

## North Yorkshire County Council

### Planning and Regulatory Functions Committee Sub-Committee

Minutes of the meeting held on 22 June 2012, commencing at 10.00 am at Tadcaster Sunday School, Kirkgate, Tadcaster.

**Present:-**

County Councillors Keith Barnes (as Substitute for Bill Hoult), David Blades, Robert Heseltine, Michael Knaggs (as Substitute for John Blackburn) and Dave Peart (as Substitute for Cliff Trotter).

There were seven members of the public present.

Apologies were received from County Councillors John Blackburn, Bill Hoult and Cliff Trotter.

**75. Appointment of Chairman and Vice-Chairman**

**Resolved –**

That for the purposes of this meeting County Councillor David Blades be appointed Chairman and County Councillor Robert Heseltine be appointed Vice-Chairman.

---

**County Councillor David Blades in the Chair**

---



---

**Copies of all documents considered are in the Minute Book**

---

**76. Minutes**

**Resolved -**

That the minutes of the meeting held on 13 April 2012, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

**77. Public Questions or Statements**

The Democratic Services Officer reported that other than those persons who had registered to speak on items listed on the Agenda there were no questions or statements from members of the public.

**78. Declarations of Interest**

**County Councillor Keith Barnes declared a personal and prejudicial interest in respect of him having predetermined his position in relation to the application for Bridleway No 15.111/10 (Part) East of Killinghall Bridge, Ripley Diversion Order 2012, as, at previous meetings of the County Area Committee for Harrogate he had**

voted to provide a grant for the project, and had also voted in favour of recommending to the Planning and Regulatory Functions Sub-Committee the County Area Committee's support for the proposed Order.

County Councillor Dave Peart declared a personal and prejudicial interest in respect of the application for a Village Green at Lumby, Selby in respect of him having predetermined his position as he had taken part in consideration of the matter at a Selby Area Committee meeting, with the Area Committee voting to advise the Planning and Regulatory Functions Sub-Committee that it supported the application to register the land at Lumby as a Town or Village Green.

At the time of the agenda items indicated the respective Councillors left the room and took no part in the discussion, consideration or vote on those.

**79. Application to add a Bridleway to the Definitive Map and Statement from Moss carr Lane to the West Yorkshire County Boundary, Bilton-in-Ainsty with Bickerton**

Members were advised that this item had been withdrawn from the agenda prior to consideration at this meeting.

**Resolved –**

That the withdrawal of the above item be noted.

**80. Application to Upgrade Footpath No 05.41/23 (Part) to bridleway status and to record the lane known as Dodgson Lane and Dark Lane on the Definitive Map and Statement as a bridleway**

**Considered –**

The report of the Corporate Director – Business and Environmental Services advising Members of an application for a Definitive Map Modification Order, the effect of which, if confirmed, would be to add a Bridleway along the route known as Dodgson Lane and Dark Lane, in doing so to upgrade Footpath No 05.41/23 to a Bridleway, within the parishes of Thornton-In-Craven and Lothersdale. A location plan was attached to the report highlighting the route.

The report was introduced by James Perkins, the County Council's Definitive Map Officer, who gave a presentation of photographs of the route and summarised the legal issues to be determined.

The application was supported by six evidence of use forms, claiming that the route referred to was a Bridleway. Three signatories claimed to have used the route from 1921 to 1994 which combined showed usage of above the 20 year required period but as individuals only one of the signatories had used the route for a period in excess of 20 years. The three signatories also claimed to have used the route on horseback or by horse and cart. None of the witnesses had ever been prevented from using the route until the route had become overgrown. Historical evidence was provided in support of the application.

Evidence against the application was provided by the landowner of Windlefield Farm affected by the application. Details of the evidence were outlined within the report. Earby Town Council had also objected to the application. Again the details were provided in the report.

At a previous meeting, the application had been deferred for consideration, to take account of historical evidence provided to the Definitive Map Officer at that time which indicated that the Draft Map, issued as part of the process for the production of the Definitive Map in 1953, showed that there was a public route along the route shown, which contradicted what was set out in the report. In response to those issues it was noted that documents had been produced by the Parish Council during the surveying of the routes in the early 1950s towards the preparation of the Definitive Map, which were referred to as Parish Schedules. A Parish Schedule existed for the full application route, referring to the application route as a Bridleway. There was, however, an inconsistency between the Draft Map and the associated Draft Statement for the part of the route as shown between points B-D on the plan attached to the report. Although the route on the plan was shown as a footpath, in the Draft Statement the route was described as a Bridleway. The Provisional Map and Statement were consistent with the Definitive Map and Statement.

In conclusion Mr Perkins stated that on balance the recording of the section of the route A-B on the list of streets, and the historical documentary evidence, demonstrated that the part of the claimed route, shown as A-B on the plan, should be recorded on the Definitive Map and Statement as a restricted byway. He considered that there was insufficient evidence to show that the Definitive Map and Statement should be modified between points B-D shown on the plan to the report.

Mrs Susan Beresford, addressed the Committee and spoke in opposition to Section B-D of the application, indicating that she had no objection to Section A-B. In respect of Section B-D she highlighted how there had been little use of the route and that there was very little evidence of use provided. She considered that the route was impassable due to deep undergrowth and vegetation. She noted that there was no knowledge in the area that B-D had been used as a right of way previously and the historical evidence indicated that this had not been identified as a right of way. She stated that another Bridleway already ran from the same two points as those in the application. She noted that Earby Town Council had also objected to the application and details of their objections were set out in the report. She stated that in contradiction to the evidence shown in support of that part of the route, the County Council's Definitive Map Officer had walked the route. She emphasised her support for the recommendation as set out in the report.

Members discussed the report outlining the following issues:-

- It was confirmed that the presenting officer, James Perkins had walked the route indicated.
- A Member highlighted the last minute evidence that had been introduced at the previous meeting, leading to the deferral of the item. He noted that Part A-B of the route was on the List of Streets and wondered whether this indicated that this had Bridleway status. In response it was stated that the List of Streets did not define the status of the route. It was noted that should the route A-B be recorded as Restricted Byway this would allow use by non-motorised vehicles only.
- Clarification was provided as to the status of the different sections of the route and the issues that could be determined by the Committee.

**Resolved –**

- (i) That the Corporate Director of Business and Environmental Services be authorised to make a Definitive Map Modification Order for the part of the application route shown as A–B on Plan 2 of the report to be shown on the Definitive Map and Statement as a Restricted Byway;
- (ii) That in the event that formal objections are made to that Order, and are not subsequently withdrawn, the Committee authorise the referral of the Order to the Secretary of State for determination, and permit the Corporate Director, under powers delegated to him within the County Council's Constitution, to decide whether or not the County Council can support confirmation of the Order;
- (iii) That agreement be given that there should be no modification to the Definitive Map and Statement between points B-D on Plan 2 of the report.

**81. Bridleway No 15.111/10 (Part) East of Killinghall Bridge, Ripley Diversion Order 2012**

**Considered –**

The report of the Corporate Director – Business and Environmental Services, advising Members of a Diversion Order that had been made, but had been opposed. The effect of the Order, if confirmed, would be to divert a section of Bridleway No 15.111/10, east of Killinghall Bridge. A location plan highlighting the proposed diversion was attached to the report. The section of Bridleway to be deleted was shown as A–B and the section of Bridleway to be added was shown as A-C-B.

The report was introduced by Penny Noake, the County Council's Definitive Map Team Leader, who gave a presentation of photographs of the route and summarised the legal issues to be determined.

She outlined how the Diversion Order, which had been made, was being promoted by North Yorkshire County Council in the interests of the public, to provide a route that would be easier for use, but was a relatively minor amendment to the alignment of the existing definitive route. The proposed section of Bridleway would have the same recorded width and service as the existing Bridleway as recorded in the Creation Order confirmed in 2011. Following statutory consultations with the Ripley Parish Council and Harrogate Borough Council both confirmed that they were in agreement with the proposed diversion. The Diversion Order was made on 24 April 2012 and was advertised between 4 May 2012 and 1 June 2012.

105 letters of support from members of the public were received in support of the Bridleway as well as from Harrogate Bridleways Association and the British Driving Society.

Letters of objection were received from solicitors representing the landowner and from Nidd Parish Council. Details of their objections were set out in the report. A further four letters of objection were received from residents in the Parish of Nidd. It was noted that a further letter from the landowner's solicitors had been received prior to the meeting and had been circulated to Members, again setting out their objections to the Diversion Order.

It was noted that the main objection from the landowners was that to rectify the omissions and mistakes of the Creation Order in 2009, Creation and Extinguishment Orders should have been pursued instead of a Diversion Order. This would have allowed the Inspector to have regard to the full range of matters set out in Section 26 (1) (A) and (B) of the Highways Act 1980.

In response Penny Noake outlined how the circumstances adequately met the criteria required to promote a Diversion Order. Therefore, it was not accepted that there had been a misuse of the Authority's powers.

Details were provided of how the concerns raised by Nidd Parish Council and the four other objectors had been addressed.

It was concluded that the proposed diversion satisfied the criteria of Section 119 Highways Act 1980 in that it was in the public's interest to have the Bridleway moved to the alignment and it was considered that the realignment would not have a detrimental affect on the land crossed by the Bridleway. It was felt that the objections raised were not specific to the proposed diversion but related, in the main, to the lack of support for the original creation of the Bridleway. It was emphasised that there was a considerable proportion of the local community in favour of the proposed diversion. With six outstanding objections to the Order, it would need to be forwarded to the Secretary of State for determination, therefore, Members were requested to decide what stance the County Council should take in its submission to be made to the Secretary of State having given consideration to the objections.

Councillor Michael Harrison, Harrogate Borough Councillor for the Killinghall Ward addressed the Committee in support of the proposed diversion. He stated that the Bridleway passed through his Ward and he had sat on a Steering Group, which had brought about the Bilton to Ripley Bridleway, for around eight years. He noted that the construction of the route was fully funded, was being delivered on time and was working to budget. He suggested that the Diversion Order applied for was a minor re-routing of the Bridleway. He considered that the Diversion Order was being provided in the interests of the public to ensure their passage along the Bridleway was as easy as possible. He considered that the proposed diversion would provide an easier route and would also assist with the construction. He did not consider that the proposed diversion was detrimental to the landowner. He suggested that those that had objected to the Diversion Order were against the whole project in principal, rather than the Diversion Order. He noted that Ripley Parish Council were in favour of the application. He requested that Members support the Officer's recommendation.

Nidd Parish Council submitted a statement which was read out to the Committee by the Clerk.

The statement was in opposition to the Diversion Order. The statement indicated that an application for listed building consent was yet to be determined for the Nidd Viaduct. It was stated that the work carried out around four years ago, to the viaduct, was undertaken illegally and Harrogate Borough Council had confirmed that any works to the viaduct would require both Listed Building Consent and Planning Permission. To date there had been no planning application. Nidd Parish Council considered it premature to consider a Diversion Order, and any cost implications, before the planning status of the viaduct was determined. They suggested that no information had been given in support of the Diversion Order in respect of need or financial implications and noted that Harrogate Borough Council had given an open-ended commitment to underwrite any shortfall in funding for the construction of the Bridleway. They considered that all the

information should be submitted to Members and rate payers before a decision was made. They asked that support was not given to the Diversion Order.

Mr Spragg addressed the Committee and spoke in opposition to the Diversion Order.

He presumed that the County Council was aware that it was pointed out and acknowledged by both Sustrans and Harrogate Borough Council, at the Public Inquiry into the Bridleway held in February 2011, that there had been a major breach of planning regulations in that works had already been carried out to the Nidd Viaduct which required both planning permission and more importantly Listed Building consent. He understood that works which were carried out by Sustrans were done in collaboration with Harrogate Borough Council.

He stated that the works which had been carried out along the majority of the route, and the costs incurred, had been undertaken in the knowledge that planning permission was required and that it may be refused. If the necessary permissions had not been obtained then it would appear that the Bridleway could be aborted as there would be no means of crossing the River Nidd.

Last month, some 15 months after the breach of the planning became public knowledge, a Listed Building application was then submitted. A planning application, which was also required, had yet to be submitted. He considered, therefore, unless the County Council condones the abuse of the planning system, there was no alternative in the interest of the ratepayers but to stop all work on the project until the planning situation on the viaduct was resolved, which allowing for the appeal process, could take another year.

Members discussed the report and the following issues were highlighted:-

- It was clarified that there were no safety concerns in respect of rerouting the Bridleway nearer to the river.
- It was emphasised that the Diversion Order was a separate issue to the development of the Bridleway and, therefore, the legality of works on the Bridleway route was not an issue for consideration.

#### **Resolved –**

That the Committee authorises the Corporate Director, Business and Environmental Services, to support the confirmation of the Diversion Order within the County Council's submission to be made to the Secretary of State, and, in the event of any Public Inquiry that may be held, that officers maintain that stance.

## **82. Application for a Village Green - Lumby, Selby**

Considered –

The report of the Corporate Director – Business and Environmental Services, on an application (“the Application”) for the registration of an area of land at Lumby identified in a plan attached to the report (“the Application Site”) as a Town or Village Green.

The report was introduced by Doug Huzzard, Highway Asset Manager, who gave a presentation of photographs of the site and summarised the legal issues to be determined. Details of the application site were shown on a plan attached to the report

and it was noted that this had been identified as highway maintainable at public expense, however, the basis of that assertion had been challenged by the applicant's solicitor. Full details of the location and boundary of the application site were outlined.

The application had been submitted by South Milford Parish Council, through their solicitors, on 27 January 2011 and accepted as duly made on 9 February 2011. No witness letters or evidence of use proforma were submitted with the application.

The main objection to the application was received from the Head of Highways Operations for North Yorkshire County Council. The objection was based upon the fact that the application site was part of the highway maintainable at public expense.

The objection stated that the activities carried out, which could 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. It considered that the applicant's evidence of use for the land was not strong enough to justify its registration as a Village Green.

Originally the land, which was the subject of the application, extended to a larger area than that currently under consideration and objections to that original application were received from solicitors acting on behalf of parties with an interest in the adjacent land. Both the objections included a legal opinion from Charles George QC which was included as an Appendix to the report.

Following negotiations between the applicant and the neighbouring objectors the extent of the application site was reduced to what was being considered at the meeting. Following the reduction of the application site objections were withdrawn, however, in both cases, the point was made that neither objector accepted that the application met with the necessary legal criteria to succeed.

It was noted that the applicant, through their solicitor, had questioned the assertion that the site was highways land and had sought evidence of when it was adopted. No documentation recording adoption of the road had been submitted by the Highway Authority (this is not unusual as formal 'adoption' records only exist for about 5% of the highway network). A number of comments from the applicant in respect of representations by the local Highway Authority were contained in a letter dated 17 April 2012, appended to the report. The response of the Highway Authority was also provided. It was noted, in the exchange, that the extent (or frequency) of works undertaken by a Highway Authority did not have a bearing on whether or not the land was part of the Highway.

In reviewing the evidence the following issues were noted:-

- It was acknowledged that Lumby was a small village, however, the evidence submitted in terms of there being usage by a significant number of local residents, could not, on balance, be said to have been met by the application.
- The application was relying on evidence of use by inhabitants of the neighbourhood of Lumby in the locality of the administrative district Selby.

- It was stated that where members of the public already had a right to use land then when taking part in lawful activities they did so “by right” rather than “as of right”. As the land was defined as highway maintainable at public expense, the use of the land would amount to use “by right” rather than “as of right”, meaning that the criteria for Village Green status would not be met.
- There was no first hand evidence included in the application to indicate that lawful sports and pastimes had taken place on the land.
- There was no evidence that offered any indication of the regularity of alleged use of the site during the 20 year period preceding the application.

In conclusion Mr Huzzard indicated that for the application to be approved the County Council had to be satisfied that on evidence all the criteria contained in Section 15 (2) of the Act were met. It was suggested that on the balance of probabilities, the relevant criteria were not met by the application.

Mr Bill Hobman, Chairman of South Milford Parish Council, addressed the Committee and spoke in favour of the application. He noted that the statement he was providing had been agreed by a meeting of South Milford Parish Council. He indicated that the application had been put forward so that a small piece of land could be allocated as Village Green for Lumby. The piece of land in question was the only area in Lumby that could be seen as public space and contained a seat, postbox, railings, etc. He noted that a petition had been undertaken in the previous year, requesting that the land be given Village Green status for use by local children and the public. Should the piece of land be granted Village Green status then further improvements to the application site would be made via the Parish Council including replacing the seat, painting the railings, etc. He noted that the wall had been retained and maintained by the Parish Council. He emphasised that the land in question had not been adopted, therefore, questions in respect of its ownership remained. He emphasised that the aim of the application was to protect the centre of the village for the benefit of the local community.

Mr Watson, whose property was adjacent to the application site, addressed the Committee and spoke against the application. He indicated that the application site was clearly highway verge, maintainable at the public expense, which assisted with site lines around the corner for those leaving the adjacent access points. He emphasised that it was clear that the application did not meet the legal criteria for Village Green status. He highlighted the opinion of an eminent QC, which had been provided alongside the report, which provided the legal definition of whether the application site was suitable. He noted the definition of “as of right” as opposed to “by right” as provided. He considered the application evidence to be weak and noted that a number of local adjacent landowners were not aware of the application. He considered that the Chairman of the Parish Council, Mr Hobman, had an interest in the land, as he lived directly adjacent to it. He supported the officer’s recommendation that the application should be refused.

The Chairman invited Mr Hobman to reply to the issue raised by Mr Watson in respect of his interest in the land. Mr Hobman stated that the application was not for his benefit, but had been undertaken by the Parish Council, with significant local support, for the benefit of the local community in Lumby. He noted that there were documents available, if required, to show this was the case.



Members discussed the report and the following issues were highlighted:-

- A Member considered the evidence for the application to be insufficient and highlighted the opinion provided by the QC, within the report, which clearly stated that there was no case to answer in terms of granting the application. He suggested a way forward was for the Parish Council was to submit a request for the land being gifted to them by the Highway Authority, for them to maintain, to provide a facility for the local community. He emphasised, however, that this was not within the remit of the Committee.
- The size of the area of the application site was clarified.
- A Member considered that the site was highway verge and did not meet the necessary criteria to be considered as Village Green. He also considered that granting Village Green status could be dangerous as the area of land was close to the road.
- A Member asked whether the improvements to the piece of land could be made by the Parish Council irrespective of a decision not to register this. It was stated that the Parish Council already maintained the piece of land and there would be no harm in a dialogue being conducted between the Parish Council, adjacent landowners and the Highway Authority to develop an agreement that was to the benefit of all of them.
- It was suggested that the Highway Authority could reduce the strip of land for highway resource purposes, if that was felt appropriate and necessary. The Chair of the Parish Council highlighted the concerns of a number of people in the local area in respect of potential development for that piece of land and stated that the aim of the application was to ensure that some control could be exercised over what was being developed there and to protect the green areas of the village. Mr Watson noted that there had been no reduction of the area of land for many years.
- The Chairman emphasised that the decision to grant Village Green status for the application site had to be based on whether the appropriate criteria had been met.
- It was clarified that the application site was in the centre of the village, on the main route through it, but was not at the entrance to the village.

#### **Resolved –**

That the Application be refused on the grounds that the Committee could not be satisfied that all the relevant criteria of Section 15(2) of the relevant Act are evidenced by the Application for the reasons set out in the report.

The meeting concluded at 12.15 pm.

SL/ALJ

**NORTH YORKSHIRE COUNTY COUNCIL****PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE****10 AUGUST 2012****PROSPECT HILL, WHITBY****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 (identified on the plan at Appendix 1) known as Prospect Hill, Whitby as a Town or Village Green.

**2.0 BACKGROUND AND PROCEDURAL MATTERS**

- 2.1 The County Council is responsible for maintaining the Register of Town & Village Greens for North Yorkshire. The Application, made in January 2005, was brought before the County Council’s Yorkshire Coast and Moors County Area Committee on 9 April 2009, and a copy of that report is attached at Appendix 2.
- 2.2 That Committee resolved in accordance with the officers’ recommendation to appoint an Inspector to hold a non-statutory public inquiry to hear evidence and to make a recommendation to the County Council in its role as Registration Authority.
- 2.3 Consequently Ruth Stockley, a barrister with extensive knowledge and experience of this area of the law and who has often acted as Inspector, was instructed and an inquiry was held at Sneaton Castle Conference Centre, Whitby on 26th and 27th July 2011. The Inspector’s extensive report dated 6 February 2012 is attached to this report at Appendix 3. The Committee will note that the Inspector has recommended that the Application is refused, on the basis that the application fails to meet the any of the relevant legal criteria.
- 2.4 Following receipt of the Inspector’s report by the County Council it was sent to Thorpe & Co. solicitors acting for the Applicant and to BHP Law solicitors acting for the affected landowner. Response received from BHP Law on behalf of the landowners is attached as Appendix 4. No response was received on behalf of the Applicants.
- 2.5 Officers accept that the case law referred to in the letter from BHP Law strengthens the findings of the Inspector.

### **3.0 CONSIDERATIONS**

- 3.1 The principal matters for consideration in dealing with the application were set out in the report to the County's Yorkshire Coast and Moors County Area Committee and dealt with comprehensively by the Inspector. The appropriate element of Section 13(as amended) of the Commons Registration Act 1965 provided for land to be registered as a town or village green where:

*"...land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right and either (a) continue to do so, or (b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions."*

- 3.2 Although section 13 of the Commons Registration Act 1965 has now been repealed and replaced by provisions of the Commons Act 2006 the provisions of section 13 are still applicable to applications made prior to the date of its repeal on 6 April 2007. Consequently it is section 13 that applies in this case.
- 3.3 For an application to be successful it is necessary for it to meet all the criteria set out in section 13 and the Inspector found that the application failed to meet any of them. Officers concur with the Inspector's findings. It is not obligatory for a Registration Authority to follow the findings of an Inspector though it must act lawfully in any decision it reaches. Arguments as to the merits or desirability of land being registered are not relevant.
- 3.4 In the event the committee resolve to accept the officer recommendation contained in this report the Applicant will be entitled to make application for judicial review. However it is your officer's opinion that there is insufficient reason before the Registration Authority to warrant a departure from the Inspector's finding and that the authority has proceeded appropriately such that any application for such a review would be unlikely to succeed.

### **4.0 EQUALITIES IMPLICATIONS**

- 4.1 Consideration has been given to the potential for any equality impacts arising from the recommendation. It is the view of officers that the recommendation does not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010.

### **5.0 FINANCE**

- 5.1 There are no financial implications associated with the introduction of these proposals.

**6.0 RECOMMENDATION**

- 6.1 That the Application be **REFUSED** because the Registration Authority is not satisfied that it meets all the criteria set out in section 13 of the Commons Registration Act 1965 for the reasons set out in the Inspectors Report dated 6 February 2012, comprising Appendix 3 to this report, and taking into further account the case law referred to in correspondence from BHP Law comprising Appendix 4 to this report.


DAVID BOWE

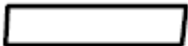

Corporate Director – Business and Environmental Services

Author of Report: Doug Huzzard / Chris Stanford

Background Documents: Application case file held in County Searches Information




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

**Key:**  
 Village Green Application   
 Public footpath   
 Map drawn on 25 June 2012  
 Drawn by JRP Scale 1:1250

**North Yorkshire County Council**  
 Planning & Regulatory Functions  
 Sub-Committee  
 10 August 2012  
**APPENDIX 1**

**Appendix 2**

NYCC – 10 August 2012 - P&RF Sub-Committee  
Prospect Hill, Whitby/4

**NORTH YORKSHIRE COUNTY COUNCIL**  
**YORKSHIRE COAST AND MOORS COUNTY AREA COMMITTEE**

**9 APRIL 2009**

**LAND AT PROSPECT HILL, WHITBY**  
**APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN**

**1.0 PURPOSE OF REPORT**

1.1 To report on an application for the registration as a Town or Village Green an area of land at Prospect Hill, Whitby (identified on the plan comprising **Appendix 1**)

**2.0 BACKGROUND**

2.1 The County Council is a Commons Registration Authority and so responsible for maintaining the register of Town & Village Greens for North Yorkshire which includes determining applications to add to the register land that is claimed to have become green.

**3.0 APPLICATION**

3.1 An application dated 5 January 2005 to register land at Prospect Hill, Whitby as village green was submitted by Mayfield Residents Action Group claiming that the land had been "*in use for a period in excess of 20 years immediately prior to the Application*"

3.1 The criteria in respect of which the application has to be assessed is that contained in the Commons Registration Act 1965. Namely that :-

*for not less than twenty years a **significant number** of the inhabitants of any **locality**, or of any **neighbourhood within a locality**, have indulged in lawful sports and pastimes **as of right** and either*

*(a) continue to do so, or*

*(b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions*

3.2 In support the Application was accompanied by 24 type written statements and a petition of claims all referring to a range of activities and pastimes having taken place over time (**Appendix 2**)

3.3 Some of the signatories to the petition also signed written statements. Allowing for this in all there appears to be claims of use and observations of usage by others from at least 32 people.

**4.0 APPLICATION SITE**

4.1 The land which is the subject of the Application is privately owned.

- 4.2.1 The owners state that the site was licensed for grazing for over 50 years up until May 2004 and additionally that part of the site was used as a building compound during the development of adjoining land.
- 4.2.2 A public footpath runs through the land concerned bounding one side of the main body of the land (**Appendix 1**)

## 5.0 **OBJECTIONS**

- 5.1 The landowners have objected to the Application on a number of grounds :-
- a) that claimed uses need to continue up until the date of registration. The site was fenced in March 2005 preventing access to the land concerned and so this couldn't have happened.
  - b) many of the statements in support of the Application relate to use of the public right of way and do not evidence that the remainder of the application site has been used
  - c) the evidence submitted in support of the application does not demonstrate use of the land by a "*significant number*"
  - d) use of the land has been interrupted and restricted by grazing and the building compound which was present when adjoining land was being developed
  - e) there is implication from one of the user statements that the land was used with "*consent*" of the landowner rather than "*as of right*"
  - f) a letter from Mayfield Residents Action Group dated 23 October 2006 to the solicitor for the landowners sought permission to access the land to collect litter suggesting it was recognised that any use of the site required their permission
- 5.2 The son of a former tenant of the field has also objected by letter citing grazing as having been the predominant use of the land.

## 6.0 **PROCEDURES**

- 6.1 Statutory requirements to publish public notice of the Application in the local press and post similar notice on site have been complied with.
- 6.2 In common with many applications across the country consideration of the application was placed on hold pending the outcome of the "Trap Grounds" case which was the subject of appeal to the House of Lords. The issue of whether or not the exercise of sports and pastimes had to be demonstrated right up until the date of land being registered as a green was primarily at issue. The Lords decided it was not necessary to demonstrate use up until registration thus over turning a previous decision of the Court of Appeal. If it had been necessary it would have had a profound effect in that the majority of applications would probably have been doomed to failure. It was thus important to be clear of the legal position before proceeding with the application.
- 6.3 In accordance with Regulations governing procedures for such applications the Mayfield Residents Action Group was permitted later to put their application "*in order*" by completing a statutory declaration that should have been included when submitted
- 6.4 In accordance with due procedure copies of the objections have been forwarded to the Applicants for comment

## 7.0 LEGAL ISSUES

7.1 The question of whether or not sports and pastimes have been undertaken on the site “as of right” is probably the most complex of the legal issues to be addressed in determining this application.

7.2 The courts have determined in principal that use “as of right” means use which has been exercised :-

*“without force, stealth nor licence of the owner”*

7.3 In the recent Court of Appeal case of R(on the application of Lewis) v Redcar and Cleveland Borough Council and another (2009) “as of right” was discussed by Lord Justice Dyson at length. In particular he identified the following criteria that need to be met to show that use has been “as of right” :-

*“the use must be such as to give the outward appearance to the reasonable landowner that the user is being asserted and claimed as of right”*

7.4 Thus in order to determine an application where there are apparently competing uses and contrasting statements of a landowner and the content of an Application the issue becomes complex requiring full inquiry into and assessment of the respective claims and an assessment of the impression that a reasonable landowner would take from activities that have taken place on the land. “Deference” (where claimed uses are considered to defer to an overriding use of a landowner) and “Interruption” (where claimed uses might be said to be disturbed) will be relevant to determining the issue. Reaching a conclusion is a matter of fact and degree in each case.

7.5 The circumstances in this case are complicated by the existence of the public footpath. In objection the Owner has raised this as an issue in objection (see 5.1(b)) above. Close inquiry will be required to determine what elements, if any, of the usage referred to in support of the application may have amounted simply to use of that right of way. The issue of dealing with circumstances where a right of way affects an application for green status was addressed in judgement of the “Trap Grounds” case :-

*In this situation the starting point must be to view the user as referable to the exercise (and the occasional excessive exercise) of the established right of way and only as referable to exercise as of right the rights incident to a green if clearly referable to such a claim and not reasonably explicable as referable to the existence of the public right of way”*

7.6 Additionally the question of whether or not what amounts to a “significant number” of users have taken part in sports and pastimes is a matter which needs to be assessed in particular reference to the circumstances of each case. It is clearly not an exact science. In judgement in the case of R v Staffordshire County Council, ex parte Alfred McAlpine Homes Ltd [2002] Sullivan. J was satisfied that an Inspector was right to conclude that :-

*“what matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers”*



The landowners suggest in objection that this requirement has not been met by the Application. Full inquiry to confirm the nature and extent of the claimed uses will necessary to reach a conclusion on this issue.

8.0 **NON STATUTORY INQUIRY**

8.1 In this case there is a serious conflict of evidence and cases put forward and received from the interested parties particularly on the question of whether or not activities have taken place on the site "*as of right*" although the landowner is also questioning that the "*significant number*" criteria requirement has been satisfied (see 3.1 above)

8.2 In the leading case of The Queen on Application of Christopher John Whitmey and The Commons Commissioners (2004) it was the view both of Lord Justice Arden and Lord Justice Walker that where a registration authority is faced with a serious dispute it should reach a decision only after receiving the report of an independent legal expert who has at the registration authority's request held a "*non statutory inquiry*". Government guidance reflects this view.

8.3 Use of "*non statutory inquiries*" to assist registration authorities determining applications is currently common practice across England and Wales.

9.0 **RECOMMENDATION**

9.1 In view of the conflicting evidence before the Council, it is recommended that the Corporate Director (Business and Environmental Services), in consultation with the Assistant Chief Executive (Legal and Democratic Services) be authorised to appoint an independent expert to conduct a non-statutory public inquiry into the application from the Mayfield Residents Action Group and to prepare a report to assist the Council in its determination of this matter

9.2 Following the inquiry and receipt of the expert's report, that a further report be presented to this Committee in order that the application may be determined.

CAROLE DUNN  
Assistant Chief Executive Legal & Democratic Services

**Background Papers**

File No 100683 held in Legal & Democratic Services

Contact: Simon Evans



This plan should be read in conjunction with result A03FVCB

KEY : ● ● ● ● ● ● ● ● (PUBLIC FOOTPATHS)

## APPENDIX 2

### SUMMARY OF EVIDENCE SUBMITTED IN SUPPORT OF THE APPLICATION

- 24 typed statements and a petition of 21 names all including a reference that “the land has been used by myself (and my family)” and always relating to a period of usage in excess of 20 years but not specifying when that took place (ie between which dates) and to there being no restrictions whatsoever on the use and enjoyment of the land
- 13 parties who completed statements are also named on the petition - resulted in duplication of evidence – allowing for this 32 separate parties have submitted written evidence
- the following range of activities is claimed :-
  - dog walking
  - bird nesting
  - blackberry picking
  - accessing a pond to observe frogs, spwan, newts
  - observing wildlife
  - picnics
  - playing with children
  - placing bat boxes in trees
  - visiting goats, lambs, ducks and ducklings
  - collecting conkers
  - collecting horse manure
  - bird watching
  - educating children about historical features on site
  - training gun dogs
  - making childrens dens in trees
  - picking daisies
  - tree climbing
  - botonizing
  - snowballing

summarised (totals allow for duplication) :-

- Walking – 17(statements) / 13(petition) – total 20
- Wildlife observation – 20(statements) / 15(petition) – total 25
- Picnicking – 6(statements) / 4(petition) – total 6
- Dog walking – 11(statements) / 10(petition) – total 14
- General playing -7(statements) / 5(petition) – total 1
- Fruit picking - 3(statements) / 0(petition) – total 2

## **Appendix 3**

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT PROSPECT  
HILL, WHITBY, NORTH YORKSHIRE AS A  
TOWN OR VILLAGE GREEN**

**REPORT**

**of Miss Ruth Stockley**

**06 February 2012**

**North Yorkshire County Council**

**County Hall**

**Northallerton**

**North Yorkshire**

**DL7 8AD**

**Ref: 15345**

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT PROSPECT  
HILL, WHITBY, NORTH YORKSHIRE AS A  
TOWN OR VILLAGE GREEN**

---

**REPORT**

---

**1. INTRODUCTION**

1.1 This Report relates to an Application made under Section 13 of the Commons Registration Act 1965 (“the 1965 Act”) to register land at Prospect Hill, Whitby, North Yorkshire (“the Land”) as a town or village green (“the Application”). Under the 1965 Act, North Yorkshire County Council, as the Registration Authority, is required to register land as a town or village green where the relevant statutory requirements have been met. The Registration Authority instructed me to hold a non-statutory public inquiry into the Application, to consider all the evidence and then to prepare a Report containing my findings and recommendations for consideration by the Authority.

1.2 I held such an Inquiry over 2 days, namely on 26 and 27 July 2011. I also undertook an accompanied site visit on 27 July 2011.

1.3 Prior to the Inquiry, I was invited to make directions as to the exchange of evidence and of other documents. Those documents were duly provided to me by both Parties which significantly assisted my preparation for the Inquiry. The Applicants produced a bundle of

documents containing their witness statements and other documentary evidence in support of the Application and upon which they wished to rely, which I shall refer to in this Report as “AB”. The Objector, the Trustees of the Bagshawe Will Trust, also produced a bundle of documents containing its witness statements and documentary evidence in support of its Objection and upon which it wished to rely. I shall refer to that bundle as “OB”. In addition, each Party provided a skeleton argument setting out an outline of its case, and the Objector provided a bundle of supporting authorities, which I shall refer to as “OB2”. I have read all the documents contained in the bundles and each of the skeleton arguments and taken their contents into account in this Report.

1.4 I emphasise at the outset that this Report can only be a set of recommendations to the Registration Authority as I have no power to determine the Application nor any substantive matters relating thereto. Therefore, provided it acted lawfully, the Registration Authority would be free to accept or reject any of my recommendations contained in this Report.

## **2. THE APPLICATION**

2.1 The Application was made by Janet Peake and Jennifer Spence on behalf of Mayfield Residents Action Group of 16 Pembroke Way, Whitby YO21 1NT (“the Applicants”) and is dated 5 January 2005.<sup>1</sup> It is made on the requisite Form 30. Part 3 of the Application states that the land to be registered is usually known as “*Land at Prospect Hill*”, and that its “Locality” is at the “*Rear of Upper Bauldbyes, Prospect Hill, Whitby*”. Part 4 of the Application states that the Land became a village green on “*the date of the Application, if not before*”. In relation to how it is alleged the Land became a village green, it is stated in Part 5 to be by its “*use for a period in excess of 20 years immediately prior to Application*”. The Application was accompanied by a Petition, 25 statements in support, photographs, an index

plan and a location plan as referred to in Part 8. It is verified by a statutory declaration in support dated 22 November 2005.

2.2 The Application was advertised by the Registration Authority as a result of which two objections were received, namely from Mr J. A. Holmes dated 14 September 2005, and from the Trustees of the Bagshawe Will Trust, the Owner of the Land, dated 7 October 2005.<sup>2</sup> It was confirmed at the start of the Inquiry that both those objections had been subsumed into the one Objection and, indeed, Mr J. Holmes gave oral evidence in support of the Objection.

2.3 I have been provided with copies of all the above documents in support of the Application and copies of both objections, all of which I have read and the contents of which I have taken into account in this Report.

2.4 Having received such representations, the Registration Authority determined to arrange a non-statutory inquiry prior to determining the Application which I duly held.

2.5 At the Inquiry, the Applicants were represented by Mr Sam Healy of Counsel and the Objector was represented by Leading Counsel, Mr Douglas Edwards QC. Any third parties who were not being called as witnesses by the Applicants or the Objector and wished to make any representations were invited to speak, but no additional persons did so.

### **3. THE APPLICATION LAND**

---

<sup>1</sup> The Application is contained in AB tab 1.

<sup>2</sup> The former's objection is not contained in the bundle provided by the Objector, but the latter's objection is at OB pages 5-6.

3.1 The Application Land is identified on the Index Map Plan submitted with the Application on which it is outlined in pink.<sup>3</sup>

3.2 It comprises a triangular area of an open and undeveloped agricultural field which is currently somewhat overgrown (“the Field”) with evidence of ridge and furrow. It is bound to the east and south by hawthorn hedgerows, whilst part of the paved Monks Trod public right of way on foot (“the Footpath”) runs along the length of its north western boundary. In the south western corner of the Land is a former coach wash pond (“the Pond”).

3.3 There is a fence running along the southern side of the Monks Trod with wooden signs in place indicating that the Field is private. There is also a field gate in the south western corner of the Land. At the north eastern part of the Land, there were remnants of a broken wooden fence on the ground at the time of my Site Visit enabling access to be gained onto the Land. Access to the Footpath along the Land’s northern boundary is gained via a kissing gate at each end. At the south western end of the Footpath, it meets a farm track running north to south leading from the road to the allotments. There is also a horse chestnut tree to the north of the Footpath at the south western corner of the Land which is located just outside the Land.

3.4 At the south eastern corner of the Land is an opening in the hedge leading to the former allotment field to the south. There is a worn path along the eastern boundary of the Land leading to that opening. A gap in the hedge is also present at the south western corner of the Land leading to that same field.

---

<sup>3</sup> At AB pages 5 and 48.



3.5 To the north of the Land is residential development consisting of the extended Yuill Estate, and beyond that Mayfield Road. To the east is a railway embankment. On the southern side of the Land is the former allotment site, and to the east is the remainder of the Yuille Estate.

#### **4. THE EVIDENCE**

4.1 Turning to the evidence, I record at the outset that every witness from both Parties presented their evidence in an open, straightforward and helpful way. Further, I have no reason to doubt any of the evidence given by any witness, and I regard each and every witness as having given credible evidence.

4.2 The following is not an exhaustive summary of the evidence given by every witness to the Inquiry. However, it purports to set out the flavour and main points of each witness's oral evidence. I assume that copies of all the written evidence will be made available to those members of the Registration Authority determining the Application and so I shall not rehearse their contents herein in detail. I shall consider the evidence in the general order in which each witness was called at the Inquiry for each Party.

#### **CASE FOR THE APPLICANTS**

##### **Oral Evidence in Support of the Application**

4.3 **Mrs Jennifer Spence**<sup>4</sup> is one of the Applicants and she has lived at 16 Pembroke Way with her husband for over 31 years since March 1980. Prior to that, they resided in Pocklington for 8 years. They have two children born in 1973 and 1975. They have used the Land throughout their period of occupation of 16 Pembroke Way. She and her family used the Footpath through the field for access to schools and town. They would walk from their

home via Anchorage Way and then walk along the track alongside the allotments to the Pond where they would turn right and walk along the Footpath and then turn left onto Mayfield Road. Her children attended the Airy Hill Primary School until 1984 and 1985 respectively, and there were occasional school visits onto the Land. They subsequently attended Caedmon School. After her children left school in the early 1990's, she used the Monks Trod less frequently, namely around 2 or 3 times per week when she went into town. Dog walkers used Monks Trod, and she noted that she had never seen a dog that was off the lead.

4.4 When the children were young, they brambled round the edge of the Field along the southern and eastern boundaries; watched birds on the Land which particularly tended to nest in the northern hedge along the Trod; watched other wildlife particularly round the Pond located in the south west corner; and collected conkers from near the Pond. They would observe the Pond from the fence along that Footpath on their way to school. The Pond can be seen whilst walking along the Monks Trod Footpath and is in very close proximity to the Footpath. Her children also made dens in the tree belt round the Pond. There were no restrictions on any of their use of the Land. However, she pointed out in cross examination that she had very little reason to use the Land herself other than the Footpath after her children had left school. She produced some photographs taken in May 2009 showing the worn path along the eastern boundary of the Land, which she indicated was used by dog walkers and was probably the path also used by allotment holders to access the allotments to the south as there was an access point to the allotments in the south east corner of the Land. There is also a defined path along the southern boundary which meets the Monks Trod at its western end. Those defined paths remain on the Land to date and she regarded them as consistent with walking use. They were a regular route used by dog walkers that had been created by such use. The predominant use of the Land in recent years has been dog walking

---

<sup>4</sup> Her two witness statements (written jointly with Mr Martin Spence) are at AB pages 15 and 16 to which an  
NYCC – 10 August 2012 - P&RF Sub-Committee  
Prospect Hill, Whitby/17

as it has become so overgrown. She acknowledged that trees and wildlife could be observed whilst walking along those worn paths. She had only been on the Land once since February 2005 which she accessed through a gap in the fencing that had deteriorated.

4.5 In terms of the agricultural use of the Land, she recalled Mr Holmes keeping goats on the Land during the early 1980's. It was not a huge herd, and they were mainly out on the Land around lunchtime. Mr Holmes was always with them. She did not recall him shouting at anyone. However, she pointed out that if he was on the Land with his goats, people would ensure that they did not go off the Footpath as they respected what was in the Field. Given the narrowness of the Footpath, it was inevitable that if people were walking in a group, some would have to walk at the side of it. Nonetheless, children knew that they were not to go off the Footpath when stock was in the Field.

4.6 She recollected the coach house that was recently destroyed by fire being on the Land in the location shown on the October 2005 photographs 9 and 10 produced by the Objector,<sup>5</sup> and the front of that building was as shown on photograph 1 with a sign on the door with the wording as shown on photograph 2.<sup>6</sup> That sign was erected by Mr Holmes and stated "THIS IS A PRIVATE FIELD PLEASE KEEP TO THE PATH AND PLEASE KEEP YOUR DOG ON A LEAD THANK YOU". It was obvious by that sign that Mr Holmes was informing people to keep to the Monks Trod Footpath, and she indicated that her own experience was that people did keep to the Footpath for the most part. In her view, that was largely due to there being a good Footpath through the Land. She did not recall Mr Holmes minding if children ran off the Footpath, though.

---

amendment slip is attached.

<sup>5</sup> At OB page 117.

<sup>6</sup> At OB pages 111 and 112.

4.7 Fencing was put up along the northern boundary of the Land adjacent to the Monks Trod in February 2005. The Objector's photographs taken on 7 October 2005 show that fencing that was erected in February 2005, which included fencing turning southwards at the coach house in order to block off that gap.<sup>7</sup> Although she stated in her evidence in chief that when such fencing was initially erected, it was broken down within a few weeks and the signs disappeared, and no attempts were made to replace or repair it, she acknowledged in cross examination that as of 7 October 2005, the fencing appeared intact and "*as it is now*". Further, she accepted that she did not recall the notices on the fencing shown in the Objector's photographs<sup>8</sup> being erected and was unaware whether they had been replaced on two occasions after being taken down. However, she recalled the permanent ones being erected by Barratts in December 2005 and accepted that such signs were clear. Further, the 7 bar metal gate currently on the Land has been padlocked since it was put up in February 2005. In May 2009 after the destruction by fire and subsequent demolition of the brick building in the corner of the field, additional fencing was erected to fill the gap left by the building. That fencing was broken down within a very short period and was not repaired. The present gap in that location is where the fencing was broken and the remnants of that fencing remain on the Land. The Field has since become overgrown, thereby limiting its use.

4.8 She was the appointed Secretary of the Mayfield Residents Action Group, whilst the other Applicant, Mrs Peake, was the Chairman. There was a Committee of around 6 or 8 of the members. It formed when Barratts made a planning application to construct a pumping station on the Land. The Group ceased to formally exist after the village green Application had been made. Geographically, it mainly covered the Mayfield Road area, namely the area of the Yuill Estate, including Pembroke Way and the roads off it, and those who lived on the other side of Mayfield Road. She had written a letter to the Objector's Solicitors dated 23

---

<sup>7</sup> At OB pages 54 and 55.

October 2005 on behalf of the Mayfield Residents Action Group requesting permission to access the Land to clear litter.<sup>9</sup> That letter was written after the Application had been submitted and after the fences and notices had been put up. It was written as a matter of courtesy rather than because it was felt that permission was required. Barratts had a site compound on the Land in the location shown on the Objector's plan<sup>10</sup> during its residential development involving the extension of Shackleton Close around 2003 and 2004. However, the padlocked gate and fencing were not in situ at that time. She confirmed that "Prospect Hill" is merely the name of the road to the north and north east of the Land and not the name of an area.

4.9 **Mrs Sylvia Brewster**<sup>11</sup> has lived at 9 Canterbury Close for 27 years. Prior to that, she resided at St Andrews Road for 14 years, and before that at Falcon Terrace for over 14 years. She has 3 children who were born in 1956, 1958 and 1964. Hence, by 1985, all three of them were grown up. They played in the hedges on the Land and round the Pond. She used the Land herself throughout her occupation of each of those properties for dog walking, bird watching and enjoying the local wildlife in the Pond. She and her family frequently walked down to Ruswarp along the Monks Trod as it avoided the road. It was a popular leisure walk. Most people used the Monks Trod to get to Ruswarp. It is a very well used Footpath at all times of the year, and people use it to avoid the road. When she walked there with her children during the 1960's and 1970's, she tended to walk on the Path and her children would go a bit off the alignment of the Path. She regularly used the Field to exercise her dog from around 1983 onwards, and many use the Field now for that purpose. That use of the Land "snowballed" once the old building was removed and there was a means of access through onto the Land. She looked out for local wildlife whilst she was walking along the Monks

---

<sup>8</sup> At OB pages 53 and 54.

<sup>9</sup> At OB page 40.

<sup>10</sup> At OB page 44.

Trod, and birds were generally in the hedges alongside the Footpath and along the southern boundary hedge that she walked through after the allotment use had ceased in that field in 1998. She could see the Pond from the Monks Trod. She had also walked round the Pond. There has never been any restriction on her use of the Land and the Field was not fenced off until 2005.

4.10 She recalled goats being on the Land until Mr Holmes ceased using it around 1996. She did not use the Land for dog walking when the goats were out. She would go onto the Land to talk to Mr Holmes, but she would walk along the Monks Trod with her dog. She indicated that she would “*definitely not*” let her dog off the lead when goats were on the Land and she would not walk into the Field when animals were in it. She never saw anyone go onto the Field when animals were in it. She recalled the sign on the old building requesting people to keep to the Footpath, and she indicated that she more or less complied with it. She regarded the whole of the Yuill Estate as the community she lived in.

4.11 **Mr Roger Pickles**<sup>12</sup> has lived at 6 Anchorage Way for 34 years since 1977. Prior to that, he resided at Sleights for 5 years. He used the Land throughout that period for activities which included walking along the Footpath between Whitby and Ruswarp, exercising his dog, playing with children, enjoying the wildlife in the Pond and teaching school children about the historical features of the Land. There had never been any restrictions on his use of the Land.

4.12 More specifically, he exercised his dog on the Land between around 1988 and 2002, although he usually exercised his dog on the lower fields rather than on the Application Land. He used the Monks Trod to go to and from town, and if the dog was with him it would

---

<sup>11</sup> Her two witness statements are at AB pages 8 and 9.

normally be on the lead then. He had seen dogs on the Field. He had two children, and his youngest was born in 1979. They used the Land to get to and from school via the Monks Trod. They attended Airy Hill Primary School, then Caedmon School and then Whitby Community College. They also played on the Land, particularly around the Pond. Between 1972 and 1994, he taught history at Whitby School. He took a class of schoolchildren onto the Land approximately once a year to explain the features of history that were apparent in the local landscape, such as the medieval ridge and furrow in the Field, the history of the paved Trod and the historical value of the Pond. They would congregate near to where Mr Holmes's building had been and then walk along the Trod to the Pond. The children would not walk far onto the Field, but if there was a group of youngsters, they would not walk in single file but would encroach onto the Field a little. They would also encroach a little further to view the ridge and furrow. The Pond is close to the Trod and so they would go to the edge of the Pond via the Trod. He did not seek Mr Holmes's permission in advance of such school trips. He never saw Mr Holmes on the Land during such a trip.

4.13 **Mrs Christine Vasey**<sup>13</sup> has lived at 7 Prospect Hill since 1975. She has four daughters born in 1965, 1967, 1969 and 1971. In 1985, the youngest would have been 14, and the elder three would have stopped playing on the Land by then. She discovered the Land in 1974 when walking around the area whilst renting a property on Mayfield Road. Her family has used the Land for activities including dog walking, bird watching, picnics, blackberry picking, pond watching, observing wildlife, tree climbing and collecting conkers. There has never been any restriction on their use of the Land.

4.14 They have always had a dog since 1975. Prior to 1996, she recalls Mr Holmes's goats being on the Land, and subsequently sheep for a short period. She would not go onto the

---

<sup>12</sup> His witness statement is at AB page 10.

Land if the goats were in the Field and she would keep her dog on a lead. Mr Holmes would shout if her dog was not on a lead. They were keen bird watchers which mainly took place around the Pond. Her daughters went onto the Field for picnics, but that was prior to 1985. She knew Mr Holmes, and he never said anything to them. However, if his goats were in the Field, her children would have kept off the Land. He was always on the Field when his goats were out, and he would shout at anyone if their dog was not on a lead. She also noted that she was aware of him occasionally having indicated to individuals that they should not be on the Field. There was a blackberry hedge along the southern boundary of the Land, along the eastern boundary and also along the Monks Trod. They would go onto the Land a few times a week during the season to pick blackberries and did not then stick to the Path. They had also seen deer on the Land. The only conker tree on the Land was the one near to the Pond. She recalled the sign on Mr Holmes's shed. On occasion, she did not comply with it. She acknowledged in cross examination, though, that she was an exception in that regard from others who had given evidence. She remembered the fencing and notices being put up in 2005 and that such fencing served to prevent access onto the Land. It was initially a huge disincentive to access the Land, but it was swiftly breached and she indicated that it was clear that wire cutters had been used to cut it. The Land then continued to be used again, especially by dog walkers. She was aware of one attempt to repair the fence, but it was not repaired properly and was soon pushed over again.

4.15 **Mr David Vasey**<sup>14</sup> has also lived at 7 Prospect Hill since 1975 with his wife and four daughters until they left home. He is a practising G.P. He accessed the Land from the northern most point from where the brick barn was demolished and followed the path down to the former allotments. When that barn was demolished, it left a gap of approximately 15 feet. A wooden fence was then erected. It was that wooden fence which was breached shortly

---

<sup>13</sup> Her two witness statements on behalf of the Vasey family are at AB pages 23 and 24.



after its erection. The metal fence which had been erected in February 2005 and is shown on the Objector's photographs was still in situ in October 2005 as shown on the photographs of that date.<sup>15</sup> That same metal fencing was still in place as of June 2007, and remains in situ today. That fencing has not been breached since it was erected in February 2005. The building was demolished the following day when the gap was closed by a wooden post and rail fence as shown on the photographs produced by Mrs Spence. It was that wooden fence which was damaged. The worn track down the eastern boundary of the Land developed after that opening had been created from the demolition of Mr Holmes's building.

4.16 Prior to 2005, there was no impediment to accessing the Land. Between February 2005 when the Land was fenced and June 2007 when the building was demolished, he accessed the Land only infrequently as it involved climbing over a locked gate near to the Pond which he described as not being an easy access. He has used the Land more frequently over the last 9 years; prior to that, he mainly used it at weekends. During the weekends, he mainly used the Footpath and may have deviated from it in order to inspect the Pond. There was a specific route that dog walkers tended to follow on the Land. Over the latter years, he had frequent encounters with people with dogs on the Land. He often went bird watching on the Land. He recalled a site compound being on the Land. When it was removed, the diverted path that had been used still continued to be used prior to the fence being erected in 2005. It remained a beaten path even after 2005. That path was used again when the wooden fence was breached. The Land was cleared only the week before the Inquiry took place and looked as though it had been mown.

---

<sup>14</sup> He had provided the update to the Vaseys' witness statement at AB page 24.

<sup>15</sup> At OB page 55.

4.17 **Mrs Carole Holmes**<sup>16</sup> resides at 4 Waterstead Crescent in Whitby where she has lived since 2004. Prior to that, she resided at 23 Prospect Hill for 30 years between 1974 and 2004. She has 4 children born in 1959, 1960, 1962 and 1964. By 1985, her youngest child was 21 years old. She also has grandchildren born between 1977 and 1981 who come to stay with her about once a month, but they do not live locally. She has used the Land since 1974 particularly for dog walking, bird watching, blackberry picking, watching wildlife, having picnics and playing with her children.

4.18 She had a dog from 1974 onwards until the late 1990's which she walked on the Field. She knew Mr Holmes well, and his goats were never out on the Land without him being close by. They were not out all the time, though. He kept goats on the Land until around 1996, and then he had sheep on the Land for a short period. Sometimes she would just walk along the Monks Trod; other times, she would walk around the perimeter of the Field, especially when blackberries were in season. Others would take that particular route round the perimeter of the Field too. She had her dog on a lead when she was on the Field, and if she saw Mr Holmes on such occasions, he was fine. When the goats were out, people generally kept their dogs on a lead. She indicated that he would shout at those who let their dogs loose on the Field or at children who were on the Field unaccompanied by an adult. He was concerned about his goats and that litter would not be left. However, she never saw anyone herself on the Field with their dog off its lead when the goats were out, although many local people still used the Land at those times. She was aware of the sign on Mr Holmes's building,<sup>17</sup> and agreed that it was clear what the sign meant, namely that he did not want anyone to have their dog off a lead when stock was in the Field. She also acknowledged that she and others using the Field were ignoring a clear sign that they should keep to the Footpath. Nonetheless, she pointed out in re-examination that the sign could not be read from

---

<sup>16</sup> Her two witness statements are at AB pages 21 and 22.

any distance away as shown on the Objector's photograph.<sup>18</sup> She recalled a previous sign being on the building which had the word "Field" mis-spelt. She was of the view that Mr Holmes did not particularly enforce the point that the Field was private as sometimes people would approach him on the Field to look at his goats. There was a grassy area on the Land where she and her family would picnic, but they ceased that activity before her youngest left home. She was no longer using the Land by 2005. After the building compound had been on the Land, the condition of the Land was so bad that she no longer wished to go there. There have never been any restrictions on her use of the Land. She knows the area as "*the Prospect Hill/Mayfield Road area*".

4.19 **Mr J. Sullivan**<sup>19</sup> also resides at 4 Waterstead Crescent where he has lived since 2004. Prior to that, he resided at 23 Prospect Hill for 7 years from 1997, and he has lived in Whitby since 1970. He has used the Land quite regularly from 1997 onwards. Before that, he used it up until 1978 when he was running a pub. He then went to live in Church Square in West cliff. He first started to use the Land when he was told about the walk to Ruswarp which he did on Sunday afternoons with his dog. He walked along the Footpath down to Ruswarp. He did not take much notice of the Field at that time, but he recalls seeing two children throwing ball to each other on the Field. He subsequently threw a ball for his dog in the Field for around 5 or 10 minutes during his morning walk to buy a newspaper as he walked along the Footpath, apart from when the goats or any other animals were out. He has also used the Land for taking his grandchildren on walks to Ruswarp, gathering conkers and watching wildlife in the Pond. His grandchildren played all over the Field, picking daisies, and they enjoyed seeing the goats. There have never been any restrictions on his use of the Land. He

---

<sup>17</sup> Shown on the photograph at OB page 112.

<sup>18</sup> At OB page 111.

<sup>19</sup> His two witness statements are at AB pages 17 and 18.

was involved with clearing the Pond out, and he was involved in the successful objection to the development of the Land for a pumping station.

4.20 **Mr Rodney Nattris**<sup>20</sup> has lived at 4 Shackleton Close since 1978. The Estate on which he lives was built on part of Prospect Farm. There is a children's play area on the Yuill Estate, but there are no shops or other facilities. He would describe where he lives as "land at Upper Bauldbyes". He has 2 children born in 1967 and 1969, who were aged 18 and 16 in 1985. However, they would still play out on the Land at that age. His grandchildren were born in the mid to late 1990's and live locally. They go onto the Land with him when he takes the dogs. He has used the Land from 1978, particularly for exercising and training his dogs; educating his children and grandchildren by watching frogs and newts round the Pond; collecting conkers from round the horse chestnut tree just to the north of the Pond; and walking. There have never been any restrictions on his use of the Land.

4.21 Between 1985 and 2005, he exercised his gun dogs on the Land, having obtained the verbal permission of Mr Holmes to do so. He stated that he sought such permission as the Land was not his and he felt that he should not just go onto such land. He taught his dogs to walk in a straight line which he could not do on the Footpath. There was no fence along the Footpath at that time, but he continued to use the Land for that purpose after the fence went up in February 2005, accessing the Land from the former allotment field which was used for allotments until around 1998. He got to know Mr Holmes quite well, and pointed out that "*he used to patrol the area quite strictly*". Children played in the area regularly, especially round the Pond, and they also used the Field, as did his children. Mr Holmes did not object provided they behaved themselves. However, if walkers were wandering all over the Land, that would

---

<sup>20</sup> His two witness statements are at AB pages 11 and 12.

be a problem when there was stock on the Land. Mr Holmes would challenge people if they let their dogs off the lead when goats were around.

### **Written Evidence in Support of the Application**

4.22 In addition to the evidence of the witnesses who appeared at the Inquiry, I have also considered and had regard to all the written evidence submitted in support of the Application in the form of additional witness statements and a petition which are contained in the Applicants' Bundle.

4.23 However, whilst the Registration Authority must also take into account all such written evidence, I and the Authority must bear in mind that it has not been tested by cross examination. Hence, particularly where it is in conflict with oral evidence given to the Inquiry, I have attributed such evidence less weight as it was not subject to such cross examination.

## **CASE FOR THE OBJECTOR**

### **Oral Evidence Objecting to the Application**

4.24 **Mr John Holmes**<sup>21</sup> is the son of Mr George Harold Holmes, who rented the Land from Mr George Bagshawe, the owner of the property known as Upper Bauldbyes, for agricultural purposes from the mid 1950's until 1996 and who sadly died some 2 years ago. Mr John Holmes lived with his parents at 32 Prospect Hill until 1993, and was then at home with them during his holidays from university over the next 3 years until he left home in August 1996. He still visited them then most days as his parents kept his dogs in the stable block. He would take his dogs out for about 15 miles per day for exercise, and he was on the

---

<sup>21</sup> His witness statement and exhibits are at OB pages 19-27. He also produced a supplementary witness statement dated 22 July 2011 at the Inquiry.

Footpath regularly then. He had dogs until 2006. He continues to visit his mother most days who still lives there.

4.25 Initially, the Land was used by his father to keep ponies and then goats. When ponies were in the Field, the houses to the west had not been built. Livestock was also occasionally brought onto the Land in the autumn, which practice continued until the late 1980's. Each year during the summer, the grass was grown and it was then cut, dried and baled. Some of the bales of hay were sold and others were stored and used to feed the livestock. The hay cropping took place every year up until 1996. His father also rented another field to the north identified on the plan at JAH1 which he used for the same purposes of grazing and cutting hay.<sup>22</sup> He assisted his father in maintaining the Land. During the period his father had goats on the Land, which continued up until 1996, they were taken out onto the Field twice a day throughout the year save when it was raining. They would be out in the Field for 1 or 2 hours at a time and his father would always be around, such as in his allotment, keeping his eye on them. His father gave up his occupation of the Field around 1996. In the north east corner of the Land there was a brick shed that was occupied by his father for the animals and to store materials. His goats were kept indoors at night.

4.26 He was aware that people would walk along the Footpath, or along the separate worn track from the north east corner of the Land down along the railway fencing to a gate in the south eastern corner that was for use by allotment holders. That gate was approximately 8 feet wide for vehicular access with a separate kissing gate at the side. There had always been a worn path down the eastern boundary of the Land leading to the allotments. If someone was on the Footpath or its immediate environs, his father would not object. However, he was not aware of any other use of the Land by the local community. The hedges around the Land are

hawthorn and so have no blackberries on them. He never witnessed anyone picnicking on the Land or playing ball games on the Land. The conker trees were not in the Field but were alongside the track leading northwards from the Field. He did not see people walking on the Field generally. If his father saw anyone on the Land and off the Footpath, he would shout across or walk across to inform the individual where the right of way was as he did not want his livestock disturbed by dogs chasing them. His father adopted that same approach when the ponies were in the Field and when hay making was taking place. In relation to the latter, his father was concerned to stop people from trampling over the crop and dogs from fouling on it. He would not have tolerated people playing ball games on the Field. If his father had seen blackberry picking on the Land, he would have challenged such people. He accepted in cross examination that he was unable to say that his father told everyone to get off the Field if they were not on the Footpath as he was not on the Land all day every day. He could only challenge them when he saw them, which he did. His father did not regard the problem with people trespassing as such as to justify fencing the Land from the Footpath. He put up signs and told people to leave. He recalled the two signs that were put up by his father on the building during the 1980's when his father was a tenant of the Land and were maintained in position while his father was a tenant.<sup>23</sup> They were put up to tell people to stick to the Footpath. He was on the Land on a fulltime basis from when hay was being cut around July until it was baled. In addition, he was responsible for looking after his father's animals when he was away on holiday, which he did annually after his retirement in the mid 1980's.

4.27 The various gates that were on the Land are identified on his plan at JAH1.<sup>24</sup> There was a vehicular gate in the south west corner near to the Pond that was used to take manure or machinery onto the Field and was also used by allotment holders. That gate was kept

---

<sup>22</sup> At OB page 25.

<sup>23</sup> They are shown in the photographs at OB pages 111 and 112.

<sup>24</sup> At OB page 25.

locked with a chain over it. There was a further vehicular gate in the south eastern corner of the Land at the southern end of a worn track used by allotment holders together with a kissing gate for pedestrian access to the allotments. They did not provide public access, but only access for allotment holders. In relation to fencing, he found that the wooden fencing at the north east corner of the Land had been broken and the wire fencing had been cut during his visit to the Land on 17 July 2011. That fencing had all been intact when he had last visited the Land in February 2011, and there were freshly damaged pieces of wood on the ground.

4.28 **Mrs Joan Pickering**<sup>25</sup> has lived at 29 Guisborough Road since 1983, which Road is an extension of Mayfield Road to the west. She worked for Mr Bagshawe, a Solicitor who lived at Upper Bauldbyes, from 1959 until 1963, and then again from 1969 to 1991 as his PA and doing probate casework for him. She also collected rent from the allotment holders for him. She worked for him on a private unpaid basis between 1991 and 1994. Upon his death, she became and remains a trustee of his estate. There are three trustees of the estate which is held in trust for Mrs Bagshawe's daughter. She confirmed that there are no known intentions as to the future use of the Land, and no-one currently has an option on the Land.

4.29 Mr Holmes had a tenancy of the Land and kept goats on it. They were out on the Land most of the time grazing on the grass, and he was on the Land daily. He also had allotments and so was in the area most of the time. He had use of the stables and garage for storage of his tools and equipment. It was well known that you could not go onto the Land or let your dog off its lead as Mr Holmes would shout at you. He would challenge anyone who strayed off the Path or its immediate environs. Children were never allowed to go into the Field. It was a "*known thing*" that you did not go into "*that Field*". She noted that she was taught that as a child and she so taught her children. On one occasion when she had an allotment, she



came out of the gate by the Pond and her daughter let her dog off the lead and ran after it over the Land causing Mr Holmes to give her a lecture. She disagreed with Mr Nattris that Mr Holmes only challenged people if they were misbehaving, such as if their dogs were off the lead. He would also challenge them if they went onto the middle of the Land, even if their dog was on a lead. He was happy for people to remain on or just off the Monks Trod. She spoke to him about the Application in June 2007 and his use of the Land, and provided a note of their telephone conversation at JP3.<sup>26</sup> Upper Bauldbyes was sold in 1996, and thereafter Mr Holmes's tenancy came to an end. Once he had left, people continued to use only the Footpath.

4.30 She has seen children collecting conkers from the horse chestnut trees which are situated outside the Land, and people looking at the Pond from the Footpath. She has never seen anyone picking blackberries from the Land, and there were none in the hedgerow between the Land and the former allotment site unless they have grown up since the 1940's and 1950's. She has never seen anyone picnicking on the Land nor any other activities taking place on the Land. The only dog walking she saw on the Land until around 2000 was along the Monks Trod which is very well used. When she had an allotment up until 1984, she accessed the former allotment land via the kissing gate at the north eastern corner of the Land and then walked down the eastern boundary of the Land along the worn path to the gate in the south eastern corner which led to the allotments. That path went nowhere other than to the allotments gate. There was a "Private" sign on that gate. Most of the people using that worn path were going to the allotments and were entitled to use it. They paid rent to the Bagshawe Estate for the allotments. Mr Holmes would challenge anyone who used that path if they were not an allotment holder. When the fencing was erected in February 2005, that path stopped

---

<sup>25</sup> Her witness statement and exhibits are at OB pages 31-46. She also produced a supplementary witness statement dated 20 July 2011 at the Inquiry.

<sup>26</sup> At OB page 42.

being used. Between 1985 and 1996, she went to the Land infrequently, although she had a dog then until 2002 and walked along the Monks Trod 2 or 3 times per week. From 1996, she was there approximately once a month. She is still involved with the allotments and goes regularly to inspect them on behalf of the Trustees.

4.31 In 1998, the allotment holders moved from the land to the immediate south of the Field to the present allotment site. After then, in around 1999/2000, a gap in the hedge was created into the old allotment site from which people could then access the Land. She identified that gap as being on the western boundary of the former allotment site near to its south western corner. It was from then onwards that people started to walk their dogs on the Land and to use the Land more generally. An allotment holder put some wire fencing up to close the gap in the hedge around 2001/2002, but it was torn down within a couple of hours. There were quite a few attempts to close the gap with fencing, but it was always removed. She was informed about that in her capacity as trustee. Since the allotments moved, a number of people have said to her that they feel that they have a right to use the Land and they have used it since then. In 2003, the Trustees sold land to Barratt Homes for the development of Shackleton Close which they had obtained planning permission for in May 2002. Barratts used part of the Land as a site compound whilst Shackleton Close was being built, having obtained the requisite licence to do so.<sup>27</sup> The Footpath had to be diverted round the compound into the Field for an 18 month period as a result.

4.32 She was responsible for organising the fencing in February 2005 which had the effect of enclosing the Land that had previously been unfenced. Barratts put up notices shortly after the fencing had been erected. After the fencing had been erected, there was no physical access to the Land other than by climbing over the fence. That position continued until 2007

when the garage was burned down and subsequently demolished. She received a letter from Mayfield Residents Action Group dated 23 October 2005 seeking permission to access the Land in order to clear litter.<sup>28</sup> Following the demolition of the garage, the Land was open to access for a time from that point, but it was subsequently fenced off. That fencing has recently been damaged.

4.33 Part of the adjacent housing estate was built on land that previously comprised Mayfield Farm, including Shackleton Close and Canterbury Close. Further to the south was Prospect Hill Farm on which the bottom part of the estate was built, including Anchorage Way. All the estate became known as the Yuill Estate. She pointed out that “*everyone in Whitby knows what is referred to as the Yuill Estate*”. Prospect Hill and Mayfield Road are not part of the Yuill Estate. The Yuill Estate was built in the late 1970’s save for the recent Shackleton Close extension. Therefore, there was then an influx of people into the area, including young families. There is a play area on the Estate near to Shackleton Close and another one off Canterbury Close.

4.34 **Mrs Barbara Drummond**<sup>29</sup> is the youngest daughter of Mr Edward Bagshawe, the eldest of the three Bagshawe brothers. Her Uncle, George Bagshawe, became the owner of Upper Bauldbyes in 1947 following the death of her Grandmother. Although she has never lived in Whitby, she spent many weeks staying at Upper Bauldbyes with her family. As a child, she would sometimes visit for the entirety of the summer holidays. Subsequently, she visited with her husband and two children, born in 1963 and 1964, every summer up until 1994 for around a fortnight. Thereafter, she visited only rarely. She recalled walking along the Monks Trod as a child, and looking at the Pond from the Monks Trod. She also walked

---

<sup>27</sup> That is evident from the letter at OB page 46.

<sup>28</sup> The letter is at OB page 40.

<sup>29</sup> Her witness statement is at OB pages 8-12.

along it when she visited as an adult when she would walk her Uncle's dog during the evening. The Land adjacent to the Monks Trod was known to her as "the goat field" as Mr Holmes kept his goats there. He was proud of his goats and enjoyed showing them to people. There were kissing gates at each end of the Monks Trod and hedging round the boundaries of the Land so that the goats were in a controlled area. She did not recall horses being on the Land. Although her Uncle owned the Field, the family were never allowed to play in it; they were told to "stick to the slabs" in the grounds of Upper Bauldbyes. She never saw people using the Land other than the Footpath when she visited as a child and subsequently as an adult. She referred to a letter dated 18 June 2007 she sent to the Trustees' Solicitors setting out a summary of an e-mail sent to her by her cousin who lived at Upper Bauldbyes addressing her recollection of the use of the Land.<sup>30</sup> Her cousin was born in June 1952, and she left Upper Bauldbyes around 1976 but visited fairly regularly thereafter. She no longer had the e-mail, although she had it when she wrote the letter.

4.35 The Land was owned by Mr George Bagshawe and then by his estate. She became a Trustee of the Trust owning the Land, and ownership of the Land remains vested in the Trustees. The Land has recently been fenced off by the Trustees. At no time has any permission been given for picnicking on the Land, sports on the Land or any other activities on the Land. Walkers and dog walkers were only permitted to use the Monks Trod. That was also the position for members of the Bagshawe family.

4.36 **Miss Rachel Williams**<sup>31</sup> is a university law lecturer who previously practised as a Solicitor. She was employed by the Trustees' Solicitors, BHP Law, between 2004 and 2007 and had conduct of the relevant legal file between September 2005 and July 2007.

---

<sup>30</sup> At OB page 106.

4.37 She visited the Land on 7 October 2005 during working hours to erect notices on behalf of the Trustees. The reason they were erected was because the Application to register the Land as a town or village green had been received. She had taken over the file in September 2005, and it was her recommendation that it would be advisable to also erect signage on the fencing to make the position totally clear. She attached 8 notices to the recently erected fence adjacent to the Monks Trod in the positions marked on the plan at Exhibit RW1 which stated “*Private Property Access is prohibited without the express consent of the owner*”.<sup>32</sup> They made it clear that the area was private and people were only permitted to use the Footpath. She also took photographs of the notices in situ on 7 October 2005 which are at Exhibit RW2.<sup>33</sup> She observed that the Land was completely fenced in on its north western boundary adjacent to the Monks Trod and that such fencing was intact as shown on her photograph at Exhibit RW3.<sup>34</sup> The Land was bounded on its other sides by thick hedgerow, and so appeared to her to be entirely secure. She saw no one using the Land and no evidence that people had been using the Land, such as signs of litter. She also took photographs of the garage on the Land with a sign attached.<sup>35</sup> Subsequently, Barratt Homes erected more permanent wooden signs on the Land, initially around 31 October 2005 in an incorrect location on the northern side of the Monks Trod rather than its southern side, and then it was moved to the correct location around 20 December 2005.<sup>36</sup> They were instructed to use the same wording as the temporary signs she erected, although she has not seen them. She only visited the Land on the one occasion on 7 October 2005.

---

<sup>31</sup> Her witness statement and exhibits are at OB pages 47-61.

<sup>32</sup> Plan is at OB page 50.

<sup>33</sup> Photographs are at OB pages 52-55.

<sup>34</sup> At OB page 57.

<sup>35</sup> At OB page 59.

<sup>36</sup> The invoice for the signage is at OB page 61.

4.38 **Mr Richard Harland**<sup>37</sup> has lived at 7 Anchorage Way since 1986, having lived previously near to Robin Hood's Bay. Anchorage Way is part of the Yuill Estate, which is so known as Yuill were the main building contractors. The houses had been built around 15 years when he moved in.

4.39 He has known the Land since 1953. At that time, he visited the Land mainly over the summer period at a weekend, albeit not every weekend. He would collect horses and equipment from the Land. He also visited the Land in his capacity as Highway Superintendent for North Yorkshire County Council when he was required to inspect footpaths, fences, kissing gates and other highway features. One of his workers would report any damage, and then he would attend on site to inspect the damage and determine who could fix it and arrange the repair. He covered some 1800 miles of rights of way in that capacity. In addition, his late wife used the Monks Trod virtually every day.

4.40 He recalled Mr Holmes renting the Land and grazing his goats on it. In the spring, Mr Holmes took the goats out of the Field and put them into a paddock, which was later sold to Barratts and became the extension of Shackleton Close. When the goats had been taken off the Land to enable the grass to grow, Mr Holmes applied fertiliser to the grass and later in the year it was cut and baled. Thereafter, the goats were put back into the Field. Sometimes they were tethered and at other times they were not. Save when the weather was poor, the goats were out in the Field most days. Mr Holmes ensured that the gate to the Field was always locked to prevent the goats from escaping. He never allowed gaps to occur in the fencing and would repair them if necessary to ensure that his goats were kept secure. That particularly occurred on the southern boundary where the goats would press down on the wire. He recalled the building on the Land used by Mr Holmes and that Mr Holmes put up his own

---

<sup>37</sup> His witness statement is at OB pages 13-18.

sign on that building in order to keep people off the Land. Fencing was erected at the beginning of 2005 along the Footpath.

4.41 He was also an allotment holder from 1988 onwards. The allotments moved to their current position in 1998. He has attended his allotment every day since his retirement in 1993/1994. He pointed out that since he has known the Land, the only means of access to it was via the two kissing gates at either end of the Footpath and via the field gate from the track. That gate was always locked with a padlock during Mr Holmes's occupation of the Land, and he kept the key in his waistcoat pocket. As an allotment holder, he had to obtain permission to go onto the Land with a vehicle to take manure onto the allotments. Access to the Field was only by permission from Mr Holmes. The Land has only been used for agricultural purposes, and has never been used for picnicking. The only dog walking on the Land has been on Monks Trod. Mr Holmes challenged people more or less whenever he saw anyone straying off the Footpath, particularly when they had a dog, telling them to go back onto the Path and to put their dog on a lead. He would do that even if he was in the allotments at the time. He saw him challenge people, particularly when his goats were on the Land. He also saw him challenge children playing on the Field, particularly when the hay was growing and being baled. Mr Holmes did not "turn a blind eye". Even allotment holders were only allowed to cross the Field when the grass had been cut, and they kept to the path along the eastern boundary of the Land which they had permission to use and which was their means of access to the allotments via a gate and kissing gate. There was a sign on the field gate near to the Pond saying "Whitby and District Allotment Association Members Only". He also used that as one of his access routes, and his route across the Field is shown by dotted lines on the plan at JAH1.<sup>38</sup>

4.42 **Mr John Morley**<sup>39</sup> has farmed land in Whitby all his working life and he retired around 1991. He has known the Land for most of his life, both as a farmer and in his retirement. He farmed the Land and also the field where the allotments are currently. He recalled that Mr Holmes, a retired policeman, kept goats on the Land for many years. He used to bale the hay for Mr Holmes after it had already been cut around the late 1980's. That only took about an hour or two. He would come to the Land once a year to bale the hay. He did not take the bales away. The Land was fenced to prevent the goats from escaping. He did not recall any other person having access to the Land without Mr Holmes's permission apart from people using the Footpath. There was a sign on the building on the Land telling people to keep off the Field. He was not aware of the Field ever being used for picnicking or dog walking or any other activity other than keeping livestock.

### **Written Evidence Objecting to the Application**

4.43 In addition to the evidence of witnesses who appeared at the Inquiry, I have also considered and had regard to all the written evidence submitted in support of the objection to the Application in the form of additional witness statements and documents which are contained in the Objector's Bundle.

4.44 However, in relation to such written evidence, I refer to and repeat my observations in paragraph 4.23 above that whilst such written evidence must be taken into account, I and the Registration Authority must bear in mind that it has not been tested by cross examination. Hence, particularly where it is in conflict with any oral evidence given to the Inquiry, I have attributed such evidence less weight as it was not subject to cross examination.

### **THIRD PARTY EVIDENCE**

---

<sup>38</sup> At OB page 25.



4.45 During the Inquiry, I invited any other persons who wished to give evidence to do so. There were no such other persons who gave any additional evidence.

## **5. THE LEGAL FRAMEWORK**

5.1 I shall set out below the relevant basic legal framework within which I have to form my conclusions and the Registration Authority has to reach its decision. I shall then proceed to apply the legal position to the facts I find based on the evidence that has been adduced as set out above.

### **Commons Registration Act 1965**

5.2 The Application was made pursuant to Section 13 of the Commons Registration Act 1965, prior to its repeal on 6 April 2007. The Commons Registration Act 1965 provided for each registration authority to maintain a register of town and village greens within its area. Section 13(b) of the 1965 Act provided for the amendment of the register to take place where any land became a town or village green. Although that provision has been repealed, by virtue of Article 4(4) of the Commons Act 2006 (Commencement No 2, Transitional Provisions and Savings) (England) Order 2007,<sup>40</sup> where an application is made to a registration authority before 6 April 2007 pursuant to Section 13(b) of the 1965 Act for the amendment of the register of town or village greens as a result of any land having become a town or village green, and the registration authority does not determine the application before that date, the registration authority must continue to deal with the application on and after 6 April 2007 as if section 13(b) of the 1965 Act had not been repealed. Therefore, as the Application was made prior to that date, it must be determined pursuant to that legislation.

---

<sup>39</sup> His witness statement is at OB pages 28-30.

<sup>40</sup> SI 2007/456.

5.3 “Town or village green” is defined for the purposes of Section 13(b) by Section 22(1) in three ways, usually referred to as class (a) statutory greens, class (b) customary greens and class (c) prescriptive greens. In this case, if the Land is a town or village green, it can only be because it is a class (c) green.

5.4 The definition of a class (c) green in Section 22 of the Act was amended by Section 98 of the Countryside and Rights of Way Act 2000, so that a class (c) green is now defined for the purposes of the Application in Section 22(1A) of the 1965 Act as:-

*“...land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right and either (a) continue to do so, or (b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions.”*

5.5 No “prescribed provisions” have been made under subparagraph (b), so that part of the definition is not operative.

5.6 As to subparagraph (a), the House of Lords in ***Oxfordshire County Council v. Oxford City Council***<sup>41</sup> held that the requirement that qualifying use should “*continue*” was to be construed as meaning that the qualifying use had to continue up to the date of the application for registration of land as a green, and not up to the date of registration.

5.7 Therefore, for the Application to be accepted, it must be shown that:-

- (i) the Application Land comprises “land” within the meaning of the 1965 Act;
- (ii) the Land has been used for lawful sports and pastimes;

- (iii) such use has been for a period of not less than 20 years;
- (iv) such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;
- (v) such use has been as of right; and
- (vi) such use has continued to the date of the Application for registration.

### **Burden and Standard of Proof**

5.8 The burden of proving that the Land has become a village green rests with the Applicant for registration. The standard of proof is the balance of probabilities. That is the approach I have used.

5.9 Further, when considering whether or not the Applicant has discharged the evidential burden of proving that the Land has become a town or village green, it is important to have regard to the guidance given by Lord Bingham in *R. v Sunderland City Council ex parte Beresford*<sup>42</sup> where, at paragraph 2, he noted as follows:-

*“As Pill LJ. rightly pointed out in R v Suffolk County Council ex parte Steed (1996) 75 P&CR 102, 111 “it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green ...”. It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision makers must consider carefully whether the land in question has been used by inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years’ indulgence or more is met.”*

---

<sup>41</sup> [2006] 2 AC 674.

<sup>42</sup> [2004] 1 AC 889.

Hence, all the elements required to establish that land has become a town or village green must be properly and strictly proved by an applicant on a balance of probabilities.

### **Statutory Criteria**

5.10 Caselaw has provided helpful rulings and guidance on the various elements of the statutory criteria required to be established for land to be registered as a town or village green which I shall refer to below.

### **Land**

5.11 Any land that is registered as a village green must be clearly defined so that it is clear what area of land is subject to the rights that flow from village green registration.

5.12 However, it was stated by way of *obiter dictum* by the majority of the House of Lords in *Oxfordshire County Council v. Oxford City Council*<sup>43</sup> that there is no requirement that a piece of land must have any particular characteristics consistent with the concept of a village green in order to be registered.

### **Lawful Sports and Pastimes**

5.13 It was made clear in *R. v. Oxfordshire County Council ex parte Sunningwell Parish Council*<sup>44</sup> that “*lawful sports and pastimes*” is a composite expression and so it is sufficient for a use to be either a lawful sport or a lawful pastime. Moreover, it includes present day sports and pastimes and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and children’s play.

---

<sup>43</sup> [2006] 2 AC 674 per Lord Hoffmann at paragraphs 37 to 39.

<sup>44</sup> [2000] 1 AC 335 at 356F to 357E.

5.14 However, that element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way. In **R. (Laing Homes Limited) v. Buckinghamshire County Council**<sup>45</sup>, Sullivan J. (as he then was) noted at paragraph 102 that:-

*“it is important to distinguish between use which would suggest to a reasonable landowner that the users believed they were exercising a public right of way – to walk, with or without dogs, around the perimeter of his fields – and use which would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of his fields.”*

A similar point was emphasised at paragraph 108 in relation to footpath rights and recreational rights, namely:-

*“from the landowner's point of view it may be very important to distinguish between the two rights. He may be content that local inhabitants should cross his land along a defined route, around the edge of his fields, but would vigorously resist if it appeared to him that a right to roam across the whole of his fields was being asserted.”*

5.15 More recently, Lightman J. stated at first instance in **Oxfordshire County Council v. Oxford City Council**<sup>46</sup> at paragraph 102:-

*“Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. Use of a track merely as an access to a potential green will ordinarily be referable only to exercise of a public right of way to the green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential green may be recreational use of*

---

<sup>45</sup> [2003] EWHC 1578 (Admin).

*land as a green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green).”*

He went on area paragraph 103 to state:-

*“The critical question must be how the matter would have appeared to a reasonable landowner observing the user made of his land, and in particular whether the user of tracks would have appeared to be referable to use as a public footpath, user for recreational activities or both. Where the track has two distinct access points and the track leads from one to the other and the users merely use the track to get from one of the points to the other or where there is a track to a cul-de-sac leading to, e g, an attractive view point, user confined to the track may readily be regarded as referable to user as a public highway alone. The situation is different if the users of the track, e g, fly kites or veer off the track and play, or meander leisurely over and enjoy the land on either side. Such user is more particularly referable to use as a green. In summary it is necessary to look at the user as a whole and decide adopting a common-sense approach to what (if any claim) it is referable and whether it is sufficiently substantial and long standing to give rise to such right or rights.”*

The Court of Appeal and the House of Lords declined to rule on the issue since it was so much a matter of fact in applying the statutory test. However, neither the Court of Appeal nor the House of Lords expressed any disagreement with the above views advanced by Lightman J.

---

<sup>46</sup> [2004] Ch. 253.

## Continuity and Sufficiency of Use over 20 Year Period

5.16 The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period: *Hollins v. Verney*.<sup>47</sup>

5.17 Further, the use has to be of such a nature and frequency as to show the landowner that a right is being asserted and it must be more than sporadic intrusion onto the land. It must give the landowner the appearance that rights of a continuous nature are being asserted. The fundamental issue is to assess how the matters would have appeared to the landowner: *R. (on the application of Lewis) v. Redcar and Cleveland Borough Council*.<sup>48</sup>

## Locality or Neighbourhood within a Locality

5.18 A “locality” must be a division of the County known to the law, such as a borough, parish or manor: *MoD v Wiltshire CC*;<sup>49</sup> *R. (on the application of Cheltenham Builders Limited) v. South Gloucestershire DC*;<sup>50</sup> and *R. (Laing Homes Limited) v. Buckinghamshire CC*.<sup>51</sup> A locality cannot be created simply by drawing a line on a plan: *Cheltenham Builders* case.<sup>52</sup>

5.19 In contrast, a “neighbourhood” need not be a recognised administrative unit. Lord Hoffmann pointed out in *Oxfordshire County Council v. Oxford City Council*<sup>53</sup> that the statutory criteria of “any neighbourhood within a locality” is “obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries”. Hence, a housing estate can be a neighbourhood:

---

<sup>47</sup> (1884) 13 QBD 304.

<sup>48</sup> [2010] UKSC 11 at paragraph 36.

<sup>49</sup> [1995] 4 All ER 931 at page 937b-e.

<sup>50</sup> [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.

<sup>51</sup> [2003] EWHC 1578 (Admin) at paragraph 133.

<sup>52</sup> At paragraphs 41 to 48.

<sup>53</sup> [2006] 2 AC 674 at paragraph 27.

**R. (McAlpine) v. Staffordshire County Council.**<sup>54</sup> Nonetheless, a neighbourhood cannot be any area drawn on a map. Instead, it must be an area which has a sufficient degree of cohesiveness: *Cheltenham Builders* case.<sup>55</sup>

5.20 Further clarity was provided on that element recently by HHJ Waksman QC in **R. (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v. Oxfordshire County Council**<sup>56</sup> who stated:-

*“While Lord Hoffmann said that the expression was drafted with “deliberate imprecision”, that was to be contrasted with the locality whose boundaries had to be “legally significant”. See paragraph 27 of his judgment in Oxfordshire (supra). He was not there saying that a neighbourhood need have no boundaries at all. The factors to be considered when determining whether a purported neighbourhood qualifies are undoubtedly looser and more varied than those relating to locality... but, as Sullivan J stated in R (Cheltenham Builders) Ltd v South Gloucestershire Council [2004] JPL 975 at paragraph 85, a neighbourhood must have a sufficient degree of (pre-existing) cohesiveness. To qualify therefore, it must be capable of meaningful description in some way. This is now emphasised by the fact that under the Commons Registration (England) Regulations 2008 the entry on the register of a new TVG will specify the locality or neighbourhood referred to in the application.”*

### **Significant Number**

5.21 *“Significant”* does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation,

---

<sup>54</sup> [2002] EWHC 76 (Admin).

<sup>55</sup> At paragraph 85.

<sup>56</sup> [2010] EWHC 530 (Admin) at paragraph 79.



rather than occasional use by individuals as trespassers: **R. (McAlpine) v. Staffordshire County Council**.<sup>57</sup>

### **As of Right**

5.22 Use of land “*as of right*” is a use without force, without secrecy and without permission, namely *nec vi nec clam nec precario*. It was made clear in **R. v. Oxfordshire County Council ex parte Sunningwell Parish Council**<sup>58</sup> that the issue does not turn on the subjective intention, knowledge or belief of users of the land.

5.23 “Force” does not merely refer to physical force. User is *vi* and so not “*as of right*” if it involves climbing or breaking down fences or gates or if it is under protest from the landowner: **Newnham v. Willison**.<sup>59</sup> Further, Lord Rodger in **Lewis v. Redcar** stated that “*If the use continues despite the neighbour’s protests and attempts to interrupt it, it is treated as being vi...user is only peaceable (nec vi) if it is neither violent nor contentious*”.<sup>60</sup>

5.24 “Permission” can be expressly given or be implied from the landowner’s conduct, but it cannot be implied from the mere inaction or acts of encouragement of the landowner: **R. v. Sunderland City Council ex parte Beresford**.<sup>61</sup>

### **Amendment of Applications**

5.25 In **Oxfordshire County Council v. Oxford City Council**,<sup>62</sup> the House of Lords addressed the extent to which a registration authority could amend an application. All of the

---

<sup>57</sup> [2002] EWHC 76 (Admin) at paragraph 71.

<sup>58</sup> [2000] 1 AC 335.

<sup>59</sup> (1988) 56 P. & C.R. 8.

<sup>60</sup> At paragraphs 88-90.

<sup>61</sup> [2004] 1 AC 889.

<sup>62</sup> [2006] 2 AC 674 at paragraph 61.

Law Lords found that an amendment could be made at the authority's discretion, provided that such an amendment would not occasion unfairness to an objector or any other person.

## **6. PROCEDURAL ISSUES**

### **Application to Amend Application Land**

6.1 At the outset of the Inquiry, the Applicants indicated that they sought to amend the area of the Application Land by excluding the strip of land running southwards from the westerly end of the Land. An amended "Index Map Plan" identifying the amended Application Land was supplied immediately following the close of the Inquiry as requested. The Objector stated that it had no objection to the Application Plan being so amended.

6.2 As stated in paragraph 5.25 above, an amendment to an application may be made at the Registration Authority's discretion, provided that any such amendment would not occasion unfairness to any objector. In that regard, the Objector confirmed that it had no objection to the amendment. Further, as the Application Land would be reduced rather than increased, with no additional area of land being added, it does not seem to me that any prejudice would be caused to any person in the circumstances. Indeed, I note that the evidence adduced by both Parties related primarily, and in relation to most witnesses, exclusively, to all or part of the amended area rather than also to that additional strip of land sought to be excluded.

6.3 Consequently, I recommend that it would be reasonable and appropriate for the Registration Authority to exercise its discretion to allow the amendment as sought so that the Application Land is reduced in accordance with the amended Application Plan. The remainder of this Report is written on that basis.

## **7. APPLICATION OF THE LAW TO THE FACTS**

### **Approach to the Evidence**

7.1 The impression which I obtained of all the witnesses called at the Inquiry is that they were entirely honest and transparent witnesses, and I therefore accept for the most part the evidence of all the witnesses called for each of the Parties.

7.2 I have considered all the evidence put before the Inquiry, both orally and in writing. However, I emphasise that my findings and recommendations are based upon whether the Land should be registered as a town or village green by virtue of the relevant statutory criteria being satisfied. In determining that issue, it is inappropriate for me or the Registration Authority to take into account the merits of the Land being registered as a town or village green or of it not being so registered.

7.3 I shall now consider each of the elements of the relevant statutory criteria in turn as set out in paragraph 5.7 above, and determine whether they have been established on the basis of all the evidence, applying the facts to the legal framework set out above and also to the more detailed legal position referred to below where relevant to specific issues raised. The facts I refer to below are all based upon the evidence set out in detail above. In order for the Land to be registered as a town or village green, each of the relevant statutory criteria must be established by the Applicant on the evidence adduced on the balance of probabilities.

### **The Land**

7.4 There is no difficulty in identifying the relevant land sought to be registered. The amended Application Plan shows the Land shaded in pink and is the definitive document on which the Land that is the subject of the Application is marked. The Land has clearly defined and fixed boundaries, and there was no dispute at the Inquiry nor in any of the evidence

adduced that that area of land comprises “land” within the meaning of Section 22(1A) of the 1965 Act and is capable of being registered as a town or village green in principle and I so find.

### **Relevant 20 Year Period**

7.5 Turning next to the identification of the relevant 20 year period for the purposes of Section 22(1A) of the 1965 Act, the use must continue up until the date of the Application. Hence, the relevant 20 year period is the period of 20 years which ends at the date of the Application.

7.6 Although the Application is dated 5 January 2005, there was a dispute between the Parties over whether or not that was the appropriate date of the Application for the purposes of Section 22(1A) of the 1965 Act. Three potential relevant 20 year periods were identified, namely:-

- (i) 5 January 1985 until 5 January 2005 on the basis that the latter date is the actual date of the Application, which period was put forward by the Applicants;
- (ii) 22 November 1985 until 22 November 2005 on the basis that the latter date is the date of the statutory declaration submitted in support of the Application and hence is the date of the Application becoming valid, which period was the secondary position put forward by the Objector; and
- (iii) 5 July 1991 until 5 July 2011 on the basis that the latter date is the date when a signed plan accompanying the statutory declaration was first provided to the Objector and hence is the date of the Application becoming valid, which period was the primary position put forward by the Objector.

7.7 Before considering that issue as to the correct 20 year period, I shall firstly consider the other elements of the statutory criteria with reference to each of those identified potential 20 year qualifying periods.

### **Lawful Sports and Pastimes**

7.8 From the evidence adduced in support of the Application, it is apparent that a range of activities have taken place on the Land. By far the most common activity referred to in the evidence, though, was walking on the Land, both with and without dogs. In addition, there were more limited references to activities including children playing on the Land, blackberry picking, bird and other wildlife watching, collecting conkers and picnicking. No formal activities were referred to as having taken place on the Land. Nonetheless, informal activities which are in the nature of an informal sport or informal pastime are capable of amounting to lawful sports and pastimes within the meaning of the statutory criteria. I find that each of the above activities referred to most commonly in the Applicants' evidence amount to lawful sports and pastimes for that purpose. I further accept the evidence of the Applicants and their witnesses that such activities have, as a matter of fact, taken place on the Land. Indeed, I note that the Objector acknowledges that some of those activities have taken place on the Land, at least to the extent that the Footpath across its north western boundary has been well used.

7.9 However, as noted in paragraph 5.17 above, in order for that element of the statutory criteria to be established, the Land must have been used for qualifying lawful sports and pastimes to such an extent and with such a degree of frequency throughout the relevant 20 year period to show the landowner that rights were being asserted. It is insufficient for the qualifying use to have been merely sporadic in nature.

7.10 In identifying the qualifying use, I have already found that the various informal recreational activities referred to by the Applicants were lawful sports and pastimes in principle. Nonetheless, certain of the activities relied upon in the Applicants' evidence must be discounted from the assessment of the qualifying use.

7.11 Firstly, and very significantly in this case, walking on the Land which was of such a character as would be more akin to the exercise of a public right of way must be discounted. I have set out the legal position on that issue in paragraphs 5.14 and 5.15 above. In my view, that principle has considerable implications for the Application.

7.12 Within the Land along its north western boundary is part of the Monks Trod Footpath. It is a paved and well defined Footpath leading to Ruswarp. The Monks Trod is undoubtedly a well used Footpath, as pointed out by a number of witnesses. Indeed, I note that each of the Applicants' witnesses who gave oral evidence referred to their own use of that Footpath, save for Mr Nattris. In addition, a number of signatories to the Petition<sup>63</sup> made express reference to their own use of "the Footpath". More specifically, Mrs Spence referred to herself and her family using the Footpath to access the local schools and town, as well as dog walkers using it. Mrs Brewster stated that she and her family had frequently walked to Ruswarp along the Monks Trod and it was a popular leisure walk used by people going to Ruswarp as it avoided using the road. Mr Pickles walked along the Footpath between Whitby and Ruswarp and to get to and from school with his children. Both Mr and Mrs Vasey used the Path, as did Mrs Holmes and Mr Sullivan. Although such use was not the only use of the Land made by such witnesses, it was nonetheless a material part of their use that that they each specifically referred to in their oral evidence.

7.13 I also note the consistent evidence of the Objector that the Footpath was well used. Mr John Holmes noted that he was aware that people walked along the Footpath, as his father had been who had never objected to such use of the Land. Indeed, his father erected signs specifically requesting people to keep to the Footpath. Mrs Pickering stated that up until around 2000, the only dog walking she saw on the Land was along the Monks Trod. Mrs Drummond recalled walking along that Footpath, and Mr Harland noted that the only dog walking he had seen on the Land had been on the Monks Trod, which use Mr Morley also recollected.

7.14 Indeed, given the paved nature of the Footpath making it suitable in all types of weather, and given the pleasant walk along that Footpath avoiding the roads, which route led to Ruswarp and was a convenient access to the local schools, it is not surprising that the Footpath was and remains well used. It is an attractive and safe walking route leading to local facilities and is easily accessible to the local community.

7.15 Taking all the above into account, I find that a material amount of the use of the Land involved use of that Footpath, which use was, by definition, the exercise of a public right of way. Such use must therefore be discounted from the assessment of the extent and frequency of the qualifying use of the Land for lawful sports and pastimes.

7.16 Secondly, it seems to me that a number of other uses of the Land were more akin to the exercise of a right of way than the exercise of recreational lawful sports and pastimes over a village green. Witnesses in support of the Application gave oral evidence of the use of defined tracks around the perimeter of the Field. Hence, Mrs Spence produced photographs of the worn path along the eastern boundary of the Land which she stated was used by dog

---

<sup>63</sup> At AB pages 42 to 46.

walkers as well as allotment holders, and she also referred to a defined path along the Land's southern boundary linking to the Monks Trod. She noted that such a route around the perimeter of the Land was a regular route used by dog walkers. Similarly, Mrs Holmes noted that she would sometimes walk around the perimeter of the Field, especially when blackberries were in season, and pointed out that others would take that particular route round the perimeter of the Field. Although there are no other definitive rights of way over the Land other than the Monks Trod, it is my view that walking around the perimeter of the Land would amount to a use that was more akin to the exercise of a public right of way than a recreational right over a green. Indeed, that seems to me to be the very use Sullivan J. was referring to in *Laing Homes* when he noted at paragraph 102 that:-

*“it is important to distinguish between use which would suggest to a reasonable landowner that the users believed they were exercising a public right of way – **to walk, with or without dogs, around the perimeter of his fields** – and use which would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of his fields.”*(my emphasis)

and at paragraph 108 that:-

*“from the landowner's point of view it may be very important to distinguish between the two rights. **He may be content that local inhabitants should cross his land along a defined route, around the edge of his fields,** but would vigorously resist if it appeared to him that a right to roam across the whole of his fields was being asserted.”* (my emphasis).

Thus, such uses of the Land involving walking round the perimeter of the Field should also be discounted from the qualifying use.



7.17 Further, and thirdly, it is necessary to go on to consider the extent of other activities on the Land which were merely ancillary to the exercise of a right of way and thus would not appear to the landowner to be anything more than part of the purported exercise of a public right of way. In that regard, I take into account the observations of Sullivan J. in **Laing Homes** when he noted at paragraph 103 in relation to dog walking that:-

*“Once let off the lead a dog may well roam freely whilst its owner remains on the footpath. The dog is trespassing, but would it be reasonable to expect the landowner to object on the basis that the dog’s owner was apparently asserting the existence of some broader public right, in addition to his right to walk on the footpath?”*

In relation to a dog owner straying off a footpath to retrieve his dog, he stated at paragraph 104:-

*“I do not consider that the dog’s wanderings or the owner’s attempts to retrieve his errant dog would suggest to the reasonable landowner that the dog walker believed he was exercising a public right to use the land beyond the footpath for informal recreation.”*

He also indicated that *“the same would apply to walkers who casually or accidentally strayed from the footpaths without a deliberate intention to go on other parts of the fields”*.

7.18 That issue was specifically considered by Mr Vivian Chapman QC appointed as an inspector at a non-statutory town or village green inquiry in relation to land at Radley, Abingdon, Oxfordshire which was referred to on behalf of the Objector.<sup>64</sup> He noted at paragraph 305 of his report the observations of Lightman J. in the **Oxfordshire** case set out at paragraph 5.15 above and stated:-

*“It seems to me that the heart of the guidance given by Lightman J is that all depends on whether the use would appear to the reasonable landowner as referable to the*

*exercise of a right of way along a defined route or referable to a right to enjoy recreation over the whole of a wider area of land. If the appearance is ambiguous, it should be ascribed to the lesser right, i.e. a right of way.”*

He then went on at paragraph 306, having found that the use of the tracks in question had the objective appearance of the exercise of rights of way, to state:-

*“I do not think that this perception is affected by the fact that people could and did sometimes wander off the side of path to pick blackberries, picnic, sit by the lake, watch birds on the lake and allow their children to paddle or pond-dip and their dogs to swim in the lake. To my mind, this is just the way in which an unfenced public right of way along a lakeside is inevitably used. There must be many public footpaths crossing open land where the public have stepped off the path to pick blackberries, to picnic on the banks of a lake or river or to watch wildlife. No one could suggest that this type of activity elevated the public right of way and its margins into an elongated stretch of TVG.”*

7.19 I respectfully concur with Mr Chapman QC’s observations. If footpath users step off a footpath from time to time to undertake ancillary activities to the exercise of a right of way, such as stopping to pick blackberries or to watch wildlife, or if they unintentionally walk on the margins of an unenclosed footpath rather than along its strict line, such use would not indicate to the reasonable landowner that the user was no longer purporting to exercise a right of way but, rather, the exercise of recreational rights over a wider area of land.

7.20 Applying those matters to the evidence, it is my view that a number of the activities referred to by users as having been carried out on the Land were uses that were ancillary to and an inherent part of the exercise of a right of way rather than the exercise of recreational

---

<sup>64</sup> His Report is at OB2 tab 16.

rights over the entire Land. As to blackberry picking, although the Objector suggested that the Land was bound by hawthorn hedges only, I noted a number of brambles in the hedges during my site visit. I therefore accept the evidence on behalf of the Applicants that blackberry picking has occurred on the Land. Nonetheless, given the location of the brambles around the edges of the Field, such blackberry picking would have occurred around the perimeter of the Land. That was confirmed by Mrs Holmes who pointed out that she would walk around the perimeter of the Field, especially when blackberries were in season. It seems to me that walking round the perimeter of the Land and stopping to pick blackberries is merely an incidental use to the exercise of a right of way.

7.21 Similarly, much of the activity involving watching wildlife in the Pond, which I find was in fact carried out, seems to me to have been merely incidental to the exercise of the public right of way along the Monks Trod. The Pond is located in the south western corner of the Land, adjacent to and very close to the Monks Trod. It can be seen from the Monks Trod; alternatively, it could be seen by merely stepping off the Path by a few paces prior to the erection of the fencing. The evidence confirms that much of that watching wildlife use related to the Pond was undertaken in that manner. Mrs Spence noted that she and her children would observe the Pond from the Footpath. Mr Pickles took school children to the Pond which they went to via the Trod. Mr Vasey indicated that he may have deviated from the Footpath in order to inspect the Pond.

7.22 The position was similar for other wildlife watching. Mrs Spence acknowledged that wildlife could be observed whilst walking along the Monks Trod or other worn paths around the perimeter of the Land, whilst Mrs Brewster looked out for local wildlife whilst she was walking along the Monks Trod. Indeed, given the presence of hedges alongside the Monks

Trod, and alongside the remainder of the perimeter of the Field, it would be reasonable for such wildlife watching to occur whilst walking along such paths.

7.23 Consequently, it is my view that a significant element of the use which has occurred on the Land has been referable to the exercise of public rights of way rather than to the exercise of recreational rights over the entire Land, and that such elements of the use must be discounted from the qualifying use.

7.24 In doing so, I note that there are also a number of written statements in support of the Application which refer to the carrying out of similar activities on the Land. However, in the absence of cross examination of such witnesses, it is unclear whether their references to walking are references to their use of the Footpath and other paths or to walking elsewhere on the Land, and whether or not their references to other activities are incidental to their use of the paths. Given the burden of proof on the Applicants, I cannot assume that such uses are not referable to the exercise of public rights of way.

7.25 Having discounted such uses, it is my view that the evidence establishes only a limited amount of qualifying use of the Land for lawful sports and pastimes. That is aside from the extent of any further discount that is required insofar as any of the uses were not “as of right” which I consider below. There remains some use of the Land for walking other than along paths, for children playing, for picnicking, and for blackberry picking and watching wildlife that were not incidental to the exercise of public rights of way. However, the evidence fails to establish that they were more than sporadic in nature.

7.26 In reaching that view, I note the extent to which those giving oral evidence in support of the Application had used the Monks Trod or the perimeter paths round the Field and

indicated that others did so as referred to above. I also take into account the relatively consistent evidence from both the Applicants and the Objector that when Mr Holmes was on the Land with his goats, people would generally stay on the Path. Mrs Spence stated that when Mr Holmes was on the Land with his goats, people would ensure that they did not go off the Footpath, and even children generally knew that they were not to go off the Footpath when stock were in the Field. Mrs Brewster similarly indicated that she would stay on the Footpath when goats were in the Field, and she never saw anyone go onto the Field when animals were in it. Mrs Vasey pointed out that she would not go onto the Land if the goats were in the Field nor would her children. That is consistent with the Objector's evidence. Mrs Pickering, for example, expressed the view that it was a "*known thing*" that you did not go into the Field whilst Mr Holmes had a tenancy of it, and that children were generally not allowed to go into the Field. It is also of significance that Mr Holmes erected a sign on the coach house building stating that the Field was private and requesting people to stay on the Footpath and to keep their dogs on a lead. According to Mrs Spence, it was her experience that people did keep to the Footpath for the most part. Mrs Brewster also indicated that she more or less complied with the sign. Although Mrs Vasey did not always comply with it, she acknowledged that she was an exception in not doing so, whilst Mrs Holmes who also did not comply accepted that she was ignoring a clear sign to the contrary.

7.27 Taking all the evidence into account, it is my view that during Mr Holmes's tenancy of the Land, the vast preponderance of the use of the Land was walking along the Footpath or its immediate environs, and to a lesser extent, walking along the perimeter paths, and undertaking incidental activities whilst doing so, such as watching wildlife. My impression from the evidence is that any unrelated uses, such as picnicking on the Land, children playing on the Land or people walking over the Land generally, were very limited during that period of time. Up until 1996, I regard the use of the Land for lawful sports and pastimes as no more

than sporadic in nature and insufficient to indicate to a reasonable landowner that recreational rights were being asserted over the Land.

7.28 Subsequent to the cessation of Mr Holmes's tenancy in 1996, there is some evidence that the use of the Land for qualifying lawful sports and pastimes may have increased as time went by. Mrs Brewster noted that the use of the Land to exercise dogs "snowballed" once the old building was removed, namely in 2007, whilst Mrs Pickering for the Objector pointed out that after the allotments were moved from the adjoining field in 1998, a gap in the hedge on the southern boundary was then created around 1999/2000, and from then onwards people started to use the Land more generally. Attempts to close the gap in the hedge by fencing were continually removed.

7.29 Nonetheless, irrespective of the extent of the use of the Land for lawful sports and pastimes post 1999/2000, I find that up until 1996, it has not been established on the balance of probabilities that the Land was used for lawful sports and pastimes to the extent and for the frequency required to establish that element of the statutory criteria. Given that such period represents a significant part of any of the identified relevant 20 year periods, I find that that element of the statutory criteria has not been established whichever is the correct 20 year period.

**Use by a Significant Number of the Inhabitants of any Locality or of any Neighbourhood within a Locality**

7.30 In order to determine this element of the statutory criteria, it is firstly necessary to identify the appropriate locality or, alternatively, neighbourhood within a locality for the purposes of the legislation.

7.31 During the Inquiry, the Applicants confirmed that the neighbourhood being relied upon was the Yuill Estate and the surrounding area of Mayfield Road and Prospect Hill. No specific locality was identified.

7.32 The question then arising is whether the Yuill Estate and the surrounding area of Mayfield Road and Prospect Hill is a qualifying neighbourhood. In that regard, the fundamental issue to be determined is whether that area has a sufficient degree of cohesiveness to amount to a “*neighbourhood*” within the meaning of the legislation. A neighbourhood cannot merely be an area drawn on a map.

7.33 The Applicants adduced relatively limited evidence on this issue. Mrs Brewster indicated that she regarded the whole of the Yuill Estate as the community she lived in, whilst Mrs Holmes stated that she knew the area as “the Prospect Hill/Mayfield Road area”. Mrs Pickering on behalf of the Objector acknowledged that the Yuill Estate was a recognised area in Whitby, but she stated that Prospect Hill and Mayfield Road are not part of that Estate.

7.34 In my view, there is insufficient evidence of the identified neighbourhood having any degree of cohesiveness. There was no evidence that those who lived on Prospect Hill and Mayfield Road regarded themselves as living within the same community as those living on the Yuill Estate. Indeed, the Yuill Estate was built much later than the houses on Prospect Hill and Mayfield Road in the late 1970’s, save for the more recent Shackleton Close extension, and the houses on the Yuill Estate had an entirely different character. I heard and have read no evidence supporting a finding that the identified neighbourhood is a cohesive community, such as it having an identified name and/or shared community facilities and/or

that it operated or was regarded as one community. Further, from my unaccompanied site visit I undertook round the claimed neighbourhood, there was nothing to suggest that the particular identified area was itself a cohesive community. On the contrary, the Yuill Estate seemed to me to be a separate area to Prospect Hill and Mayfield Road. On the basis of all the evidence, it is my view that the identified neighbourhood was chosen on the basis that it was the area within which the majority of the users resided and not for any other reason.

7.35 In the closing submissions on the Applicants' behalf, it was suggested that the Yuill Estate itself could be an alternative neighbourhood. That area does have its own identity in the sense that it comprises one residential housing estate. An individual housing estate is in principle capable of being a neighbourhood. Nonetheless, it is not the position that every residential housing estate is an individual neighbourhood. Instead, the requisite degree of cohesiveness must still be established by an applicant. In my view, no such cohesiveness has been established by the Applicants in relation to the Yuill Estate. There was no evidence adduced indicating how the Yuill Estate functioned as one community whether in the form of shared community facilities, shared community activities or otherwise. No such cohesiveness was apparent on the ground from my unaccompanied site visit. Therefore, I find that the Applicants have failed to identify a qualifying neighbourhood within the meaning of section 22(1A) of the 1965 Act.

7.36 Even if either the area identified or the Yuill Estate did qualify as a "*neighbourhood*", in order for the statutory criteria to be established, a significant number of the inhabitants of that neighbourhood must have used the Land. That requires a sufficient number to have used it to bring to the attention of the reasonable landowner that a right of recreation was being claimed by the identified neighbourhood. Thus, it seems to me that it is not merely the number of users that are significant, and I have addressed the extent of the use above, but also



their geographical distribution. The number of inhabitants whose use is proven must be distributed in such a way as to indicate that the right is vested in the neighbourhood claimed and not simply a part of it. That has been the established approach taken by many inspectors at town or village green inquiries as pointed out on the Objector's behalf in its closing submissions and with which approach I concur.

7.37 In my view, that requisite geographical distribution of users has not been established in any event. The Location of Users Plan produced by the Applicants during the Inquiry helpfully identifies the location of all users relied upon by the Applicants. It is apparent from that Plan that the users are very much confined to the area in closest proximity to the Land rather than the Land having been in use by the wider neighbourhood. There is only one user on the part of Mayfield Road located to the west of the Land, and only one on Prospect Hill save to the immediate north of the Land. Moreover, even if the neighbourhood is regarded as the Yuill Estate, there is only one user on the entirety of the western part of that Estate. In those circumstances, it does not seem to me that there has been a sufficient spread of users across either of the potential neighbourhoods. Therefore, on that further basis, I find that the Applicants have failed to establish that the Land has been used by a significant number of the inhabitants of either of the claimed neighbourhoods.

### **Use as of Right**

7.38 Turning to whether the qualifying use of the Land was "*as of right*", there was no suggestion that any of the use was by stealth.

7.39 As to whether it was with permission, it is relevant that some of the use was with such permission and thus must also be excluded from the qualifying use. Such express permission was given to Mr Nattris by Mr Holmes to exercise his gun dogs on the Land. Hence, that

particular use must be discounted in ascertaining the extent of the qualifying use. Further, it is apparent that allotment holders were given permission to walk down the eastern boundary of the Land to the gate leading into the allotments up until 1998. Their use of the Land for that purpose must also be discounted.

7.40 In addition, it seems to me that up until 1996, use of the Land was not as of right as it was with force, namely *vi*. As noted in paragraph 5.23 above, the requirement that the use be without force in order to be “*as of right*” does not merely require the use to be without physical force, such as by breaking down a fence. It must also not be contentious. As stated by Lord Walker in *Lewis*<sup>65</sup>:-

*“it would be wrong to suppose that user is “vi” only where it is gained by employing some kind of physical force against the owner...It was enough if the person concerned had done something which he was not entitled to do after the owner had told him not to do it. In those circumstances what he did was done vi.”*

7.41 Applying that principle, it is my view that the use of the Land by those who had been previously challenged for their use, or by those who knew that such use had been previously challenged, was thereby *vi*. In that regard, it appears from the evidence that Mr Holmes did challenge users of the Land up until 1996 when they were in the Field rather than on the Footpath or its immediate environs. Mrs Vasey pointed out that she was aware of him occasionally having informed individuals that they should not be on the Field, and Mr Nattris noted that Mr Holmes would challenge people if they let their dogs off the lead when goats were around. He also stated that Mr Holmes “*used to patrol the area quite strictly*”. Indeed, the considerable evidence that people would not go onto the Field when goats were out supports the view that people generally knew that they were not entitled to go off the

Footpath when the Field was in such use. For the Objector, Mr John Holmes indicated that his father would tell people to stick to the Footpath, whilst Mrs Pickering noted that he would challenge anyone who strayed off the Path or its immediate environs, as did Mr Harland.

7.42 In addition, during Mr Holmes's tenancy of the Land up until 1996, I find that there was a sign that he had erected on the building on the northern corner of the Land as shown on the Objector's photograph.<sup>65</sup> That sign was referred to by many witnesses. It stated that the Field was Private and requested people to keep to the Path and to keep their dog on a lead. In my view, that sign was clearly indicating to users that they were not to go onto the Field but were to remain on the Footpath. That was indeed the view taken by various users. Mrs Spence acknowledged that it was obvious by that sign that Mr Holmes was informing people to keep to the Monks Trod. Mrs Brewster recalled the sign and more or less complied with it. Mrs Vasey also recalled it, but she did not always comply with it. Similarly, Mrs Holmes did not always comply with it, but she nonetheless accepted that the sign was clear that people should stick to the Footpath.

7.43 In my opinion, the erection and maintenance of that sign by Mr Holmes and his challenges made to people who were off the Footpath were sufficient to result in any use of the Land off the Footpath up until 1996 a contentious one, namely contrary to the sign and the challenges, and thus *vi*. Hence, I find that the use of the Land up until 1996 was not "*as of right*" on that basis. Given that the period up until 1996 is a material part of any of the relevant 20 year qualifying periods, then the use was not "*as of right*" for the requisite 20 year period whichever of the qualifying periods is the correct one and I so find.

### **Continuation of Use**

---

<sup>65</sup> At OB2 tab 9 paragraph 88.

7.44 The final issue is whether the qualifying use continued up until the date of the Application. That in turn depends upon the correct date of the Application as noted in paragraph 7.6 above. If the Application date is properly regarded as 5 January 2005, then in my view the evidence establishes that some use of the Land was continuing as a matter of fact as of that date, subject to the other issues above over the extent and continuity of the use and the neighbourhood. However, if the Application date is either 22 November 2005 or 5 July 2011, then in my view the use had ceased before those dates, namely as of February 2005 when the Land was initially fenced along the length of the Footpath. Mr Vasey stated that between February 2005 when the Land was fenced and June 2007 when the building was demolished, he could only access the Land by climbing over a locked gate. Mr Natris stated that he then entered the Land from the former allotment field. That fencing still appeared to be intact in October 2005 as shown on the Objector's photographs of 7 October 2005<sup>67</sup> and as acknowledged by Mrs Spence. The unchallenged evidence of Miss Williams, which I accept, is that notices were then erected on 7 October 2005 prohibiting access to the Land without the owner's consent. They were subsequently replaced by more permanent signs. In my view, the effect of that fencing and the signs would be such as to indicate that the Landowner did not wish the Land to be used by the public and any use thereafter was consequently *vi* and therefore not as of right.

7.45 Although my view on the continuation of the use issue differs dependent upon the correct date of the Application, my conclusions on each of the other elements of the relevant statutory criteria are unaffected by the correct date of the Application. Given those conclusions, it is not necessary for me to reach a determination upon the correct date of the Application and I consequently do not do so.

---

<sup>66</sup> At OB pages 111 and 112.

## **8. CONCLUSIONS AND RECOMMENDATION**

8.1 My overall conclusions are therefore as follows:-

8.1.1 That the Application Land comprises land that is capable of registration as a town or village green in principle;

8.1.2 That the potential relevant 20 year periods are:-

(i) 5 January 1985 until 5 January 2005;

(ii) 22 November 1985 until 22 November 2005; and

(iii) 5 July 1991 until 5 July 2011;

8.1.3 That the Application Land has not been used for lawful sports and pastimes throughout any of the potentially relevant 20 year periods to a sufficient extent and continuity to have created a town or village green;

8.1.4 That neither the Yuill Estate and the surrounding area of Mayfield Road and Prospect Hill nor the Yuill Estate in itself are qualifying neighbourhoods;

8.1.5 That the use of the Application Land for lawful sports and pastimes has not been carried out by a significant number of the inhabitants of any qualifying locality or neighbourhood within a locality throughout any of the potentially relevant 20 year periods; and

8.1.6 That the use of the Application Land for lawful sports and pastimes has not been as of right throughout any of the potentially relevant 20 year periods.

8.2 In view of those conclusions, it is my recommendation that the Registration Authority should reject the Application and should not add the Application Land to its register of town and village greens on the specific grounds that:-

---

<sup>67</sup> At OB1 pages 54 and 55.

- 8.2.1 The Applicants have failed to establish that the Application Land has been used for sufficient lawful sports and pastimes as of right throughout the relevant 20 year period;
- 8.2.2 The Applicants have failed to establish that the Application Land has been used by a significant number of the inhabitants of a qualifying neighbourhood throughout the relevant 20 year period; and
- 8.2.3 The Applicants have failed to establish that the use of the Application Land has been as of right throughout the relevant 20 year period.

## **9. ACKNOWLEDGEMENTS**

9.1 Finally, I would like to thank the Applicants and the Objector for providing all the documentation to me in advance of the Inquiry and for the very helpful manner in which the respective cases were presented to the Inquiry. I would also like to thank all the witnesses who attended the Inquiry as they each gave their evidence in a clear, succinct and frank manner. I would further like to express my gratitude to the representative from the Registration Authority for his significant administrative assistance prior to and during the Inquiry.

9.2 I am sure that the Registration Authority will ensure that all Parties are provided with a copy of this Report, and that it will then take time to consider all the contents of this Report prior to proceeding to reach its decision.

**RUTH A. STOCKLEY**

6 February 2012

Kings Chambers

**36 Young Street Manchester M3 3FT and**  
5 Park Square East Leeds LS1 2NE

**Appendix 4**

Mr Simon Evans  
North Yorkshire County Council  
Chief Executive's Group  
County Hall  
Northallerton  
North Yorkshire  
DL7 8AD

Date 21 June 2012  
Your Ref 15345 SE  
Our Ref PW/TD/71969

**BY EMAIL**

Dear Simon

**Application to register land at Prospect Hill Whitby North Yorkshire**

Thank you for the opportunity to make further comments for consideration by the Committee.

Having received the Inspectors Report the trustees have asked me to respectfully point out for consideration of the Committee that the applicants failed to demonstrate the legal requirements under the 1965 Act in every respect. In particular the Inspector found that

- The application land has not been used for lawful sport pastimes on any of the potentially qualifying dates.
- Neither the Yuill Estate and the surrounding area of Mayfield Road and Prospect Hill nor the Yuill Estate itself could possibly qualify as a neighbourhood within the legal meaning of the 1965 Act.
- That use of the application land for lawful sports and pastimes has not been carried out by a significant number of inhabitants of any qualifying locality or neighbourhood within the locality for any of the potential 20 year periods.
- That the claim to use the application land for lawful sports and pastimes has not been as of right through any of the potentially relevant 20 year periods.

In addition to the above, two recent cases need to be considered by the Committee as they have a direct bearing on the issues considered by the Inspector. In particular the case of *Taylor -v- Betterment Properties (Weymouth) Limited [2012] EWCA Civ 250* determined that the 20 year use user as of right means without for secrecy or permission. The fact that Notices have been torn down does not prevent the use being contentious where correct Notices have been put up. As you will know clear Notices were put up by the objectors in this case and the use was therefore contentious.

**BHP Law**  
Kepier House, Belmont Business Park,  
Belmont, Durham, DH1 1TW  
DX No. 60209 DURHAM

t 0191 384 0840  
f 0191 384 1523  
e info@bhplaw.co.uk  
www.bhplaw.co.uk



BHP Law is the trading name of Blackett Hill & Pratt LLP Solicitors which is a limited liability partnership registered in England and Wales. Registration no: EC19059. Registered office: Weygate House, Weybath, Darlington, DL3 0PZ. Authorised and regulated by the Solicitors Regulation Authority. A full list of members is available at the regulator's office. Any reference to a partner of Blackett Hill & Pratt LLP means a member of Blackett Hill & Pratt LLP or an employee or consultant of Blackett Hill & Pratt LLP with equivalent standing and qualifications.



In other case *Adamson –v- Paddico (267) Limited [2012] EWCA Civ 262* the Court of Appeal has concluded that it is now clear that an area cannot be a "locality" for the purposes of the 1965 Act if it is not an administrative area or an area within legally significant boundaries.

Whilst the Inspector did not have the benefit of considering these legal authorities since they have come out after publication of her report, it is the view of the trustees that they serve to strengthen her findings and the trustees of the Bagshawe trust therefore urge the committee to reject formally the application to register the land as a Town or Village Green.

I will be obliged if you could acknowledge receipt of my formal letter and I look forward to hearing from you as regards the arrangements for the final determination of the matter in August. The trustees will wish to be represented and the for the Committee to be addressed.

Yours sincerely,  


**Philip Wills**

**Solicitor**

**BHP Law**

Email: [PhilipW@bhplaw.co.uk](mailto:PhilipW@bhplaw.co.uk)

Direct Dial: 0191/3324580

**NORTH YORKSHIRE COUNTY COUNCIL****PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE****10 AUGUST 2012****DONKEY FIELD, WHITBY****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 Donkey Field, Whitby 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*

- 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 on the balance of probabilities that all 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, shown hatched on the plan at Appendix 1, is owned by the Strickland Constable Estate.
- 3.2 The Application Site is bounded to the north by a wall separating the site from Church Lane (also known as Donkey Road). A public footpath to the east of the land runs from Church Lane to Aelfleda Terrace to the south and is separated from Donkey Field by a variety of post and mesh and barbwire fencing. The western boundary of the site is a cliff edge, which is also bounded by a variety of post and mesh fencing (a section of which is missing and has been replaced with tape), and eventually tapers towards Aelfleda Terrace. The short southern boundary, of a post and rail fencing, abuts an unclassified publically maintainable road (Caedmon's Trod) which eventually leads back into the town and exits on Church Street. The site can be accessed from the southern boundary by virtue of a central stile. The area of the land in question is 1.09 hectares (approx.).
- 3.3 Various photographs of the Application Site will be displayed on screen at the committee meeting.

### **4.0 APPLICATION**

- 4.1 The application submitted by Thomas William Brown ("the Applicant"), a local resident, was signed by him on 11 April 2011 and received by the County Council on 28 April 2011 and accepted as duly made on 28 April 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 by the Applicant comprises Appendix 2.
- 4.2 With the Application were 32 questionnaires which had been created by the Applicant asking for opinion as to whether to submit an application to register the land concerned as village green and what activities had been undertaken on the Application Site. The questionnaires included a pre written statement that the person completing the form had not been denied access during their period of use. 26 of the persons completing the questionnaires live within the area of Donkey Field. Of the remaining 6, 3 reside in Whitby whilst 3 do not live in Whitby. Copies of the questionnaires comprise Appendix 3.
- 4.3 No other letters of support have been received.
- 4.4 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 town or village green are immaterial and must be ignored in considering the application.

## 5.0 **OBJECTIONS**

5.1 No objections have been received.

## 6.0 **EVIDENCE REVIEW**

### 6.1 **Evidence of use**

6.1.1 Part 7 of the application form refers to the Application Site as forming part of the domain of Whitby Abbey and that it has a status of a scheduled ancient monument. This is confirmed by Dr. Keith Emerick, Yorkshire and the Humber Inspector of Ancient Monuments, English Heritage, in his e-mail dated 12 July 2012. English Heritage has confirmed that it has no objections in principle to the application. Copies of Dr. Emerick's e-mails confirming the position comprises Appendix 4 and Appendix 5.

6.1.2 Of the 26 questionnaires referred to at paragraph 4.2 of this report 11 of the questionnaires claimed twenty years, or more, of use of the Application Site. In combination with the other qualifying questionnaires this appears to demonstrate qualifying use over the relevant 20 year period particularly as there has been no challenge to this evidence by the affected landowner.

6.1.3 Altogether the questionnaires cite 19 activities that the compilers have either conducted, or witnessed, on the Application Site. One questionnaire also mentions the Application Site is the location for an ancient Well House dating from 1634.

### 6.2 **Significant number of the inhabitants of a locality, or of any neighbourhood within a locality**

6.2.1 Part 6 of the application form refers to "Abbey Ward". Given this the Application appears to be relying on claiming use from a "locality" rather than a "neighbourhood within a locality" and for the purposes of the Application that locality is to be the electoral ward. A locality needs to be an administrative unit recognized by law and the courts have been satisfied that electoral ward constitutes such an area.

6.2.2 What constitutes a "*significant number*" in any one case does not need to be considerable or substantial. The characteristics of the locality concerned are relevant to what is likely to be considered to constitute being a significant number. 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.

6.2.3 In this case the "*significant number*" criteria appears to have been met.

### **6.3 As of right**

6.3.1 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”.*

6.3.2 Despite several requests to do so the landowner has made no representations in respect of the application. Consequently on the evidence available it would appear that use of the site has been made without force (e.g. by breaking through a fenced boundary or locked gates) or permission (e.g. a lease or licence of the land). On evidence it is apparent that use by the residents of the locality of the site has been open to observation by the landowner and not by stealth (i.e. on occasions when the landowner is not likely to notice).

### **6.4 Lawful sports and pastimes**

6.4.1 The courts have interpreted what constitutes “lawful sports and pastimes” widely. The evidence in support of the Application indicates a variety of lawful sports and pastimes that has been conducted on the Application Site.

### **6.5 Period of at least twenty years**

6.5.1 The twenty years in question in this case runs from April 1991 to April 2011 being the twenty years preceding the Application.

6.5.2 The evidence in support of the Application indicates regularity of use on the Application Site during the twenty years. The Council has received no representations to suggest otherwise.

## **7.0 DECISION MAKING**

7.1 The decision whether or not to approve the Application rests with the County Council in its role as a Commons Registration Authority. In doing so it must act impartially and fairly.

7.2 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.

## **8.0 CONCLUSIONS**

8.1 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.

8.2 Whilst the Courts have suggested that where there is serious dispute a non statutory inquiry be convened by commons registration authorities to fully test

evidence there has to be evidence of some substance worthy of testing to justify taking such a step. That is not for the Application in this case.

- 8.3 It is your officer's view that on the balance of probabilities the relevant criteria of Section 15(2) has been met and the Application should be accepted.

## **9.0 EQUALITIES IMPLICATIONS**

- 9.1 Consideration has been given to the potential for any equality impacts arising from the recommendation. It is the view of officers that the recommendation does not have an adverse impact on any of the protected characteristics identified in the Equalities Act 2010.

## **10.0 FINANCE**

- 10.1 There are no financial implications associated with the introduction of these proposals.

## **11.0 RECOMMENDATION**

- 11.1 That the Committee resolves to accept the Application on the grounds that it is 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 and accordingly make an appropriate entry in the Register of Town / Village Greens.

DAVID BOWE  
Corporate Director – Business and Environmental Services

Authors of Report: Doug Huzzard and Chris Stanford

Background Documents: Application case file held in County Searches Information

APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN - DONKEY FIELD, WHITBY





FORM 44

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 VG56

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.

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

## 1. Registration Authority

To the

NORTH YORKSHIRE COUNTY COUNCIL





**Note 4**

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

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

**4. Basis of application for registration and qualifying criteria**

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

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

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

**Section 15(2)** applies:

**Section 15(3)** applies:

**Section 15(4)** applies:

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

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

**Note 5**

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

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

**Note 6**

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

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

Name by which usually known:

JACKIES FIELD  
DONKEY FIELD  
Arms House Close  
HATCHED IN GREEN

Location:

EAST SIDE OF WHITBY SEE MAP

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:

SEE ATTACHED MAPS, INCLUDING  
ORDNANCE SURVEY PLAN NZ 9011 SW  
IN ASSET WARD WHITBY  
REF. ARMS HOUSE CLOSE AS ALTERNATIVE  
NAME FOR DONKEY FIELD.  
HATCHED IN GREEN

Tick here if map attached:



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

### Note 7

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

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

THE DONKEY FIELD FORMS PART OF THE  
 ERSTWILE DOMAIN OF WHITBY ABBEY  
 (SCHEDULED ANCIENT MONUMENT). AS FAR AS  
 HAS BEEN ESTABLISHED, IT HAS NOT BEEN UNDER  
 THE PLOUGH FOR OVER A MILLENNIUM.

THROUGHOUT LIVING MEMORY, THE DONKEY FIELD  
 HAS BEEN OPEN TO PUBLIC ACCESS AS A LOCATION  
 FOR LEISURE - PET EXERCISING & GURIAL,  
 PICNICS, EASTER CELEBRATIONS, COURTING TO  
 NAME ONLY A FEW OF THE MANY ACTIVITIES  
 ENJOYED THERE BY LOCAL PEOPLE AND  
 VISITORS.

FURTHERMORE, THE DONKEY FIELD PROVIDES  
 A NATURAL HABITAT TO A WIDE VARIETY OF  
 FAUNA AND FLORA RIGHTLY CONSIDERED BY  
 LOCAL PEOPLE AS A TREASURE.  
 THOUGH THE DONKEY FIELD IS PROTECTED  
 FROM THE RISK OF FUTURE DEVELOPMENT  
 UNDER ITS STATUS AS A SCHEDULED ANCIENT  
 MONUMENT, RIGHT OF PUBLIC ACCESS  
 FORMS AN INTEGRAL PART OF ITS  
 CULTURAL AND HERITAGE IMPORTANCE.

**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).

**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**

.....

STICKLAND CONSTABLE ESTATE  
 88 OLD MALTON GATE  
 MALTON  
 NORTH YORKSHIRE  
 YO17 7EG.

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

**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).

**10. Supporting documentation**

✓

DR KETH EMERICK HAS CONFIRMED THAT THE DONKEY FIELD FORMS PART OF THE LAND DESIGNATED AS:  
 WHITBY ABBEY ANCIENT MONUMENT (SCHEDULED)

**Note 10**

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

Please use a separate sheet if necessary.

**Note 11**

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

**Note 12**

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

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

THE DONKEY FIELD ENSURED A LARGE-SCALE INTRUSION BY PETER DUFFY LTD (CONTRACTOR), ON BEHALF OF YORKSHIRE WATER, IN LATE OCTOBER 2010. A STRIP OF LAND 20M WIDE ALONG THE ENTIRE EASTERN PERIMETER WAS BULDOZED, DAMAGING A MEDIEVAL ROAD AND SUNDRY OTHER MEDIEVAL REMAINS. AN ARCHAEOLOGICAL SURVEY WAS CONDUCTED AT THE BEHEST OF ENGLISH HERITAGE. REPORT AVAILABLE SOON.

Date:

11/04/2011

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).

THOMAS WILLIAM BROWN solemnly and sincerely declare as follows:—

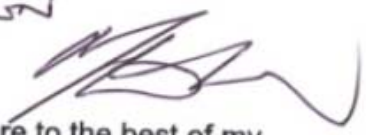
3 BOULBY BANK TOP  
WHITBY YO22 4EZ

<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

THE ADDRESS + SIGNATURE  
THOMAS WILLIAM BROWN  
3 BOULBY BANK TOP  
WHITBY YO22 4EZ



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

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

Cont/

<sup>4</sup> 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 *THOMAS*  
*WILLIAM BROWN*  
at *Whitby, North Yorkshire*  
this *11<sup>th</sup>* day of *April 2011*

Signature of Declarant

Before me \*

Signature: *R Hobart*

Address: **NORTH YORKSHIRE LAW  
SOLICITORS  
23 BAXTERGATE, WHITBY  
NORTH YORKSHIRE YO21 1BW**

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.

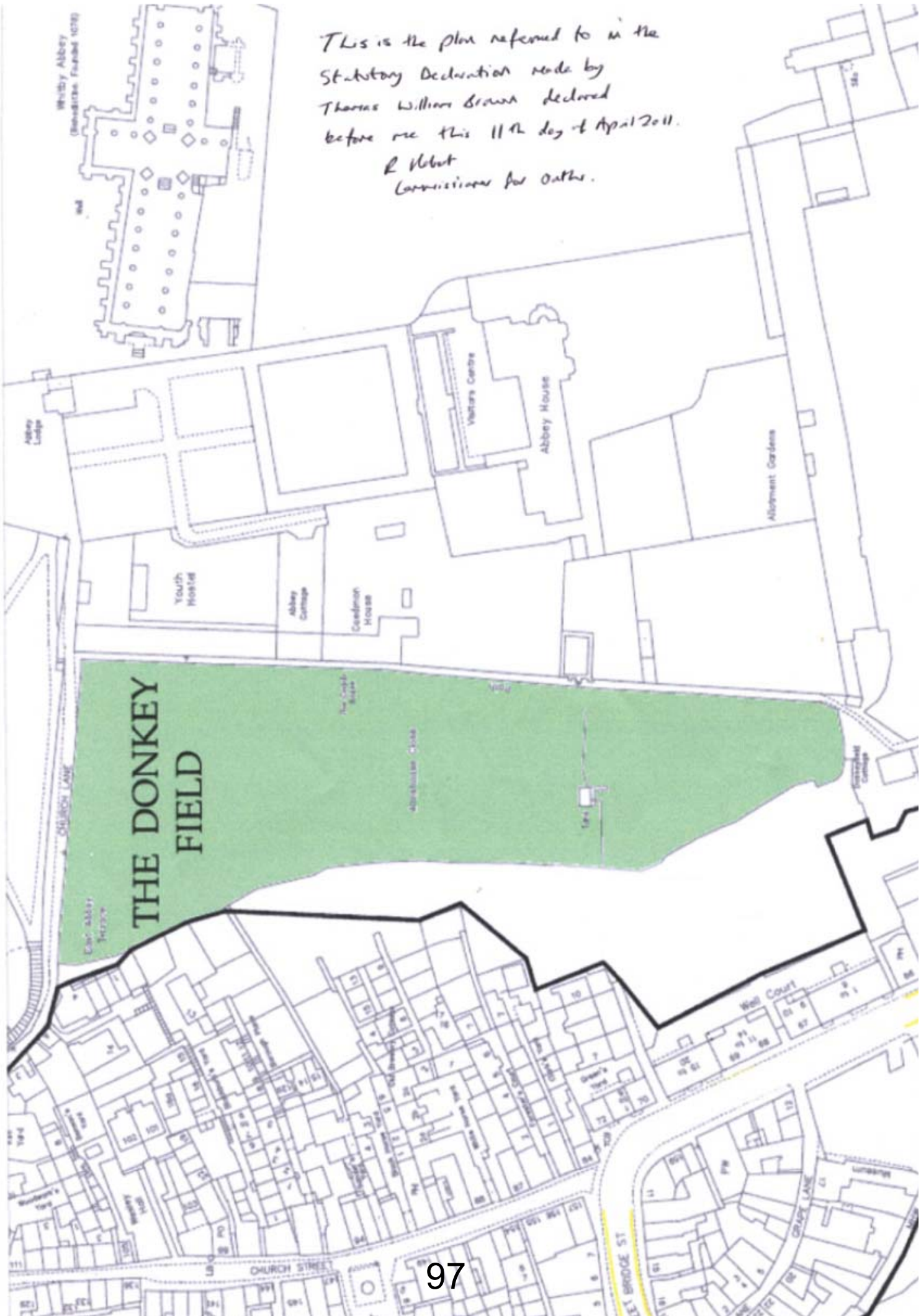
**REMINDER TO OFFICER TAKING DECLARATION:**

*Please initial all alterations and mark any map as an exhibit*

---



This is the plan referred to in the  
Statutory Declaration made by  
Thomas William Brown declared  
before me this 11<sup>th</sup> day of April 2011.  
R Robert  
Commissioner for Oaths.







TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green GME initial
b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

PLAYING
KIDS FUN
FOOTBALL

..... in the period from 1971 to 2011 ✓

I have not been prevented from using the land by its owner during

This period. I consider myself to be an inhabitant

of EAST WHITBY and to be local to the land hatched in black on the map attached.

Name MRS. GEORGINA EDGAR
Address 8. ESKSIDE COTTAGES
BOULBY BANK
WHITBY
NORTH YORKSHIRE

Signature.



Dated this 25 day of APRIL 2011

Thank you for your help

Tom Brown



TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green.. JR .....initial
b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

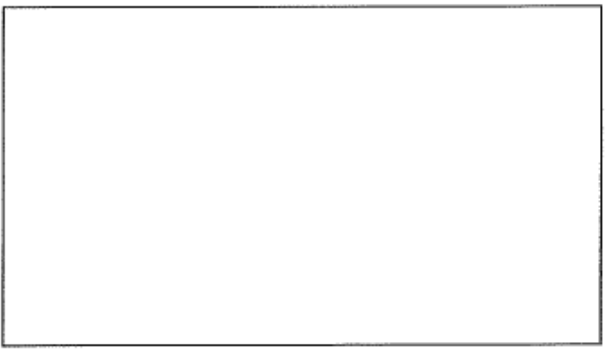
I have used the land (hatched in black) on the map attached for the following sports And pastimes

WHEN I WAS A STUDENT AT BRISTOL POLY TECHNIC, I CAME TO WHITBY ON A FIELD TRIP IN 1975 AND WE HAD MORE THAN ONE PICNIC ON THE DONKEY FIELD DURING OUR STAY AND SUBSEQUENTLY DID THE SAME ON FAMILY HOLIDAYS FROM YORK 1995 in the period from 1975 to 1995

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of SLEIGHTS..... and to be local to the land hatched in black on the map attached.

Name.. JON RYSDON
Address.. NEW GROVE,
42 TOWNDAVE LANE
SLEIGHTS
WHITBY

Signature.....
Dated this 20 day of FEBRUARY 2011



Thank you for your help
Tom Brown

TOWN GREEN FOR EAST WHITBY

Ref

SURVEY

1. Are you in favour of the Town Green application?

If there is significant opposition I will not go ahead with it.

- a. YES to registration as a town green.....(initials only) *RF*
- b. NO to registration as town green.....(initials only)

2. If in favour, can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports

And pastimes

*Dog walking*

*Walking without dogs*

*Looking at the view*

..... in the period from *1979* to 2011.

I have not been prevented from using the land by its owner during this period.

I consider myself to be an inhabitant of Whitby, North Yorkshire, and to be local to the land marked 'The Donkey Field' and shaded green on the map below.

Name..... *Rosemary PARKER* .....

Address..... *137 Church Street* .....

*Whitby YO22 4DE* .....

Signature... ..

Dated this *21* day of *Feb*, .....2011.

Thank you for your help

**TOWN GREEN FOR EAST WHITBY**

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green... *NW*...initial
- b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

THROUGHOUT THE 6 WEEK SUMMER HOLIDAYS OF 1959, AND ON COUNTLESS OCCASIONS THROUGHOUT THE 1960S, 1970S & 1980S, I HAVE PICKNICKED, SUNBATHED & PLAYED A VARIETY OF BALL-GAMES AT THE DONKEY FIELD.

SINCE FEBRUARY 2001, MY WIFE AND I HAVE DOG-WALKED & RELAXED IN THE DONKEY FIELD ON AN ALMOST DAILY BASIS.

DURING ALL OF THE ABOVE EXPERIENCES, I HAVE WITNESSED MANY OTHER PEOPLE (BOTH LOCALS & VISITORS) USING THE DONKEY FIELD FOR SIMILAR PURPOSES.....in the period from 1959 to 2011

I have not been prevented from using the land by its owner during

This period. I consider myself to be an inhabitant

of... *WHITBY*..... and to be local to the land hatched

in black on the map attached.

Name... *NIGEL LARD*  
 Address... *6, NEW WAY GRANT*  
*CHURCH STREET*  
*WHITBY*  
*N. YORKS. YO22 4DH*

Signature.....

Dated this *2<sup>5<sup>th</sup></sup>* day of *FEBRUARY*, 2011

Thank you for your help

Tom Brown

**TOWN GREEN FOR EAST WHITBY**

**SURVEY**

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green...  .....initial
- b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

..... I USED TO PLAY THERE AS A CHILD.....  
 ..... AND HAVE HAD PICNIC'S THERE IN.....  
 ..... RECENT YEARS.....

..... in the period from 1975 to 2011

I have not been prevented from using the land by its owner during

This period, I consider myself to be an inhabitant of CHURCH STREET WHITBY..... and to be local to the land hatched in black on the map attached.

Name..... CHRIS WATSON.....  
 Address..... 151 CHURCH STREET.....  
 ..... WHITBY.....  
 ..... NORTH YORKSHIRE.....  
 ..... YO22 4BH.....

Signature..... ..

Dated this 1 day of MARCH 2011

Thank you for your help



TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green... JEP...initial
b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

Rolling Easter Eggs
Sledging in winter
Walking various dogs
Picnicing
Multifarious childhood games... in the period from 1939 to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of... WHITBY... and to be local to the land hatched in black on the map attached.

Name... J. Packer
Address... 137 CHURCH ST
WHITBY

Signature. ....

Dated this 23 day of February 2011

Thank you for your help



TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green.....WK.....initial
- b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

.....WALKING.....  
 .....PLAYING WITH FRIENDS AS A CHILD.....  
 .....BIKE RIDES.....  
 .....GOING TO THE ABBEY.....

..... in the period from 19... to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant

of.....20 BOULBY BANK..... and to be local to the land hatched in black on the map attached.

Name.....WAYNE KIPING.....  
 Address.....20 BOULBY BANK.....  
 .....WHITBY.....YOR24HA.....

Signature.....

Dated this ..... day of..... 2011

Thank you for your help

Tom Brown

TOWN GREEN FOR EAST WHITBY

Ref

SURVEY

1. Are you in favour of the Town Green application?

If there is significant opposition I will not go ahead with it.

- a. YES to registration as a town green. *SPJ*.....(initials only)
- b. NO to registration as town green.....(initials only)

2. If in favour, can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports  
And pastimes

.....  
*I have walked through this area*  
.....  
*several times as a resident of*  
.....  
*Whitby*  
.....

..... in the period from <sup>2002</sup>~~19~~... to 2011.

I have not been prevented from using the land by its owner during this period.

I consider myself to be an inhabitant of Whitby, North Yorkshire, and to be local to the land marked 'The Donkey Field' and shaded green on the map below.

Name..... *Sandra Smith*.....

Address..... *Harbour House*.....

..... *17 Esk Terrace*.....

..... *Whitby*..... *YO21 1PA*.....

Signature.....

Dated this *28* day of *February* 2011.

Thank you for your help

TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green. DK initial
b. No to registration as town green. initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

walking the dog
walking with parents & grandparents as a child
taking my daughter for a walk
taking in the views
to watch my dad coming in from sea & watching Redwings in the period from 1990 to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of 20 Bailey Bank and to be local to the land hatched in black on the map attached.

Name Danielle K. R. G.
Address 20 Bailey Bank
Whitby YO22 4HA

Signature

Dated this 10th day of February 2011

Thank you for your help

Tom Brown

TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green...initial
b. No to registration as town green...initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

Rolling Easter Eggs
Playing when a child

in the period from 1974 to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of...WHITBY...and to be local to the land hatched in black on the map attached.

Name...PAREN FOWLER...
Address...106 CHURCH STREET...
WATFORD...
NORTH YORKSHIRE...
YO22 4DE

Signature...
Dated this 6 day of March 2011

Thank you for your help

Tom Brown

TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green...fk.....initial
b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

Walking The Dog
Walking with my granddaughter
We have used this land for many years with my own father as a child in the period from 1970 to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of 2a Boscoby Bank and to be local to the land hatched in black on the map attached.

Name Paula Kipling
Address 2a Boscoby Bank
Whitby

Signature...

Dated this ...day of... 2011

Thank you for your help

Tom Brown



TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green... Ck...initial
b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

From THE AGE of 4 OR 5 I USED TO VISIT MY GRANDPARENTS ON THE RISE @ GREEN LANE AS CHILDREN WE WOULD SPEND MANY HOURS PLAYING ON THE FIELDS AROUND THE ABBEY. IN PARTICULAR MYSELF & MY SISTER WOULD SPEND MANY HOURS PLAYING GAMES IN THE AREA KNOWN AS THE DONKEY FIELD.

..... in the period from 1973 to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant

of WHITBY and to be local to the land hatched in black on the map attached.

Name: Glenn KUPARUK
Address: 18 JOHN STREET
WHITBY
NORTH YORKSHIRE
YO21 3ET

Signature...

Dated this 13th day of MARCH 2011

Thank you for your help
Tom Brown

TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green... *KM* initial
- b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

*1960s - As a child we played in the field*  
*and we rolled our eggs at Easter on the*  
*slope... We played up and down the*  
*chased by lady Alfreeda on her*  
*White horse.*..... in the period from 1960 to 2011

I have not been prevented from using the land by its owner during

This period. I consider myself to be an inhabitant of... *WHITBY*..... and to be local to the land hatched in black on the map attached.

Name... *Karen McCarthy*  
 Address... *4 Sandbank Cottage*  
*Gylm Bridge*  
*Gylm*

Signature .....

Dated this *21<sup>st</sup>* day of... *March*.. 2011

Thank you for your help

Tom Brown

TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green.....initial
b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

As long as I can remember the Donkey Field was used... exactly that of Mr Nick Wilson had it then but we were always given the... and that there was... around the alley restricting people from doing as they liked... were allocated even of... Mike Thistles. The boundary was right round with a large... gate... on the top of the field near your hotel only... in the period from 19... to 2011

A lot of hard has not been fenced because someone else moved it, that's why all the soil is all... This period. I consider myself to be an inhabitant... and to be local to the land hatched... in black on the map attached

Name... John Gandy... Address... 2 Lakeside Cottages... WHITBY... 4022... 11.11.11

Signature..

Dated this ...day of... 2011

Thank you for your help

Tom Brown



**TOWN GREEN FOR EAST WHITBY**

Ref

**SURVEY**

1. Are you in favour of the Town Green application?

If there is significant opposition I will not go ahead with it.

- a. YES to registration as a town green. *D.C.*.....(initials only)
- b. NO to registration as town green.....(initials only)

2. If in favour, can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports

And pastimes

.....*JACKY FIELDS AS I KNOW IT WAS MY PLAY GROUND*  
*ALL OF MY LIFE EVEN NOW I STILL WALK THE FIELDS EVEN*  
*NOW AT 65 YEARS OLD ALWAYS CHECK THE FIELDS SINCE*  
*THE AWFUL DAMAGE TO MY FROG POND AS I KNOW IT*

*I KNOW ENERGY WITH REF. IT..... in the period from 1950 to 2011.*  
*AND ALL THE YARDS BELOW MOST WHITE HORSE YARD WHERE I LIVED*

I have not been prevented from using the land by its owner during this period.

I consider myself to be an inhabitant of Whitby, North Yorkshire, and to be local to the land marked 'The Donkey Field' and shaded green on the map below.

Name *CLLR DENNIS COLLINS..... ABBEY WARD*

Address *FLAT 4 HAROLD MANSIONS.....*

*SKINNER STREET, WHITBY, N.Y. YORKSHIRE*

*YO21 3AW*

Signature.. ..

Dated this *18* day of *FEB*.....2011.

Thank you for your help

Tom Brown

TOWN GREEN FOR EAST WHITBY

Ref

SURVEY

1. Are you in favour of the Town Green application?

If there is significant opposition I will not go ahead with it.

- a. YES to registration as a town green.....<sup>fb</sup>.....(initials only)
- b. NO to registration as town green.....(initials only)

2. If in favour, can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports

And pastimes

..... 10 Picnic, walk my dog  
 ..... Enjoy the view, Bury my Pets!  
 .....  
 .....

..... in the period from 1974 to 2011.

I have not been prevented from using the land by its owner during this period.

I consider myself to be an inhabitant of Whitby, North Yorkshire, and to be local to the land marked 'The Donkey Field' and shaded green on the map below.

Name Peter Bodd

Address 10 Sandside, WHITBY  
Y022 4DN

Signature.....

Dated this 4 day of March 2011.

Thank you for your help

Tom Brown

TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green... initial
b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

Played as a Child.
Looked after Donkeys.

..... in the period from 1977 to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of..... and to be local to the land hatched in black on the map attached.

Name... Mr M Watson...
Address... 151 Church St...

Signature... ..

Dated this 2nd day of May, 2011

Thank you for your help



TOWN GREEN FOR EAST WHITBY

Ref

SURVEY

1. Are you in favour of the Town Green application? **Yes**

If there is significant opposition I will not go ahead with it.

a. YES to registration as a town green...**AD**.....(initials only)

b. NO to registration as town green.....(initials only)

2. If in favour, can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports

And pastimes

.....  
.....  
.....  
**site-seeing**  
.....  
**picnics**  
.....  
**walks**  
.....

..... in the period from **2008** to 2011.

I have not been prevented from using the land by its owner during this period.

I consider myself to be an inhabitant of Whitby, North Yorkshire, and to be local to the land marked 'The Donkey Field' and shaded green on the map below.

Name..... **Amanda Daynes**.....

Address..... **23 Abbot Walk**.....

..... **Whitby**.....

..... **YO22 4EP**.....

Signature..

Dated this **22** day of **02** 2011.

Thank you for your help

Tom Brown

TOWN GREEN FOR EAST WHITBY

Ref

SURVEY

1. Are you in favour of the Town Green application?

If there is significant opposition I will not go ahead with it.

- a. YES to registration as a town green.....<sup>y</sup>.....(initials only)
- b. NO to registration as town green.....(initials only)

2. If in favour, can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports  
And pastimes

.....  
.....  
.....  
.....  
.....

I regularly walk my dog there.

..... in the period from <sup>2007</sup>19... to 2011.

I have not been prevented from using the land by its owner during this period.

I consider myself to be an inhabitant of Whitby, North Yorkshire, and to be local to the land marked 'The Donkey Field' and shaded green on the map below.

Name... Margaret Brown.....

Address... 13 Church St.....

..... WHITBY.....

..... YO 22 4AE.....

Signature.....

Dated this 16 day of February 2011.

Thank you for your help

Tom Brown

TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green. T: P initial
- b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

Football.....

Dog Walking.....

Nature trails with my family.....

Picnics.....

..... in the period from 19..7 to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of... WHITBY ..... and to be local to the land hatched in black on the map attached.

Name... THOMAS... PEEL .....

Address... 21... BOULDER BANK .....

..... WHITBY.....

..... N. HORS .....

..... 4022... HHA .....

Signature... ..

Dated this 22 day of February 2011

Thank you for your help

Tom Brown

TOWN GREEN FOR EAST WHITBY

Ref

SURVEY

1. Are you in favour of the Town Green application?

If there is significant opposition I will not go ahead with it.

- a. YES to registration as a town green...*y*.....(initials only)
- b. NO to registration as town green.....(initials only)

2. If in favour, can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports

And pastimes *I walk my dog here*

.....  
.....  
.....

..... in the period from <sup>2007</sup>19... to 2011.

I have not been prevented from using the land by its owner during this period.

I consider myself to be an inhabitant of Whitby, North Yorkshire, and to be local to the land marked 'The Donkey Field' and shaded green on the map below.

Name *John Stephen Scott*

Address *13/13A CHURCH STREET*

*WHITBY*

*NORTH YORKSHIRE YO224AE*

Signature.....

Dated this *18<sup>th</sup>* day of *FEB* 2011.

Thank you for your help

Tom Brown



TOWN GREEN FOR EAST WHITBY

SURVEY

- 1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.
  - a. Yes to registration as a town green. D.C....initial
  - b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

played on the field as a child.....  
 .....  
 Walked my dog.....  
 .....  
 played/practiced football.....  
 .....  
 .....

..... in the period from 1999 to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of... Whitby..... and to be local to the land hatched in black on the map attached.

Name..Oliver..Cochran.....  
 Address..E.L..Bouby..Bank..Whitby.....  
 Y022..UHA.....  
 .....  
 .....

Signature. ....

Dated this 22 day of february 2011

Thank you for your help

Tom Brown



TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green. PK...initial
b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

CHECKING THE WEATHER FOR SEA
WALKING WITH FAMILY
WALKING THE DOG

..... in the period from 1975 to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of 20 BOVIBY BANK and to be local to the land hatched in black on the map attached.

Name PAUL KIPLING
Address 20 BOVIBY BANK WHITBY
YO22 4HA

Signature.....

Dated this 22 day of FEB ..... 2011

Thank you for your help

Tom Brown

TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green. LG.....initial
- b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

FOOTBALL  
 .....  
Hide + Seek  
 .....  
Looking for Newts in Well  
 .....  
 .....

..... in the period from 1996 to 2011  
2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of THE ROPERYS ..... and to be local to the land hatched in black on the map attached.

Name Lee GRAMM  
 Address 30 THE ROPERYS  
WHITBY  
YO22 4EY  
 .....

Signature.....  
 Dated this 27 day of MARCH 2011

Thank you for your help  
 Tom Brown

TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green. SG initial
b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

Playing Football
Looking for Insects
Hide + Seek
in the period from 1996 to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of THE ROPERY and to be local to the land hatched in black on the map attached.

Name... SHAWN GRAHAM
Address... 30 TH ROPERY WHITBY

Signature...
Dated this 27 day of MARCH 2011

Thank you for your help
Tom Brown



TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green. *GA*.....initial
- b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

- ..... *Walking The children* .....
- ..... *Picnics* .....
- ..... *Looking at the Wild Flowers* .....
- ..... *Photography* .....

..... in the period from *1996* to *2010* 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of *The Ropery Whitby*..... and to be local to the land hatched in black on the map attached.

Name *Gina Graham*  
Address *30 The Ropery*  
*Whitby*  
*YO22 4EY*

Signature.....

Dated this *27* day of *April* 2011  
*MARCH*

Thank you for your help

Tom Brown

**TOWN GREEN FOR EAST WHITBY**

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green... S. C. initial
- b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

Taken the children on nature walks  
 sat and looked at the views of Whitby.  
 Fed the donkeys.

..... in the period from 19.7 to 2011

I have not been prevented from using the land by its owner during

This period. I consider myself to be an inhabitant

of... Whitby..... and to be local to the land hatched in black on the map attached.

Name... S. Coddell  
 Address... 21 Baulby Bank  
 Whitby  
 N. Yorks  
 YO22 4HA

Signature.. ..

Dated this 22 day of February 2011

Thank you for your help

Tom Brown

TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green.....initial
b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

.....
..... HAVE ACCESSED IT AS AND WHEN
..... I NEEDED.
.....
.....

..... in the period from 19... to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of..... and to be local to the land hatched in black on the map attached.

Name Mr. M. Trustle
Address ABBEY LANE FARM ← LAST ADDRESS.
Whitby BEFORE MOVING.

Signature.....

Dated this 6 day of March 2011

Thank you for your help

Tom Brown

TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green...KA...initial
b. No to registration as town green.....initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

Playing Football With my sons
Observing Wild life
Photography

.....in the period from 19.16 to 2011
2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant

of The Koperu and to be local to the land hatched in black on the map attached.

Name Ken GRAHAM
Address 30 The Koperu
Whitby
YO22 4ey

Signature.....

Dated this 27 day of MARCH 2011

Thank you for your help

Tom Brown



TOWN GREEN FOR EAST WHITBY

Ref

SURVEY

1. Are you in favour of the Town Green application?

If there is significant opposition I will not go ahead with it.

- a. YES to registration as a town green.....(initials only) ✓ *RB*
- b. NO to registration as town green.....(initials only)

2. If in favour, can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports

And pastimes

*Walking on a daily basis, enjoying the fresh air and the views*

..... in the period from 19<sup>94</sup> to 2011.

I have not been prevented from using the land by its owner during this period.

I consider myself to be an inhabitant of Whitby, North Yorkshire, and to be local to the land marked 'The Donkey Field' and shaded green on the map below.

Name *RICHARD INESON*

Address *131, CHURCH ST. WHITBY  
YO22 4DE*

Signature.....

Dated this *5<sup>th</sup>* day of *April* 2011.

Thank you for your help

Tom Brown



TOWN GREEN FOR EAST WHITBY

SURVEY

1. Are you in favour of the Town Green application (if there is a strong? Opposition I will not do it.

- a. Yes to registration as a town green... EW...initial
b. No to registration as town green...initial

2. If in favour can you help by filling in the statement below about the land?

I have used the land (hatched in black) on the map attached for the following sports And pastimes

WALKING
VISITING AND CHECKINS ON
ANCIENT WELL HOUSE DATED 1634
SITTING IN THE GRASS

in the period from 1989 to 2011

I have not been prevented from using the land by its owner during This period. I consider myself to be an inhabitant of WHITBY and to be local to the land hatched in black on the map attached.

Name MRS E WHELAN
Address 15 INGHAM CLOSE
SLEIGHTS
WHITBY
YO22 5DN

Signature

Dated this 6 day of APRIL 2011

Thank you for your help
Tom Brown

**Chris Stanford**

---

**From:** Douglas Huzzard  
**Sent:** 03 April 2012 16:32  
**To:** commons Registration  
**Subject:** FW: Application to Register 'Donkey Field', Whitby, as a Town or Village Green  
**Importance:** High

Douglas G Huzzard MBA, IEng, MICE, MCIHT.  
 Highway Asset Manager.  
 Highways and Transportation,  
 Business and Environmental Services Directorate,  
 North Yorkshire County Council,  
 County Hall,  
 Northallerton,  
 DL7 8AH.

---

**From:** EMERICK, Keith [mailto:Keith.Emerick@english-heritage.org.uk]  
**Sent:** 03 April 2012 14:24  
**To:** Douglas Huzzard  
**Subject:** RE: Application to Register 'Donkey Field', Whitby, as a Town or Village Green

Dear Doug,  
 Scheduled Monuments are protected under the 1979 Ancient Monuments and Archaeological Areas act. It is a criminal offence to carry out 'works' without consent from the Secretary of State at the Dept for Culture. In practice 'works' means anything that 'alters' a scheduled site.

Therefore, looking at your list, the majority of activities are allowable and do not need consent, however 'pet burial' would require consent. My feeling is that once people knew that they had to apply for consent to bury a pet, they would bury the pet anyway and thereby commit a criminal offence. Pet burial could also conceivably include erecting a small stone to the pet in question - which would need consent and would impact on the other activities. It would be better to exclude pet burial as an allowable activity.

Football is ok, but if there was to be an application or request to erect goal posts, that would require consent.

Does this help?

Kind regards,

Dr Keith Emerick | Yorkshire and the Humber Inspector of Ancient Monuments  
 Direct Line: 01904 601988  
 Mobile: 07967 712111

English Heritage | 37 Tanner Row  
 York | YO1 6WP

[www.english-heritage.org.uk](http://www.english-heritage.org.uk)

**Chris Stanford**

---

**From:** EMERICK, Keith <Keith.Emerick@english-heritage.org.uk>  
**Sent:** 12 July 2012 08:56  
**To:** commons Registration  
**Subject:** RE: APPLICATION TO REGISTER NEW VILLAGE GREEN AT DONKEY FIELD, WHITBY - NEW VG56

Dear Sir,

To answer your two specific questions:

- 1) I can confirm that the English Heritage guardianship area does not extend into the Donkey Field.
- 2) English Heritage has no 'in principle' objection to the change in status to 'commons', but would remind you that the field is part of the Scheduled Monument of Whitby Abbey and therefore protected under the powers of the 1979 Ancient Monuments and Archaeological Areas Act. This Act requires that any 'works' to a scheduled monument require the consent of the Secretary of State at the DCMS, and failure to receive this consent can be considered a criminal offence.

Happy to discuss,

Kind regards,

Keith Emerick

Dr Keith Emerick | Yorkshire and the Humber Inspector of Ancient Monuments Direct Line: 01904 601988  
Mobile: 07967 712111

English Heritage | 37 Tanner Row  
York | YO1 6WP

[www.english-heritage.org.uk](http://www.english-heritage.org.uk)