ITEM 8

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

22 JUNE 2012

LAND AT LUMBY 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 Lumby 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 and 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

- 2.3 Section 15(2) of the Act provides for land to be registered as a town or village green where it is shown that:-
 - (a) a significant number of the inhabitants of a locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years

and

- (b) they continue to do so at the time of the application
- 2.4 A Commons Registration Authority needs to be satisfied <u>on the balance of probabilities</u> that <u>all</u> the elements of section 15(2) have been demonstrated to have been met by an application relying on that provision for it to be approved. The onus of proof rests with an applicant.

3.0 APPLICATION SITE

- 3.1 The Application Site is shown hatched on the plan at Appendix 1.
- 3.2 Plans held by the County Council identify the land concerned as publicly maintainable highway though the basis of that assertion has been challenged by the applicant's solicitor.
- 3.3 The Application Site lies approximately in the centre of the village of Lumby adjacent the carriageway of the main road through the village (unclassified road, number SB 473R).
- 3.4 The Application Site is bounded by a stone wall on its' west side and is open to the said road carriageway to the east. The Application Site runs from the entrance to Hall Farm, and tapers southwards ending at approximately 15 metres north east of the entrance to Lumby Court. The area of the land in question extends to 215 square metres (approx.).

4.0 APPLICATION

- 4.1 The Application submitted by South Milford Parish Council ("the Applicant"), through solicitors Elmhirst Parker was received by the County Council on 27 January 2011 and accepted as duly made on 9 February 2011. It relies on the criteria contained in Section 15(2) of the Act as having been met. A copy of the standard Form 44 as completed and submitted comprises Appendix 2.
- 4.2 Submitted with the Application was a letter from the Chairman of South Milford Parish Council dated 17 January 2011, copied at Appendix 3, giving reasons why the Application was submitted together with the result of a Land Registry Search dated 23 November 2010 identifying that the land is not registered (Appendix 4).
- 4.3 Also submitted was a copy of a Decision Notice from Selby District Council regarding an adjoining site and dating from 2007 included at (Appendix 5) as well as eight copies of photographs of the Application Site (Appendix 6). The notice confirmed planning consent for the construction of a dwelling on the land concerned.
- 4.4 Subsequently Elmhirst Parker wrote on 23 June 2011 and in doing enclosed a statement from the Parish Council and material concerning a questionnaire survey conducted in the village.
- 4.5 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 of 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.

4.6 No witness letters or evidence of use pro forma was submitted with the Application.

5.0 OBJECTIONS

- 5.1 <u>Mike Roberts, Head of Highway Operations for North Yorkshire County</u> <u>Council</u> (Appendix 7)
- 5.1.1 The main objection to the Application was received from Mike Roberts, Head of Highway Operations for North Yorkshire County Council.
- 5.1.2 The objection is based on the understanding that the Application Site is part of the publicly maintainable highway and states :-
- 5.1.3 Activities claimed to have taken place on the land by the Applicant (e.g. as a meeting place / rest area) appear to have arisen primarily from its status as highway and the public's associated rights. Although the public's rights over highway land are essentially to pass and re-pass, they are also entitled to carry out other incidental activities, such as to stop and talk or to stop and rest.
- 5.1.4 The public are entitled to use a highway for any reasonable purpose that does not conflict with the primary right to pass and re-pass and many activities may be able be carried out upon it <u>as a highway</u>, subject to the primary right of the public to pass and re-pass not being affected.
- 5.1.5 The activities carried out which can be regarded as having been undertaken pursuant to the public's use of the land as part of the highway must be discounted as qualifying uses for establishing a village green. The Head of Operations considers that the Applicant's evidence of use of the land is not strong enough to justify its registration as a Village Green.
- 5.1.6 Although the County Council, as Highway Authority, has a general power under the Highways Act 1980 to improve the highways for which they are responsible, and to provide equipment for those highways, if the land were registered as Village Green it would become subject to additional protection from encroachment / unauthorised works, etc. and any future highway works may therefore require some form of consent from the Secretary of State, which in turn may have an impact on the County Council's performance in carrying out its ongoing duties as Highway Authority.

5.2 <u>Other objections</u>

5.2.1 Originally the land which was the subject of the Application extended to a larger area than that currently under consideration (Appendix 8). Objections to that original Application were received from Ward Hadaway (Solicitors) and Walker Morris (Solicitors) on behalf of parties with an interest in the adjacent land.

- 5.2.2 Both those objections included a legal opinion from Charles George QC dated 25 October 2011. (Appendix 9).
- 5.2.3 Following negotiations between the Applicant and the neighbouring objectors the extent of the Application Site was reduced to what is now under consideration. The land withdrawn from the original application comprises the site on which an access has been constructed to reach the new house which was the subject of the Decision Notice referred to at paragraph 4.3 of this report.
- 5.2.4 Consequently those objections were withdrawn however in both cases the point was made that in neither case did the objector accept that the Application met with the necessary legal criteria to succeed. In each case the objectors in particular pointed the legal opinion from Charles George QC for maintaining that view.
- 5.2.5 Objections to the application as it originally stood were also received from the now resident of the new dwelling and from her father on her behalf. Both those objections were subsequently withdrawn following the said change to the extent of the Application Site. In both cases it was made known that notwithstanding withdrawal of objection neither party was able to offer support to the Application.

6.0 APPLICANT COMMENTS

- 6.1 During officers initial handling of the Application the Applicant's solicitor questioned the assertion that the Application Site is highway land and sought evidence of when it was adopted as highway and also details of any highway maintenance works undertaken on the land. No documentation recording adoption of the road has been submitted by the Highway Authority.
- 6.2 The Parish Council's comments on representations made by the local Highway Authority are contained in its letter dated 17 April 2012 (Appendix 10) in which it alleges only limited number of actions have taken place on the land by the County Council in its capacity as Highway Authority. A number of practical issues concerning the land were raised including questioning whether or not that part of the land on which a property access has been created still forms part of the highway. Reference is also made to activities that are claimed to have taken place on the land and to support in the village for the Application (but without any direct evidence of that support).
- 6.3 The response of the Highway Authority to the Parish Council's comments is set out in a letter dated 14 May 2012 (Appendix 11) in particular pointing out that the extent (or otherwise) of works undertaken by a Highway Authority does not have a bearing on whether or not land is part of the highway.

7.0 EVIDENCE REVIEW

7.1 <u>Significant number</u>

- 7.1.1 Applications of this kind are usually supported by the submission of evidence of use directly from those who have used the land normally in the form of letters or completed pro forma. No such letters or pro forma have been submitted in this case.
- 7.1.2 In correspondence the Parish Council submitted the summary of results of a Questionnaire survey it conducted in the village (Appendix 12). The completed forms were not submitted.
- 7.1.3 Even accepting the summary at face value it offers little if any direct evidence of use of the land by local residents. All of those comments from residents quoted in the summary comprise comment on the perceived merit of the land being registered as village green and not evidence or claims of usage and as such carry no evidential weight.
- 7.1.4 What constitutes a "*significant number*" in any one case is not prescribed. 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.
- 7.1.5 Whilst it is acknowledged that Lumby is a small village the evidence submitted is so weak that the criteria cannot, on balance, have even closely been met by the Application.
- 7.2 Inhabitants of a locality, or of any neighbourhood within a locality
- 7.2.1 Part 6 of the Application form which covers this point refers to "Lumby Village Selby District Council."
- 7.2.2 From this it appears the Application is relying on evidence of use by inhabitants of the "neighbourhood" of Lumby in the "locality" of the administrative district Selby. In them selves it seems likely that Lumby and Selby would be capable of being a neighbourhood and locality for the purposes of the Commons Act 2006.
- 7.3 <u>As of right</u>
- 7.3.1 Where members of the public already have a right to use land then when taking part in lawful activities they do so "by right" rather than "as of right".
- 7.3.2 The Highway Authority records identify this land as part of the publicly maintainable highway. It is not unusual that a road in a rural location, such as

in Lumby, will not have been the subject of a formal documented adoption. More common is that land became public highway as a result of the way property boundaries were laid out historically. It seems likely that was the case for the Application Land and that it effectively formed part of a verge or sightline as part of highway when land boundaries were set out in the past. It is not surprising that the Highway Authority has been unable to produce any documentary evidence of adoption of the road at any time in the past. Perhaps Enclosure Awards for the area might shed light on this point but no party has offered up any such evidence.

7.3.3 Accepting the land to be highway land and given the wide range of activities that can take place lawfully on such land then even if stronger evidence of actual use were produced it seems likely that use would amount to a use by right and so consequently the "as of right" criteria would not be met.

7.4 Lawful sports and pastimes

7.4.1 The courts have interpreted what constitutes "*lawful sports and pastimes*" widely. However, given the lack of evidence submitted there is little to pass to comment on in respect of this point.

7.5 Period of at least 20 years

- 7.5.1 The twenty years in question in this case is from January 1991 until January 2011 being the 20 years preceding the Application.
- 7.5.2 The evidence in support of the Application offers no indication of the regularity of alleged use of the site during the twenty years nor of the extent of user over the twenty years.

8.0 DECISION MAKING

- 8.1 The decision whether or not to approve the Application with the County Council in its role as a Commons Registration Authority. In doing so it must act impartially and fairly.
- 8.2 It is not relevant to consider the merits or otherwise of the land being, or not being, registered. Consequently, any representation that other open space does not exist locally is immaterial and should be ignored. The County Council must direct itself only to whether or not <u>all</u> the relevant criteria set out in Section 15 have been met.

9.0 CONCLUSIONS

- 9.1 For the Application to be approved the County Council must be satisfied that on the evidence available to it that **ALL** the criteria contained in Section 15(2) of the Act are met.
- 9.3 It is your officer's overwhelming view that on the balance of probabilities the

relevant criteria contained in Section 15(2) of the Act are not met by the Application and that it should be refused.

10.0 <u>RECOMMENDATION(S)</u>

10.1 That the Committee resolves to refuse the Application on the grounds that it is not satisfied that all the relevant criteria of Section 15(2) of the Act are evidenced by the Application for the reasons set out in this report.

DAVID BOWE

Corporate Director – Business and Environmental Services

Author of Report: Doug Huzzard and Chris Stanford

<u>Background Documents</u>: Application case files held in County Searches Information - Business & Environmental Services

APPLICATION TO REGISTER NEW VILLAGE GREEN AT LUMBY



Official stamp of indicating valid d	registration authority ate of receipt:	Application number: New JG 54
	STUATION ACY 1985	Register unit No(s):
MORTH YORKSHIR RESISTRATION AU DAITE 2		VG number allocated at registration:
		(CRA to complete only if application is successful)
	na time an chois na na anna tha a' faith a' faith an 241963.	
	1. Registration Aut	hority
Note 1 nsert name of	1. Registration Aut	hority

lote 2	
there is more than ne applicant, list all	Name: SOUTH MILFORD PARISH COUNCIL.
ames. Please use a eparate sheet if	
ecessary. State the	Full postal address:
ull title of the organisation if a body	e/o. CLERK TO THE SOUTH MILFORD P.C.
corporate or inincorporate.	STEWARDS HOUSE
f question 3 is not	SOUTH MILFORD Postcode LSZS 5JA.
completed all correspondence and	SOUTH MILFORD POSICODE DAS SUM
notices will be sent to	Telephone number:
he first named applicant.	(incl. national dialling code)
	Fax number:
	(incl. national dialling code)
	E-mail address:
	3. Name and address of solicitor, if any
This question should be completed if a	Name: JOHN G. Cox
This question should be completed if a solicitor is instructed for the purposes of the	
This question should be completed if a solicitor is instructed for the purposes of the application. If so all	Name: JOHN G. Cox
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	Name: JOHN C. COX Firm: GLMHIRLET PARKER LLP. Full postal address: THE CROAS
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	Name: JOHN C. COX Firm: GLMHIRLET PARKER LLP. Full postal address: THE CROAS
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	Name: JOHN C. COX Firm: CLMHIRLET PARKER LLP. Full postal 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.	Name: JOHN C. COX Firm: GLMHIRLET PARKER LLP. Full postal address: THE CROAS
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	Name: JOHN C. COX Firm: <u>GLMHIRST PARKER LLP</u> . Full postal address: THE CROSS SHERBURAJ-IN-GLMET Post code 1525 68H
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	Name: JOHN C. COX Firm: <u>GLMHIDLET PARKER LLP</u> . Full postal address: THE CROSS SHERBURAJ -IN- ELMET Post code LS25 68H
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	Name: JOHN C. Cox Firm: <u>GLMHIDLET PARKER LLP</u> . Full postal address: THE CROSS SHERBURAJ-IN- GLMET Post code LS25 68H Telephone number: (incl. national dialling code) 01977 682219 Fax number:
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	Name: JOHN C. Cox Firm: CLMHIRLT PARKER LLP. Full postal address: THE CROSS SHERBURAJ -IN- GLMET Post code LSZ5 68H Telephone number: (incl. national dialling code) 01977 682219
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	Name: JOHN C. Cox Firm: <u>GLMHIDLET PARKER LLP</u> . Full postal address: THE CROSS SHERBURAJ-IN- GLMET Post code LS25 68H Telephone number: (incl. national dialling code) 01977 682219 Fax number:

	4. Basis of application for registration and qualifying criteria
Note 4	If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.
For further advice on he criteria and qualifying dates for registration please see section 4 of the Guidance Notes.	Application made under section 15(8):
Suidance Notes.	If the application is made under section 15(1) of the Act, please <u>tick one</u> of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.
	Section 15(2) applies:
* 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.	Section 15(3) applies:
	Section 15(4) applies:
	If section 15(3) or (4) applies please indicate the date on which you conside that use as of right ended.
	If section 15(6) * applies please indicate the period of statutory closure (if any) which needs to be disregarded.

	5. Description and particulars of the area of land in respect of which application for registration is made
Note 5 The accompanying	Name by which usually known:
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.	LUMBY VILLAGE GREEN
	Location:
	CENTRE LUMBY VILLAGE
Only complete if the and is already egistered as common and.	Shown in colour on the map which is marked and attached to the statutory declaration.
Note 6	6. Locality or neighbourhood within a locality in respect of which the
t may be possible to ndicate the locality of he green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently	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 clearly marked:
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	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
t 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 ocality or neighbourhood is	application is madePlease 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 clearly marked:LUMBY VILLAGE - SELBY DISTRICT
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.	application is madePlease 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 clearly marked:LUMBY VILLAGE - SELBY DISTRICT

7. Justification for application to register the land as a town or village green Note 7 THE AREA HAS BEEN USED BY VILLAGERS Applicants should provide a summary of AND VISITORS FOR OVER 38 YEARS the case for registration here and WITHOUT INTERRUPTION OR OBJECTION enclose a separate full FROM ANY PARTY AS A RECREATIONAL statement and all other evidence including any SPACE FOR THE COMMUNITY. 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).

APPENDIX 2

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

NONE SO FAR AS THE APPLICANT IS AWARE. A SEARCH AT H.M LAND REGISTRY REVEALED THAT THE LAND IS UNREGISTERED

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

NONE

10. Supporting documentation

STATEMENT	OF CHAIRMAN OF PARISH LOUNCIL.
LOCATION RESULT OF	
PHOTOGRA	OHS
PLANNING	APPLICATION (LAPSED).

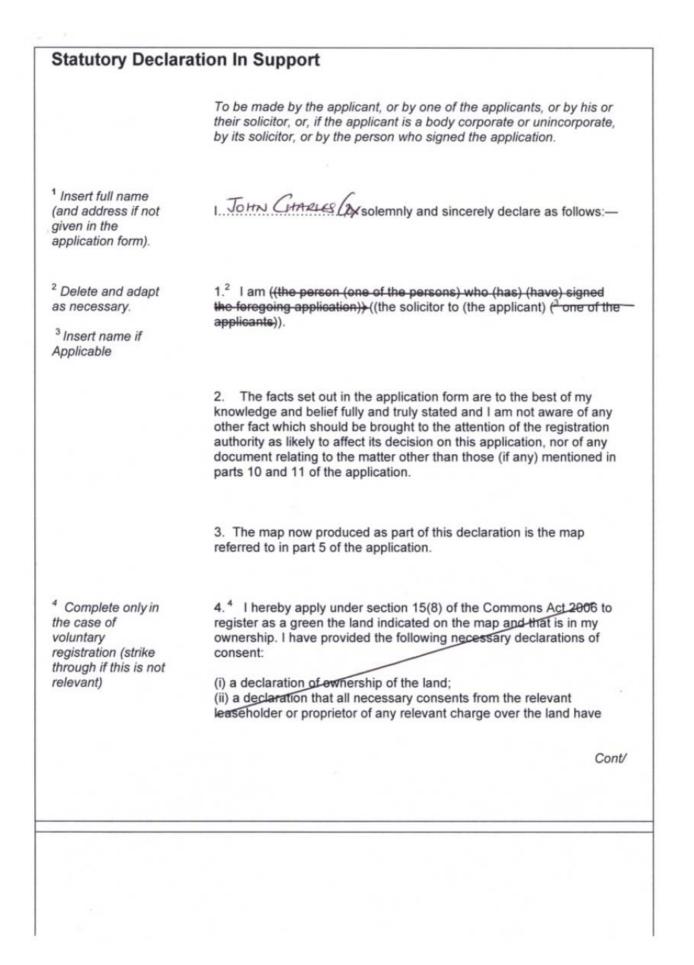
Note 11 If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.	THERE IS A LAPSED PLANNING CONSENT FOR THE ALTERATION OF AN EXISTING ACCESS TO AN ADJACENT PROPERTY THE OWNER OF THE ADJOINING PROPERTY MAY CHARLENGE THE APPLICATION.
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: 24 JANUARY 2011. Signatures: MAN Pahe

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.



APPENDIX 2

⁴ Continued 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 Jorn CHARLES (Gx) at Sheekurn in Elmet 24th day of January 2011 this

1.ll

Signature of Declarant

Before me * EMMale

6. Al Male

Glynis M. Hale F.Inst.L.Ex. Commissioner For Oaths

Signature:

Address:

4 Wolsey Parade Sherburn in Elmet LS256BO

Qualification:

Legal Executive

* 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

Ordnance Survey, (c) Crown Copyright 2010. All rights reserved. Licence number 100020449 Lumby Court Hall - arm 4 P The News Stewards House \$6.5m Lindisfarne Saplings Biscayne ψ Cottag Hall Stonebarn House Forge House S Halt Barn Cottage Rowandennan

Lumby is a very small village and the land in question is small and consequently so are the numbers of users.

The land defines what most people would accept to be Lumby Village Green and it has been viewed and used as such for all the time I have lived in the village (38 years).

It includes some artifacts (eg a step in the wall).

The seat is used an amenity by members of the local community and passing tourists (cyclists etc) and also as a children's play area over a number of generations.

It is also the location of a bus stop and the village post box. It is maintained by the Parish Council who in 2010 arranged to rebuild a wall at the site which fell into disrepair (aided by recreational activity).

The seat is also in disrepair and the Parish Council will consider it's replacement once Parish Council ownership is registered. Part of the land was used by NYCC to smooth a bend in the road, which reduced it's area and we would therefore like this application to go forward before further erosion of the space occurs.

It also forms part of a visual amenity space, so designated by Selby District Council and the registration as Common Land would perpetuate this designation as well as its long established recreational use.

Bill Hobman

Chairman, South Milford Parish Council

Copy to Ann Rowling, Clerk

17 January 2011

Official certificate of the result of search of the index map

Land Registry

Land Registra	tion R	ules 20)03
Certificate Date:	23	NOV	2010
Certificate Time:	(00.00	0.01
Certificate Ref:	164	4/A4	9PSJB

Page

1

SIMR

Property	Only the land within the red broken line(s) on the attached Land Registry index map plan has been searched against. The LAND ON THE WEST OF, BUTTS LANE, SOUTH MILFORD, LEEDS, NORTH YORKSHIRE, LS25 5JA.
	NORTH YORKSHIRE, LS25 5JA.

The index map does not define the extent of the land in any registered title. This reflects the fact that the boundary of a registered estate as shown for the purposes of the register is a general boundary, unless shown as determined under section 60 of the Land Registration Act 2002. For information about general boundaries please see Public Guide 19 - Title plans and boundaries, (www.landregistry.gov.uk). You might also wish to refer to the individual register and title plan of any adjoining titles for details of the surrounding registered estates and their general boundaries and/or determined boundaries.

Result

The index map has been search in respect of the Property with the following result:

Plan reference

Title No. Registered Estate or Caution Notes

Tinted Pink

Part of the Property is unregistered.

NYK369383 Leasehold

The plan lodged with your application has been accepted only in respect of this SIM application, as the red edging is unclear.

Since we were unable to clearly identify the Property you applied to search, the certificate has been completed in respect of the land within the red broken line(s) on the accompanying Land Registry index map plan. You must satisfy yourself that this is the area of land your

Continued on page 2

Your Reference: 20896/1	Key Number: 1713796	Any enquiries concerning this certificate to be addressed to: ELM
ELMHIRST PARKER LLP DX701452 SHERBURN IN ELMET		Durham Office Southfield House Southfield Way Durham DH1 5TR
54		Tel. No: (0191) 301 3500 A £5.00 fee will be debited to the account quoted.



Official certificate of the result of search of the index map

Certificate Date:	23 NOV 2010
Certificate Time:	00.00.01
Certificate Ref:	164/A49PSJE

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SIMR

Page 2

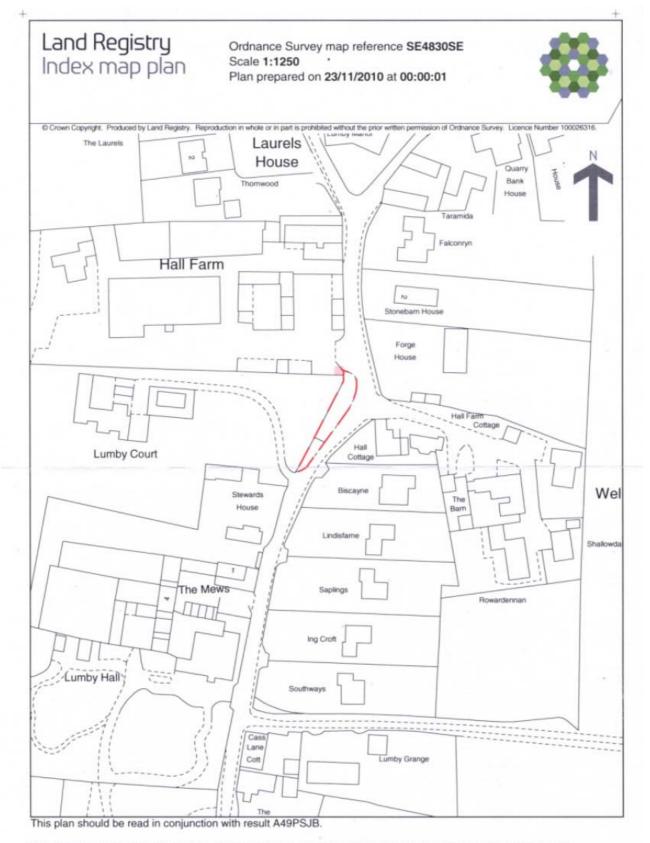
search related to. Please note that we may need to raise a requisition if you use a defective plan on a subsequent application for registration. ***** No other registered estate, caution against first registration, application for first registration or application for a caution against first registration is shown on the index map in relation to the Property. ***** The attached Land Registry index map plan has been prepared for the sole purpose of showing the area in respect of which an official search has been made. The information has been taken from the index map and is illustrative only. ***** For further information about: SIMS - see Practice Guide 10 - Official searches of the index map How to obtain official copies - see Practice Guide 11 - Inspection and applications for official copies Plan requirements for registration - see Practice Guide 40 - Land Registry plans - (www.landregistry.gov.uk). Ordnance Survey map products - (www.landregistry.gov.uk).

END OF RESULT.

MM

ELMHIRST PARKER LLP DX701452 SHERBURN IN ELMET

APPENDIX 4



This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.

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NYCC 22 June 2012- Planning and Regulatory Functions Sub-Committee Land at Lumby/22



Decision no: 2007/0969/FUL (8/57/466C/PA)

TOWN AND COUNTRY PLANNING ACT 1990 NOTICE OF DECISION

NOTICE OF DECISION OF PLANNING AUTHORITY ON APPLICATION FOR PERMISSION TO CARRY OUT DEVELOPMENT

This decision does not constitute approval under the Building Regulations Please read notes at the end of this notice

Susan Watson c/o NW Architects Limited 49 Velocity West 5 City Walk Sweet Street Leeds LS11 9BG

The above named council being the Local Planning Authority for the purposes of your application dated 23 August 2007 in respect of the following

Proposal: Resubmission of a previously withdrawn application 2007/0646/FUL (8/57/466A/PA) for the erection of one dwelling with integral garage on plot 2

Location: Lumby Court, Butts Lane, Lumby

Have considered your said application and have **GRANTED** permission subject to the following conditions and reasons:

01. The development for which permission is hereby granted shall be begun within a period of three years from the date of this permission.

Reason:

In order to comply with the provisions of Section 51 of the Planning and Compulsory Purchase Act 2004.

02. Prior to the commencement of development details of the materials to be used in the construction of the exterior walls and roof(s) of the new dwelling; shall be submitted to and approved in writing by the Local Planning Authority, and only the approved materials shall be utilised.

Reason:

In the interests of visual amenity and in order to comply with Policy ENV1 of the Selby District Local Plan.

03. Notwithstanding the provisions of Class A, Class B, Class C, Class D and Class E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) no extensions, porches, garages, outbuildings or other structures, including means of enclosure shall be erected, or new windows, doors or other openings be inserted, or alterations to the roof carried out without the prior written consent of the Local Planning Authority.

Reason:

To safeguard the rights of control by the Local Planning Authority in the interests of amenity and in order to retain the character of the site in the interest of visual amenity, having had regard to Policies ENV1 and H7 of the Selby District Local Plan.

04. Before any work to construct the buildings hereby permitted commences full details of the proposals for the disposal of foul sewage and surface water drainage, including the results of any necessary percolation tests, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be operational in accordance with the approved details before the dwelling hereby permitted is first occupied for the permitted residential use, only the approved scheme shall be implemented and it shall be maintained as approved at all times.

Reason:

To ensure the adequate provision for drainage from the proposed development, having had regard to Policy ENV1 of the Selby District Local Plan

05. Prior to the commencement of the development hereby permitted visibility splays providing clear visibility in both directions of 2 metres x 45 metres measured down the centre line of the access road and the nearside channel line of the major road shall be provided at the junction of the access road with the county highway at no more than 1 metre above the level of the carriageway. Once created, these visibility areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason

In the interests of road safety to provide for drivers of vehicles using the access road to the site and the public highway with a standard of inter-visibility commensurate with the vehicular traffic flows and road conditions

06. Prior to the first use of the development the vehicular access, parking and turning facilities shall be formed in accordance with the submitted drawing (Reference 06010/P210-1B). Once created these areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason

To provide for appropriate on-site vehicle parking facilities with associated access and manoeuvring areas, in the interests of highway safety and the general amenity of the development.

07. The dwelling shall not be occupied until 3 parking spaces of a size not less than 4.8 metres x 2.4 metres, including one garage or a car parking space capable of accommodating a garage, have been provided within the curtilage of the dwelling, in accordance with standards set out in the North Yorkshire County Council Parking Design Guide. Any garages shall then be positioned a minimum of 6 metres back from the highway boundary. Once created these parking and garaging areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.

Reason

To provide for adequate and satisfactory provision of off-street accommodation for vehicles generated by occupiers of the dwellings and visitors to them, in the interest of safety and the general amenity of the development.

08. Details of the precautions to be taken to prevent the deposit of mud on public highways by vehicles travelling from the site shall be submitted to and approved in writing by the Local Planning Authority. These facilities shall include the provision of wheel washing facilities where considered necessary by the Local Planning Authority. These precautions shall be made available before the

development commences on the site and be kept available and in full working order until such time as the Local Planning Authority agrees in writing to their withdrawal.

Reason

To ensure that no mud or other debris is deposited on the carriageway in the interests of highway safety.

09. Prior to the commencement of the development there shall be submitted to and approved by the Planning Authority after consultation with the Highway Authority the proposals for the provision of an on-site parking area and on-site material storage area capable of accommodating all staff and sub-contractor's vehicles clear of the public highway and all materials required for the operation of the site. The approved compounds shall be available for use at all times building works are in operation.

Reason

To provide for appropriate on-site vehicle parking facilities with associated access and manoeuvring areas, in the interests of highway safety and the general amenity of the development.

The decision to grant permission has been taken having regard to the policies and proposals in the:

Selby District Local Plan: ENV1- Control of Development ENV15-Conservation and Enhancement of Locally Important Landscape Area GB2-Control of Development in the Green Belt GB4- Character and Visual Amenity of the Green Belt H2A-Managing the release of housing development H7 -Housing Development in the villages that are capable of accommodating additional growth T1-Development in relation to the highway Network T2- Access to Roads VP1- Vehicle Parking Standards

In reaching this decision the Council was mindful of the particular circumstances of this application, namely:

The proposed development is considered to be infilling in an identified village, and therefore appropriate development within the Green Belt in accordance with Policy GB2 of the Selby District Local Plan and PPG2. Further to this the application site is on an area of previously developed land and despite being partly outside development limits is on the site of an extant planning permission, a material consideration to outweigh the non-conformity with Policy H2A. Further to this it is not considered that the application would have a detrimental effect on the character of the area, residential amenity or highways safety. The proposed development is therefore considered acceptable in accordance with Policy H7 of the Selby District Local Plan.

This informative is only intended as a summary of the reasons for granting of planning permission. For further detail on the decision please see the application report by contacting Selby District Council Planning Section or visiting the Planning Section on the Council's website.

Principal Planning Officer

Date: 15 October 2007

Appeals to the Secretary of State

- If you are aggrieved by the decision of your Local Planning Authority to grant permission subject to conditions, then you can appeal to the Secretary of State for the Environment under Section 78 of the Town and Country Planning Act 1990.
- If you want to appeal, then you must do so within six months of the date of this notice, using a form that is available from the Planning Inspectorate at 3/12a Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. A copy of the completed appeal form should be sent to Selby District Council. Alternatively, appeals can now be submitted on line via the following web site, www.planningportal.gov.uk/pcs and click on Planning Casework service in the navigation box.
- The Secretary of State can allow a longer period for giving notice of an appeal, but he will not
 normally be prepared to use this power unless there are special circumstances which excuse the
 delay in giving notice of appeal.
- The Secretary of State need not consider an appeal if it seems to him that the Local Planning Authority could not have granted it without the conditions it imposed, having regard to the statutory requirements, to the provisions of the development order and to any directions given under the order.
- In practice, the Secretary of State does not refuse to consider appeals solely because the Local Planning Authority based its decision on a direction given by him.

Purchase Notice

- If either the Local Planning Authority or the Secretary of State for the Environment refuses
 permission to develop land or grants it subject to conditions, the owner may claim that he can neither
 put the land to a reasonably beneficial use in its existing state nor can he render the land capable of
 a reasonably beneficial use by carrying out any development which has been or would be permitted.
- In these circumstances, the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with Part VI of the Town and Country Planning Act 1990.

Compensation

- In certain circumstances compensation may be claimed from the local planning authority if
 permission is refused or granted subject to conditions by the Secretary of State on appeal or on
 referral of the application to him.
- These circumstances are set out in Section 114 and related provisions of the Town and Country Planning Act 1990.

Circular 10/82 - Access for the disabled

Section 76 of the Town and Country Planning Act 1990 places a duty on local planning authorities to draw the attention of developers to the relevant provisions of The Chronically Sick and Disabled Persons Act 1970. These sections cover buildings or premises to which the public are to be admitted and to offices, shops, railway premises and factories. These sections require any person providing such premises to make provision, where reasonable and practicable, for the means of access, parking and sanitary conveniences to meet the needs of disabled people.

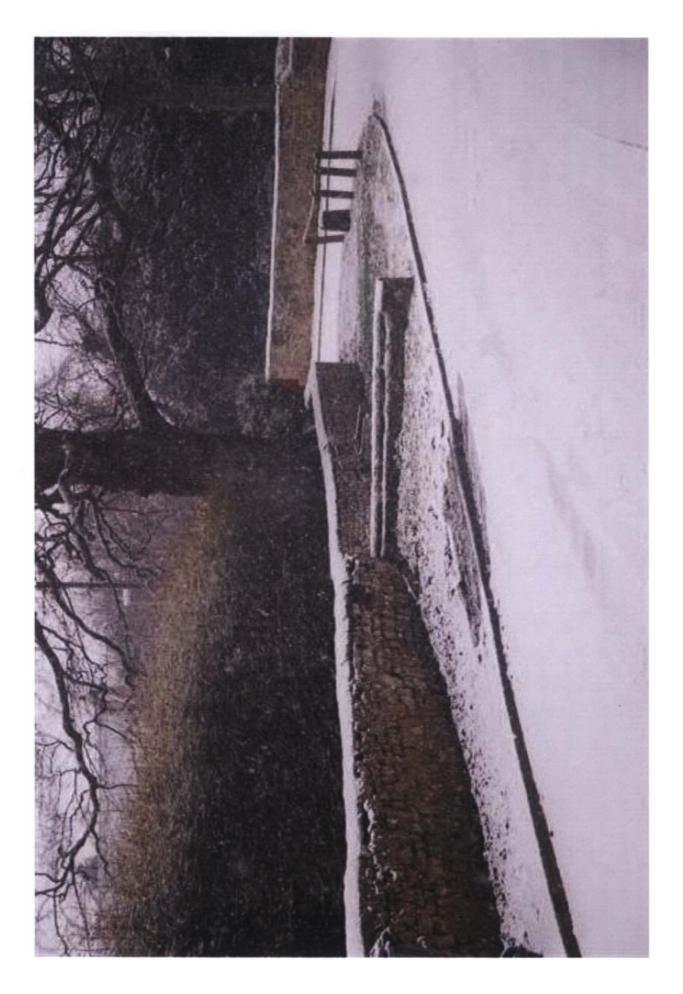
NOTE

No consent, permission or approval hereby given absolves the applicant from the necessity of obtaining the approval, under Building Regulations, of the District Council in whose area where the site of the proposed development is situated; or of obtaining approval under any other Bye-Laws, local Acts, orders, regulations and statutory provisions in force; and no part of the proposed development should be commenced until such further approval has been obtained.





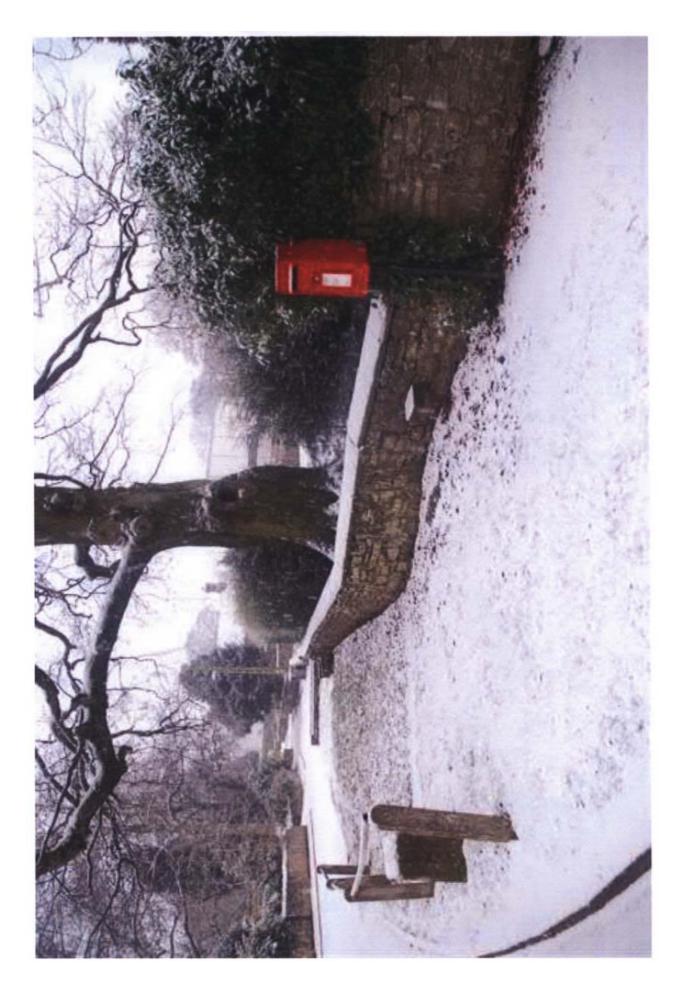




APPENDIX 6









NEW VG54

72 / 50 / 70215

9 January 2012

Objection to Application to Register New Village Green at Lumby (New VG54)

The Head of Highway Operations of North Yorkshire County Council ("the Head of Operations") wishes to object to the above application.

The objection arises from the fact that the Head of Operations considers the application land to be publicly maintainable highway (the Council has undertaken kerbing work and verge maintenance on the land in the past) and is made on the following grounds:-

(1) The activities which are claimed to have taken place on the land (e.g, as a meeting place/rest area) appear to the Head of Operations to have arisen primarily from its status as highway and the public's associated rights. Although the public's rights over highway land are essentially to pass and re-pass, they are also entitled to carry out other incidental activities, such as to stop and talk or to stop and rest. In the case of DPP v Jones [1999], the House of Lords held that:-

"the public highway is a public place which the public may enjoy for any reasonable purpose, provided the activity in question does not amount to a public or private nuisance and does not obstruct the highway by unreasonably impeding the primary right of the public to pass and repass".

Hence, the public are entitled to use a highway for any reasonable purpose that does not conflict with the primary right to pass and re-pass and many activities may in fact be able to be carried out upon it <u>as a highway</u>, subject to the primary right of the public to pass and re-pass not being affected.

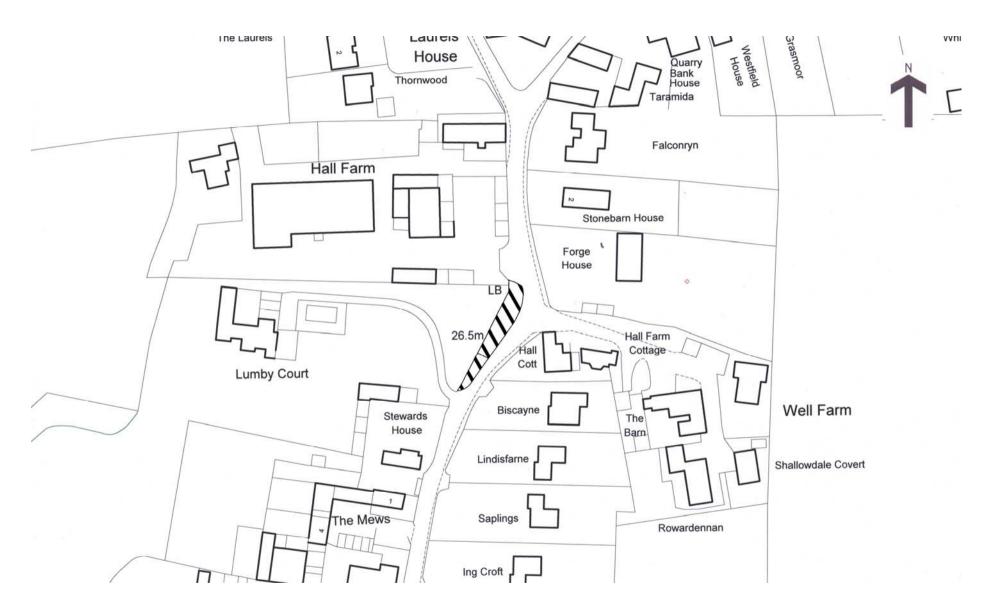
On the factual determination of whether the land has become a Village Green, the activities carried out which can be regarded as having been undertaken pursuant to the public's use of the land as part of the highway must be discounted as qualifying uses for that purpose and the Head of Operations considers that the Parish Council's evidence of use of the land is not strong enough to establish the elements of and thereby justify its registration as a Village Green.

(2) Although the County Council, as highway authority, has a general power under the Highways Act 1980 to improve the highways for which they are responsible and to provide equipment for those highways, if the land were registered as Village Green it would become subject to additional protection from encroachment/unauthorised works, etc and any future highway works may therefore require some form of consent from the Secretary of State, which in turn may have an impact on the County Council's performance in carrying out its ongoing duties as highway authority.

For the reasons set out above, the Head of Highway Operations of North Yorkshire County Council therefore objects to this application.

Mike Roberts – Head of Highway Operations

APPLICATION TO REGISTER NEW VILLAGE GREEN AT LUMBY



ADVICE

1. South Milford Parish Council ("the PC") has applied to North Yorkshire County Council, the Commons Registration Authority ("RA"), to register a strip of land in the centre of Lumby Village ("the strip") as a new village green under s.15(2) of the Commons Act 2006 ("the 2006 Act").

2. The application is deficient in a number of respects, including being unsupported by evidence of user for lawful sports and pastimes for the relevant 20 year period. In particular the results of a survey conducted by local residents refers merely to it being "a pleasant focal point of the village" and to the claim that "the village needs to retain it's green", without evidencing any use of the strip.

3. It would seem that after some hesitation the RA has accepted the application. I consider, however, that without any need to consider questions such as the quantum and quality of the use over the relevant period, and by whom, there is an overriding reason why the application must fail. This is that the strip is highway land (i.e. part of the highway). Whilst it does not form part of the existing carriageway of the main road through Lumby, it immediately adjoins that road, lying between the kerbway and a stone wall, and giving the appearance of highway verge on which has been placed a low stone wall, a seat, a post box, and a container for salt (of the sort used to scatter on roads during icy and snowy weather).

4. Highway verge is part of the highway. Save exceptionally (as in the case of motorway verges), the public has a right to use highway verge for pedestrian passage and, in emergency, for the parking of vehicles (where this is necessary to avoid obstruction of traffic on the adjoining carriageway (see *Rodgers v Ministry of* Transport [1952] 1 All ER 634). A passage in the venerable text on highway law *Pratt and Mackenzie* pp.43-44 clarifies that:

"the right of passage or way extends over the whole space which comprises the highway and not merely to the part which is metalled or kept in order for the more convenient use of carriages and foot passengers".

Similarly the duty of the highway authority under s.130 of the Highways Act 1980 ("the 1980 Act") to assert the right of the public to use the highway specifically extends to "any roadside waste that forms part of it". This indicates that the offence under s.137 of the 1980 Act (wilful obstruction of the highway) can be committed in respect of highway verge, as well as the carriageway (metalled or otherwise).

5. The evidence that the strip is highway land appears overwhelming. By letter of 20 February 2008 from the County Searches Information Officer of North Yorkshire County Council to Spencer & Fisch solicitors, it was stated:

"...I confirm that which is coloured blue on the attached plan [i.e. the carriageway of the road, including all the strip] is highway maintainable at the public expense within the meaning of the Highways Act 1980".

By letter of 12 May 2011 the RA informed the solicitors for the PC that:

"...the Council's local Area Highway Maintenance Manager advises that the Council has undertaken kerbing work and verge maintenance on the land....He also advises that an open ditch which flowed across the land was piped by the Council in the early eightics. All this is the Council's capacity as Highway Authority and so indicative certainly of the Highway Authority's understanding of the status of the land".

6. I have seen a copy of what is described as "OS Old Map 1908" which shows two things. First, that the central part of the strip, consisting of what is almost a rectangle, may have been enclosed in some way at that date. It is not clear what form the enclosure of the three sides (other than the inner wall) took, though the enclosure to the south probably consists of something similar to the existing low wall which is still in place in that location. By the time of "OS Old Map 1960-61" it is would seem there was no longer any enclosure between the carriageway and the rectangular part of the trip, though two lines are still shown across the strip it the same place as in the earlier map. I do not regard the markings shown on either of these maps as showing that the strip was not at those times highway land. Second, I note that both OS maps have a symbol in the shape of an S crossing the inner boundary of the strip. This indicates that the strip and the adjoining carriageway were joined together for the purpose of area measurement, presumably because they were regarded as being part of the same parcel of land. In the case of the OS Old Map 1908 there is a single S, linking the rectangle with the carriageway; in the case of the OS Old Map 1960-61 there are two Ss, the one linking the rectangle with the carriageway, the other linking the southern part of the strip with the carriageway. The S

symbols are evidence that that the rectangle was not a separate parcel of land in 1908 (or later), and suggest strongly that it was highway land at that time, along with the rest of the strip and the carriageway itself.

7. There is nothing whatever to suggest that the strip was a village green (i.e. land over which local inhabitants had recreational rights) in 1908; and even if that was the position then, those rights would have been extinguished by non-registration under s.1(2)(a) of the Commons Registration Act 1965 ("the 1965 Act").

8. There is no express statement in either the 1965 Act or the 2006 Act that highway land cannot be registered as a new village green following the requisite 20 years use, and no decided court case to this effect,. Nevertheless, I am confident that this is the position. I draw attention to three matters:

(1) as a matter of principle it would be extremely odd if land which is subject to a public right of passage (as is the case with all highway land, including highway verge) could become village green, since this would involve a potential conflict between the wider recreational rights which can be exercised over a village green and the public rights of passage.

(2) most of the uses which can lead to the establishment of a new village green are exercisable in any case "by right" over highway land. This includes not merely rights of passage, including walking with dogs, but also recreational strolling, nature pursuits (looking at birds, wildflowers etc) and most children's games. It needs to be recalled that, as expressed by Lord Irvine of Lairg in *DPP v Jones* [1999]2 AC 240 at 257D:

"The public highway is a public place which the public may enjoy for any reasonable purpose provided the activity in question does not amount to a public or private nuisance and does not obstruct the highway by unreasonably impeding the primary right if the public to pass and repass".

Therefore such uses do not constitute indulgence "as of right in lawful sports and pastimes on the land" as required by s.15(2) of the 2006 Act. There is a distinction between uses which are "by right" and those which are "as of right"

(3) if the uses relied on would involve interruption of the lawful passage of individuals along the highway (including the highway verge), as would for example the establishment of goal posts with nets, or the playing of cricket or rounders (and probably the throwing of frisbees also), then the use would not be "lawful sports and pastimes" on highway land, but rather unlawful ones. This is because they would constitute a public nuisance and unreasonably impede the right of the public to pass and repass.

 The correct legal analysis is that of Chief Commissioner George Squibb QC as long ago as 1979 in *The Green, Hargrave, Suffolk* (1979) 234/D/79:

"...it would not be possible in law for the inhabitants of the locality to acquire a

right to indulge in sports and pastimes on a highway".

He stated that there might be cases where a highway was dedicated subject to a reexisting right to indulge in sports and pastimes, but that is irrelevant in the present case.

 I am not aware of any case where, following an objection, highway verge has been registered as a new village green, whereas there are several decisions of Inspectors

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who have followed the approach in *The Green, Hargrave, Suffolk* and held that highway land (including highway verge) is not registrable. Whilst I accept that land which includes registered public footpaths has from time to time been registered as a new village green, this is merely because the objector has not sought to confine the registration to the land either side of the public footpath. Such cases do not therefore conflict with the principle in *The Green, Hargrave, Suffolk*.

11. Therefore the RA should be invited to reject as a matter of legal principle the claimed registration of this strip of land at Lumby as a new village green. If the PC then wishes to challenge that decision it can try to do so by an application for judicial review in the Administrative Court, although I would expect permission to be refused by the single judge.

25 October 2011 FRANCIS TAYLOR BUILDING INNER TEMPLE

Cerlin

CHARLES GEORGE QC

Application for new village green Lumby Village, North Yorkshire

ADVICE

Ward Hadaway Solicitors Sandgate House 102 Quayside Newcastle upon Tyme ME1 3DX

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Walker Morris Kings Court 12 King Street Leeds LS1 2HL

SOUTH MILFORD PARISH COUNCIL

Stewards House

Lumby

LS25 5JA

Mr C.N. Stanford

NYCC

Commons Registration

North Allerton DL7 8AH

Dear Chris

Further to the Objection to South Milford Parish Council's Application by NYCC Highways to register a new Village Green at Lumby, the Parish Council wishes to make the following comments:

- 1. The maintenance work referred to (kerbing work and verge maintenance) was a one time exercise associated with damage caused either by water damage from a culvert which passes under the area and the adjacent road at the northern tip of the land, or by the width of the road being extended, something which serves no purpose other than allowing the bend to be taken at a higher speed (and consequently local residents would appreciate it's return to it's original state). Both these events occurred in the late 1970/80 timeframe and there is no evidence of further NYCC activity either in grasscutting or seat provision or any other care for this piece of land which is the only amenity provision in the Village.
- 2. NYCC recently granted a local resident an access across the land the effect of which is to further reduce the land space (an action which has partly prompted this application as people observe the further reduction in the space and in the visual and actual quality of the amenity). The status & specification of this access is not known. Does the access still form part of the space? Is it still part of the highway & can the public continue to 'pass and re-pass' over this access area? Does the access conform to NYCC standards? Where does the Parish Council's grasscutting end? What is the extent of the access area? A small wall, maintained by South Milford Parish Council last year due to its dangerous condition at a cost of £200, forms a purely artificial limit across the space and its purpose requires clarification in the context of this Application.
- NYCC record of stewardship of the land has had very little, if anything to do with its use as a
 Public Highway. In reality the record is one which has eroded (1) its usable area and

17th April 2012

consequently it's use as a Public Highway and (2) its ongoing status as the only piece of green amenity space in the Village. NYCC actions (especially with the recent access) have done nothing to improve or preserve its appeal or operational safety as a public amenity, and if anything the initiatives should be reversed.

- 4. The land has been used by village children and adults at least over a 35 year period, based on information provided by people who have lived permanently in the Village over that time. These uses include as a photograph backcloth, regular meeting place and play area (especially for children), celebration place for national events (eg HM Queen's Silver Jubilee). The land serves the same use as many such Village Green spaces in other Villages. No more, no less.
- Application for it to be defined as a Village Green was supported by over 30 members of the local Lumby Community.
- 6. Regarding Para (2), given NYCC record on this land, the protection afforded by Village Green status would be welcomed as an improvement by the Parish Council on behalf of the 30 members of the Community who supported the petition for Village Green status. Continued definition of the land as being part of the Highway offers no benefit to the Community, and this status has allowed a significant decline in the quality of its contribution to Village character, without consultation.

Yours Sincerely

Ann Rowling - Clerk to SMPC



Your ref:

Our ref: M20AS001.MR

Contact: Mike Roberts

Highway Operations

Highways and Transportation County Hall, Northallerton North Yorkshire DL7 8AH Tel: 01609 532168 Fax: 01609 779838 E-mail: mike.roberts@northyorks.gov.uk www.northyorks.gov.uk

14 May 2012

Dear Chris

HIGHWAY VERGE - LUMBY

Thank you for forwarding to me a copy of South Milford Parish Council's letter of the 17 April 2012 commenting on my objection to their application to register a new village green at Lumby. I would respond as follows to the specific points raised in the Parish Council's letter:

- Works were carried out in the past by the County Council, as Highways Authority. These works included kerbing and drainage improvements in the immediate locality which were commensurate with the Highways Authority's duty to maintain the highway network. In doing this, works are not necessarily carried out every year in any given location as works would only be actioned as required. This are would, however, be routinely inspected to confirm when any future works may be needed. It is quite common for highway verges to be cut by residents, Parish Council's etc. so if this were happening then the County Council would not need to do this work, but it would have to act if others did not cut the grass as the statutory duty to maintain rests with the Highway Authority. Seats within the highway are not normally provided or maintained by the Highway Authority. This is quite normal and similar to other street furniture provided by other bodies within the highway.
- 2 The access across the highway verge was constructed in accordance with the normal requirements of the County Council, as Highway Authority, and the District Council, as Planning Authority. The access forms part of the highway maintainable at public expense and the right for the public to pass and re-pass has not altered. The Parish Council are responsible for identifying to the County Council which areas of highway verge they wish to cut. The wall is an existing feature within the highway verge and, as it serves no highway purpose, it could be removed.

Chris Stanford Common Land and Village Green Officer County Searches North Yorkshire County Council Northallerton

INVESTOR IN PEOPLE

A responsive County Council providing excellent and efficient local services

- 3 The level of resource expended does not affect the status of the verge as Highway Maintainable at Public Expense. The whole area remains highway as covered by previous responses. There are no complaints on record regarding its condition.
- 4 Such activities are known to happen on highway verges given that the public have the right to pass and re-pass. Care should always be taken to ensure any such activity does not in itself present a danger to other highways users.
- 5 Noted.
- 6 Selby District Council, as local Planning Authority, undertakes consultations on planning applications and the County Council is a statutory consultee. The Parish Council would similarly have the opportunity to comment on any proposals and the District Council would consider their comments as part of their reaching a decision.

Yours sincerely

MIKE ROBERTS Head of Highway Operations

APPENDIX 12

A survey of local residents has recently been conducted (survey questionnaire attached). All
returned questionnaires showed all respondents were in favour of the land being registered as a
Village Green.

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Summary of Results from Questionnaire regarding proposed Lumby Village Green

Lumby is a small settlement located approximately 1 mile south of South Milford to which it is connected by a single track lane.

It comprises approximately 50 dwellings.

The area for the proposed Village Green is in the centre of the Village.

The Questionnaire was distributed during the second half of May and early June 2011.

In total 28 questionnaires were completed.

They represented the views of 32 residents.

All supported the application.

Comments on the returned questionnaires specifically regarding the application included:

- 'I think the village needs to retain it's green !'
- · 'It might be nice for people to have a press button water drinks fountain and a lych gate cover'
- 'It is very important to the village that this land is not developed or becomes part of the new development in the centre of the village '
- · 'The sooner the better as it is becoming an eyesore'
- 'As a village green, i would like to see it maintained as a pleasant focal point of the village and not to be desecrated by vandals or youths using it inappropriately. How will this be watched ?'
- 'I would very much like the post and railings on the outside of the green (next to the road) to be
 retained and painted white, as this is how they were when we moved into Lumby 36 years ago.
 They were once temporarily removed but at my late husband's request they were put back.'
- 'The village green is in need of an upgrade. New seat, maybe a rubbish bin. Pots with flowers or shrubs.'

To: The Residents of Lumby

The Parish Council is applying to formally register the piece of land in the centre of Lumby (the area where the seat is located) as a Village Green.

This would enable the land to be preserved in perpetuity as Common Land, maintained by the Parish Council.

The Parish Council already maintains the land as part of it's parish wide grass cutting schedule and we would look to extend this support for example to include replacement of the seat which is in a state of disrepair. Last year the Parish Council paid to rebuild the low wall which runs across the strip as it was held to be in a dangerous condition.

Over the years the land has provided a rest place for members of the public, including walkers and cyclists, and it has in the past been defined by Selby District Council as a visual amenity space. It is also the location of a Bus Stop ,the Village Post Box, the local area grit bin and it is regularly used by children as a meeting place and play area.

In 1977 is was the location of the village's celebration of the Queen's Silver Jubilee.

There is no other land in Lumby which provides a similar facility.

A case is being prepared to support the application and the Parish Council would appreciate your views on the subject.

Please indicate your opinion by answering the questions below and return the form to Ann Rowling, Clerk, South Milford Parish Council, Stewards House, Butts Lane, Lumby, LS25 5JA.

Name/Address

I support the application []

I do not support the application []

Additionally I would like to make the following comments:

Thank you South Milford Parish Council May 2011

> NYCC 22 June 2012- Planning and Regulatory Functions Sub-Committee Land at Lumby/50

Extract from the Minutes of Selby Area Committee held on 21st May 2012 for the attention of the Planning and Regulatory Functions Sub-Committee at which the application will be considered.

179. Application for a Village Green Lumby, Selby

County Councillors Dave Peart and Andrew Lee each declared a personal interest in the following item as a member of the County Council's Planning Committee.

Considered –

The report of the Corporate Director – Business and Environmental informing the Area Committee of a forthcoming report inviting the Planning and Regulatory Functions Sub-Committee to determine an application for a village green in respect of land in Lumby village.

The Democratic Support Officer advised that the date of the meeting of the Planning & Regulatory Functions Sub-Committee at which the application would be determined was 22 June 2012 and not 10 August as stated in the report.

Members expressed surprise that Mike Roberts Head of Highway Operations North Yorkshire County Council was objecting to the application that had been submitted by the local parish council and asked the reasons for this.

Paul Sheppard, Group Highways Manager responded saying that the land in question was 'highway land' maintainable at public expense. There was a culvert on the land which also had public utility services infrastructure running beneath it.

County Councillor Mike Jordan (local member for Lumby) spoke in support of the application. He said that the land which had no registered owner had been maintained by the Parish Council for many years. He fully supported the Parish Council's application and sought the support of the Area Committee to make a recommendation to the Planning & Regulatory Functions Sub Committee that the application be approved.

County Councillor Andrew Lee abstained from voting and asked for this to be recorded in the minutes.

Resolved -

That the content of the report be noted.

That the Planning and Regulatory Functions Sub-Committee be advised that Selby Area Committee supports the application by South Milford Parish Council to register land at Lumby as a town or village green.