shepherd that people believed they were exercising a public right other than that to use the footpaths. Any such recreational use, if any has taken place, must have been so trivial and sporadic as to fail to satisfy the statutory test.

In Mr Shepherd's statement dated 31 August 2011 he states that he visits Aunums Field early in the morning and again in the evening on most days in addition to his more frequent visits during and after the lambing season.

In Mr Dudley Smith's statement dated 2 September 2011 he states that he goes down Westgate to walk his dogs on most days and has done so for the last 20 years. The Applicant has attempted to cast doubt on the veracity of this evidence. For avoidance of doubt, on most days of the year Mr Dudley Smith drives along Westgate and looks at the estate land as he passes, which includes Aunums Field. He then walks his dogs in one of the fields to the south of Westgate which he farms himself and from which he has an excellent view of the surrounding land, including Aunums Field. A photograph is attached which demonstrates how good the view of Aunums Field is from this position. As any reasonable landowner would, Mr Dudley Smith keeps a regular watching eye on all the estate land.

The Applicant has tried to cast doubt on the overall veracity of Mr Dudley Smith's statement. For the avoidance of doubt, Mr Dudley Smith has been permanently resident in Thornton Dale since his return from Australia in July 1991. Each year Mr Dudley Smith takes 5 to 6 weeks holiday when he is away from the village, which includes visiting his children and grandchildren, some of whom are in Australia.

It is strongly denied that the taking of annual holiday "creates a cessation in his continuity of record" whatever the Applicant may mean by that. Such assertions seem to be no more than "mud-slinging" in order to disguise the fact that there is no proper foundation to the application.

The Applicant asserts that if Aunums Field were to be registered as village green the tenant farmer would remain unhindered to carry on with his present farming methods. Such a consideration is irrelevant for these purposes as it forms no part of the statutory test, but it is in any event wrong for two reasons. The first reason is that case law has established that a landowner (which in this case will include his tenant) still has the right to use the land in any way *which does not interfere with the recreational rights of the inhabitants* (our emphasis). [see the speech of Lord Hoffmann in *Oxfordshire County Council -v- Oxford City Council & Robinson* [2006] All ER 817 at 837].

Unless he can tell people to stop activities which endanger or distress his sheep, no farmer will wish to leave sheep to graze land on which the local inhabitants have the right to carry out recreational activities. Profit margins in sheep farming are tight and this would be a risk no farmer would be willing to take.

The courts have still not resolved the question raised in *Oxfordshire County Council -v- Oxford City Council & Robinson* about whether the provisions of s12 of the Inclosure Act 1857 and s29 of the Commons Act 1876 would render the grazing of sheep and ancillary



farming activities on the new village green unlawful.

In the House of Lords case *Oxfordshire County Council -v- Oxford City Council and Robinson* [2006] UK HL25; [2006] 4 All ER 817 it was held that registration of land as village green would give rise to rights for the relevant inhabitants to indulge in lawful sports and pastimes on the land. The owner would still have the right to use the land in any way *which did not interfere with the recreational rights of inhabitants*. The possibility of interference with the recreational rights of inhabitants is the nub of this problem.

Section 12 of the Inclosure Act 1857 creates various summary offences prohibiting any act interrupting the use or enjoyment of a town or village green as place for exercise or recreation and section 29 of the Commons Act 1876 provides that any encroachment, erection or interference made on a town or village green was to be deemed a public nuisance so as to give rise to summary offences under the 1857 Act. In short the activities of a sheep farmer are likely to fall foul of section 12 of the 1857 Act and section 29 of the 1876 Act and leave John Shepherd open to prosecution for various offences should he for example wish to erect fencing or feeding troughs or any number of things that might be required by a sheep farmer in the field where he releases his ewes shortly after they have lambed.

As those Acts are still in force, there is no reason to suppose that they will not affect this land and Mr Shepherd would therefore be vulnerable to a summary conviction for public nuisance and a fine if he were to drive his sheep on to Aunums Field after registration as village green had taken place.

Furthermore, even if he were not to be prosecuted under those two 19<sup>th</sup> Century Acts for continuing his farming activities in relation to the land, it is unlikely that the land will continue to be suitable for his sheep particularly his in-lamb ewes and his recently born lambs if the local inhabitants are entitled as of right to indulge in lawful sports and pastimes on the land.

Whatever assertions may be made at this stage about nothing changing, the reality is that the farmer's activities will have to give way to the inhabitants recreational rights which will mean that grazing will cease on this land if it is registered as village green.

#### **Planning objections**

The Applicant seems to have missed the point which was being made and this opportunity is taken to clarify it for the benefit of all parties. Of the 76 statements with 79 signatures produced in support of the application 21 of the witnesses also raised objections to the planning application. Not one of those people asserted at that point that planning permission should not be granted as this was public open space over which they had a right to enjoy recreational activities.

The Applicant asserts that because he has been able to produce 76 statements with 79 signatures that this should outweigh the strength of the objections which have been supported by only 6 statements. As few of the 76 statements adduce any credible evidence in support of the application this argument carries little weight.

#### **Observations on Section 4**

We have not received section 4.

## Observations on Section 5

The Applicant, has to show on a balance of probabilities that:

- i a significant number of the inhabitants of Thornton Dale have indulged in lawful sports and pastimes on Aunums Field;
- ii they did so as of right;
- iii they did so for a period of at least 20 years;
- iv they continued to do so in relation to Mr Dudley Smith's land at the time of the application;
- v they ceased to do so less than two years before the application was made in relation to the land owned by the Sanctuary Housing Association.

The Applicant's response to the submissions in the Objection is irrelevant. It has not been suggested that statements are invalid. The point which was being made was that where the use of the land was with the consent of the farmer or the landowner it does not support the application as the use was not nec vi, nec clam and nec precario. The statements are not invalid; they merely fail to support the application.

The Applicant's response to paragraph 8 of the submission is incorrect. For example evidence has been given in the witness statements that the "dew pond" is no more than a damp patch after heavy rains. Where people assert that they have been "fishing" or "pond dipping" such assertions should be viewed with caution.

The Applicant's response to paragraph 10 is that he is not aware of any case law which would ban sheep grazing, citing Sunningwell. His reliance on that case is misplaced and it does not support the assertion he makes.

### **Statement of Leigh Holliday**

Leigh Holliday was born in October 1975 and lived in Thornton Dale from then until 1999. He gives evidence in his statement dated 26 August 2011, that he and his friends never played in Aunums Field.

He was at the village school from "rising five" to the age of eleven. From February 1980 to July 1986 Mr Holliday was at the village school and never played in Aunums Field. In September 1986 Mr Holliday went to secondary school and continued to live in Thornton Dale until 1999. Between February 1980 and 1999 Mr Holliday and his friends never indulged in any lawful sports and pastimes on Aunums Field.

His "generation" was part of the cohort which would have been indulging in such lawful sports and pastimes during the relevant 20 year period if anyone was. His evidence shows that they were not doing so.

### **Statement of Richard Gray**

Mr Gray provides evidence that the organised activities which took place on Aunums Field in the past were with the consent of the farmer.

He also gives evidence that he is not aware of anyone using Aunums Field for lawful sports and pastimes without the permission of the farmer either now or in the past.

Mr Gray's children are now aged about 28 and 25 respectively. Their father and mother do not believe that they played on Aunums Field during the period from 1988 to 2004 (or at all) when they might have been expected to do so if that is what village children were doing.

#### **Statement of Karen Hustler**

Mrs Hustler provides evidence that when she was active as a parent and volunteer at the village school, children were not being taken on to Aunums Field.

The Applicant is dismissive of this evidence and describes the witness as "someone who is not a resident of the locality". There is no requirement for a witness to be a resident of a locality, and the evidence she gives relates to the activities of local inhabitants and it is therefore relevant.

#### **Statement of Michael Harper**

Mr Harper provides evidence that he was on site in Aunums Field between 08:00 and 17:00 on Monday to Friday in each week from late February 2011 to the end of August 2011. This is a period of 6 months, during which time he saw occasional runners and walkers but no-one else save for the farmer.

The Applicant may not believe this statement relates to a representative period but it is submitted that it is extremely important evidence in support of the objector's contentions that *no* activities actually take place on Aunums Field at all save for those occasional users of the public footpaths.

This is all part of an overall picture which contradicts the claims that this land is used for recreation.

#### **Statement of Rachael Cook**

The Applicant in his response to this witness statement asserts that the farmer was not aware of the "as of right" issue before the village green application. It is not clear what is meant by this assertion, but if he means that the farmer was not aware of the "as of right" issue in relation to Aunums Field, because there was *no* activity taking place on Aunums Field which would alert a landowner or tenant farmer that people might be indulging in recreational activities "as of right" then the assertion is correct.

#### **Statement of John Shepherd**

The Applicant asserts that it is inherently not possible to throw sticks or balls for a dog from the footpath. This assertion is surprising and North Yorkshire County Council is left to draw its own conclusions.

The Applicant asserts that because supporters of the application have expressed pleasure in going to see the spring lambs this becomes a "lawful activity as of right". Whilst it is not an unlawful activity per se, that is not the test which has to be applied. It is questionable whether going to see the spring lambs is a lawful sport and pastime, but even if it is, it does not require a person to leave the footpath to do it. The Applicant has said in his response that [sic]"it does not assume that everyone remains on the footpath", but it is of course for the Applicant to prove that it is more likely than not that they have not remained on the footpath.

Mr Shepherd has objected to the application and has given evidence in a very measured and moderate way. Despite what the Applicant says in his response there is no "implication" contained within it of friction between Mr Shepherd and other villagers.

There is no reference in the case of R -v- Oxfordshire County Council ex parte Sunningwell Parish Council [2000] 1 AC 335 to the word "intensive". In the report of the inspector who presided over the non statutory public inquiry there is a passage which reads:

*"the land has been used throughout for rough grazing so that informal public recreation on the land has not conflicted with its agricultural use."*

This clearly forms part of a finding of fact in that particular case, but it forms no part of the ratio of the case. In any event as discussed above, such a consideration forms no part of the statutory test to be satisfied by the Applicant.

The Applicant alleges that there is an abundance of sloes and blackberries in Aunums Field, yet the best photographic evidence the Applicant has produced at the height of the autumn fruiting season shows:

1. the hedge on the road side, that is outside of Aunums Field;
2. the hedge on the road side, that is outside of Aunums Field;
3. fruit which can be reached only when on the footpath running up the eastern boundary of Aunums Field;
4. fruit which can be reached only when on the footpath running up the eastern boundary of Aunums Field; and
5. a blurred and indistinct photograph of what may be a single blackberry, with no certainty as to its location.

The Applicant refers to sheep having a limited "eating height", but overlooks the fact that brambles grow out of the ground and are eaten by the sheep when the stems are tender and young, as they emerge from the ground. The brambles never have the opportunity to grow to a height where the sheep cannot reach them or to fruit.

The presence of brambles in the outside of the hedge is irrelevant and is no indicator that any would have been found on the inside of the hedge when that part of the field was grazed by sheep.

#### **Statement of Alwyn Dudley Smith**

##### Paragraph 3

The Applicant says in response to paragraph 3 of this statement that Mr Dudley Smith has not been seen walking his dogs down Westgate in the last twenty years. Mr Dudley Smith drives down Westgate on most days with his dogs to walk them in a field which is farmed in hand by the estate.

##### Paragraph 8

In response to paragraph 8 the Applicant says "Vice versa, 6 objectors seem an even less significant proportion. Some of them are not local inhabitants." As previously stated the witnesses in support of the objection do not have to be inhabitants of the locality.



The burden of proof rests on the Applicant. The only recreational activities which are relevant to the application are those of inhabitants of the locality which fall into the category of lawful sports and pastimes and which have been indulged in without consent or permission, without force and without secrecy or as of right. There are numerous assertions of activities within the supporting witness statements which do not bear up to scrutiny because they were with the consent of the farmer at the time, and in any event they have ceased more than 20 years ago. The statement of Mr Charles Hill is an example in point.

Paragraph 11

In his response to paragraph 11 the Applicant appears a little desperate in his attempt to discredit this reasonable objection to a groundless application.

Paragraph 12

The Applicant's response to paragraph 12 is that it does not matter whether the photographs were "posed". This suggests an admission by him that these photographs were indeed staged. Such staged "visual evidence" is of no evidential value and if the Applicant wishes it to be cited as a demonstration of the degree of honesty and good faith which has been offered in the other witness statements supporting the application then North Yorkshire County Council is left to draw its own conclusions.

Paragraph 14

The Applicant does not deny writing the letter referred to. There is no reason why the "implication against Mr James as an individual is inappropriate." The conduct of the parties is of course germane to the outcome of any such application as there is a process which requires the weighing up of opposing evidence. If the credibility of any witness is suspect, it is a matter to be taken into account.

Paragraph 15

Yet more unsubstantiated supposition by the Applicant. No evidence has been adduced by the witnesses setting out the location of any alleged snowball fights.

Paragraph 17 & 18

Evidence has been adduced confirming that there has been sledging and tobogganing only in the field adjacent.

Paragraph 19

The sheep may not always be in the field, but that cannot affect the fact that Mrs Arnold-Craft defers to the farmer.

Paragraph 22 & 24

Whilst there may be scope on the witness form distributed to others by the Applicant for a witness to say whether their immediate family use the land, this does not affect the legal test which needs to be applied. Where members of a witness' family are not inhabitants of the locality their activities (if any) are not relevant to the application.

Paragraph 23

The objectors take issue with the interpretation placed on this by the Applicant.

Paragraph 25

The Applicant seems to accept that this evidence does not support the application because force was used.

#### Paragraph 26

Mrs Bates may have signed a statement relating this photograph to Aunums Field, but that does not mean that it *is* in Aunums Field. The objectors are entitled to infer from this that Mrs Bates has perhaps misunderstood the limits of the land which is the subject of the application.

It should be noted that Mrs Bates has annotated the reverse of the photograph of the two horsemen with the words "They broke the stile over the field behind them."

#### Paragraph 28

This paragraph is not inadmissible merely because the Applicant considers it to be so. A witness in support of the objection is entitled to rely on their own experience and opinion when providing their evidence.

#### Paragraph 29

Once again, the presence of an opportunity on a form provided to others by the Applicant to say whether their immediate family uses the land cannot affect the legal test which needs to be applied. Where members of a witness' family are not inhabitants of the locality their activities (if any) are not relevant to the application.

#### Paragraph 30

The playing of football towards the bottom of Aunums Field is relevant, because witnesses in support of the application have given evidence that they have seen football and other team games played there. It is submitted that these witnesses were more likely than not giving evidence of having seen the football team play there, or seeing the school children playing there in the period before the new school site opened in 1969/1970 with a sports field on site. Both these activities were with the consent of the farmer and therefore not relevant to the application.

#### Paragraphs 31 & 32

The Applicant acknowledges that formal games have dwindled in recent times. In reality they have only ever actually taken place with consent. The Applicant asserts that "there remains plenty of space for other countryside activities included in the application not to mention the scope for an informal 'kick about' ". That does not mean that such activities have been taking place on Aunums Field. Neither the landowner, nor the farmer have seen such activities and the site manager at the building site saw no-one doing anything except walk or run on the footpaths during a period of 6 months earlier this year.

#### Paragraphs 35, 36 & 37

The Applicant must accept that even a witness who signs a statement may be mistaken about some aspect of the evidence they have given.

#### Paragraph 39

The Objectors are not intending to defend political correctness, but changes in the approaches of schools to risk is undeniable. The school would need to obtain written parental consent to take the children off school premises, even if only on to the field adjacent to the school. Before requesting the parental consent they would need to provide a full risk assessment to the parents. Since the notable case in 1990 of a child in Dorset being blinded by *Toxicara Canis* (a worm found in dog faeces) contracted on the school playing fields, not only have local authorities taken greater steps to prevent dogs being exercised on playgrounds and playing fields, but schools have taken such issues into account in their risk assessments.

Add into this scenario the fact that there is plenty of space on the school premises for such activities, these considerations all serve to support the evidence that in the last 22 years no school children have been taken on to Aunums Field by the school.

Paragraphs 40 & 41

This is evidence given to demonstrate that school activities on the field happened in the past but were with the consent of the farmer, and in any event ceased over 40 years ago. The Applicant cannot just dismiss it because it is outside the 20 year qualifying period. Witnesses in support of the application have referred to these activities without giving the historical perspective and the objectors are entitled to provide evidence in rebuttal to prevent North Yorkshire County Council from being misled into thinking that such activities have in fact taken place within the last 20 years.

Paragraph 42

Perhaps the list was given by way of example, but that cannot change the fact that it does not provide evidence of any activity taking place on Aunums Field.

Paragraph 44

It is for the Applicant to prove his case on a balance of probabilities. Saying that it is supposition to assume that none of the other walkers might be local residents is really not sufficient.

Paragraph 45

Pleading in the alternative is an accepted method, particularly where in a case such as this there is so little particularity given. North Yorkshire County Council are respectfully requested not to consider the fanciful scenario presented by the Applicant as no evidence has been presented upon which to base such suppositions.

Paragraphs 47, 48 & 49

Mr Dudley Smith's evidence is that he does not find the evidence of kite flying in Aunums Field credible. He is entitled to assert that opinion.

Paragraph 51

Unsubstantiated supposition by the Applicant.

Paragraph 53

The Applicant has failed to rebut the evidence given by Mr Dudley Smith in his witness statement dated 2 September 2011. Observations on his photographs are given above.

Paragraph 55

As before, the Applicant has misunderstood the case law.

Paragraph 61

The Applicant's evidence is not as extensive as the bare number of completed questionnaires might suggest. A close examination of the questionnaires discloses consistent absence of particularity and a considerable amount of ambiguity. Few of the activities alleged represent sports or pastimes, Aunums Field generally being used merely for the purpose of passage.

The Applicant's Conclusion from section 5

No response is made to unfortunate personal comments made by the Applicant.

It is however useful to note that the Applicant seems to accept that much of the claimed use of the land other than the footpaths has been because the footpaths are ill-defined. This would seem to confirm that the users were intending to use the rights permitted by the footpath, rather than intending to exercise much more extensive entitlements as of right. The Applicant also openly concedes that it would have been difficult for the Objectors to know whether those on the land were on the footpath or not. Again, this is inconsistent with the Applicant's claim that far more extensive entitlements have been enjoyed frequently and openly over many years.

However, the burden of proof lies on the Applicant. It is for the Applicant to produce cogent evidence of significant and frequent uses of the land which not only go beyond enjoyment of the public rights of way, but amount to sports and pastimes as required by the legislation. It is submitted that despite some Herculean efforts the Applicant has fallen a long way short of discharging that onerous burden.



Grays Solicitors

dated this 17<sup>th</sup> day of October 2011

**Observations**

submitted to

**North Yorkshire County Council**

on behalf of

**Mr Alwyn Dudley Smith and Mr John Shepherd**

in relation to

**the Response of the Applicant to the Objections**

made in relation to an application for registration of a

Town or Village Green at

**Aunums Field, Westgate, Thornton le Dale**

under the provisions of the

**Commons Act 2006**

**GRAY S**  
S O L I C I T O R S

Duncombe Place York YO1 7DY  
Telephone (01904) 634771

Fax (01904) 610711  
DX 61606 YORK

[www.grayssolicitors.co.uk](http://www.grayssolicitors.co.uk)

## VILLAGE GREEN WITNESS FORM

**Briefing note**

Dear Resident,

I do hope you are willing to help us by taking a few minutes to complete the enclosed questionnaire. Most of the answers are yes, no or tick box. Some tips are written below.

Our purpose is to make an application to North Yorkshire County Council to register the field beside Aunums Close, just outside the village boundary so that it is protected for the use of villagers in the future, for leisure activities such as sledging - just as it has been used for many years gone by. The area in question is the whole of the field (see red line on map attached) from the school to Westgate, so it includes the new building site for the Sanctuary Homes. We hope to preserve this piece of countryside from any future development, so that children, country lovers and the next generations can continue to enjoy it.

If you are willing to help then you must show that you are, a resident of Thornton Dale on the day you sign it.

Thank you

Tony James ( for Westgate Protest Group)

## Guidance for completion of evidence questionnaire

**1. This is NOT a petition.**

Each person completing this form is signing a witness statement in support of the field to the immediate west of Aunums Close (please see map) being designated a 'village green' This is a legal term not to be confused with the image of a traditional green in a village centre.

**2. Be honest - don't exaggerate.** If you have not been to the field recently, then take the dog or a pair of binoculars and GO NOW! That way you can complete the form and be honest at the same time!

**3. Fill the form in yourself (if you feel justified) and pass it on to others - try to talk them through it; or give yourself or me as a contact for help because there are some ambiguities. However, some initial guidance follows. I have already completed some boxes but they can be scored out if you or others don't agree.**

**4. Spread the word!** From here on, ask everyone you meet in the village if they have ever used the field. Our oldest residents may have useful experience from 20yrs ago. We need this to become a source of gossip around the village, but be wary of those we are likely to upset!

Newspaper and radio publicity is in the pipeline.

**5. Husbands/wives/partners from the same household can each fill in the form. Children can also do the same, so long as they understand what they are signing. Children are a useful source because they have an emotional impact on the adjudicators**

**6. We are concentrating on a 20yr period 1991-Feb 2011, but evidence pre 1991 will be useful as an historic picture. If in doubt get the form filled and it can be discarded at a later time.**

**7. On the enclosed map, you must mark where you live - inside the blue line. The area marked in red is the field we are claiming for 'village green'.**

**Advice on form questions - by section**

5. Shown on Ordinance Survey maps as 'ROXBY HILL'

6. Some call it 'AUNUMS FIELD'

14 List one or all activities. Add in your own Eg. Tobogganing or snowballing etc

19a. Maybe applicable pre 1991 if you have lived in the village a long time. PTO

20. Perhaps you might answer - yes or used to but no longer  
21 probably - no - unless anyone has evidence from the 70s or 80s  
22 Tobogganing, blackberry picking, picnicking or rolling eggs at Easter time are good examples.  
23 Other items mentioned so far are;- tobogganing, snowballing, tree climbing, mushroom picking and recreational walking 'taking the air'!  
Car Parking does NOT count  
28/29/30 Say NO to all of these (already completed). The application is nullified if express permission has been given by the farmer. You have to believe you have been on the field 'as of right'. Anyone asked to sign this form on the basis that they asked the farmer and he gave permission - THEN DON'T SIGN - our application would fail.  
31 The answer to this needs to be NO, but if anyone has seen such an instruction then please ring 474594

Although there is no box on the form; anyone who completes it needs to be sure they have deviated from the public footpath. Eg If you walk your dog, the dog roams but you stay on the path then it does not count. If you throw a ball for the dog and need to move about the field, then it DOES count! Seems daft but true! The dog is not an inhabitant of the village!

We do not have to show the field has been used every day for 20yrs but that it is available when needed. It makes no difference if the farmer keeps us out for a day whilst sheep shearing. What we need are statements, which when taken cumulatively, make up a 20yr period.

Use of the field for sheep grazing makes no difference to the validity of the application. However if a potential witness has been caught bothering the sheep and kicked out by the farmer - then DON'T FILL IN THE FORM.

Try to get people to lend photographs especially if they show children. Name and address should be written on the back and where taken from Eg. From bottom of field facing north. It helps if they can also say who is in picture and when taken

**DON'T FORGET TO MARK YOUR HOUSE ON THE MAP AND SIGN ON THE BACK OF THE MAP**

**DEADLINE FOR RETURN OF FORMS IS - 5pm 21/4/11**

Return to person who gave it to you or if in doubt to:-

Mr A James,  
Hazel Croft  
Westgate  
Thornton Dale  
YO18 7SG  
01751 474594