North Yorkshire County Council

Planning and Regulatory Functions Committee Sub- Committee

Minutes of the meeting held on 26 April 2013, commencing at 10.00 am at Community House, Portholme Road, Selby.

Present:-

County Councillors John Blackburn, David Blades, Robert Heseltine, Bill Hoult and Peter Sowray (as Substitute for Cliff Trotter).

There were ten members of the public present.

111. 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

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112. Minutes

Resolved -

That the minutes of the meeting held on 8 March 2013, having been printed and circulated, be taken as read and be confirmed and signed by the Chairman as a correct record.

113. 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.

114. Application to record a public footpath from the Eastern End of the Former Railway Viaduct to Wighill Lane, Tadcaster

Considered –

The report of the Corporate Director – Business and Environmental Services advising Members of an application for a Definitive Map Modification Order to add a footpath between the eastern end of Tadcaster Viaduct and Wighill Lane, Tadcaster. A location

plan was attached to the report; together with details of the route referred in an additional plan attached to the report. Members were requested to authorise the Corporate Director, Business and Environmental Services, to make a Definitive Map Modification Order.

The County Council's Definitive Map Officer, Russ Varley, presented the report highlighting the Committee's responsibilities and the legal issues pertaining to the implementation of modification orders.

Mr Varley outlined the background to the applications stating that on 26 March 2012 a local resident submitted an application to add the route shown A-B on Plan 2, to the Definitive Map and Statement as a footpath. The route crossed land forming part of a property which in the past was a Barnardos Home. The application was supported by user evidence forms, a statement from the former Barnardos Care Home Superintendent and three historic maps. The application was submitted as a reaction to the obstruction of the western end of the route with a substantial fence and on the eastern end of the route with the walling up of a gap in an existing stone wall boundary. The fence and walling were put in place around February 2012. Mr Varley provided a visual presentation to demonstrate the route of the application and of the fence and walling that had been erected.

In terms of the evidence in support of the application 267 evidence of use forms alleging use between 1954 and 2012 had been submitted. Of those forms, nine had been disregarded for reasons set out in the report, leaving 258 signatories that had demonstrated use of the route, "as of right". All of the signatories had used the route on foot, 90 claimed to have used the route on pedal cycle and foot and two claimed to have used the route on pedal cycle, by horse riding and on foot. The reasons given for using the route were all bona fide in terms of the use of a public right of way.

Details of a statement made by the former Barnardos Care Home Superintendent, who was in post between 1962 and 1988, indicated that local residents had used an unofficial path across the Spinney to get from Wighill Lane to the viaduct without challenge unless anyone strayed into areas where the children played and then they would be reminded that they should not be there.

Historic maps indicated that a track existed linking the eastern end of the viaduct with Wighill Lane.

In terms of the evidence against the application the County Council had received one objection from the single affected current landowner. The objector claimed that the requirements of the Wildlife and Countryside Act 1981 had not been satisfied by the evidence presented in support of the application. Furthermore it was stated that the fencing erected across the route during the 2000's was broken down by people trying to access the route. It was considered that the erection of fencing should have been seen as an indication that the then landowner had no intention to dedicate the route. The objector also stated that the previous owners of the site, Marshalls of Eland, gave permission for people to use the route, therefore. "by right".

The report provided an assessment of the evidence provided and in conclusion it was stated that there was sufficient evidence of use of the way during the relevant period to allege that the route outlined on Plan 2 attached to the report had been dedicated as a public path.

Following the initial presentation a Member of the Committee sought clarification as to where the path, that ran adjacent to that outlined on Plan 2 attached to the report, led to.

Clarification was provided by Mr Varley and Members of the public present at the meeting. It was noted that access to this route involved a number of steps.

The local County Councillor for the Tadcaster area, County Councillor Chris Metcalfe, also a Town Councillor addressed the Committee and spoke in favour of the application. He outlined his involvement with regards to requests to formalise the footpath between Wighill Lane and the viaduct. He noted that the route was valued by the community in Tadcaster as it gave access to the local school and access to work for many people. The route also gave an alternative access when flooding occurred. He noted that the Town Council had engaged in consultation on the formalisation of the route for a number of years and had been involved with Doctor Barnardos in attempting to formalise the footpath along the route. He noted that Doctor Barnardos had been willing to do that. Following the transfer of the land, Councillor Metcalfe met with the new landowner and made them aware of the footpath. He noted that there had been support for the community's wishes and support for a cycle route, in that area, at the time. However a decision was made to sell the land before those factors could be put in place. Councillor Metcalfe noted that several site visits had taken place involving the County Council, the District Council and the landowners with a view to establishing the route as a footpath. He emphasised that the route was well used, that the evidence in favour of the route was reasonably large and those that had used the route in the past had not been challenged.

Mr Patrick Tunney, Chairman of the Local Footpath Society, addressed the Committee and spoke in favour of the application. He noted that he had been a user of the footpath every day until it had been blocked off. Many people in the area chose to use that route and it had been well used for over 20 years with substantial evidence submitted to corroborate that. He noted that local residents had asked for a meeting in relation to this matter, with the landowner, but had been met by the Company Secretary who had stated that there was no possibility of a footpath being put in place there. That was the current situation in terms of the footpath. As a result an application had been sent for a Definitive Map Modification Order which was before the Committee today. The Action Group set up to oversee the development of a footpath on the route had been overwhelmed by the community's response with over 400 evidence of use forms submitted following the application. He emphasised that the blocking off of the footpath was unwarranted and that the route required reinstatement as before, as use of that had always been "as of right".

Mr David Binns, local resident, addressed the Committee and spoke in favour of the application. He outlined how persons with health problems, those using cycles, wheelchairs, pushchairs, etc, were currently disadvantaged through the present situation, as the alternative route required access down a flight of 38 steps. The stopping off of the original route from Wighill Lane to the viaduct had led to this. He considered that this was leading to people travelling more in vehicles, rather than walking. He suggested, therefore, that the problems, related to the stopping off of the route were two fold in that it was discriminatory and detrimental to the environment.

Mr Neil Jacobi of Peter Lyn and Partners Solicitors, representing the landowners, Wharfe Bank and Samuel Smiths, addressed the Committee and spoke against the application. He asked Members to focus on matters on which such applications should be decided. He stated that for the application to be approved the route had to have been used for a 20 year period, without force and without permission having to be given. He considered that this was not the case. He noted that there were fences obstructing the path, which had been shown in the photographic evidence during the officer's presentation. He noted that there was evidence to suggest that those using the route had been guided away from the site at the former Barnardos Home, that there had not been 20 years of

use and suggested that Members take account of the evidence that had been disregarded as that stated that permission had been required for use of the route. He noted that 28 evidence of use forms had been disregarded as such. He stated that the existing fences had been broken down by people continuing to use the route and considered that over the last 20 years people had to either break down or climb over the fences to obtain use of the route. He considered, therefore, that the route had not been used for the 20 year period without force or permission having to be given.

Following the representations Members discussed the report and information provided and the following issues and points were highlighted:-

- Members gave consideration to the photograph showing the original fencing in place and considered that a bottom rung could be placed on the fence and had not necessarily been broken for people to obtain access.

- Clarification was provided as to where the steps were located in terms of the alternative footpath.

Resolved –

(i) That authorisation be given to the Corporate Director of Business and Environmental Services to make a Definitive Map Modification Order for the route shown as A – B on Plan 2 of the report to be shown on the Definitive Map as a Public Footpath; and

(ii) That in the event that formal objections are made to that Order, and are not subsequently withdrawn, authorisation be given to the referral of the Order to the Secretary of State for determination, and in doing so 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.

115. Public Footpath 35.74/16 and 35.74/17 Pinfold Hill to Carr Lane, Wistow

Considered –

The report of the Corporate Director Business and Environmental Services advising Members of an opposed Definitive Map Modification Order, the effect of which, if confirmed, would be to add public footpaths 35.74/16 and 35.74/17 to the Definitive Map and Statement at Wistow, Selby. A location plan outlining the routes was attached to the report. Members were requested to authorise the Corporate Director of Business and Environmental Services to refer the opposed Order to the Secretary of State for determination, allowing the Authority to support its confirmation.

The County Council's Definitive Map Officer, Russ Varley, presented the report highlighting the Committee's responsibilities and the legal issues pertaining to the implementation of modification orders. He provided a visual presentation giving photographs of the route and outlining the objections lodged in relation to the application.

Mr Varley outlined that an application to add the route A – B – C – D – E shown on the plan attached to the report, to the Definitive Map and Statement, as a footpath, had been submitted by Wistow Parish Council on 20 September 2004. Additionally A–B of the route was shown in an additional plan within the report and the northern section of the

Diversion Order, shown as F – G was also highlighted on an additional plan. The application was supported by user evidence forms. The application was submitted in reaction to the obstruction of the northern end of the route by a wall and fence constructed across the claimed route.

Mr Varley highlighted the evidence in support of the application stating that 27 evidence of use forms alleging use between 1914 and 2004 had been submitted. Five forms had been disregarded for reasons set out in the report leaving 22 witnesses alleging use of the route as a footpath. The reasons for their use of the route were all bona fide for the use of a public right of way. Additionally examination of the 1908 edition of the Ordnance Survey Map showed the existence of a track that generally corresponded with the route claimed by the evidence of use forms. The claimed route became partially obstructed by newly laid out gardens of houses constructed in the early 1980s but it seemed that the public continued to make use of the majority of the route avoiding the obstruction by walking within the land of the south west of the gardens.

In terms of the making of the order Mr Varley stated that an initial consultation was carried out in September 2010 and one objection was received at that time. Following negotiations with both the objector and the Parish Council it was agreed that if the Definitive Map Modification Order was successful the route shown as A-B on the Plan attached to the report would be immediately diverted on to a new alignment crossing the open space at the centre of the village owned by the Parish Council. The open space was already crossed by a suitable path with a tarmacked surface. The path was shown as F-G on the Plan attached to the report. The proposal allowed the objection to be withdrawn and the Definitive Map Modification Order and the agreed Diversion Order were made by the authority in January 2012. Both Orders were advertised between May and June 2012 and an objection was received in relation to the Definitive Map Modification Order from a local resident. There were no objections to the Diversion Order. The objection was based on the grounds that the Parish Council had not allowed the objector to erect an access gate from his property directly on to the open space to the south west of the property. Full details of the objection including plans and photographs were provided by the objector, however, this evidence did not present any suggestion that the route was not a public right of way.

Mr Varley provided an assessment of the evidence submitted in relation to the application and concluded that the evidence supporting the Definitive Map Modification Order was sufficient to justify the addition of the route shown in the plan attached to the report as a public footpath on the Definitive Map and Statement.

Mr John Verity, local resident, addressed the Committee and spoke in opposition to the application. Mr Verity outlined how he was the objector referred to in the officer's presentation and that his right of access outlined in his objection had been cut off for what was now a period of more than 25 years. He stated that he had spoken to the Parish Council and had expected some action to be taken over this matter during that time but to no avail. He noted that he had withheld his payment of his Council tax for a short period during that time, as a protest in relation to this matter, but still no solution had been provided. He considered that he should have a right of access from his property and that the matter should be addressed.

Members discussed the report and information provided and the following issues and points were highlighted:-

- It was clarified that the footpath on the land referred to by the objector was owned by the Parish Council.

- Members noted that, unfortunately, the matter referred to by the objector was not relevant in the case of the DMMO application and was a matter to be taken up by the local resident and the Parish Council between themselves. It was emphasised that the Committee had no legal remit on this matter and could not take it into account when determining the application.

Resolved –

That authorisation be given to the Corporate Director of Business and Environmental Services to refer the opposed Order to the Secretary of State for determination and for the Authority to support its confirmation.

116. Bridleway No 25.28/18 Lingy Plantation, Givendale Head, Ebberston and Yedingham Creation Order 2008 Reviewed

Considered –

The report of the Corporate Director - Business & Environmental Services advising Members of the change in circumstances affecting the opposed Creation Order which was reported to the Planning and Regulatory Functions Sub-Committee meeting on 13 January 2012. Members were requested to advise the Corporate Director of Business and Environmental Services not to pursue confirmation of the Creation Order and that consequently it not be submitted to the Secretary of State for determination.

The County Council's Definitive Map Officer, Penny Noake, presented the report, highlighting the Committee's responsibilities and the legal issues pertaining to the non-pursuance of a Creation Order.

Ms Noake highlighted that in 2008 the Corporate Director had been satisfied that it was expedient that a bridleway should be created on the route shown as A-B on Plan 2 attached to the report, which was made, but was opposed and was, therefore, reported to the Sub-Committee on 13 January 2012. Members resolved that the opposed Order should be submitted to the Secretary of State for determination. Subsequent to the meeting, and before the Order was submitted to the Secretary of State, details emerged that a change had arisen regarding the circumstances affecting the Creation Order.

Since the resolution had been made Highways Officers had examined archived highways records and had concluded that the route had been recorded in earlier versions of the List of Streets and in associated documents. There was no record of any legal event to support the deletion from those records and it was concluded that an error had occurred during an update of the List of Streets and that the route subject of the Creation Order was in fact already a highway maintainable at public expense and should be returned to the former record. The consequence of that was that there was now no legal basis for confirmation of the Creation Order given that the County Council now acknowledged a highway existed.

Ms Noake outlined the options available as follows:-

- That the Creation Order was forwarded to the Secretary of State, with support for the confirmation of the Order.

- That the Creation Order was forwarded to the Secretary of State, with the Authority taking a neutral stance as to the confirmation of the Order.

- That the Creation Order was forwarded to the Secretary of State requesting that the Order was not confirmed.

- That the authority made a formal resolution not to proceed with the Order in effect abandoning the Order.

In conclusion she stated that as the route was now recorded as public highway maintainable at public expense it was considered inappropriate to pursue the confirmation of the Creation Order, in any event, it was unlikely to be capable of confirmation. She noted that the authority could be open to criticism if it were to pursue the confirmation of the Order in such circumstances. It would be possible for the Authority to forward the Order to the Secretary of State, either choosing to take a neutral stance or alternatively requesting that the Order was not confirmed, but the action was not necessary as it was open to the authority to resolve not to pursue the Creation Order. In line with the DEFRA "Guidance for Local Authorities" the authority had the discretion to make a formal resolution not to proceed with certain Orders, including Creation Orders and this was considered to be the most appropriate course of action of the authority to take in this instance.

Mrs Janis Bright addressed the Committee and spoke in relation to the recommendation being put before Members. She stated that she was a local resident who lived near to the route and considered that there was still need for a Creation Order in relation to the route. She asked that Members consider continuing with the Creation Order to ensure that a right of way was recorded on the route which would allow structures to be placed along there, in line with those required for a bridleway, at the public's expense. She suggested that the matter relating to the List of Streets was a separate issue to that of the Definitive Map. She emphasised that the route had been on the List of Streets did not determine the clarification of the route and suggested that the two factors were entirely separate. She noted that the British Horse Society had applied for a Definitive Map Modification Order, which would have provided the status for the route, whereas merely leaving this on the List of Streets did not define that status. She requested that Members stick to their previous decision in relation to this matter.

Members discussed the report and the information provided and the following issues and points were highlighted:-

- It was clarified that the DMMO application was for a bridleway and that this application which was waiting to be processed would deal with the Definitive Map issue.

- A Member noted the concerns of the local resident that asked for clarification as to whether a "street" had higher rights than the other routes suggested, for example the bridleway. In response it was stated that the issue before Members was in fact a technicality, as a Creation Order could not be promoted where a route already legally existed. As this had now been found to be the case within the List of Streets it would be inappropriate to submit the Creation Order to the Secretary of State for confirmation. It was noted that the DMMO application process could still be undertaken to clarify the status of the route.

Resolved –

That the Authority does not forward the Creation Order to the Secretary of State, and does not proceed with the Order; and that the Corporate Director of Business and Environmental Services follows the statutory requirements for notification of interested parties of that resolution.

117. DMMO and Public Path Order Update - March 2012 - April 2013

The County Council's Definitive Map Officer, Penny Noake, gave a verbal report outlining the progress made on DMMO and Public Path Order applications that had been considered by the Committee from March 2012 to April 2013. She stated that eleven new cases had been considered by the Committee during the year, however, some of those had been to the Committee more than once.

She provided details on the applications that had been to the Committee as follows:-

- Application to add a bridleway to the Definitive Map and Statement at Hawber Lane and to upgrade Footpath Number 05.41/11 (Part) and Footpath Number 05.41/16 (Part) to Bridleways, Thornton-in-Craven – no objection had been received and the Orders had been confirmed.

- Application to upgrade Footpath Number 05.41/23 (Part) to Bridleway status and to record the lane known as Dodgeson Lane and Dark Lane on the Definitive Map and Statement as a Bridleway – no objection had been received and the Order had been confirmed, with Section A-B being shown as a restricted byway, with no modification to the Definitive Map and Statement in relation to points B-D.

- Application to add a Bridleway to the Definitive Map and Statement from Mosscarr Lane to the West Yorkshire County boundary, Bilton in Ainsty with Bickerton – the Order had now been advertised with notices on site.

- Downgrading of public Bridleway Number 15.29/38 (Part) to Footpath, Monk Ing Road, Dacre Modification Order 2012 – The Order is opposed and Members had resolved that the Authority should support the downgrading of the public Bridleway. The Order was now awaiting submission to the Secretary of State.

- Upgrading of Footpath Number 15.39/16 and Footpath Number 15.39/4 (Part) to Bridleway, Horsemans Well, Felliscliffe Modification Order 2012 – objections were still in place in relation to the Order and this was awaiting submission to the Secretary of State.

- Application to add a Footpath to the Definitive Map and Statement from Abbey Road to Abbey Road via the bank of the River Nidd, Knaresborough – the Order was made and is opposed: therefore this was awaiting submission to the Secretary of State.

- Application for diversion of public Footpath Number 05.30/37, Gallaber Farm, Long Preston – the Order was made, had not been opposed and was now confirmed.

- Application for diversion of public Footpath Number 10.19/21, Pear Tree Bungalow, Brompton – the Order had been made and had been opposed, therefore this was awaiting submission to the Secretary of State.

- Application for diversion of Bridleway Number 10.128/8, Sexhowe Grange, Sexhowe – the landowner had offered to make a number of alterations that would address the concerns of the objections raised at the meeting, however, the Order had not yet been advertised, therefore this case was ongoing.

- Application to divert public Footpath Number 15.89/21 (Part), Marfield Nature Reserve, Masham – the Order was about to be drafted and would be advertised shortly.

- Bridleway Number 15.111/10 (Part) East of Killinghall Bridge, Ripley Diversion Order 2012 – the Order was opposed and had been submitted to the Secretary of State who held a public inquiry in January 2013. The Order had subsequently been confirmed by the Secretary of State and work had commenced on the route. It was noted that the Diversion Order had affected a small section of much longer public right of way extending from Bilton to Ripley which was surfaced and well used. A Pegasus crossing was now in place to allow safe access across the A61.

Penny Noake referred to an application that had been dealt with previously by the Committee in relation to the addition of a Public Footpath to the Definitive Map and Statement from Manor Road to Spring Street, Easingwold. She noted that the public inquiry had been held in September 2012 and the Order had been confirmed by the Secretary of State. Works had now been carried out to open the route and the obstructions had been removed.

A Member asked about the backlog of applications to be submitted to the Secretary of State. In response it was stated that there were currently around 24 Orders waiting to be submitted to the Secretary of State and it was intended that the following municipal year would see a concentration on ensuring those applications were dealt with appropriately.

A Member of the Committee referred to an outstanding application from his own electoral division and asked what progress was being made on that. In response Penny Noake stated that there had been an issue with some Orders in relation to the line styles used on the plans due to the constraints of earlier computer mapping packages. She noted that the issue referred to was one of those applications and the Order had been required to be re-advertised. She noted that the Order was still opposed but with fewer objectors than previously. She stated that the Order had been submitted to the Secretary of State in the previous week.

Members welcomed the updates and thanked the officers for their details in relation to these.

Resolved –

That the update report be noted.

The meeting concluded at 11.45 am.

SL/ALJ

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

14 JUNE 2013

CASTLE PARK, 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 Castle Park, Whitby identified on the plan at **Appendix 1** ("the Application Site") as a Town or Village Green.

2.0 BACKGROUND

2.1 The County Council is responsible for maintaining the Register of Town and Village Greens for North Yorkshire. The Application, made in May 2009, was brought before the Planning and Regulatory Functions Sub-Committee on 3 June 2011, and a copy of that report is attached at **Appendix 2**

2.2 The Committee resolved in accordance with the Officer's 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 (Kings Chambers), a Barrister with extensive knowledge and experience of this area of the law and who has often acted as an Inspector, was instructed and an inquiry was held at the Sneaton Castle Conference Centre, Whitby between 30 April 2012 and 2 May 2012 inclusive. The Inspector's extensive report dated 21 August 2012 is attached 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 all the relevant legal criteria necessary for an application to be successful.

3.0 LEGAL CRITERIA

3.1 The principal matters for consideration in dealing with the application were set out in the report to the Planning and Regulatory Functions Sub-Committee and dealt with comprehensively by the Inspector. The relevant provisions of Section 15(2) of the Commons Act 2006 provide for land to be registered as a town or village green where:

(a) a significant number of the inhabitants of a locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years

and

(b) they continue to do so at the time of the application

3.1 For an Application to be successful it is necessary for it to meet all the criteria set out in Section 15(2) and the Inspector found that the Application failed in this respect. Officers concur with the Inspector's finding.

3.2 In reference to the criteria set out in section 15(2) of the Commons Act 2006 the Inspector concluded that :-

a) the relevant 20 year period under consideration is that running from May 1986 until May 2006 being the 20 year time period dating back from the erection of permissive signs on the site

b) Castle Park within the locality of the electoral ward of Mayfield amounts to a qualifying neighbourhood within a locality for the purposes of section 15(2)

c) it had not been demonstrated that a significant number of residents had taken part in the exercise of lawful sports and pastimes in such a way which amounted to them having indulged as of right in that exercise .

3.3 Although evidence was given by residents, many of whom had lived or grown up in the locality regarding use for sports and leisure activities the Inspector discounted use which amounted to :

i) use by RAF family and personnel as such use will have amounted to a use for which they already had entitlement rather than amounting to use as of right (i.e. establishing a right which did not already exist). In this context ownership of the land is relevant. The Inspector identified that this principle was accepted by the Applicant in her closing submissions to the Inquiry.

ii) use which took place out with the relevant 20 year period.

iii) use which was not by inhabitants of the locality concerned – that included use by sports teams from outside the relevant neighbourhood.

iv) use which was akin to the exercise of a public right of way rather than the exercise of wider recreational rights – the Inspector found from the evidence, including that given over three days of the inquiry, that a considerable amount of dog walking referred to fell into this category and found no evidence of general walking across the land.

3.4 The Inspector therefor did not question that the land had been in use throughout the relevant 20 year period, but concluded that sufficient qualifying

use had not been demonstrated across the whole of the 20 year period. In doing so she identified that it is necessary for an application to demonstrate that rights which did not already exist were being asserted over the land concerned. She concluded that had not been the case for the reasons set out in para. 3.3 above and that ultimately qualifying use in its entirety had not been demonstrated identifying in particular the first few years of the 20 year period as being a time when a number of the users who gave evidence would have been exercising a right which they had to use the land. The extent of non-qualifying use was material enough, particularly in the early part of the relevant 20 years, that any remaining balance of use was not sufficient to amount to a significant use from the inhabitants as a whole. From this and her overall assessment of the degree of use by the inhabitants of the neighbourhood as a whole the inspector reached a view that the extent of use did not amount to sufficiently continuous qualifying use over the relevant 20 years by a significant number of the inhabitants of the neighbourhood.

3.5 It is not obligatory for a Registration Authority to follow the findings of an Inspector, but it must demonstrate through its decision making that it has had proper regard to the Inspector's report and it must act lawfully in any decision it reaches. Arguments as to the merits or desirability of land being registered are not relevant. Similarly the fact the fact land has been maintained with the appearance of open useage is not of itself relevant.

3.6 In the event that the Committee were to resolve to accept the officer recommendation contained in this report the Applicant will be entitled to make an application for judicial review. However, it is your officer's opinion that there is no reason to warrant a departure from the Inspector's findings and that the Authority will have proceeded appropriately in following the Inspector's finding such that any such application for review is unlikely to be granted.

4.0 REPRESENTATIONS ON THE INSPECTOR'S REPORT

4.1 Following receipt of the Inspector's report by the County Council it was sent to the applicant and to Walker Morris Solicitors acting for the affected owner.

4.2 In responding the applicant herself expressed disappointment but was not entirely surprised at the result and felt it was unfortunate she and the residents had been unable to employ professional help. The owner did not comment on the Inspector's report at that time.

4.3 Two letters were received from local supporters of the application. Comments in reference to the content of those letters are set out below :-

(i) Mrs. P. Hopkin **(Appendix 4**)

- Miss Stockley is extremely experienced in this area of the law and has undertaken work on behalf of the County

Council on many occasions. There is no reason to doubt that she will have taken a balanced and measured view.

- A legal officer from the County Council was in attendance at all times and is satisfied that matters were conducted correctly and that there was no favouritism shown to either side.

- Representations concerning the merits of the land concerned remaining as an open green site are not relevant to determining the application.

(ii) Mrs J.Wood (**Appendix 5**)

- Comments of the Area Committee following the brief information report presented to it were brought to the attention of this committee at its meeting in June 2011. Having fully considered the relevant criteria the Planning & Regulatory Functions sub Committee did not resolve to approve the application but resolved that a non statutory inquiry be arranged to assist with determining the matter in due course.

- Where it is clear that a Registration Authority is going to receive representation in respect of an application then it should endeavour to take those representations into account in making its decision. A decision made ignoring any representations received (even though after the date in a public notice) is highly likely to be the subject of a successful challenge by judicial review. It is for this reason that the County Council does at times offer parties with a genuine intention of making representation extensions of time for their submission.

- As mentioned above officers are entirely satisfied as to the conduct and fairness of the inquiry and the ability of Miss Stockley to correctly assess matters of evidence.

- References to alleged financial gains to be made by the landowner and offers of purchase by the local residents are not relevant to determining the application for registration of the land as town or village green.

5.0 EQUALITIES IMPLICATIONS

5.1 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 indentified in the Equalities Act 2010.

6.0 FINANCE

6.1 Any decision reached by the Council may be the subject of an application for judicial review which if granted may involve the Council in the cost of defending its decision.

7.0 RECOMMENDATION

7.1 That the Application be **REFUSED** because the Registration Authority is not satisfied that it meets all the relevant criteria set out in Section 15(2) of the Commons Act 2006 for the reasons set out in the Inspector's Report dated 12 August 2012, comprising **Appendix 3** to this report.

DAVID BOWE
Corporate Director Business & Environmental Services

CAROLE DUNN
Assistant Chief Executive (Legal & Democratic Services)

Authors of Report: Doug Huzzard and Chris Stanford and Simon Evans

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

APPENDIX 1

North Yorkshire County Council
Business and Environmental Services

COMMONS ACT 2006

APPLICATION TO REGISTER NEW VILLAGE GREEN AT CASTLE PARK, WHITBY

AREA THAT IS THE SUBJECT OF APPLICATION

APPENDIX 2

ITEM 5

NORTH YORKSHIRE COUNTY COUNCIL

PLANNING AND REGULATORY FUNCTIONS SUB-COMMITTEE

3 JUNE 2011

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

1.0 PURPOSE OF REPORT

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

2. BACKGROUND

2.1 Under the provisions of the Commons Act 2006 ("the Act") the County Council is a Commons Registration Authority and so is responsible for maintaining the Register of Town and Village Greens for North Yorkshire.

2.2 Section 15(2) of the Act provides for land to be registered as green where:

(a) a significant number of the inhabitants of a locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years

and

(b) they continue to do so at the time of the application

2.3 A registration authority needs to be satisfied that on the balance of probabilities all the elements of Section 15(2) have been demonstrated by an application for it to be approved. The onus of proof rests with the applicant.

3.0 APPLICATION AND SUBMISSIONS OF SUPPORT

3.1 The application, submitted by Susan Grimoldby, who is a local resident of the Castle Park housing estate within which the land in question is situated, was received by the County Council on 9 June 2009. It relies on the criteria contained in Section 15(2) as having been met.

3.2 The application includes the submission of 43 evidence questionnaires together with 24 letters of support and copies of seven letters of objection previously sent to Scarborough Borough Council in relation to an earlier planning application affecting the site. Subsequently a further 26 forms have been submitted and have been received following public notification of the application.

3.3 A copy of the TVG Application and the additional completed evidence questionnaires is attached as Appendix 2. Photographs submitted with the TVG Application will be distributed to members at the meeting.

3.4 Papers and representations submitted in the application relating to planning strategies, provision of parks and green spaces, etc, including the copy correspondence relating to a previous planning application, are all immaterial and require to be disregarded for the purposes of assessing the TVG application. Assessing the application is a matter of evidential assessment as to whether or not the criteria set out in Section 15(2) have been met. The merits of the site being or not being a village green have no place in that assessment.

4.0 APPLICATION SITE

4.1 Indexed photographs of the site taken in July 2009 will be distributed to Members at the meeting.

4.2 The TVG Application site comprises a combination of open flat grassland, two former tarmac-surfaced tennis courts and an area of hard standing and play wall. The hard standing is understood to have been formerly equipped with children's play equipment and the tennis courts understood to have at one time been enclosed by fencing.

4.3 Sited on a small section of the TVG Application site is what is understood to be currently the office building of the local officer of the Ministry of Defence (MoD) Hive Information Service (see photo 9). This building is not identified on the plan at Appendix 1. An adjacent building and open play area behind it which is used as a children's day nursery does not form part of the TVG Application site though land fronting it, comprising steps and a grass verge, does (see photo 11).

4.4 In total the site extends to approximately 1.246 hectares (3.081 acres)

5.0 OWNERSHIP

5.1 The TVG Application site comprises part of an area of what was originally farmland known as Parsons Close Farm and which was purchased by the Ministry of Air in 1961. The Ministry subsequently constructed staff housing on the site it is understood to provide largely for staff of RAF Fylingdales. It seems the layout of the estate included the TVG Application site as recreational land, and that its size and characteristics have remained relatively unchanged since the initial construction of the estate.

5.2 As part of a nationwide sale of MoD housing stock the ownership of the Castle Park housing estate, including the TVG Application site, was transferred to Annington Property Limited in November 1996. In summary it is understood the terms of the transfer included provision for the leaseback to the MoD of houses that were still occupied by MoD service staff and for houses to be taken "in-hand" by Annington Property Limited when they became vacant.

5.3 Annington Property Limited was owner of the TVG Application site at the time of the TVG Application. The TVG Application was prompted by a proposal to develop the TVG Application site for housing which was the subject of a planning application submitted to Scarborough Borough Council.

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

6.0 OBJECTION

6.1 Objection to the TVG Application has been lodged by Yorkshire County Homes Limited in a "Statement of Objections" submitted on their behalf by Walker Morris solicitors together with a covering letter dated 19 July 2010 (all attached as Appendix 4)

6.2 In accordance with due process the objection was forwarded to the Applicant for comment and her response is attached as Appendix 5.

6.3 Correspondence opposing points raised in the Statement of Objection was also submitted independently by Mr P L Keens, a local resident claiming 30 years' acquaintance with the site (Appendix 6)

6.2 Walker Morris subsequently confirmed that their client had no further representations to make and in doing so reaffirmed the objections submitted with their letter dated 19 July 2010.

7.0 EVIDENCE REVIEW

7.1 Significant number of the inhabitants of a locality, or of any neighbourhood within a locality

7.1.1 The TVG Application relies on the Castle Park Estate as comprising a neighbourhood within the locality of the electoral ward of Mayfield.

7.1.2 Government guidance sets out that the term "locality" means a recognised administrative unit. In relying on the Mayfield electoral ward the application appears to meet this element of the criteria.

7.1.3 In considering what constitutes a "neighbourhood" for the purposes of Section 15(2) the courts have ruled that:

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

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

7.1.4 The history and nature of the Castle Park Estate is such that there seems little doubt that it constitutes what amounts to a neighbourhood under Section 15(2). The landowner's Statement of Objection does not raise issue with the adequacy of the "locality" or neighbourhood" submitted by the Applicant for the purposes of Section 15(2).

7.1.5 Whilst there is no set formula for calculating what constitutes a "significant number" in any one case it does not need to be necessarily considerable or substantial. The totality of the circumstances of a case blend to help determine what level of use is "significant". The extent of use, in terms of numbers, needs to signify evidence of "general use by the local community." There is no formula as to precisely what number of users will demonstrate that in any one case.

7.1.6 At section 4 the Statement of Objection contains a claim that the user evidence does not represent a satisfactory spread across the neighbourhood to demonstrate use by inhabitants of the neighbourhood in general. Attached as Appendix 7 is a plan of the Castle Park Estate. Each of the streets from which claims have been submitted are shown emboldened. Your officers believe the distribution of claims considered with all the other circumstances of the case adequately suggest the evidence claims contained in the TVG Application demonstrate claims of usage from a sufficient spread of residents across the neighbourhood

7.1.7 In summary, a total of 94 representations either as a letter or completed evidence of use form have been received from the Applicant in support of the TVG Application. Of those 94 there are eight which appear to be duplicate submissions. Around 20 of those forms and letters require to be disregarded because they either fail to specify either a period of use or a type of use, or simply support the merits of the site being a village green. Appendix 8 comprises a summary spreadsheet of the evidence of those letters and forms submitted by the Applicant.

7.1.8 The majority of letters and witness statements submitted in support of the application refer to the length of time those making the submission have lived on the Castle Park Estate (ie, the neighbourhood) but rarely to the consistency of uses mentioned over the period concerned. The landowner highlights this particularly at para 5.9 of the Statement of Objection. It is perhaps arguable witnesses imply consistent use over the time they have been resident. However, fuller scrutiny, for example by cross examination, would provide opportunity to obtain clarification and verification of the precisely what has been claimed.

7.2 As of right

7.2.1 In its role as Registration Authority the County Council has to be satisfied the claimed use over the relevant 20-year period has not been by force, stealth nor with the permission or licence of the owner (at the time of use) for it to be satisfied that claimed use was use made "as of right". Where claimants have been permitted to be on the subject land then their use of the land will have been "by right" and not "as of right".

7.2.2 From the evidence submitted it would appear that the "neighbourhood" in this case when first constructed comprised entirely Ministry of Defence housing, and that the TVG Application site formed part of the layout of that housing provision. In all likelihood residents of the "neighbourhood" at that time were effectively using the site with permission of their employer/landlord and then landowner the MoD. Consequently those residents' use will not have amounted to a use exercised "as of right."

7.2.3 The Applicant submits (and has backed this up with documentary evidence) that a total of 133 houses in the neighbourhood were progressively sold off between 1973 and 1994. The likely effect of this will have been that, from the date of sale, any user originating from those houses will not then have been making use of the TVG Application site in exercise of an effective permission given to them by the MoD, and so any such user is likely to have amounted to a use "as of right".

7.2.4 At the commencement of the 20-year period preceding the TVG Application it appears at least 108 homes within the neighbourhood had been sold (perhaps more). The remaining sales referred to in 7.2.3 were completed by 1994. There is no indication of whether or not purchasers were or remained employees of the MoD after buying their house.

7.2.5 Subsequent to those property sales described in 7.2.4, use of the TVG Application site by residents of "the neighbourhood" is likely to have been by a mixture of users originating both from premises sold off and other houses still leased to the MoD (MoD houses). Consequently from that time groups of users may have comprised a mix from MoD and non-MoD houses with at times the predominant user originating from MoD houses and at other times not. Further, at other times groups of users will have been entirely from either non-MoD premises or alternatively entirely from MoD houses. Users originating from MoD houses are likely to have effectively been using the site by permission of the MoD ("by right" – as opposed to "as of right"). Without full scrutiny and examination of the evidence of user it is difficult to make a clear assessment of the extent of what user if any was "as of right" following the sales of houses in the "neighbourhood". Prior to that time use by residents of the "neighbourhood" will almost certainly have been effectively at the permission of the MoD arising from their occupation of staff housing.

7.2.6 The MoD relinquished any interest in the vast majority of the site in 2002. Clearly any use of the TVG Application site after that time by any persons (ie, whether originating from MoD houses or not) cannot have been with any form of permission from the MoD.

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

7.3 Lawful sports and pastimes

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

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

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

7.4 Period of at least 20 years

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

8.0 AREA COMMITTEE

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

9.0 DECISION MAKING

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

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

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

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

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

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

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

10.0 RECOMMENDATION

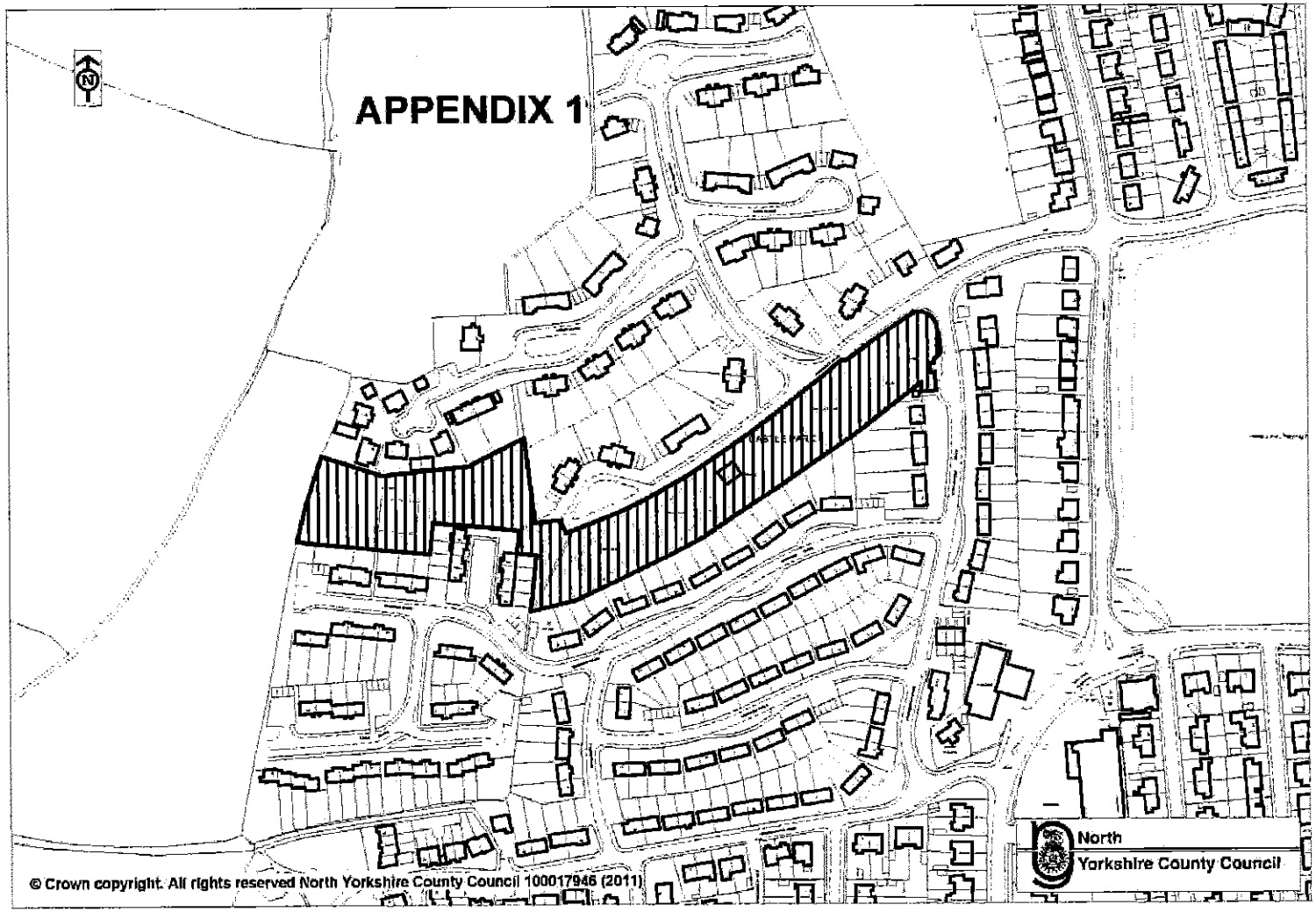
10.1 In view of the serious dispute that exists between the Applicant and the current landowner concerning the evidence before the County Council it is recommended that the Corporate Director (Business & Environmental Services) with advice and guidance from the Assistant Chief Executive (Legal & Democratic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

10.2 Following receipt of the expert's report, that a further report be presented to this Committee to enable it to then determine the application.

DAVID BOWE
Corporate Director, Business and Environmental Services

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

Contact: Doug Huzzard/Chris Stanford


APPENDIX 1
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North Yorkshire County Council

APPENDIX 2

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:

COMMONS REGISTRATION ACT 1965
NORTH YORKSHIRE COUNTY COUNCIL
REGISTRATION AUTHORITY
DATE - 4 JUN 2009

Application number: NEW VG50

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

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

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

1. Registration Authority

Note 1
Insert name of registration authority.

To the

NORTH YORKSHIRE COUNTY COUNCIL

C.
1 JUN 2009
CM

2. Name and address of the applicant

Note 2
If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

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

Name: SUSAN GRIMALDI

Full postal address:

11 FIELD CLOSE
WHITBY
NORTH YORKSHIRE

Postcode YO21 3LR

Telephone number:
(incl. national dialling code) 01947 602834

Fax number:
(incl. national dialling code)

E-mail address: scooby.looz@tiscali.co.uk

3. Name and address of solicitor, if any

Note 3
This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

Name:

Firm:

Full postal address:

Post code

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

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

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

Section 15(3) applies: ☐

Section 15(4) applies: ☐

If **section 15(3)** or **(4)** applies please indicate the date on which you 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.

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

Note 5
The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable to it to be clearly identified.

Name by which usually known:

CASTLE PARK

Location:

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

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

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

Common land register unit number (if relevant) *

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.

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

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

CASTLE PARK SITE WITHIN THE MAYFIELD WARD OF WHITBY

Tick here if map attached: ☐

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

Note 7
Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

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

THE LAND IN QUESTION HAS BEEN USED BY LOCAL RESIDENTS, AS OF RIGHT SINCE THE INCEPTION OF THE ESTATE. IT IS USED REGULARLY BY LOCAL RESIDENTS FOR A VARIETY OF ACTIVITIES AND REPRESENTS AN OPEN, EASILY ACCESSIBLE, RECREATIONAL SPACE ON WHICH USE IS NOT, NOR HAS BEEN IN THE PAST, RESTRICTED BY EITHER THE OWNERS, THE COUNCIL OR ANY OTHER PERSON.
THE LAND IS NOT FENCED OFF AND IN FACT HAD FORMAL PLAY FACILITIES ON SOME AREAS WHICH WERE PREVIOUSLY MAINTAINED BY THE MOD BEFORE THE LAND OWNERSHIP WAS TRANSFERRED TO THE CURRENT OWNERS.

Note 8
Please use a separate sheet if necessary.

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

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

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

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

ANNINGTON DEVELOPMENTS LTD
1 JAMES STREET
LONDON
W1U 1DR

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

Note 10
List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

PLEASE SEE ATTACHED

11. Any other information relating to the application

Note 11
If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a seperate sheet if necessary.

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

Note 12
The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date: 28. MAY 2009

Signatures:

REMINDER TO APPLICANT

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

Data Protection Act 1998

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

Statutory Declaration In Support

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

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

I, Susan Grimoldby,[1] solemnly and sincerely declare as follows:—

[2] *Delete and adapt as necessary.*

[3] *Insert name if Applicable*

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

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

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

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

4.[4] I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

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

Cont/

[1] *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
Jean Sanderson

at Whitby North Yorkshire

this 20th day of May 2009,

Signature of Declarant

Before me *

Signature:

Address:

Qualification:
MICHAEL A. CROSSLING
SOLICITOR

*** 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:

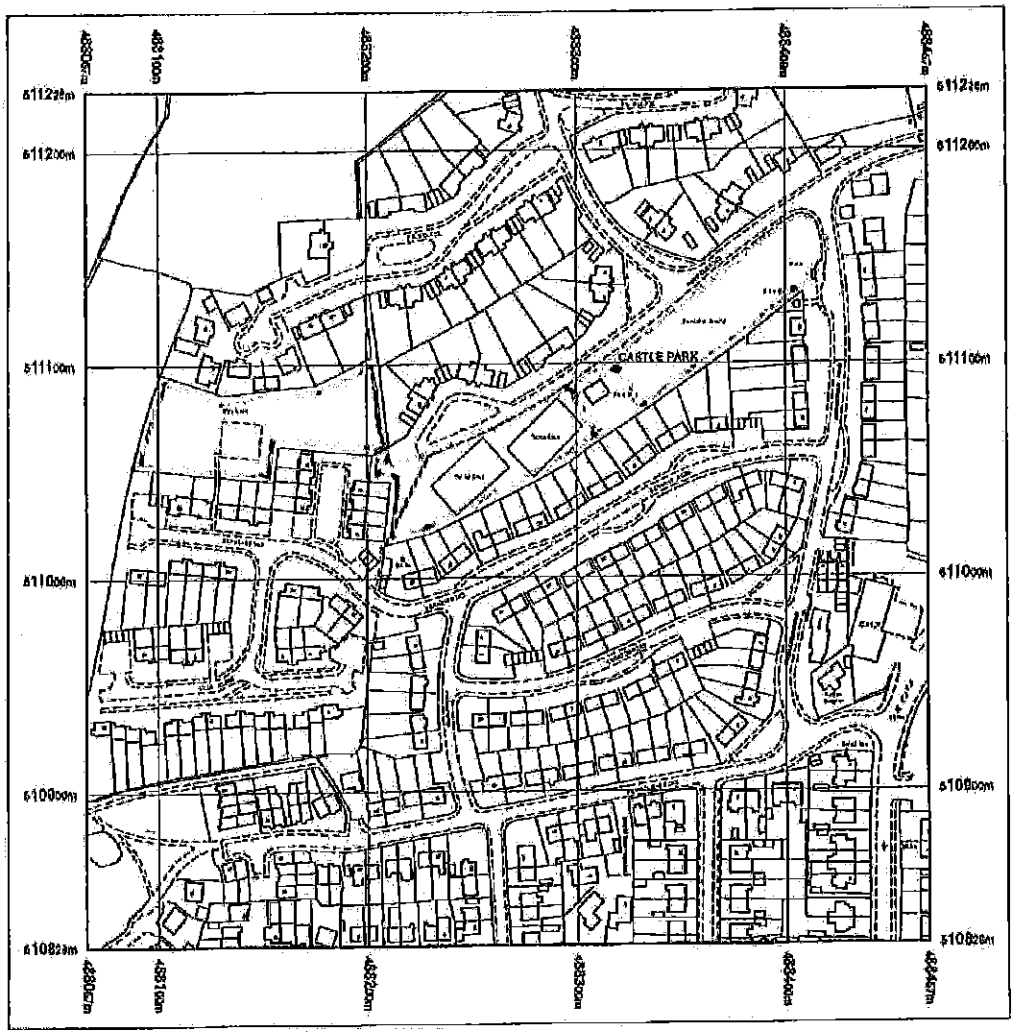
Please initial all alterations and mark any map as an exhibit

---

This is the map marked "SS 1" referred to in the Statutory Declaration made by Susan Cartwright on the 24/5/11 Before me

Ordnance Survey®

OS Sitemap™



Produced 28.03.2008 from the Ordnance Survey National Geographic Database and incorporating surveyed revision available at this date. © Crown Copyright 2008.

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The representation of a road, track or path is no evidence of a right of way.

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

Metres
0 20 40 60 80 100
Scale 1:2500

Supplied by: The Business Shop
Serial number: 00146700
Centre coordinates: 488287 511026

Further information can be found on the OS Sitemap Information leaflet or the Ordnance Survey web site: www.ordnancesurvey.co.uk

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

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

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

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

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

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

This application has been prompted by a series of events and the context of these is important in shaping the argument for this area to be a town green. In 2007 planning permission was sought for the area at the same time as the area appearing within a consultation document from Scarborough Council as a possible development site.[3] This galvanised local residents into action, there were 44 objections[4] recorded with 2 in favour of the development (one of these is not a resident in the local estate) and a meeting held to discuss the issues by residents at the local rugby club with local councillors present.

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

Taking The SBC's own findings
Parks and Green Space Strategy
In an audit of the main built areas in the borough, Whitby is shown to have significantly less open space and parks per person then either Scarborough or Filey
Scarborough 87.1 m^2 per person
Filey 75.7 m^2 per person and
Whitby 44.3 m^2 per person
The 1.34 hectares represents almost 6% of the current amenity green space in Whitby.

The document above lists the advantages of green space

'Valuable green spaces need to be protected from development, improved by new landscaping or play schemes and managed to a high standard. The strategy will explore the need to create new spaces, link existing spaces together or rationalise spaces that do not provide for the community's needs. It will establish a framework within which the future planning, provision, improvement, maintenance and use of these spaces can take place.
The importance of parks and green spaces to our quality of life is enormous, not least by breaking down social barriers and pulling communities and people together and if they are easily accessible, neighbourhoods become better places, giving us more contact with the natural environment. Trees and shrubs reduce pollutants and green spaces allow water to soak away, aiding water management.
There is also a clear link between quality green spaces and the economy. An attractive environment not only provides social, recreational and health benefits

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

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

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

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

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

While there are alternative *sports* facilities locally – the Whitby Rugby Club is very close by, the land there (owned by SBC) is currently used for park and ride and caravans on occasion as well as formal matches and is further under threat from rental hikes being imposed by SBC. Regardless of this, areas to the opposite side of the Rugby club – Brownfield sites[6] - are also proposed development sites (and more acceptably so, as they are true Brownfield sites) for which the rugby club has again been nominated as open space area - a combined build area of 2.71 hectares, 200 plus homes adding to the demand for appropriate open space. The rugby club grounds are essentially formal sporting fields, not common land for a multitude of uses, dogs are not allowed, other play activities do not take place there as it is respected as a sporting arena and used as such, when not, it is used as a car park by the council. You can not restrict open space by saying only when there are no matches, no training, no caravans and no dogs at anytime.

Other amenity space in West Whitby is formal play space sited near the sports centre – tennis courts, paddling pool, bowls/pitch and putt which also doubles as park and ride for most of the long Whitby season. The Open Space map of Whitby[7] shows clearly the few open spaces in the area and density of build in the town.

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

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

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

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

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

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

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

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

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

Your Neighbourhood (Mayfield Ward)	68%
Scarborough	94.7% and
England	87.5% [6]

so prior to any build within the area which will obviously increase the requirements of greenspace, the Mayfield ward is below both local and national percentages. Positioned centrally, as it is in the ward area, the land to which the application refers would provide an ideal position for a Town Green.

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

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

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

[1] A photocopy of this conveyance is attached (original is not held by the applicant)

[2] Quote taken from the Annington Developments website www.annington.co.uk

[3] The applicant and residents would like to express dismay that a site can be included within a consultation document but then be awarded outlining planning permission prior to the completion of the consultation. It appears to nullify the principles of a consultation and reduce public confidence in the process.

[4] Attached Report to planning development committee 3.9 (page 5)

[5] English Natures Accessible Natural Greenspace Standard

[6] Proposed development sites

[7] Open space map Whitby

[8] Neighbourhood Statistics, Mayfield Ward

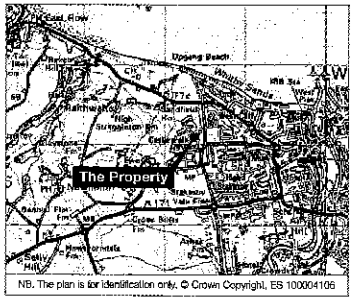
LOT **208**

Whitby
Land at Highfield Road, North Yorkshire YO21 3LW

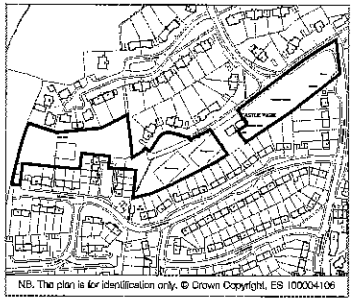
A Pair of Freehold Sites extending in Total to Approximately 1.35 Hectares (3.34 Acres)

BY ORDER OF ANNINGTON PROPERTY LTD

TO BE OFFERED WITHOUT RESERVE



NB. The plan is for identification only. © Crown Copyright. ES 100004106


NB. The plan is for identification only. © Crown Copyright. ES 100004106

Vendor's Solicitors
Messrs Eversheds (Ref: Janet Morgan).
Tel: (02920) 477896 Fax: (02920) 477896.
e-mail: janetmorgan@eversheds.com

Freehold Sites


The Photograph is for identification only.

Tenure
Freehold.

Location
Whitby is a fishing port located within the Scarborough district of North Yorkshire around 47 miles from York and 31 miles from Middlesbrough. It is surrounded by the North Yorkshire Moors and is a popular tourist destination.
The property is located to the west of Whitby town centre and is approached from Love Lane to the east. Local shops and amenities are readily available in the area with the extensive facilities of Middlesbrough accessible to the north. Rail services are provided by Whitby Rail Station and road links by the A171 and A174.

Description
The property comprises two sites extending to approximately 1.35 hectares (3.34 acres) in total. The larger site is generally level with three large concrete areas situated within the irregular shaped piece of land. The property is surrounded by modern housing.

Accommodation
Western Site Area approximately 0.91 Hectares (2.25 Acres)
Eastern Site Area approximately 0.44 Hectares (1.09 Acres)
Total Site Area approximately 1.35 Hectares (3.34 Acres)

Please Note: The site boundaries may be altered slightly prior to the date of the Auction. Prospective purchasers are advised to contact the Auctioneers or Vendor's Solicitors for further information. The particulars on the Allsop website (www.allsop.co.uk) will be updated as and when appropriate.

Prospective purchasers are strongly advised to read the notices to prospective buyers and all applicable conditions of sale and addenda
To request Legal Documents, Special Conditions of Sale and any Errata/Addenda please refer to pages 3, 8 and visit www.allsop.co.uk.
BUYER'S FEE: The successful Buyer will be required to pay to the Auctioneers a buyer's fee of £300 (including VAT) upon exchange of contracts.

APPENDIX 4

WALKER MORRIS

Kings Court, 12 King Street, Leeds LS1 2HL. Tel 0113 283 2500
Fax 0113 245 9412 Document Exchange 12051 Leeds 24
Email emma.bingham@walkermorris.co.uk Web: www.walkermorris.co.uk

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

Our ref ERB/SDG/YOR.770-1

Your ref NEW VG50 / CNS / 500672

19 July 2010

BY E-MAIL, FAX AND POST

Dear Sirs

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

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

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

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

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

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

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

This permission may be revoked at any time"

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

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

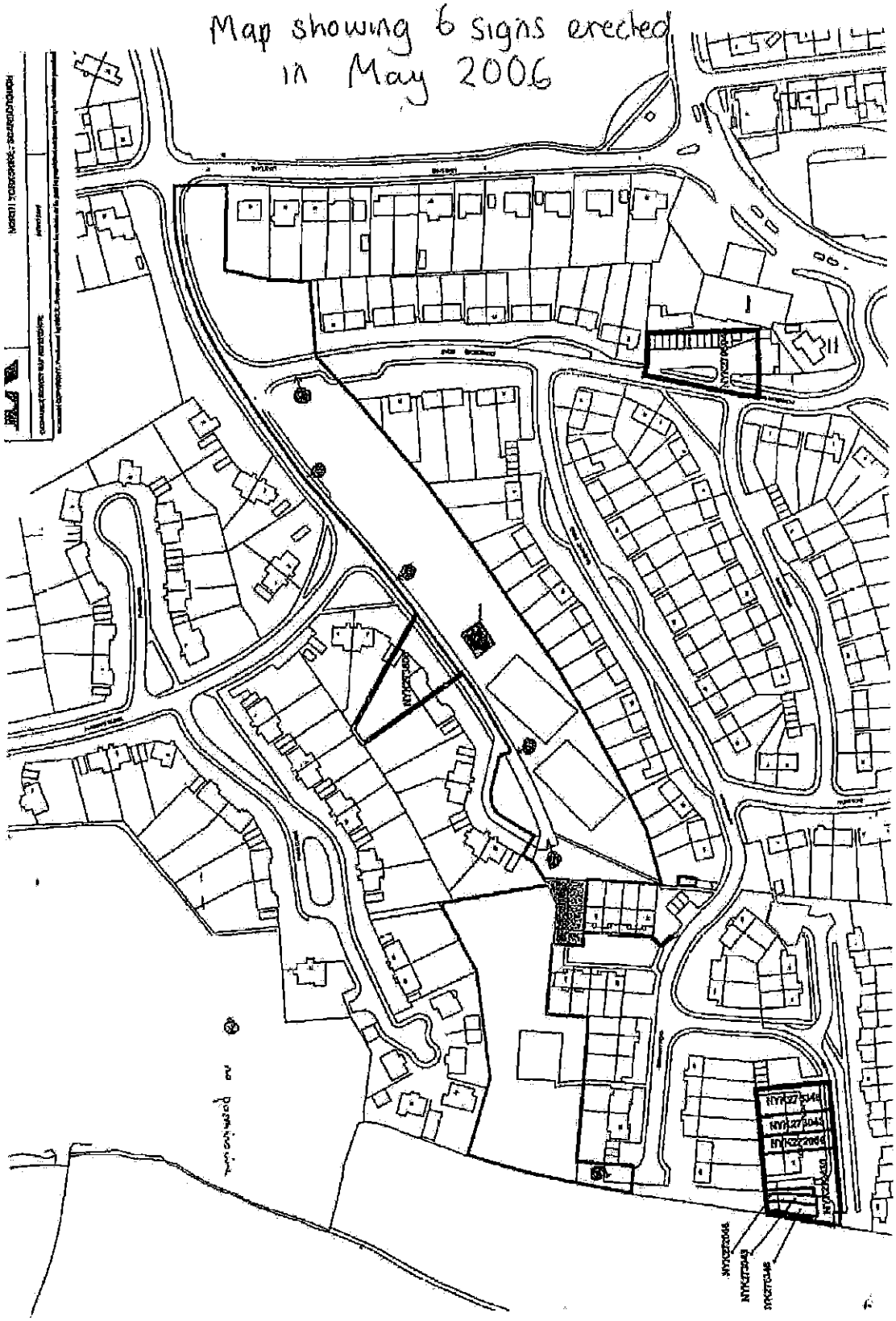
reason that it took place following a deliberate attempt to flout the owner's purposes in erecting the permissive signs. Such use cannot qualify as use *'as of right'*. It is on this basis that we ask the Registration Authority to refuse the Application in its entirety without holding a Public Inquiry.

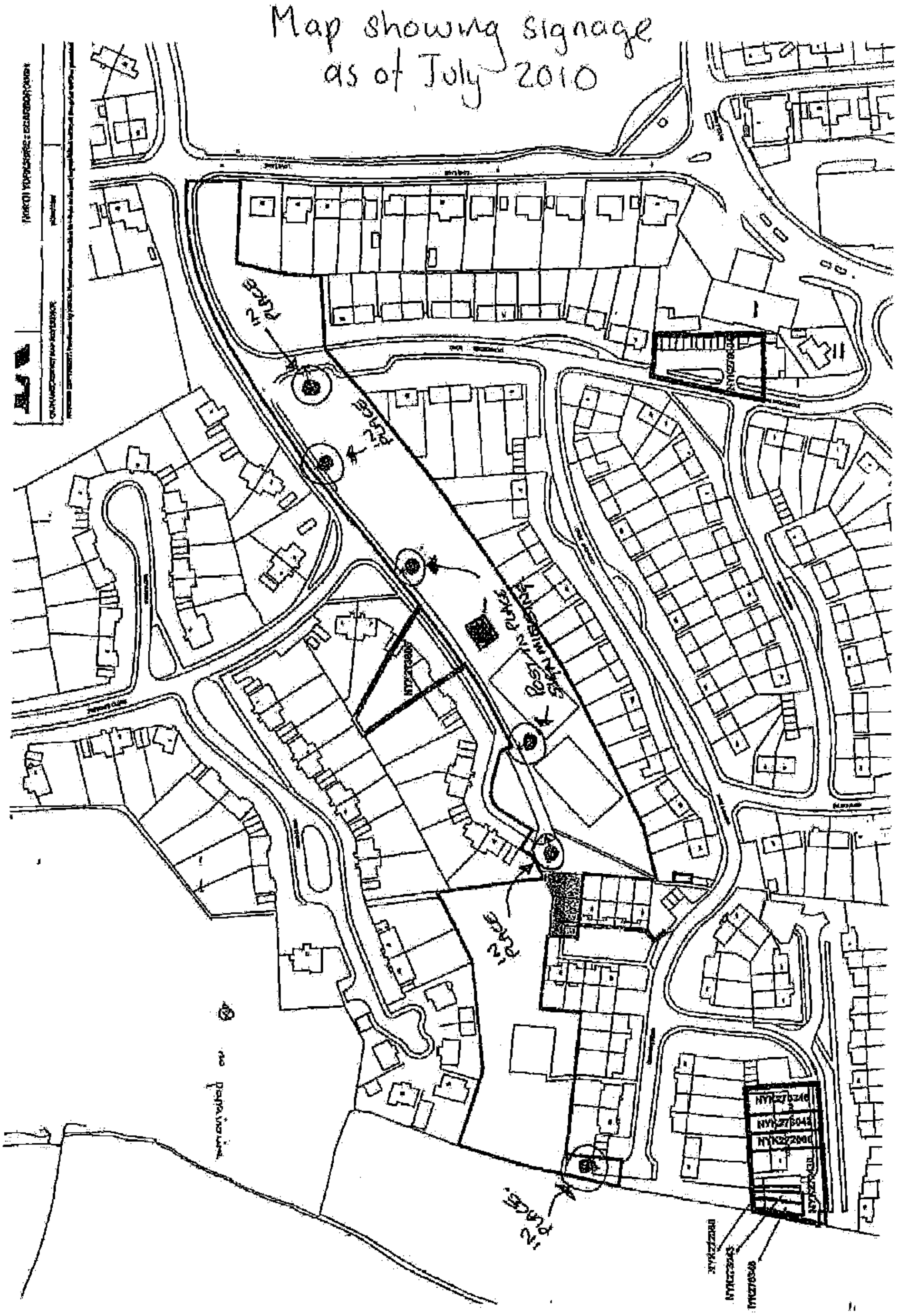
If you have any questions in relation to this matter, please do not hesitate to contact Emma Bingham of these offices.

Please acknowledge safe receipt.

Yours faithfully

Walker Morris


Map showing 6 signs erected
in May 2006


Map showing signage
as of July 2010
1 in place
2 in place
Post in place
Sign missing
1 in place
2 signs in place

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

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

IN THE MATTER OF THE COMMONS ACT 2006

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

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

STATEMENT OF OBJECTIONS BY YORKSHIRE COUNTY HOMES LIMITED

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1 INTRODUCTION

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

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

2 REQUIREMENT FOR REGISTRATION OF A TVG

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

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

2.1.2 The activities have been indulged in by inhabitants of that qualifying area whose households are sufficiently spread across that qualifying area.

2.1.3 The activities in which the inhabitants have indulged may properly be described as lawful sports and pastimes.

2.1.4 The activities were of such intensity and quality such as at all times throughout the relevant 20 year period to bring home to the owners of the Site that a right to engage in lawful sports and pastimes "*as of right*" over the entire Site was being asserted.

2.1.5 The activities have been indulged in "*as of right*"; that is without force; without stealth; and without permission.

2.1.6 The activities have taken place over a period of not less than 20 years and continue to do so at the date of the Application.

3 SUMMARY OF GROUNDS OF OBJECTION

3.1 The Applicant has failed to show a sufficient spread of usage across the identified area of the Castle Park Site ("the Qualifying Area") within the Mayfield Ward of Whitby.

3.2 The Applicant has failed to show that, in respect of the claimed sports and pastimes "a significant number" of the inhabitants within the Qualifying Area have carried out the claimed activities as required by the Commons Act 2006.

3.3 The Applicant has failed to show that the user was of such amount, and in such manner, throughout the 20 year period as would reasonably be regarded by the owner as being the assertion of a right to engage in lawful sports and pastimes over the entire Site (or any part of it).

3.4 The Applicant has failed to show that the activities and uses relied upon took place on and throughout the whole of the Site and were not restricted to specific areas or to tracks.

3.5 The Applicant has failed to show that the claimed activities were indulged in "*as of right*" in the period 1989 to 2002 when the land was either owned by, or leased to, the Ministry of Defence ("MoD"). During this period any recreational use of the Site was primarily by the occupants of the MoD married quarters on the Castle Park Site and any

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

3.6 In 2006, permissive notices were erected on the Site and any use in the period 2006 to 2009 was not *'as of right'* but with the permission of the land owner. To the extent that any use took place on any part of the Site following destruction to the permissive notices, that use was not *'as of right'* but by force.

3.7 The Applicant has failed to show that the activities relied upon have been undertaken for the minimum period of 20 years; and

3.8 The Applicant has failed to establish use *"as of right"* for 20 years which continued as at the date of the Application.

4 LOCALITY OR QUALIFYING AREA WITHIN A LOCALITY

4.1 The Qualifying Area identified by the Applicant is Castle Park Site within the Mayfield Ward of Whitby as shown edged black on the map shown at enclosure 2.

4.2 Whilst the Qualifying Area appears to be a cohesive identifiable and recognisable area, the clear pattern that emerges from plotting the supporters of the Application by reference to their addresses, is that they predominately live on the Northern part of the Qualifying Area and are not sufficiently spread. On this basis, the Objector submits that the Applicant has failed to show a sufficient spread of usage across the Qualifying Area.

5 SIGNIFICANT NUMBER

5.1 Whilst "significant number" does not have to be a substantial number, whether a number is significant depends on the context and whether the Site is used not simply by a few individual house holders, but rather by the community of a Qualifying Area.

5.2 Further, it is not sufficient, simply to claim, that over the 20 year period, the cumulative total of inhabitants engaging in lawful sports and pastime is significant. Instead, the Applicant must establish that within each year of the requisite period, there have been reasonably frequent occasions where a significant number of qualifying inhabitants have used the Site. The Objector submits that the Applicant has failed to show a "significant number" of inhabitants (who need not necessarily be the same individual inhabitants) have engaged in lawful sports and pastimes throughout the requisite period.

5.3 The Objector estimates that there are around 350-400 houses within the Qualifying Area. There are 24 letters ("Letters"), 43 response forms ("Response Forms") and 7 letters submitted against the planning application in 2007 ("Planning Letters"), filed in support of the Application.

5.4 It is important that there not be any double – counting of the evidence submitted in support of the Application. There are 7 Response Forms and 3 of the Planning Letters which were submitted by inhabitants who have also submitted a Letter. Further, 2 of the Planning Letters fail to identify who the writer is or where they live.

5.5 Therefore, in total there is only evidence from around 62 out of the 350-400 houses within the Qualifying Area.

5.6 From the evidence of the 62 inhabitants, only just over half claim to have used the Site personally with the rest either saying nothing about recreational use, or claiming to have only witnessed activities which have taken place on the Site. This is wholly insufficient to found a claim.

5.7 At page 1 of the note dated 26 May 2009 accompanying the Application, the Applicant herself states that "*Currently there is approximately 15 dog walkers from the lower end of the estate along..... who regularly use the area, there are a number of local children (estimate around 30) who along with their friends use the area for play and sport, kites are flown and on occasion there are two horses exercised here*". Therefore, the Objector submits that even on the Applicant's own evidence, it is apparent that, at most, relatively few local householders have gone onto the Site from time to time.

5.8 The inhabitants of the Qualifying Area already have White Leys Recreational ground and the recreational area north of Chancel Way, which includes swings and slides, in close proximity. This may explain why relatively few local inhabitants have used the Site. In particular, the Objector contends that local inhabitants from the Southern part of the Qualifying Area will use the recreational area north of Chancel Way.

5.9 The Applicant has therefore failed to establish that within each year of the requisite period, there have been reasonable frequent occasions where a significant number of qualifying inhabitants have used the Site.

5.10 Finally, in any assessment of 'significant number' there must be deducted any user which was with permission of the land owner and therefore not '*as of right*' (see below).

6 LAWFUL SPORTS AND PASTIMES

6.1 The focus must always be on the way the land has been used and above all the quality of that use, and whether it was of such amount, and in such manner, as would reasonably be regarded as being the assertion of a public right.

6.2 To the extent that the Letters or Response Forms refer to activities such as cycling, football, etc. it is the Objector's position that the Applicant has failed to establish which, if any, part of the Site these activities were carried out on. It is the Objector's position that if (which again it is not admitted) there was any lawful sports and pastimes, that such use was not over the entirety of the Site.

6.3 Further, to the extent that a number of Letters and Response Forms refer to "walking" and "dog walking", the Objector's contend that the topography and previous use of the Site suggests that any such recreational walking could not reasonably amount to a general recreational wandering over the Site. If the use is over tracks and by specific routes, the Objector contends that this is insufficient to establish an indulgence in lawful sports and pastimes over the whole Site.

6.4 If (which again it is not admitted) there was any considerable quantity of walking and dog walking, the message it would have conveyed would have been that certain limited parts of the Site were being used as footpaths and might, after a sufficient passage of time, give rise to a presumption of dedication as a Public Highway. Therefore, the Objector's submission is that there would not have been, and was not, any message that village green rights were being asserted.

6.5 It is unclear from the plan accompanying the Application whether it includes the small building between Section B and Section C which is currently used as an information centre/office space for the Hive Information Officer. This building has never been used for lawful sports and pastimes. Furthermore, it was let to the MoD pursuant to a lease dated 24 April 2007 between (1) Annington Property Limited and (2) The Secretary of State for Defence ("the Lease"). A copy of the Lease is shown at enclosure 3.

6.6 The Application includes a thin strip of land running directly in front of both the buildings on Section B, and abutting Highfield Road. This land comprises the steps and access to the Pre School Nursery and thereafter the Community Centre, and information centre and office space for the Hive Information Officer and is incapable of use and was not used for lawful sports and pastimes

7 AS OF RIGHT

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

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

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

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

7.2.3 playing fields on Section C.

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

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

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

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

This permission may be revoked at any time"

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

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

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

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

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

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

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

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

9 CONCLUSION

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

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

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

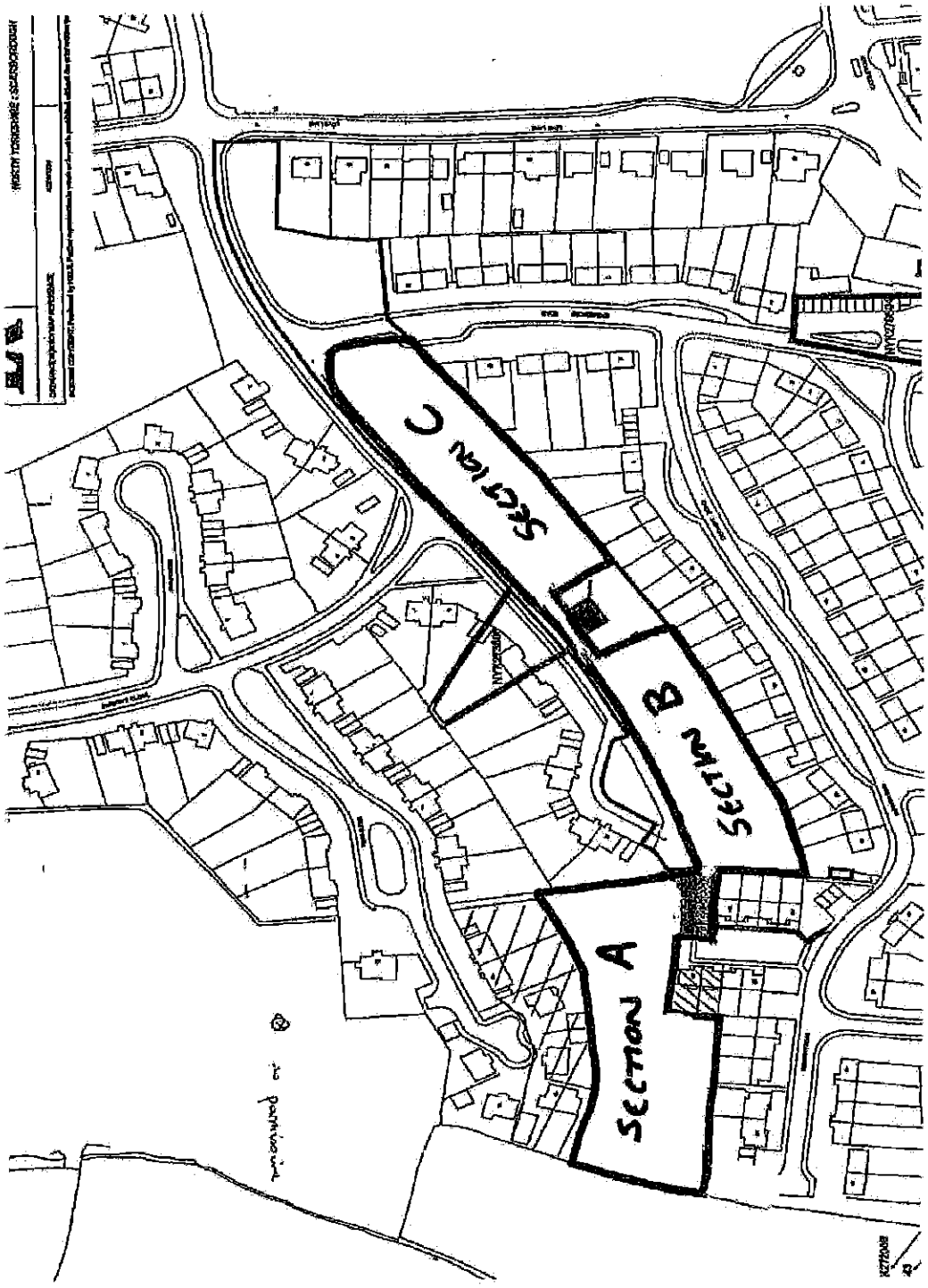
9.3 If, contrary to the submissions above, it is considered that the Application cannot be dismissed outright, the Registration Authority is requested to hold a Local Inquiry so that the Application can be tested.

Signed .....

Dated 19/07/2010

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

Enclosure 1



APPENDIX 5

NEW VG50 72-50-S1080

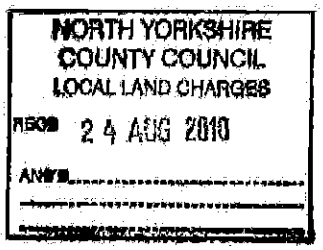
From: "scooby.sooz@tiscali.co.uk" <scooby.sooz@tiscali.co.uk>
To: <commons.Registration@northyorks.gov.uk>
Date: 23/08/2010 22:53
Subject: New VG50/CNS
Attachments: scan0003.jpg; scan0002.jpg; scan0001.jpg; In response to the Objections by Yorkshire Coast HomesLtd.docx

Dear Mr Stanford
I have sent through supporting evidence for my response to Yorkshire County Homes objection to my Village Green application today to arrive with you tommorrow (24th August 2010) as agreed.
I have attach my comments with regard to the objection and 3 additional pieces of evidence above.

If you require any further information please let me know

Regards

Sue Grimoldby



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

In response to the Objections by Yorkshire Coast Homes Ltd

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

Locality (objectors 4)
The area defined in the village green application is geographically clearly defined by the surrounding roads, farmland and golf course. Castle Park appears within the Mayfield ward and is marked on the Office of National Statistics website's neighbourhood breakdown on the map shown there. It is known locally as the Castle Park area and the green area to which the application is concerned is easily and safely accessible for all residents to have the right to use.

Significant Number (objectors 5)
While my name is on the application as the applicant I am merely the conduit for the inhabitants of the local area and I was, and am, acting on their behalf through this Village Green submission. An initial meeting was held on the 26.09.2007 at the local rugby club, attended by approximately 50 people and when the question of Village Green submission was raised it was passed unanimously, the birth of this application. As such I believe that every supporter of the application would consider themselves as a significant number!

In the McAlpine/Staffordshire Case (R on the application of Alfred McAlpine Homes Ltd v Staffordshire County Council, 17 January 2002, Case ref: QBD CO/2653/2001)
Mr Justice Sullivan rejected the argument by the claimant that 'significant number' in the context of section 22 (1) of the Commons Registration Act 1965 as amended by the Countryside and Rights of Way Act 2000, means 'a considerable or a substantial number'. *He said that the number of people using the land has to be sufficient to indicate that it is in general used by the local community for informal recreation.*
I suggest it is not for the objector to decide on what constitutes a significant number but for the correct authority to make a balanced and judicious response.
There is of course a difficulty in locating all the people who have been residents of the area and who actively used the land over all, or part of the qualifying twenty year period as people relocate much more widely in modern society. Some used the land regularly whilst living in the vicinity then moved on to be replaced by other residents, so it is difficult to put a definite number on the users, however there are a number of residents in the locality who have lived here all their lives and will testify to the regular use through the years from the mid 1960's. The very nature of the mobility of modern society makes the question of significant number and the relevance of witnesses crucial and as such, a question for the relevant authority.
Additional support for the application has been included with this document[2]. Some are again from existing supporters of the Village Green application who still feel very strongly about the importance of saving land for recreational purposes, while others are additional to those previously submitted.
Note: 5.6 While some supporters of the application are not necessarily current users their evidence is none the less that of eye witnesses and substantiates the evidence of users of the area
Note: 5.7 the objector has misquoted the applicant, the sentence should read alone not along when referring to the dog walkers – this was not meant to imply that all dog walkers were from the lower end of the estate but reflected those known to the applicant. There are further dog walkers throughout the estate who do use the area.
Note: 5.8 The White Leys Recreational ground is not regularly used by the residents of the Castle Park Area and I think this was addressed in my original application:

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

Since the submission the rugby club has purchased the club house and facilities from SBC on a 999 year lease; added to its remit by incorporating a football club as part of its responsibilities and has recently received funding for floodlighting which will have further bearing on how the land is used. The land also sits outside the Castle Park area for which the application was made.
Finally the existence of the White Leys area has no bearing on the assertion that the land to which the application applies has been used for over twenty years 'as of right' by the local inhabitants.

Lawful sports and pastimes (objectors 6)
The Sunningwell Case (R v Oxfordshire County Council and others, ex parte Sunningwell Parish Council (House of Lords, 1999) case reference UKHL 28; [2000] 1 AC 335;[1999] 3 ALL ER 385; [1999] 3 WLR 160)
'Lawful sports and pastimes
These activities do not need to be either organised sport or have a communal element. Activities such as dog walking, kite flying, solitary or family activities are sufficient to justify registration as long as there is an established pattern of use and it is not 'trivial and sporadic'.'
Lord Hoffmann made it clear in his judgement that sports and pastimes does not have to be the traditional activities but means modern sports and pastimes – these do not have to be sports and pastimes but sports **or** pastimes.
Supporters of the application have shown a variety of uses of the land across the whole area – we do not divide the area up into sections and limit our use accordingly:
- the dog walker will start at one end and cover the length and sometimes breadth of the area, perhaps the term 'exercise' the dog would be more accurate terminology, balls are thrown for dogs, they run free and roam the area.
Children run and play in different sections, kite flying, bicycling, playing ball games, camping.

Note: 6.5 The building which is for the Hive information officer was not added to the site until 2007 and as such was added after the land had been used as of right for over 20 years. It did not appear on the OS site map as purchased for the village green application.
Note: 6.6 The land in front of the hive and the nursery is used regularly by foot traffic to link the two areas of open space.

'As of right' (Objectors 7)
Guidance supplied by Defra February 2007 states that
In some cases, a landowner may grant people permission to use his land after there has already been 20 years' use of the land 'as of right'. If this happens, then section 15(7) says that the grant of permission does not stop continuing use of the land being regarded 'as of right' for the purposes of an application under section 15. There is no time limit by which you must make an application for registration, unless the landowner takes other steps to challenge use (such as fencing off the land to prevent access).
Local people were using the land 'as of right' for more than 20 years before the permissive signs were added to the land, witnesses who still live and use the area confirm this and therefore, I believe the erection of the permissive signs by the then owners Anningtons was to try to either dissuade local use or to avoid such an application for registration from going

ahead.

Note: 3.5
... 'as of right' in the period 1989 to 2002 when the land was either owned by, or leased to the Ministry of Defence ("MoD")
The land was purchased by The Secretary of State for Air (Conveyance of approximately 37.284 acres of land at Whitby, Yorks. known as Parsons Close Farm – 12 July 1961) and although properties built were initially, primarily for members of the air force stationed at RAF Fylingdales; which was officially declared operational in 1963; the recreational land for which the Village Green status is being sought was never enclosed, fenced or access restricted to other local residents of the area such as the existing homes and residents to the South of the Castle Park estate.
These RAF houses were then sold off over a period of time leaving a few remaining properties which are rented by the MOD for service personnel. The first houses sold were in 1973 and over the period to and including 1986, 108 properties were sold including 31 to Scarborough Borough Council in 1975. I select this date, 1986 as significant as it equates to 20 years up to the time the objector declares the permissive signs were placed on the land. (A further 25 properties were sold between 1987 and 1994) It shows that usage of the land was not predominately service personnel but a significant number of non service personnel within the ex ministry housing as well as users from the greater locality [1].

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

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

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

Finally in response to 9.2, the application was instigated in reaction to the planning application (2007) made for the land in question because residents of the Castle Park area were horrified that land they considered recreational and used 'as of right' might no longer be available for leisure pursuits.
Land which they had used since the inception of the estate, and continue to use, was threatened, residents 'as of right' was suddenly to be removed. It simply had not been a consideration prior to that, the land was and always had been available, the general

public/residents (unfortunately perhaps) do not consider points of law and the complications of application as a general rule but now want to ensure that 'as of right' which was taken for granted remains for future generations.
Perhaps the question might rather be why the current owner is in fact determined to defeat the application, having purchased the land extremely cheaply (May 27th 2010), in the full knowledge there was a village green application pending, in the hope that the wishes of the residents and the history of the land can be cast aside to provide the owner with a extraordinarily high return on his investment regardless of the impact on current and future residents' 'quality of life'.

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

[2] **Additional response forms**
1. Berenice Readman
2. Mark Wilson and Helen Radford
3. Rebecca Hill and Peter Hill
4. Mr and Mrs Winspear
5. Christine and Graham Hilton
6. KM and E Drewery
7. Stephen and Mandy Purvis
8. Carol and John Hanson
9. Susan Birch
10. Mr and Mrs Coomber
11. Mr and Mrs Kirk 11b letter of support
12. Brian and Josie Smithson 12b attached letter
13. Mr B. Eddon
14. Pamela Webster
15. Mrs Joan Dunscombe
16. The Cox family
17. Mrs Sue Bailey
18. Martin Boyes and Colin Walker (note: new frequent user in support of application living in the Castle Park Area) 18b Photo from resident

The following have already submitted support but have submitted further up to date support
19. Mr and Mrs Nicol
20. Mr and Mrs A.P. Gissing
21. John and Ann Woollin
22. Neil and Audrey Isherwood
23. Miss S Walker and Mr L Iralsbeck
24. Karen Sanderson
25. Miss K Rushworth 25b attached note of support

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

APPENDIX 6

01/03/1998 07:51 01947600649 HOPKIN BUSINESS PAGE 01

New VG 50

72-50-S1097

23 August 2010

Ref: NewVG50/CNS/500807

N. Y. C. C.
BES
24 AUG 2010
Pass to CM
Acked
Actnd
ECD
Filed

Fairmount
25 Field Close
Whitby
YO21 3LR

01947 604461

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

Dear Mr Stanford

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

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

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

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

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

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

I hope the foregoing is of help.

Yours sincerely

P L Keens

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

APPENDIX 7


North Yorkshire County Council
Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office © Crown copyright. Unauthorised reproduction infringes Crown Copyright and may lead to prosecution or civil proceedings. North Yorkshire County Council, 2011. Licence no. 100017946
Map scale: Scale 1/2598
Date: Date 23/5/2011
Created by:
Grid Ref: Centre = 491246 E 511036 N

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

PLANNING LETTERS

SANDERSON	X	X	X
UN-NAMED			
GREEN			X
OGDEN			
UN-NAMED			
DAVIDSONS	X		
	2	1	2

FIELD CLOSE				X			X	X	
							X	X	
							X		
	0	0	0	1	0	0	3	2	0

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

FORMS SUBMITTED WITH THE APPLICATION

MANY FORMS INCLUDE COMMENT ON MATTERS OF MERIT

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

NOT CLEAR WHICH OF THESE WERE MOD PERSONNEL

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

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

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

KIDD				LILLA CLOSE											10	no uses specified
GIBSON				LOCKTON ROAD							X				N/S	
LAWRIE		X		LOCKTON ROAD	X					X					28	
MILTON	X	X		LOCKTON ROAD				X		X					12	
PURVES		X		LOCKTON ROAD								X			N/S	
PURVIS		X		LOCKTON ROAD							X	X			N/S	
RUSSELL		X		LOCKTON ROAD				X			X				4	
WOOD	X	X		PARSONS CLOSE	X					X					40	
BOYLE				STONECROSS ROAD											35	no uses specified
HAYTON	X	X		STONECROSS ROAD						X					11	
HOLMES		X		STONECROSS ROAD					X	X	X				14	
MCKNOCKITER	X	X	X	STONECROSS ROAD	X										28	"over the years it has been left to overgrow"
OWEN	X		X	STONECROSS ROAD							X				14	
BELCHAMBER	X	X		WESTBOURNE ROAD	X										30	
GISSING				WESTBOURNE ROAD											20	no uses specified
JEWELL	X			WESTBOURNE ROAD		X					X	X			9	
	20	25	11		15	8	0	3	4	13	19	9	1			

FURTHER SUBMISSIONS SENT WITH LETTER & EMAIL BOTH DATED 23.8.10 IN RESPONSE TO OBJECTION

COOMBER	X	X		DERWENT ROAD	X	X				X		X			33	
DUNSCOMBE		X		DERWENT ROAD									X		29	
NICOL			X	DERWENT ROAD		X		X							5	
RUSHWORTH			X	DERWENT ROAD							X				22	
WALKER & RAISBECK	X	X		DERWENT ROAD						X					14	partner ex-RAF
WINSPEAR		X		DERWENT ROAD	X					X					17	
WOOLIN			X	FARM CLOSE							X				1.5	
HILTON		X		FIELD CLOSE									X		3	
PURVIS			X	FIELD CLOSE	X					X	X		X		9	
SANDERSON	X	X		FIELD CLOSE			X	X				X			37	
HANSON	X			FYLING ROAD								X			24	
KIRK				FYLING ROAD											16	no uses specified
BOYES & WALKER		X		HIGHFIELD ROAD						X					1	
COX				HIGHFIELD	X	X									8	

				ROAD														
SPEDDING	X	X		HIGHFIELD ROAD	X	X				X		X			15	no permission needed to use tennis courts
ISHERWOOD			X	LILLA CLOSE		X					X	X			8	
WILSON & RUDFORD?				LOCKTON ROAD							X				4	
SMITHSON	X			SEA VIEW CLOSE							X				45	no uses specified
BROWN				STONECROSS	X						X				5	
HILL	X	X		STONECROSS	X			X			X				35	
BAILEY			X	STONECROSS ROAD						X					2	
BIRCH		X		STONECROSS ROAD							X				14	
DREWERY	X	X		STONECROSS ROAD						X	X				13.5	
EDDON	X			STONECROSS ROAD							X				22	
GISSING				WESTBOURNE ROAD											20	no uses specified
READMAN	X	X		WESTBOURNE ROAD				X			X	X			18	
WEBSTER	X			WESTBOURNE ROAD	X	X									24	
	11	12	6		8	6	1	4	0	8	12	6	3			

APPENDIX 9

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

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

Note:

- **County Councillor Jane Kenyon declared a personal non-prejudicial interest as the Member representing the Electoral Division in which this land was situated.**

- **County Councillor John Blackburn declared a personal non-prejudicial interest as a Member of the Planning and Regulatory Functions Committee Sub-Committee. He took no part in the Committee's debate or voting on this item of business.**

- **County Councillor David Jeffels declared a personal non-prejudicial interest as a Substitute Member on the Planning and Regulatory Functions Committee. He took no part in the Committee's debate or voting on this item of business.**

CONSIDERED –

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

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

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

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

RESOLVED –

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

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

REPORT

of Miss Ruth Stockley

21 August 2012

North Yorkshire County Council

County Hall

Northallerton

North Yorkshire

DL7 8AD

Ref: 100683

Application No: NEW VG50

IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT

CASTLE PARK, WHITBY, NORTH YORKSHIRE

AS A TOWN OR VILLAGE GREEN

REPORT

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1. INTRODUCTION

1.1 This Report relates to an Application ("the Application") made under section 15(1) of the Commons Act 2006 ("the 2006 Act") to register land at Castle Park, Whitby, North Yorkshire ("the Land") as a town or village green. Under the 2006 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 3 days, namely between 30 April 2012 and 2 May 2012 inclusive. I also undertook an accompanied site visit on 1 May 2012, together with an unaccompanied visit to the site and around and within the neighbourhood on 2 May 2012.

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 Applicant produced a bundle of documents containing her supporting witness statements, evidence questionnaires, letters, photographs and other documentary evidence in support of the Application and upon which she wished to rely, which I shall refer to in this Report as "AB". The Objector produced a bundle of documents containing its witness statements and other documentary evidence in support of its Objection and upon which it wished to rely, which I shall refer to as "OB". In addition, each Party provided a skeleton argument setting out an outline of their case together with supporting legal authorities. 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 Susan Grimoldby of 11 Field Close, Whitby, North Yorkshire YO21 3LR ("the Applicant") and is dated 28 May 2009.[1] It was received by the Registration Authority on 4 June 2009. Part 5 of the Application Form

[1] The Application is contained in AB page 1.

states that the Land sought to be registered is usually known as "*Castle Park*", and its location is "*Land adjacent to Highfield Road (excluding the nursery) and behind Derwent Road, backing on to Field Close end houses' gardens, Whitby*". A map, marked "SG1", was submitted with the Application attached to the Statutory Declaration which showed the Land subject to the Application outlined in blue.[2] I shall return to that Application Plan later in this Report. In part 6 of the Application Form, in relation to the relevant "locality or neighbourhood within a locality" to which the claimed green relates, it is stated that "*Castle Park sits within the Mayfield Ward of Whitby*".

2.2 The Application is made on the basis that section 15(2) of the 2006 Act applies, which provision contains the relevant qualifying criteria. The justification for the registration of the Land is set out in Part 7 of the Form. The Application is verified by a statutory declaration in support made on 28 May 2009. As to supporting documentation, a detailed supporting document is attached to the Application together with documentary evidence in support. In addition, evidence questionnaires, letters of support and photographs were submitted with the Application.

2.3 The Application was duly advertised by the Registration Authority as a result of which an objection was received dated 19 July 2010 ("the Objection")[3] on behalf of the owner of the majority of the Land, namely Yorkshire County Homes Limited ("the Objector"). The Applicant duly responded, and supported her response with additional evidence questionnaires.[4]

[2] At AB page 10.
[3] The Statement of Objection is at OB pages 1-34.
[4] At AB pages 96-126.

2.4 I have been provided with copies of all the above documents in support of and objecting to the Application which I have read and the contents of which I have taken into account in this Report.

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

2.6 At the Inquiry, the Applicant appeared in person and represented herself, whilst the Objector was represented by Counsel, Mr Alexander Booth. Any third parties who were not being called as witnesses by the Applicant or the Objector and wished to make any representations were invited to speak, and one additional person did so.

3. THE APPLICATION LAND

3.1 The Application Land was initially identified on the map marked "SG1" submitted with the Application on which it is outlined in blue.[5] However, it became apparent prior to the Inquiry that in relation to the area of land excluded from the Application Land to the east of the former tennis courts where the nursery is located, the western boundary of that excluded area did not extend far enough to the west. Correspondence was duly entered into between the Applicant and the Registration Authority, and in a letter from the Applicant to the Authority dated 23 September 2009, the measurements of the buildings and other features in that area were set out by the Applicant. The Objector acknowledged that such measurements were correct.

[5] At AB page 10.

However, in the resulting plan provided by the Registration Authority attached to its letter to the Applicant dated 26 January 2010, those measurements were not accurately reflected in the vicinity of the nursery. Instead, the identified western boundary of that excluded area was still incorrectly drawn in that it did not extend sufficiently to the west so as to abut the eastern former tennis court. Given that the Applicant and the Objector agreed that the Application Land was correctly shown on that latter plan save insofar as the western boundary of the area excluded was incorrectly marked, and that they agreed that the correct position of that boundary was in accordance with the measurements set out in the Applicant's letter of 23 September 2009, I shall regard that latter plan as identifying the Application Land subject to that agreed qualification.

3.2 The Land is located within a relatively built up residential area. It is approximately 1.246 hectares in area. It comprises open, flat grassland together with two former tarmac-surfaced tennis courts, an area of hardstanding with a kick wall, and an office building used by the Ministry of Defence Hive Information Service.

3.3 For description purposes, the Land is capable of being divided into three areas. The most westerly area, which I shall refer to in this Report as "Area A", is an area of open rough grassland. It looks out onto the golf course to the west. There is a concrete path running close to the southern boundary of the western part of that Area leading to a wider area of concrete in the south western corner to the rear of a house referred to at the Inquiry as "plot 41". In addition, a concrete path runs south to north from Derwent Road across Area A to the south western edge of a large area of concrete hardstanding on which a kick wall is located towards the middle of its western edge.

3.4 To the south east of Area A is the central part of the Land, which I shall refer to in this Report as “Area B”. The western part of Area B comprises rough grassland. On the accompanied site visit, a small rectangular area of hardstanding was apparent beneath the grass close to the intersection between Areas A and B. Further to the east, there is a paved path running south-west to north-east across Area B, and then the two former tarmac-surfaced tennis courts which are still marked out as such. The eastern boundary of Area B comprises mesh fencing with the Community Centre play area and building beyond it, which are used as a children’s day nursery and that are not part of the Land.

3.5 The most eastern part of the Land, which I shall refer to in this Report as “Area C”, comprises a large expanse of open grassland. It abuts Stonecross Road to the east and Highfield Road to the north. Between Areas B and C, although the community centre building and play area are excluded from the Land, there is a narrow area to the north of the community centre building which is included which comprises the steps to that building, fencing and railings and a grass verge. To the east of the Community Centre building and on the western boundary of Area C is an office building used by the Ministry of Defence Hive Information Service which is included within the Land. There is a visible worn track running diagonally across Area C leading from its south eastern boundary with Stonecross Road to the footway on Highfield Road.

3.6 The Land was originally part of a wider area of farmland known as Parsons Close Farm which was purchased by the Ministry of Air in 1961. The Ministry

constructed housing on the acquired area, known as "Castle Park", comprising Service Family Accommodation to accommodate Armed Forces personnel and their families. In addition, recreational facilities were provided for the benefit of those personnel and their families. Those houses were gradually sold off privately from around 1974 until 1996, when Annington Property Limited ("Annington") purchased the Land and the remaining houses at Castle Park pursuant to a 999 year lease. Annington then leased the Land and those houses back to the Ministry of Defence ("the MOD") on a 200 year underlease. The Land and the remaining houses were released back to Annington in March 2002, and the Nursery and the Hive Building were re-let to the MOD under a lease dated 24 April 2007. The Objector purchased the Land from Annington in July 2010.

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 save as indicated below, and I regard each and every witness as having given credible evidence to the best of their individual recollections.

4.2 The evidence was not taken on oath.

4.3 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. I shall consider the evidence in the general order in which each witness was called at the Inquiry for each Party.

CASE FOR THE APPLICANT

Oral Evidence in Support of the Application

4.4 **Mrs Margaret Coomber**[6] has lived at 34 Derwent Road since 1977, which is located to the south of Section B. Her first Husband was employed at RAF Fylingdales until 1989, and her house was RAF-owned accommodation at that time. When her Children lived at home, they used the Land regularly several times a week between 1980 and 2003 to play football, cricket, tennis and other games. They played on the part of the Land directly behind her house when they were younger, but then used all the Land as they got older. Her Son was born in 1976, and her two Step Daughters, born in 1984 and 1986, lived with her from 1992 onwards. The Land has always been well used by people walking on the Land and exercising their dogs, while children from the Estate often meet up and play games on the Land. She had her previous dog from 1989 until 2003, which she exercised and played Frisbee with on the Land, and she currently has two dogs which she acquired in 2006 that she walks and exercises on the Land. Her primary use of the Land has been to exercise her dogs and to chase after the Children. One of her main walks is to walk across Area B via the paved path leading from close to 36 Derwent Road to Highfield Road, past the back of the Community Centre building, along the front of Area C, and then onto the beach. Her Grandchildren now play on the Land when they visit, but they all live outside Whitby. She has never sought permission to use the Land. She referred to

[6] Her written evidence is at AB pages 135 -136.

three photographs taken by her Husband on 2 January 1995 that were provided to the Inquiry showing her two Step Daughters playing Frisbee on the Land with her previous dog on the area of the Land directly behind her house.

4.5 **Mr Coomber**[7] has lived at 34 Derwent Road since March 1992 when he moved in with his two Daughters aged 8 and 6. His Wife already lived there as she had moved there with her first Husband and their then one year old Son. Between 1992 and 2003, Mr Coomber exercised the family Border Collie daily on the grassed area between the tennis courts and the golf club, namely Areas A and B, primarily using a Frisbee, for around 20 to 30 minutes. He did not exercise that dog on Area C, and he did not do the beach walk. His Daughters used the tennis courts every summer to play tennis with their friends. When the courts were de-commissioned, his Daughters continued to use them for tennis, skating and football. They also used the grassed area for cycling and general play with their friends. In 2006, he acquired two Staffordshire Bull terrier puppies which he initially exercised daily on Area A, and then daily on the entire grassed area of the Land as they got older. He has met other dog owners regularly using the Land to exercise their dogs. He has also seen children playing cricket and football on the grassed area and cycling. The grassed area on Area C between the Community Centre and Stonecross Road was used as a helicopter area for the RAF and he had seen Wessex helicopters land there on three occasions, the last one being around 2000. There is a paved walk between Derwent Road and Highfield Road across Area B running from its south western corner, which is regularly used by people walking to the Community Centre, to shops on the Parade and to licensed premises at the Rugby Club and the White House. In addition, he

[7] His written evidence was provided in a separate witness statement produced at the Inquiry.

referred to a worn path developed across the grassed area between Highfield Road and the corner of the houses on Stonecross Road used by school children walking to the Community College and by people walking to the Spar Garage and to the Lidl Supermarket. That has existed for around two or three years, or maybe slightly longer, and was probably created when Lidl and the Spar came to the area. He has never been denied access to any part of the Land save that during the early years, the tennis courts were kept locked by RAF personnel, a practice that was abandoned early during his residency. They were kept locked in 1992 when he moved into the area, and for a period the children had to obtain a key to use them. They were subsequently left open for general use from around 1995 onwards. He could not recall when signs were erected on the Land, but they remain in situ. They did not affect his use of the Land.

4.6 **Mr Dave Kirk**[8] has lived at 1 Fyling Road since August 1994. His Children were born in 1982 and 1986, and they regularly played tennis and other ball games on all three parts of the Land until 2002, together with other children from the Estate and from the "Officers' Patch", namely the area to the north of and including Highfield Road. Since they grew up, he has occasionally played on Areas A and B with his Granddaughter, who lived with them from 2007 until 2010. He also used the paved path across Area B on a regular basis as a short cut from Derwent Road to Love Lane or to the beach, which has been his main use of the Land. When he moved into the area, where he lived permanently from February 1995 onwards when he started working at RAF Fylingdales, the children's play park area on the Land had been dismantled and abandoned with merely the current hardstanding remaining. He also

[8] His written evidence is at AB page 111 together with a witness statement produced at the Inquiry.

pointed out in his letter dated 13 August 2010[9] that when he first moved to the area, "*the play areas had been abandoned, so a large proportion of the children used to go to the Nuns field to play football and cricket during the summer especially. That was sold off for housing, they then did use the proposed "village green" area for their play activities.*" At that time, many children used to go to the Nuns Field to play football and cricket, which was developed around 2000 for housing, but children also used the Land as well at that time. His Children were too young to use the Nuns Field. He recalled the tennis courts being locked when he moved to the area. The RAF had a Community Centre building, and a person there would issue a key to residents which was signed out to people. The courts stopped being locked around 1996/1997. The Land has been maintained on a voluntary basis by local people on the Estate for around two or three years, namely from around the time the signs were erected.

4.7 **Councillor Jane Kenyon**[10] is a Ward Councillor, who has been on the Town Council since 1983/1984, became a District Councillor for the Mayfield Ward in 1987 and became a County Councillor for the Mayfield Division in 1989. She has represented the Ward in which the Land is located for more than 20 years. She has never lived on the Estate, but she previously lived at 1 Love Lane and her Parents had close friendships with personnel from RAF Fylingdales, who always sought to live amongst and to be part of Castle Park and the wider community of Whitby which "*took them in*". In return, RAF Fylingdales offered the use of their facilities to the wider community. Initially, such use was allowed in a managed way, namely it was with the permission of the RAF that the community could use the facilities. She had seen children playing on the Land. In contrast, the playing fields in the Nuns Field

[9] At AB page 111.
[10] She did not produce any written evidence.

area were for the use of the boarding school before they were developed for housing, and for the period of the 1980's and the early 1990's, it was with the agreement of the Sisters that local people could use them outside term time. There was no documentation to that effect, but it was an understanding. She had close links with the school and was aware how it operated. Local people respected the school, and would not use the playing fields without the school's consent during that period until the early 1990's. The school closed around 1997. It was initially a boarding school for girls only, but then it became mixed for the last six or seven years of its existence. In contrast to the playing fields, the Land could be used freely by local people. It has always been regarded as a recreational area where children can play safely and in a managed area. She has played tennis on the Land, and has walked her dogs across the Land on her way to see one of her constituents. She pointed out that Castle Park is a recognised area.

4.8 **Mrs Karen Sanderson**[11] has lived in the Castle Park area for nearly 50 years. She is not part of an RAF family. She originally lived at 7 Westbourne Avenue as a child, and from around 1969 when she was seven years old onwards, she regularly played in the play park on Area A, which was then well equipped with swings, roundabouts and slides. It was a very popular and safe park used by all the area, including the RAF children. Other parts of the Land were then used for football, rounders, cycling and general play. Save for the tennis courts for which permission was sought from the RAF to use them, the entire Land was used without obtaining permission. The RAF kept them locked until around the mid-1990's, and a key had to be obtained from a key holder to use them. Subsequently, from the mid to late 1990's

[11] Her written evidence is at AB pages 138 -141.

onwards, the courts were left open and permission was no longer required to use them. She also occasionally trained on the Land with Whitby Hockey Club, and Whitby Rugby Club also held practice sessions on the Land. The Land was used regularly for recreation at that time, which was prior to the start of the relevant 20 year period.

4.9 As to the relevant 20 year period, she lived on Lilla Close from 1990, having lived off the Estate for the previous two years, and her Daughter was born in 1994. She used Area C with her Daughter for picnics and for mother and toddler get-togethers with both RAF and civilian mothers in the area. In 2000, she moved to her current address at 15 Field Close. As her Daughter became older, they regularly played hockey and cricket on Area A and went bike riding on it, and her Daughter played on all of the Land with her friends. Her Daughter now takes her nephews, who live on the Estate, to play hockey, cricket and football on the Land. She uses the Land herself to cut across Area C to walk to Lidl, and also walks across Area B as part of a walk.

4.10 **Mr Anthony Taylor**[12] has lived at 5 Farm Close since 1976 since when he and his Family have enjoyed unhindered access to Areas A and C. He has six Children, who were born in 1967, 1969, 1972, 1974, 1982 and 1986. From 1986 onwards, his younger four Children have played football and cricket on the Land after school and during school holidays with their friends from Love Lane, Castle Road and the surrounding area. His Grandchildren also played on the Land during that period, and continue to do so when visiting, although they do not live on the Estate. As Area

[12] His written evidence is at AB pages 145 – 146.

C is nearest to his house, they used that area most frequently, but they also used Area A where the play park used to be before it was dismantled. He confirmed that he and his Family only used Area A until the play park was dismantled, and they had no reason to use it thereafter. His own use of Area A was confined to taking his Children to the play area before it was dismantled. Thereafter, his only use of the Land was of Area C when he used it with his Children or with his Grandchildren. They stopped using it around 2000/2001. He recalled the tennis courts on Area B being usable with a key, which was freely available from a house on Highfield Road and their usage was not otherwise restricted. By 1999, his younger Daughter and Son then aged 17 and 13 respectively, played tennis there with friends with open access to the courts which were no longer padlocked. He recalled signs being erected on the Land, but could not recall when that occurred.

4.11 **Mr Spedding**[13] has lived at 20 Highfield Road since 1995. Prior to then, he lived in Scarborough and he worked for RAF Fylingdales. He rented a house in Derwent Road that backed onto Area A for a six month period around 1979/1980 whilst he was renovating a house off the Estate, but he then moved elsewhere in Whitby until moving back onto the Estate in 1995. His three Children, born in 1982, 1983 and 1985, used the Land daily from 1995 to play football, and he played on the Land with them initially when they were still young. When they moved into the area in 1995, there were goal posts on Area A and children from all over Whitby played there regularly. When it was wet, they used the hardstanding, but they mostly used the goal post area. The children were mainly from non-RAF families, as not many RAF personnel were living in the area by that time. One of the goal posts disappeared

[13] His written evidence is at AB page 124.

around 1998/1999, and the other disappeared around two or three years later. He could not recall whether the play area on Area A was dismantled as of 1995. The roundabout was still in situ, but he could not remember whether the slides and swings were. By that time, his Children were more interested in sport than a play area. The tennis courts were also used by children from all over Whitby, and in 1995, a key was required to play on them. He paid £1.50 for a key which he then kept, but he did not recall from whom he purchased it. He had to use the key for approximately three or four years, namely until around 1998/1999, after which there was open access to the courts. He still uses the courts to practise his fly fishing and his golf. In addition, there was a tarmac cricket wicket in the area between the tennis courts and Area A which remains visible to date that the boys used to use, some of them being members of Whitby Junior Cricket Club. His Children are now grown up, but their Grandchildren still play on the Land when they visit. He has also walked his dogs on the Land. In his view, the Land has been used less since the facilities were removed, and he pointed out that it is difficult to play football on the Land when the grass is around a foot in height. It was his recollection that signs were erected on the Land at sometime between 2005 and 2007. The Land was extremely well used on a continual basis, but more by children than by adults, who came from all over Whitby to use the Land, such as from Mayfield Road, and not merely from the Estate.

4.12 **Mrs Sue Sanderson**[14] has lived at 46 Derwent Road since 1979. Her five Children, born between 1984 and 1990, all played on the area around the tennis courts and the play park when they were younger, and then on all the Land as they got older. They used the Land during their childhood years between 1989 and 2004. They did

[14] Her written evidence is at AB pages 161 – 166.

not use the tennis courts. Area A originally had playground equipment on it which her Children played on, but it was removed during the early 1990's as it was deemed unsafe due to the ground being concrete. Her Children, and others from the Estate, continued to use Area A and all the Land to play football, rounders, cricket, kite flying, cycling and tennis. Area A was re-concreted after the play equipment was removed, and a kick wall was erected for children to kick and hit balls against. The frequency of play on the Land depended on the weather and time of the year. During the summer, children would play daily in the evenings after school and at weekends; during the colder months, they would use the Land less frequently. It was considered a safe environment for children to play. From her house located towards the end of Area A she was able to see her Children playing on the Land and they were safe. Her own use of the Land was supervising her Children playing on the Land when they were younger, and using the kick wall to practise her tennis. Permission was never sought to use any of the Land. Since her Children have grown up, her three Grandchildren aged between 9 and 5 continue to use the Land. Two of them lived on the Estate until approximately nine months ago. She referred to four photographs she had taken of the Land showing different parts of the Land between prior to 1986 and 1999.[15] She did not recall when the signs were erected on the Land.

4.13 **Mr Les Raisbeck**[16] has lived at 18 Derwent Road since October 1996. Prior to that, he was posted to RAF Fylingdales in January 1989 when he lived on base. At that time, he regularly played football on the Land with RAF personnel and civilian personnel, mainly on Area C. Football training sessions for RAF and MOD employees took place on the Land, but they also played for civilian teams. There were

[15] At AB pages 54 and 56 middle and bottom photographs.
[16] His written evidence is at AB pages 151 – 153.

often matches unofficially organised between local teams from Whitby generally. That continued until around 1998/1999 by when RAF Fylingdales then had a football pitch on base so matches were transferred to that location. Since then, the use of the Land has been for less organised activities, and has been used more for kickabouts with children. The Land was an ideal area for the RAF personnel to enjoy recreational activities, but as the Estate was by then mainly civilian with some RAF families, many of the participants were local people. He estimated that approximately 25% of the users were civilians at that time. No distinction was made between the RAF personnel and the civilian personnel with regard to the use of the Land. There were never restriction notices around the Land and permission was not sought by the civilian personnel to use the Land. When he was first stationed in the area in 1989, the tennis courts were in disrepair and unrestricted. They were then refurbished and several keys were held at different houses for access. The key holders were not only RAF personnel, but the RAF/MOD provided the keys to key holders. The keys were freely available for anyone to play on the courts and a sign on the gate listed who held the keys. He was unaware who erected the sign or how long it was in situ for. He was not a key holder. He played tennis on the courts, and tournaments were organised.

4.14 He left the RAF in 1996 and bought his current house from the RAF which is located directly behind the Nursery. He can see people using the Land from the first floor. He has often seen children playing on the former tennis courts. From 1996, he continued to use the Land, particularly with his two Sons to play football, rounders and other games, and they learnt to ride their bikes on the old tennis courts. He also uses the Land regularly to exercise his dog. There is a gate in his back fence onto the Land and he used the Land as part of a longer walk.

4.15 **Mrs Mary Locker**[17] has lived at 44 Derwent Road since 1987. Her Children were by then all grown up, but she has eight Grandchildren who played on Area A throughout their childhood during the late 1980's and early 1990's. Some of them live on the Estate. Her Great Grandchildren, the eldest of whom is 3, now play on the Land. She played tennis on the courts with a friend who obtained a key, and had picnics with her Grandchildren on Area A. She recalled there being swings, slides and a roundabout on Area A and properly equipped tennis courts on Area B. She agreed the play equipment was dismantled around the early 1990's. Children continued to play on Area A with their bikes and skateboards on the concrete area and to play football on the field. She also used to walk her dog round the Land regularly until around five years ago. She walked a circuit round the perimeter of all three parts of the Land, and pointed out that some other dog walkers followed a similar route.

4.16 **Mrs Cath Butler**[18] has lived at 48 Derwent Road since 1999 when her Son was four years old. He played on the Land, which is a very safe place for children to play given that it is surrounded by houses and there are no through roads. Her Son learnt to ride his bike on the hardstanding of the old tennis courts on Area B and played ball games on the green areas, particularly on Area A. There was no fencing round the tennis courts and the nets had disappeared when she moved into the area in 1999. Her Son regularly played on the Land with friends after school and at weekends all year round, some of them from the Estate and others from elsewhere. She had seen children playing on the Land with their parents and with groups of friends, and many dog walkers using the Land to exercise and play with their dogs. She is able to see

[17] Her written evidence is at AB pages 149 - 150.
[18] Her written evidence is at AB pages 159 - 160.

Area A from the dining room of her house as well as from the upper floor. She pointed out that she has seen deer running across the western part of Area A as the land dips down, and hedgehogs on the Land just beyond the boundary from her house. The most frequent use of the Land is by children rather than adults. However, she had used Area A herself to learn to ride a motorbike, and she walked her dog on the Land between 1999 and 2003. She never asked permission to use the Land and was never asked to leave the Land.

4.17 **Mrs Pamela Webster**[19] has lived at 5 Westbourne Road since 1986, and was around 8 years old when she initially moved onto the Estate where she has lived for most of her life. She always used the Land to play sports from the age of eight, and regularly played tennis on the courts when she needed a key to access them. However, all her sporting activities on the Land were prior to 1986, and she did not use the Land for recreational purposes post 1986 save to play with her two Sons. The play area on Area A was still in situ when she moved into her current house, and it fell into disrepair gradually, but she did not recall when it was removed. She recalled going to the play area with her Children. They both attended the Nursery School run by the RAF between 1988 and 1992, namely two years each, and during that period, she crossed Area C twice a day every school day, and sometimes they would stay to play on the Land afterwards. During the 1990's, she went onto the Land most weeks with her Children when they were aged between 6 and 12. She stopped taking her Children there by around 1996 when they had got older and had more independence. She has not been using the Land since the late 1990's. As they grew older, her Sons met their friends on the Land and played sports there. They used the Land for recreational sport,

[19] Her written evidence is at AB page 167.

including cricket and football which they played on Area C. She was unaware of any laid out cricket wicket on the Land. They also used the tennis courts from around the late 1990's, and she did not recall them requiring a key at that time. The Land was a safe area for her Children to play, close to their home and with no busy roads to cross. In contrast, Love Lane is very busy and dangerous for children to cross to access the playing fields beyond. In addition, her and her Family regularly crossed the Land to get to friends' houses. She never asked for permission to use the Land.

4.18 **Miss Julye Sutherland**[20] has lived at 32 Derwent Road since October 1996 with her two Sons who were then aged 10 and 7. The tennis courts on Area B are directly behind her house. She recalled seeing the fencing round the tennis courts coming down not long after they moved to the area in 1996. Her Children played football and rode their bikes on the Land throughout their childhood and teenage years, mostly on Areas A and B that were nearest to their home, and also skateboarded and went rollerblading on the old tennis courts and on the area of concrete near to the wall on Area A. She referred to the artificial cricket pitch on Area A located on one side of the wall, but was unaware of any other artificial cricket pitch on the Land or of any goalposts on the Land. However, she did not play cricket with her boys and so would not have been aware of any such artificial pitch. None of the play equipment remained on Area A when she moved onto the Estate in 1996. In addition, she used the Land most days from 1996 onwards to walk their dog, which was her own primary use of the Land. She would usually spend 15 to 20 minutes playing with him with a ball while walking on the Land before continuing with their walk. She would throw a ball as she walked along while the dog ran around. The

[20] Her written evidence is at AB page 137.

particular route she generally walked on the Land when with her dog was to access Area A via the cut through between the houses, to walk round the perimeter of Area A in a clockwise direction, to go through the gap between Areas A and B, to walk across Area B round the back of the prefabricated building, and onto Area C. As a child, prior to the relevant 20 year period, she played on the Land when there was an equipped play park on Area A when visiting relatives, but she did not then live on the Estate. She has never been restricted in her use of the Land nor been asked not to use it.

4.19 **Mrs Jenny Wood (nee Brown)**[21] has lived at 14 Parsons Close since 2000. Prior to that, she lived on Derwent Road on the Estate as a child until 1969; she then lived in two separate properties on Stonecross Road during the 1970's; her Parents bought 1 Parsons Close in the late 1970's where she lived until she was married in 1980 when she lived on Westbourne Grove; in 1986, she moved onto Farm Close where she lived until 1994 when she moved off the Estate to Sleights; and she then moved back onto the Estate in 2000. She played on the Land herself as a child, and from 1986 onwards, her two eldest Children played on the Land. They both attended the Nursery in the late 1980's. She recalled the play area on Area A disappearing gradually during the late 1980's and early 1990's. When she moved back to the Estate in 2000, her youngest Son was aged 4 or 5 who played on the Land. She also had a Daughter and two Stepsons living with her then who were all teenagers and played on the Land with their friends. Her Stepsons used to play mainly on Area A where their friend lived. The Land was a safe place for children to play and there were no main roads for them to cross. In addition, she has walked her dogs on Area C of the Land.

[21] Her written evidence is at AB pages 154 - 158.

She has always had a dog from the 1980's onwards apart from between 1993 and 2005. With each of her dogs, she played with them and trained them on Area C rather than walked a particular route with them. Her Children have now left home apart from her 16 year old Son. She has a Grandson and still takes him to play on the Land. She did not recall when the signs on the Land were erected.

4.20 **Mrs Josephine Hayton**[22] has lived at 15 Stonecross Road with her Husband since September 1993. Prior to then, she did not live on the Estate. From 1993, she has used the Land daily to walk her dog. She walked her previous dog twice a day from 1993 until 2009 along "*a set route*" over all the Land, namely through Area C, through Area B, through to the end of Area A to the boundary with the golf course, round the perimeter of Area A and then back onto Derwent Road via the paved path on the western side of Area B. She mostly uses Area C with her current dog that she acquired after her previous dog died and they go all over the grassed area. She has five Grand-daughters aged between 17 and 4 who have all played on the Land. They all live on the Estate. She has played rounders, flown kites and had picnics with them on the grass, mostly on Area C, and has also played soft ball tennis with them on Area B from the late 1990's when the courts were no longer locked. Two of them attended the Nursery. They also exercise their own dogs on the Land. The signs have been in situ for approximately four or five years.

4.21 **Mrs Joanne Wood**[23] has lived at 23 Field Close since 2000. Prior to that, from 1964 until 1986, she lived on The Avenue which is on the Estate; from 1986 until 1989, she lived at Sleights which is outside the Estate; and from 1989 until 2000,

[22] Her written evidence is at AB pages 168 - 170.
[23] Her written evidence is at AB pages 142 - 144.

she lived at Stakesby Road which is also off the Estate. From the early 1970's, she played on the Land with her sisters and friends, after school, at weekends and during school holidays. They played on the equipped play area, and also on the grassed area where they played rounders, tig, football, cricket and other games. They were never told that they were not allowed to play there and they never asked permission to play there. One of the slides was removed from the play area before 1975 and was replaced with a bench. She was unaware when the remainder of the equipment was removed. From 1989 until 2000, she lived with her Husband and Daughter, who was born in 1989, on Stakesby Road which is not on the Estate. She still used the Land during that period around a couple of times a week to walk across to Derwent Road, and often saw others from the Estate who were not from RAF families exercising their dogs there, walking across the Land or watching their children play. When her Daughter was a toddler, she took her to the Land to play. Their Son was then born in 1996, and she walked with him round the Land.

4.22 From 2000 onwards, they have lived on the Estate. From her house which is towards the western end of Area A, she has seen children playing football, cricket, flying kites and playing many other games on the Land. Younger children have learnt to ride their bikes on the concrete areas which are also well used for roller skating and skateboarding. There is usually someone on some part of the Land. Her Son has used the Land since around 2001. His Father taught him to ride his bike there and he has played various ball games on the Land with other children. They have used all parts of the Land. It is a safe place for children to play with no main roads to cross. When her dogs were puppies, she trained them on the Land and saw other dog owners using the Land to exercise their dogs. She has continued to use the Land to exercise her two

dogs, which she acquired in 2006 and 2010. She did not have a dog before 2006. She does not have a set route, but exercises her dogs over all the Land. She has also used the Land to walk across to go to the shop or to visit friends or family. The Land has not been maintained by the present owner, and she has cut Area A herself several times, as has her Husband, and her Daughter's boyfriend recently cut Area B. She has seen badgers, foxes, deer, rabbits and pheasants on the western end of Area A close to the boundary with the golf course. Deer are regularly seen on the golf course, and she saw them on that edge of Area A on one occasion; she has seen badgers in the far corner of Area A near to the golf course; many pheasants have been seen on Area A generally; and she has seen a rabbit near to the boundary with the golf course. She did not recall when the signs on the Land were erected.

4.23 **Mr Jeremy Cox**[24] has lived at 10 Highfield Road since 2002 with his Wife and two Children. Their house is opposite the Nursery. Prior to that, he did not live on the Estate. His Children use the Land frequently for playing football, cricket and other games together with other children, mainly on Area C. They also use Area B where he taught his Children to ride their bikes, and they play games on the tarmac area on Area A and play kick ball against the wall on Area A. When the weather is good, his Children use the Land daily. They probably use it two or three times a week on average. When he moved onto the Estate, the tennis nets had gone and there was no fencing around the tennis courts. Groups of children play on the Land when one of them has a birthday party or other celebration. He has got to know other people in the area from using the Land. He has mown the grass on the Land since others stopped doing it.

[24] His written evidence is at AB page 116.

Written Evidence in Support of the Application

4.24 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 evidence questionnaires, letters in support and other documents which are contained in the Applicant's Bundle.

4.25 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

4.26 **Miss Emma Bingham**[25] is a Solicitor and Associate at Walker Morris. She referred to the history of the Land. The freehold of the area then known as "Castle Park" was purchased by the Ministry of Defence around July 1961 with some properties already in situ.[26] That area does not extend as widely as the neighbourhood relied upon as its southern boundary is along Westbourne Road. It also includes the golf course to the north west. The MOD constructed around 212 dwellings on that land as Service Family Accommodation which was provided to accommodate Armed Forces personnel and their families. Recreational facilities were provided for the benefit of the occupants of that accommodation. According to information provided

[25] Her witness statement is at OB tab 3.
[26] The boundary of the area of land owned by the MOD is shown on the map at OB tab 3 page 58.

by the Estate Surveyor for the MOD,[27] from around 1974 until 1996, approximately 132 houses were sold off by the MOD privately, leaving approximately 80 houses within the MOD's ownership as of 1996.[28] However, that information was provided from the MOD's correspondence, and it was acknowledged that such may not reflect the information contained in the Lease of November 1996 between the MOD and Annington[29] which suggested that 165 houses were sold off privately in that period with only 40 remaining in 1996. It was agreed that the Lease in Schedule 3 indicated the dates when the individual properties were sold. In 1996, Annington purchased the MOD's Married Quarters Housing pursuant to a 999 year Lease which included the remaining houses and the Land. There were no specific terms in that Lease relating to the recreational areas. Annington then leased that land back to the MOD on a 200 year underlease, with the MOD agreeing to release various properties back to Annington which were surplus to requirements and, upon termination, to transfer the freehold to Annington. The MOD could also release further properties by terminating specific premises at any time with six months notice. The Land was duly released back to Annington in March 2002. According to Estate Surveyors from the MOD, between 1996 and 2002, the Land was managed and maintained as part of the MOD's estate. The Community Centre and the Hive Building were re-let to the MOD under a lease dated April 2007.

4.27 As to signs, Annington erected six signs on the Land on 16 May 2006 which stated that the Land was private property and there was no public access or right of way without the permission of the owner; that the owner permitted access by

[27] E-mail dated 7 December 2011 at OB tab 3 page 57.
[28] The houses remaining within the MOD's ownership as at 1996 are shown on the map at OB tab 3 page 59.
[29] At OB tab 3 page 61 onwards.

members of the public for recreational purposes only; and that such permission could be revoked at any time.[30] The locations of those signs on the Land as erected in May 2006 are shown on the plan produced.[31]

4.28 **Mr Tom Bentley**[32] is the Managing Director for the Objector, Yorkshire County Homes Limited, a development company. He lives in Glaisdale which is approximately ten miles to the north of the Estate. In 1989/1990, he was the Site Engineer for the main Contractor for the new Radar at RAF Fylingdales for around one year during which he became socially involved with the American staff. He was not working near to the Land at that time. He continued to socialise with people from RAF Fylingdales for a number of years thereafter as two of his sisters were employed there. From around 1989 until 1992, he played tennis about twice a week on Area B. The courts were locked and he had to wait for someone to pick up a key from the key holder. He only played with the Military, albeit as a civilian invited to play tennis with them. The tennis courts were well used, and he acknowledged that he was unaware whether it was the military or civilians using them. He could not recall whether there was any sign on the tennis courts. He did not remember seeing any other activities on the Land at that time. He confirmed that the Nuns Field development was undertaken sometime between 2000 and 2002.

4.29 In 2007/2008, he worked on the residential development at the junction of Love Lane and Highfield Road as the Managing Director of the Company awarded the groundwork contract. He was on site daily during a two year period when he was able to see Area C, and he only noticed a few people walking across the grass from

[30] The full text of the signs is shown at OB tab 3 pages 43 and 177.
[31] At OB tab 3 page 176.
[32] His witness statement is at OB tab 5.

Highfield Road to Stonecross Road which he understood was used by residents as a shortcut given that there was a very well defined route across the grass which led to Lidl, Spar and the local School. It was widely rumoured at that time that a town or village green application was to be made in relation to the Land which his Company had an interest in, and so he was monitoring its usage for that reason. However, he acknowledged that it was difficult to monitor regular activity when he was working, and that his working hours would not necessarily correspond with when the Land was being used. He had no written record of his observations over that period. Subsequently, since Yorkshire County Homes Limited purchased the Land in 2010, he has made many visits to the Land to monitor recreational usage by regularly driving past it. He acknowledged that it took a maximum of five minutes to drive past the Land. During those visits, he has only seen the occasional person crossing the grass on Area C, the occasional child riding a bike on the tarmac path across the Land, and children using the concrete kick wall on Area A on a few occasions. Further, in November 2011, he was involved with the building of the single dwelling on plot 41 at the end of Derwent Road from where he had a full view of Area A. He expressed the view that those building works would have caused very minimal interference with any public use of Area A. They involved taking an eight tonne JCB across the grass on Area A a couple of times during the winter period. He worked on that site on a daily basis for two or three weeks and only saw the occasional child using the kick wall on Area A and a number of people walking dogs on the edge of the golf course off the Land. Since his Company acquired the Land in 2010, it had not carried out any maintenance to it which he accepted would make it more difficult to play on.

4.30 **Mr Gareth Jones**[33] is the Company Secretary for Yorkshire County Homes Limited, the Objector. He lives in Glaisdale, which is ten miles away from Castle Park, and he has never lived on the Estate. The Company purchased the Land from Annington at Auction on 27 July 2010, which then had the benefit of a resolution by the local planning authority to grant planning permission for its residential development subject to the completion of an appropriate section 106 obligation. In relation to Area B, enquiries with the MOD revealed that the tennis courts were kept locked until approximately 2000, and that the keys were controlled by the RAF Fylingdales PTI, with a duplicate set being held in "Highfield House", the RAF Welfare facility, which people could sign out when required.[34] As to the Hive Building, he was informed by the Estates Surveyor for the MOD that that was built around 2005, and it is open between three to five days per week serving a small community of 28 families.[35]

4.31 After the Objector's purchase of the Land, he drove slowly past the Rugby Club playing field and the Land on numerous occasions on his way home from work throughout the summer of 2010 at least three times a week between 5.30pm and 6.30pm. His specific purpose for driving past was to monitor usage. During those occasions, he only saw someone on the Land very occasionally, whereas he saw children playing football on the Rugby Club field plus other children playing generally. He was unaware whether dog walkers used that field, and he acknowledged that he was unaware whether the people he saw using it were from the Castle Park Estate. Subsequently, from around May 2011, he has been involved with the building of plot 41 at the end of Derwent Road, visiting the site regularly as the site manager to

[33] His witness statement is at OB tab 4.
[34] The relevant e-mail correspondence is at OB tab 4 page 184.
[35] The relevant e-mail correspondence is at OB tab 4 pages 186 - 187.

monitor the ongoing work, but not daily. He is often on site on Saturdays and on Sunday mornings. During those visits, he has occasionally seen the tarmac area and kick wall being used on Area A; a couple crossing Area A with their dog to gain access to the golf course; people occasionally crossing Area C from the bus stop on Stonecross Road to Highfield Road; one person with his dog on Area C; two people playing football on one occasion on Area C; and no activities on Area B. However, he had not recorded any of his monitoring of the Land, and he was recalling what he saw on the Land from his memory. Due to the lack of activity he observed on the Land, and the significant use of the Rugby Club land, he approached the County Council to enquire whether it could independently monitor the Land's usage, but it did not agree to do so given that the relevant 20 year period had already expired. He accepted that all his own monitoring of the Land's usage was outside the relevant 20 year period. The Objector has not maintained the Land since acquiring it.

Written Evidence Objecting to the Application

4.32 The Objector did not adduce any further written evidence in the form of additional witness statements or statutory declarations in support of its objection to the Application, but I have taken into account all the documentary evidence in support of the Objection contained in the Objector's Bundle.

THIRD PARTY EVIDENCE

4.33 During the Inquiry, I invited any other persons who wished to give evidence to do so. One individual did so and the opportunity was provided for her evidence to be subject to cross examination.

4.34 **Mrs Pat Hopkin**[36] lives at 2 Rosemount Road in Whitby which is not on the Castle Park Estate. She supports the Application. Since the late 1960's, families and children have had unrestricted access to the Land where they have been able to play in a safe environment. She used to visit a friend in the area at that time and saw children regularly playing on the Land. People walk their dogs on the Land on a daily basis. She pointed out that the Application was for the entire Land to be registered as a town or village green and it should be treated as one area rather than three separate areas. Different people use different parts of the Land. Area A is used mainly by older children for playing football and cricket. Dog owners exercise their dogs on all the Land on which occasional pony rides also take place. Areas B and C are used for picnics and play areas where even young children can play safely. The Land has always been regarded as an amenity for the entire community. It has not been maintained since it was acquired by the Objector, so the residents have maintained it themselves, including her brother, to enable children to continue to play on it. It had been used by the community continuously, "as of right", without restriction and without permission for over 40 years before the signs were erected. The inhabitants of the area do not have access to other open areas that are safe to use. The local community sought to purchase the Land at auction, but they were outbid by the Objector, which demonstrates the strength of feeling the local community has for the Land. The Objector was aware of the Application when it purchased the Land. Her brother lives at 25 Field Close on the Estate which backs onto Area A. The Objector has made a considerable mess of Area A in carrying out the recent building works at plot 4 which has restricted children's use of the Land.

[36] She produced to the Inquiry a letter dated 14 July 2010 that she had sent to the Registration Authority.

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 Act 2006

5.2 The Application was made pursuant to the Commons Act 2006. That Act requires each registration authority to maintain a register of town and village greens within its area. Section 15 provides for the registration of land as a town or village green where the relevant statutory criteria are established in relation to such land.

5.3 The Application seeks the registration of the Land by virtue of the operation of section 15(2) of the 2006 Act. Under that provision, land is to be registered as a town or village green where:-

> "*(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
>
> *(b) they continue to do so at the time of the application.*"

5.4 Therefore, for the Application to succeed, it must be established that:-

(i) the Application Land comprises "land" within the meaning of the 2006 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 continued at the time of the Application.

Burden and Standard of Proof

5.5 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.

5.6 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***[37] 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.*"

[37] [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

5.7 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

5.8 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.

5.9 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***[38] 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

5.10 It was made clear in ***R. v. Oxfordshire County Council ex parte Sunningwell Parish Council***[39] 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

[38] [2006] 2 AC 674 per Lord Hoffmann at paragraphs 37 to 39.
[39] [2000] 1 AC 335 at 356F to 357E.

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.

5.11 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***[40], 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.*"

5.12 More recently, Lightman J. stated at first instance in ***Oxfordshire County Council v. Oxford City Council***[41] at paragraph 102:-

[40] [2003] EWHC 1578 (Admin).
[41] [2004] Ch. 253.

> "*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 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.

Continuity and Sufficiency of Use over 20 Year Period

5.13 The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period: ***Hollins v. Verney***.[42]

5.14 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***.[43]

Locality or Neighbourhood within a Locality

5.15 A "*locality*" must be a division of the County known to the law, such as a borough, parish or manor: ***MoD v Wiltshire CC***;[44] ***R. (on the application of***

[42] (1884) 13 QBD 304.
[43] [2010] UKSC 11 at paragraph 36.
[44] [1995] 4 All ER 931 at page 937b-e.

Cheltenham Builders Limited) v. South Gloucestershire DC;[45] and ***R. (Laing Homes Limited) v. Buckinghamshire CC***.[46] A locality cannot be created simply by drawing a line on a plan: ***Cheltenham Builders*** case.[47]

5.16 In contrast, a "*neighbourhood*" need not be a recognised administrative unit. Lord Hoffmann pointed out in ***Oxfordshire County Council v. Oxford City Council***[48] 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: ***R. (McAlpine) v. Staffordshire County Council***.[49] 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.[50]

5.17 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***[51] 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*

[45] [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.
[46] [2003] EWHC 1578 (Admin) at paragraph 133.
[47] At paragraphs 41 to 48.
[48] [2006] 2 AC 674 at paragraph 27.
[49] [2002] EWHC 76 (Admin).
[50] At paragraph 85.
[51] [2010] EWHC 530 (Admin) at paragraph 79.

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

5.18 "*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, rather than occasional use by individuals as trespassers: ***R. (McAlpine) v. Staffordshire County Council***.[52]

As of Right

5.19 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***[53] that the issue does not turn on the subjective intention, knowledge or belief of users of the land.

[52] [2002] EWHC 76 (Admin) at paragraph 71.
[53] [2000] 1 AC 335.

5.20 "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***.[54] 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*".[55]

5.21 "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***.[56]

Part Registration

5.22 The House of Lords in ***Oxfordshire*** also addressed the issue of whether a registration authority can determine to register a smaller area of land than that referred to in an application. It was found that a registration authority could, without any amendment of the application, register only that part of the subject premises which the applicant had proved to have been used for the necessary period, subject to it resulting in no prejudice to anyone.

6. APPLICATION OF THE LAW TO THE FACTS

Approach to the Evidence

6.1 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.

[54] (1988) 56 P. & C.R. 8.
[55] At paragraphs 88-90.
[56] [2004] 1 AC 889.

6.2 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.

6.3 I shall now consider each of the elements of the relevant statutory criteria in turn as set out in paragraph 5.4 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. 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

6.4 As noted in paragraph 3.1 above, there is unfortunately no plan which accurately identifies the boundaries of the Application Land. The map marked "SG1" submitted with the Application was agreed by the Applicant to be incorrect insofar as it inaccurately marks the boundary of the Application Land between Areas B and C with the area of the Nursery. An amended plan provided by the Registration Authority was agreed by both Parties to be correct save in relation to the western boundary of the excluded Nursery area which does not extend sufficiently to the west so as to abut the eastern former tennis court. However, the correct measurements are agreed to be

those contained in the Applicant's letter to the Registration Authority dated 23 September 2009. Therefore, the Land is as shown on that amended plan, but subject to the western boundary of the excluded area between Areas B and C being in accordance with the measurements set out in the Applicant's letter of 23 September 2009.

6.5 That being so, the Land does have 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 15(2) of the 2006 Act and is capable of registration as a town or village green in principle and I so find.

Relevant 20 Year Period

6.6 Turning next to the identification of the relevant 20 year period for the purposes of section 15(2) of the 2006 Act, the qualifying use must continue up until the date of the Application. Hence, the relevant 20 year period is generally the period of 20 years which ends at the date of the Application. The Application Form and the accompanying statutory declaration are dated 28 May 2009, and the Application was received by the Registration Authority on 4 June 2009. However, prior to those dates, signs were erected on the Land which permitted access onto the Land for recreational purposes and stated that such permission could be revoked at any time. There was no dispute between the Parties that such signs were erected on the Land and, indeed, some of them remain on the Land to date, nor that they were erected prior to the Application being made.

6.7 It is thus necessary to consider the effect of those signs and, in particular, whether they amount to the grant of permission to the public to use the Land and thereby preclude any use thereafter being "as of right" and a qualifying use. The full text of the six identical signs is clear from the photograph of one of the signs in situ.[57] They expressly state, inter alia, that "*the owner hereby permits access by members of the public onto the land for recreational purposes only*" and that "*this permission may be revoked at any time*". In my view, such wording on signs placed on various different parts of the Land that could be easily viewed and were not obscured amounted to a clear grant of express permission to the public to use the Land, but on the basis that such permission was revocable by the landowner at any time. Those signs thereby had the effect of the public's use of the Land thereafter being with permission, namely "*precario*", and thus not "as of right" from the date they were erected onwards. Consequently, the use of the Land as of right could not continue until the date of the Application.

6.8 In such circumstances, section 15(7)(b) of the 2006 Act is particularly relevant. It provides:-

> "*For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied—*
>
> …
>
> *(b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land "as of right".*"

[57] At OB tab 3 page 43.

Hence, if all the other statutory criteria contained in section 15(2) are established, the effect of section 15(7)(b) is that any permission then granted to use the land is to be disregarded in determining whether people have continued to use that land "as of right". Therefore, if it is established that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the Land for a period of at least 20 years prior to the signs being erected, the statutory criteria are to be regarded as being met. It follows that the relevant 20 year period is the period of 20 years ending with the date of the erection of the signs.

6.9 As to that date, Miss Bingham stated that six such signs granting permission were erected on the Land on 16 May 2006. That information was provided to her in a written e-mail from Annington[58] who was responsible for erecting the signs. Although none of the Applicant's witnesses was able to confirm that date as no one recalled specifically when the signs were erected, no alternative date was provided by anyone as being the correct one. Moreover, Miss Bingham's evidence on the point is supported to an extent by Mr Spedding, who was of the view that the signs were erected at sometime between 2005 and 2007, and I note that the Applicant acknowledged in her Closing Statement[59] that "*permissive signs were placed on the site in 2006*". Indeed, there was no suggestion in any of the evidence in support of the Application that the date provided by Annington was in fact erroneous, and I have no reason to doubt the veracity of the information contained in its e-mail. Therefore, on the balance of probabilities, I find on the basis of the evidence that the six signs were

[58] At OB tab 3 page 175.
[59] At page 4.

erected on the Land in the locations identified[60] on 16 May 2006. It follows that the relevant 20 year period for the purposes of section 15(2) is 16 May 1986 until 16 May 2006.

Use of Land for Lawful Sports and Pastimes

6.10 Turning next to whether the Land has been used for lawful sports and pastimes in principle during the relevant 20 year period, it is contended by the Applicant that the Land has been used for various recreational activities during that period. References were made in both the oral and the written evidence to recreational activities such as children's play, football, cricket, rounders, tennis, skateboarding, rollerblading, cycling, dog walking, general walking, picnicking and kite flying. Numerous references were made by each of the witnesses who gave evidence in support of the Application of their own and / or their family's and / or other people's varying recreational uses of the Land at different times. Such evidence is supported by a large volume of written evidence. Although people's recollections may fade over time, particularly in relation to details, I accept the evidence of those witnesses that they did in fact use the Land for the stated purposes.

6.11 In so finding, I also take into account the following. It was no part of the Objector's case that recreational activities have not, to some extent, taken place on the Land. Indeed, it is acknowledged that the Land was specifically laid out and maintained as a recreational area, with an equipped play area and tennis courts being on the Land during a material part of the relevant period. The Objector's own evidence of usage, which is limited and is all post the relevant period, itself indicates

[60] On the plan at OB tab 3 page 176.

that some, albeit limited, recreational use has taken place. That is also supported by the very fact that signs were erected by Annington in 2006 granting express permission for the public to use the Land for recreational purposes. Such would have been unnecessary had no such use been carried out. Further, from my visits to the Land and the surrounding area, I find that it is unsurprising that the Land has been used for some recreational activities given its nature and location. It is a pleasant, large, flat, open, grassed area with areas of hardstanding and a kick wall upon it located within a built up residential area. There is unrestricted access to the Land and, as pointed out by many witnesses, it is a safe area for children to play, in terms of being overlooked by housing, the lack of traffic and the lack of busy roads to cross to access it. It is therefore undoubtedly an area that would be highly attractive to local residents as an area on which to recreate. I also take into account the evidence that local residents have themselves maintained the Land recently, which again supports their evidence that they value the Land for recreational purposes and have so used it.

6.12 Moreover, all such activities referred to in paragraph 6.10 above are lawful, and they are all capable of being recreational pursuits in principle. Therefore, I find that **some** lawful sports and pastimes have been carried out on the Land during the relevant 20 year period. I shall address below the extent and degree to which they have been carried out as of right throughout the entirety of the relevant period by the inhabitants of the claimed neighbourhood.

Locality or Neighbourhood within a Locality

6.13 I turn next to the identity of the relevant locality or neighbourhood within a locality for the purposes of section 15(2). The Applicant confirmed at the outset of the

Inquiry that the area relied upon for the purposes of the Application was as stated in the Application Form, namely the neighbourhood of Castle Park within the locality of the Mayfield Ward. Further, she confirmed that the neighbourhood of Castle Park was the area so identified on the plan produced by the Objector.[61]

6.14 Starting with Mayfield Ward as the relevant locality within which Castle Park lies, that Ward is an established administrative area with identifiable boundaries. It is a recognised electoral area, and I accept that it amounts to a locality within the meaning of the statutory criteria and within which Castle Park lies.

6.15 The issue then arising is whether Castle Park amounts to a qualifying neighbourhood for the purposes of the legislation. As noted above, although it need not be a recognised administrative unit, a neighbourhood must be an area with a sufficient degree of cohesiveness, rather than merely being an area that has had a line drawn round it to reflect the residential location of the users of the Land. In that regard, from the evidence I heard and saw from visiting the area, it is my view that Castle Park as identified by the Applicant is such a qualifying area. It is effectively one, albeit relatively large, housing estate that appears to function as a community. It has clear boundaries with the golf course to its north and to its west, the main roads of Love Lane and Castle Road to its east, and Castle Road to its south. Moreover, it is a known and recognised area locally, and I note that it is identified as such on local maps, such as on the Ordnance Survey Map submitted with the Application.[62] I

[61] At OB tab 1 page 12.
[62] At AB page 10.

further take into account that the Objector accepts that Castle Park is a cohesive neighbourhood.[63]

6.16 Therefore, I find that Castle Park is a qualifying neighbourhood within the meaning of section 15(2) of the 2006 Act.

Use as of Right

6.17 Before turning to the extent of the qualifying user by the inhabitants of the neighbourhood throughout the relevant 20 year period, I shall consider next whether the use of the Land has been as of right during that period. There was no suggestion in any of the evidence that any of the use was by stealth. On the contrary, it was carried out openly during daylight hours and without any element of secrecy. The use of the Land has thus been *nec clam*. Similarly, none of the use was carried out with force. Although use need not involve physical force to be *vi*, such as accessing land by breaking down fences, there was no evidence of anyone having been challenged by the Landowner or having been requested to leave the Land or using the Land contrary to any signs. Instead, the evidence of numerous witnesses in support of the Application was that they had never been requested to leave the Land nor been informed that they should not be on the Land. Therefore, I find that the use of the Land was *nec vi*.

6.18 As to whether the Land has been used *nec precario*, there were no signs granting express permission to use the Land prior to those erected in May 2006, and

[63] Objector's Closing Submissions at paragraph 61.

no other evidence of any express permission having been given to anyone to use the Land. Instead, the issue arising is whether any implied permission was given.

6.19 In terms of implied permission, it was made clear in ***Beresford*** that an implied permission could arise where a landowner's conduct was such that it made it clear to inhabitants that the use of his land was pursuant to his permission. However, permission cannot be implied from the mere inaction of the landowner with knowledge of the use to which his land was being put. Instead, the landowner has to do something positive to make the public aware that their use of his land is by his licence so that they ought to know that the land is being used by them only with his permission and not as of right. Conduct amounting to positive encouragement to use the land is not in itself sufficient to amount to an implied permission. Instead, examples given in that case of circumstances where an implied consent may well arise on the facts included where the landowner made a charge for entry to the land or where the owner occasionally closed the land to the general public or where appropriate signs were erected. Each of those examples would amount to an overt act communicating to the public that their use of the land was subject to the landowner's permission and was not as of right.

6.20 Hence, Lord Bingham stated at paragraph 5 that:-

> "*A landowner may so conduct himself **as to make clear**, even in the absence of any express statement, notice or record, that the inhabitants' use of the land is pursuant to his permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way*

asserts his right to exclude, and ***so makes plain*** *that the inhabitants' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use.*" (My emphasis).

Lord Rodger stated at paragraph 59:-

"*The grant of such a licence to those using the ground* ***must have comprised a positive act by the owners****, as opposed to their mere acquiescence in the use being made of the land.*" (My emphasis).

Lord Walker said at paragraph 75 that there must be:-

"*a* ***communication by some overt act*** *which is intended to be understood, and is understood, as permission to do something which would otherwise be an act of trespass.*" (My emphasis).

He further stated at paragraph 83:-

"*In the Court of Appeal Dyson LJ considered that implied permission could defeat a claim to user as of right, as Smith J had held at first instance. I can agree with that as a general proposition, provided that the permission is implied by (or inferred from)* ***overt conduct*** *of the landowner, such as making a charge for admission, or asserting his title by the occasional closure of the land to all-comers. Such actions have an impact on members of the public and* ***demonstrate*** *that their access to the land, when they do have access, depends on the landowner's permission.*" (My emphasis).

6.21 Applying that legal position to the evidence, the provision of play equipment and benches on the Land and the regular maintenance of the Land would not amount to implied permission to the public to use it. However, in contrast, in my view, the locking of the tennis courts by the Landowner and the requirement for individuals to

obtain a key from a key holder to use them would amount to sufficient overt conduct to demonstrate to the public that their use of the courts was subject to the Landowner's permission. The evidence in relation to the requirement to obtain keys was somewhat varied in relation to the finer details, but it was consistent in relation to the MOD having locked the courts for a material period of time during the relevant 20 years and requiring individuals to obtain a key in order to use them. Hence, Mr Coomber referred to RAF personnel keeping the courts locked as of 1992 when he came to the area and children needing to obtain a key to use them until around 1995; Mr Kirk recalled them being locked when he came to the area in 1994 until around 1996/1997 and a person in the RAF Community Centre building issuing a key which had to be signed for; Mrs Sanderson noted that the RAF kept the courts locked until around the mid to late 1990's and a key had to be obtained from a key holder; Mr Taylor recollected the courts being usable with a key which was freely available from a house on Highfield Road; Mr Spedding pointed out that as of 1995, a key was required which he paid for and then kept and had to use it until around 1998/1999; and Mr Raisbeck noted that several keys were held at different houses as stated on a sign on the courts, not only by RAF personnel, although the RAF had provided the keys to the key holders. Similar evidence was provided by the Objector. Mr Bentley noted that when he played tennis on the courts between 1989 until 1992, they were locked and a key had to be obtained; and Mr Jones indicated that his enquiries with the MOD had revealed that the courts were kept locked until approximately 2000 with the keys being controlled by the RAF which people had to sign for. I accept all such evidence, and I find that such control and regulation over the use of the tennis courts by the Landowner was sufficient overt conduct to demonstrate to the community that their use of the courts was subject to the Landowner's permission. Consequently, I

find that the use of the tennis courts on Area B was not as of right for a material part of the relevant 20 year period and so that element of the statutory criteria is not established in relation to that part of the Land. On that basis alone, I therefore conclude that the area of the tennis courts cannot be registered as a town or village green.

6.22 Nonetheless, as indicated at paragraph 5.22 above, it is open to the Registration Authority to register a smaller area of the Land than that subject to the Application and so it remains necessary to ascertain whether it has been demonstrated that the other parts of the Land nonetheless satisfy the relevant statutory criteria. There was no evidence to suggest that any of the other parts of the Land were not used as of right by the local community, save in relation to RAF employees and their families whose use of the Land I shall address further below.

Sufficiency of Use

6.23 Turning next to the fundamental issue of whether there has been a sufficiency of use of the Land for lawful sports and pastimes throughout the relevant 20 year period by a significant number of the inhabitants of the neighbourhood to establish village green rights over the Land, it is necessary to identify the relevant qualifying use and, in particular, to identify the elements of the use of the Land which must be discounted. As indicated above, the question for determination is whether the qualifying use of the Land for lawful sports and pastimes has been of such a nature and frequency throughout the relevant 20 year period to demonstrate to the Landowner that recreational rights were being asserted over the Land by the local community.

6.24 Starting with the use of the Land by RAF personnel and their families during the relevant 20 year period, I find that their use of the Land must be discounted from the qualifying use for the following reasons. The history of the Land was set out in detail by Miss Bingham in her evidence. In essence, the Land was initially laid out as recreational facilities by the MOD for the benefit of the occupants of its Service Family Accommodation that it provided on other parts of the land that it acquired in 1961. Tennis courts were provided on Area B, an equipped play area on Area A and open grassed areas were made available and maintained for recreational use. From around 1974 onwards, the MOD began to sell off its houses privately up until 1996 when it leased the Land and all its remaining houses to Annington. However, Annington leased that land back to the MOD on an underlease, pursuant to which the MOD agreed to release properties back to Annington when they became surplus to requirements. Given that history, it is apparent that as the Land was laid out as recreational land by the MOD as Landowner specifically for the occupants of its Service Accommodation and was managed as such, those RAF families were entitled to use the Land for recreational purposes as it had been specifically provided for their benefit. They were clearly not using the Land as trespassers, tolerated or otherwise, but, rather, pursuant to their entitlement to use it in that it had been provided for their very use. Their use of the Land was thus "by right" rather than "as of right", for similar reasons referred to *obiter* by the House of Lords in ***Beresford*** that user pursuant to a legal right or entitlement is not user "as of right".[64] Accordingly, such

[64] See Judgments of Lord Bingham paragraphs 3 & 9; Lord Hutton paragraph 11; Lord Scott paragraphs 29 & 30; Lord Rodger paragraph 62 and Lord Walker paragraphs 72, 87 & 88.

use must be discounted from the qualifying use. Indeed, that was accepted by the Applicant as pointed out in her Closing Submissions.[65]

6.25 It follows that, in terms of the specific evidence, Mrs Coomber's and her Children's use of the Land until 1991 must be discounted as she was married to an employee of RAF Fylingdales until 1989, and she and her family remained occupants of Service Family Accommodation until 1991 when her house was privately sold.[66] Similarly, Mr Raisbeck's use of the Land prior to 1996 was "by right" as he was employed by the RAF until 1996, together with the use of other RAF personnel that he played football with on the Land. All the use of the Land by RAF personnel and their families must be discounted as they were all using the Land "by right". In that regard, I note that Mr Bentley regularly played tennis with the Military between 1989 and 1992; and Mrs Karen Anderson referred to RAF children playing on Area A, and to picnics and get-togethers on Area C with both RAF and civilian mothers. Moreover, Mrs Webster pointed out that the Nursery was run by the RAF, at which many children who attended were no doubt from RAF families and who would also use the surrounding Land for recreational purposes. I also take into account that the written evidence does not generally distinguish between the recreational use that was seen of the Land by RAF families and by civilian families. Given that the burden of proof lies on the Applicant, I cannot assume that all the references to people seen recreating on the Land are to civilian families.

6.26 Secondly, it is necessary to discount from the qualifying use any use of the Land carried out outside the relevant 20 year period. Although such use may be

[65] At page 3.
[66] The relevant Conveyance is identified in Schedule 3 of the 1996 Lease between the MOD and Anningtons at OB tab 3 page 83.

relevant as an indicator as to the extent of the use within that period, and I have taken that factor into account, I am unable to regard such use as part of the qualifying use itself. Thus, I have excluded the recreational uses of the Land referred to in the evidence above that was undertaken prior to May 1986 and post May 2006. I have also taken the same approach with the written evidence.

6.27 Thirdly, I have discounted the evidence of use where it has not been established that the user was an inhabitant of Castle Park at the time of his or her use of the Land. Thus, in terms of the qualifying use, I cannot include, for example, any use by Councillor Kenyon who has never lived on the Castle Park Estate; any use by Mrs Joanne Wood and her family prior to 2000; the use by members of Whitby Hockey Club and of Whitby Rugby Club referred to by Mrs Karen Anderson as it is not known where they lived; the use by local football teams from Whitby generally referred to by Mr Raisbeck for similar reasons; the use by various visiting grandchildren save those who themselves live on the Estate; and the use of the Land by other children and adults who have been seen using the Land but where the locations of their homes are unknown or have not been demonstrated to be on the Estate. In discounting such use, I also bear in mind the evidence of Mr Spedding that children came from all over Whitby to use the Land and not merely from the Estate.

6.28 Fourthly, it is necessary to discount the use of the Land that was more akin to the exercise of a public right of way than to the exercise of recreational rights over a village green for the detailed reasons set out in paragraphs 5.11 and 5.12 above. That includes walking both with and without dogs, where the walk was of such a nature that it would suggest that the user was exercising a right of way over specific routes

rather than exercising a recreational right over the land generally. In my view, a considerable amount of the use of the Land for general walking and dog walking must be discounted from the qualifying use for that reason.

6.29 From the evidence, it is my impression that a material amount of dog walking took place around the perimeter of parts of the Land or along other specific routes rather than over the Land generally. Hence, by way of example, Mrs Locker walked her dog round the perimeter of all the Land and stated that other dog walkers followed a similar route; Miss Sutherland described a particular route she followed while her dog ran over the Land; Mrs Hayton described the set route she took with her dog; as did Mrs Coomber, which included the paved path across Area B.

6.30 Further, in relation to general walking, I noted from my site visits the paved path running across Area B leading from between the houses on Derwent Road through to Highfield Road, and the worn path running across Area C leading from the vicinity of the bus stop on Stonecross Road to Highfield Road. The former was referred to by Mr Coomber as a route regularly used by people walking to the Community Centre, to shops on the Parade and to licensed premises at the Rugby Club and the White House, and the latter as a route used by school children walking to the Community College, and by people walking to the Spar Garage and to the Lidl Supermarket. Walking along such routes, whether as a short cut or as part of a recreational walk, amounts to the use of a defined route rather than the recreational use of the Land generally and must be discounted from the qualifying use. As to the specific evidence of individual's use, I note that Mr Kirk used the paved path across Area B on a regular basis as a short cut which was his primary use of the Land; Mrs

Karen Sanderson used Area C to cut across to walk to Lidl; and Mrs Joanne Wood walked across the Land to go to the shop or to visit family or friends.

6.31 Having discounted such elements of use from the qualifying use, it is next necessary to assess whether that qualifying use was carried out to a sufficient extent and frequency throughout the relevant 20 year period to establish town or village green rights over the Land. In doing so, the impression I gained from the evidence was that the primary recreational use of the Land was for children's play. Indeed, aside from walking on the Land with or without dogs, few adults have used it other than when supervising their children. Moreover, Mr Spedding specifically acknowledged that the Land was used more by children than by adults, as did Mrs Butler. Further, there was no specific evidence of any community events having been organised on the Land during the relevant 20 year period, and the more formal sporting activities involved people who were not necessarily from the Estate.

6.32 In terms of walking and dog walking, a considerable amount of such use has to be discounted from the qualifying use. Indeed, there was no evidence of general walking on the Land without a dog other than in a manner that was more akin to the exercise of a right of way. As to dog walking, I accept that there was some that involved the owners themselves using the Land generally to exercise their dogs rather than following specific routes. Nonetheless, there was a material amount of such use that must be discounted. Moreover, much of the written evidence fails to indicate whether particular routes were taken, and I am unable to assume that the Land was so used generally by the authors of such evidence.

6.33 As to the primary use of children's play, as noted above, it is necessary to discount from the qualifying use material elements of such use. Nonetheless, having done so, I accept from the evidence that the qualifying use comprising children's play has been carried out with a degree of regularity during parts of the relevant 20 year period, particularly during the latter part of that period.

6.34 However, on the basis of all the evidence, it is my view that the qualifying use of the Land, namely the qualifying use in its entirety, has not been demonstrated to have been carried out to a sufficient extent and frequency throughout the whole of the relevant 20 year period to satisfy the statutory criteria, and particularly during the first few years of that period.

6.35 In that regard, in terms of the oral evidence in support of the Application, I note the following. Mrs Coomber and her family's qualifying use of the Land only commenced in 1991 when she ceased living in Service Family Accommodation and their use ceased being by right; Mr Coomber's qualifying use commenced in 1992 when he moved onto the Estate; Mr Kirk's in 1994 when he moved onto the Estate; Mrs Karen Sanderson's in 1990 when she moved back onto the Estate; Mr Spedding's from 1995 when he moved back onto the Estate; Mr Raisbeck's from 1996 when he left the RAF; Miss Butler's from 1999; Miss Sutherland's from 1996; Mrs Hayton's from 1993; Mrs Joanne Wood's from 2000 when she moved back onto the Estate; and Mr Cox's from 2002. There was no personal qualifying use from Councillor Kenyon or from Mrs Hopkin.

6.36 Instead, the only oral evidence of qualifying use prior to 1990 was from Mr Taylor, Mrs Sue Sanderson, Mrs Locker, Mrs Webster, Mrs Jenny Wood. Taking their evidence in turn, Mr Taylor's only use of the Land has been with his Children and Grandchildren. His Children played football and cricket on the Land with their friends who lived off the Estate, such as on Love Lane and Castle Road, and so their friends' use was not a qualifying one. His Grandchildren lived off the Estate and so their use was not a qualifying one. Thus, the qualifying use of himself and his Children was relatively limited. Mrs Sue Sanderson's own uses of the Land were to practise her tennis on the kick wall, in relation to which she gave no indication of the frequency of that use and made no reference to that activity in her witness statement, and to accompany her children. However, she noted in her witness statement that her children only used the Land "*during their childhood years between 1989 and 2004*". Hence, she provided no specific evidence of any qualifying use prior to 1989. Mrs Locker's Children had all grown up when she moved onto the Estate in 1987. Her uses of the Land have been for dog walking, which was largely discounted due to her walking being more akin to the exercise of a right of way, and playing with her Grandchildren, but with no indication as to the frequency of such play with those of her Grandchildren who lived on the Estate. Hence, again, she provided no specific evidence of qualifying use during the early part of the period. Mrs Webster's only use of the Land during the relevant 20 year period was to play there with her two Sons. However, her only specific evidence of such use prior to the 1990's was that she crossed the Land to get to and from the Nursery, which would not be a qualifying use, and sometimes played on the Land after Nursery but with no indication as to the frequency of such. I acknowledge that Mrs Jenny Wood's two Children played on the Land and she used the Land to exercise her dog during the early part of the period. In

my view, such oral evidence in support of the Application indicates merely a sporadic qualifying use of the Land prior to 1990.

6.37 In addition, I have taken into account the written evidence in support in relation to which a handful of people do refer to the use of the Land prior to 1990. However, from the written information provided, I am unable to ascertain in the vast majority of instances the extent to which the uses referred to are part of the qualifying use, where on the Land the uses took place, the frequency of such uses being carried out, and the period of time over which they were carried out. I am therefore unable to attribute significant weight to them. Thus, such evidence, taken together with the oral evidence, does not seem to me to demonstrate that the qualifying recreational use of the Land was carried out more than sporadically during the early part of the relevant 20 year period.

6.38 Furthermore, I bear in mind that between 1986 and 1990, a material number of RAF families continued to live on the Estate and continued to use the Land by right. Hence, a material amount of the recreational use of the Land at that time would not be part of the qualifying use. The actual numbers of RAF families remaining on the Estate at that time is unclear and different numbers were provided by the Applicant and by the Objector. Moreover, the record of the sale of houses on the Estate provided by the Applicant[67] does not appear to contain all the information that is in Schedule 3 of the 1996 Lease relied upon by the Objector, which in turn does not appear to be consistent with the information provided by the MOD's Estates Surveyor in her e-mail dated 7 December 2011. From such evidence, I am unable to ascertain the

[67] At AB pages 171 – 179.

precise number of RAF-owned houses remaining on the Estate at the start of the 20 year period in May 1986. However, in broad terms, it appears from the available evidence that in the order of around 40% to 50% of the houses built by the MOD remained RAF owned and occupied during the early part of that period. The MOD's e-mail[68], which is clearly from a reliable source and to which I attribute weight, indicates that approximately 132 dwellings of the 212 constructed by the MOD had been sold privately by 1996, namely when the site was sold to Annington in the middle of the relevant period. Further, I take into account the Applicant's helpful calculation provided in her Closing Submissions[69] that it appeared that 120 houses had been sold by 1986 and 127 by the end of 1989, which is of a similar order. Therefore, I am of the opinion that a material amount of the recreational use of the Land in the early part of the relevant period was a non qualifying use.

6.39 Other evidence seems to me to support that view. During those earlier years, the MOD was actively managing and maintaining the Land for the benefit of the occupants of the RAF housing. The play area on Area A remained in situ and fully equipped; the tennis courts were fully functional and their use was controlled by the MOD; the Nursery was run by the RAF; and the Land was maintained generally. That suggests to me that RAF families were regularly using the Land at that time. I also take into account the evidence of Councillor Kenyon that, initially, the use of the Land by the wider community was allowed by the RAF "*in a managed way*", which she explained by stating that such use of the Land was "*with the permission of the RAF*". Mrs Karen Sanderson referred to picnics and mother and toddler get-togethers with both RAF and civilian mothers. I further note the evidence of Mr Raisbeck who

[68] OB tab 3 page 57.
[69] At page 3.

stated that when he was posted to RAF Fylingdales in 1989, football training sessions for RAF and MOD employees took place on the Land and organised matches between local teams occurred between both RAF and non-RAF personnel. He pointed out that the RAF continued to actively use the Land for such purposes until the late 1990's when a football pitch was provided on base and that, significantly, since that point in time, the use of the Land has been for less organised activities and more for kickabouts with children. I also bear in mind his evidence that during those earlier years, approximately 25% of the users of the Land were civilians and therefore approximately 75% were RAF personnel and their families. Mrs Raisbeck further stated in her evidence questionnaire that "*RAF families constantly used the area even before this date*", namely before 1989.[70] In addition, in support of the Objection, Mr Bentley referred to the regular tennis matches on Area B by the RAF staff to which he was invited. Such evidence suggests to me that the recreational use of the Land during the earlier part of the relevant 20 year period was predominantly by RAF personnel and their families rather than by the wider civilian community, and would have appeared as such to the Landowner.

6.40 An increasing qualifying use of the Land by the local community later in the relevant 20 year period is also suggested by the written evidence of Mr Kirk who noted in his letter that when he moved to the area in 1994, "*a large proportion of the children used to go to the Nuns field to play football and cricket during the summer especially*", and that when that area was developed around 2000, those children "*then did use the proposed "village green" area for their play activities*".[71] Although I accept that children used both areas, and that for some children, particularly younger

[70] AB page 153.
[71] AB page 111.

ones, the Nuns Field would not have been a safe place to play, there would nonetheless have been an increased number of children using the Land after the Nuns Field facility was no longer available.

6.41 Finally in relation to the extent of the use of the Land, I take into account the Objector's evidence on that issue. Both Mr Bentley's and Mr Jones's evidence of use related to a period post the relevant 20 year period when they were either only in the area for relatively short periods or whilst they were working. The Land could of course been used more frequently when they were not present, whilst some of the use may well have gone unnoticed by them whilst they were focused on their work. Nonetheless, in general terms, that evidence supports the view that even at present, the Land has not been used during daylight hours on a continual and constant basis for qualifying uses by large numbers of people.

6.42 Consequently, for all the above reasons, I find that it has not been established on the balance of probabilities that the qualifying use of the Land has taken place to such an extent and with such a degree of frequency throughout the entire relevant 20 year period to demonstrate to a reasonable landowner that recreational rights were being asserted over the Land.

Use by a Significant Number of the Inhabitants of the Neighbourhood

6.43 Turning to whether the Land has been used by a significant number of the inhabitants of the Castle Park neighbourhood, for the reasons given above, I find that it has not been so used for lawful sports and pastimes as of right throughout the relevant 20 year period.

6.44 However, in addition, in order to establish that element of the statutory criteria, I accept the Objector's submission that there must be a reasonable spread of users across the neighbourhood rather than the users being confined to a particular part of the neighbourhood. The user must have been of such a nature to bring it to the attention of the reasonable landowner that a right of recreation was being claimed by the inhabitants of the particular identified neighbourhood, namely by that identified local community. 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 view has some authoritative support in ***Leeds Group plc v. Leeds City Council***[72] in which Judge Behrens stated at paragraph 90 of his judgment:-

> "*It cannot, in my view, have been the intention of Parliament that both the neighbourhood and the locality had to be small enough to accommodate a proper spread of qualifying users.*"

That observation suggests that although a spread of users across the locality is not required, a proper spread across the smaller area of the neighbourhood is so required.

6.45 Applying that to the evidence, I find that the requisite geographical distribution of users has not been established. Instead, it seems to me that the users of the Land during the relevant 20 year period have been from the part of the neighbourhood from Westbourne Road northwards, but not from that part of the

[72] [2010] EWHC 810 (Ch).

neighbourhood which lies to the south of Westbourne Road. No witness gave oral evidence of their use of the Land during that period whilst living at an address in the southern part of the neighbourhood. Further, I note that no written evidence was provided by a user of the Land during that period whilst they lived in that southern part. That may be unsurprising given the location of the Land within the northern part of the neighbourhood. Moreover, I saw on my unaccompanied site visit the play park and open space located at the end of Chancel Way that would be more convenient for such residents. Nonetheless, it is my view that the absence of any evidence of use during the relevant period by any inhabitant of that southern part of the neighbourhood, the boundaries of which were identified by the Applicant, results in there not having been established a sufficient geographical spread of users across the neighbourhood to satisfy that element of the statutory criteria. Therefore, on that further basis, I find that the Applicant has failed to establish that the Land has been used by a significant number of the inhabitants of the identified neighbourhood.

7. CONCLUSIONS AND RECOMMENDATION

7.1 My overall conclusions are therefore as follows:-

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

7.1.2 That the relevant 20 year period is 16 May 1986 until 16 May 2006;

7.1.3 That Castle Park is a qualifying neighbourhood within the qualifying locality of Mayfield Ward;

7.1.4 That the use of the tennis courts for lawful sports and pastimes has not been as of right throughout the relevant 20 year period;

7.1.5 That the use of the remainder of the Application Land for lawful sports and pastimes has been as of right throughout the relevant 20 year period;

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

7.1.7 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 the relevant 20 year period.

7.2 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:-

7.2.1 The Applicant has failed to establish that the area of the tennis courts has been used for lawful sports and pastimes as of right throughout the relevant 20 year period;

7.2.2 The Applicant has failed to establish that the Application Land has been used for lawful sports and pastimes to a sufficient extent and continuity throughout the relevant 20 year period to have created a town or village green ; and

7.2.3 The Applicant has failed to establish that the use of the Application Land has been by a significant number of the inhabitants of any qualifying locality or neighbourhood within a locality throughout the relevant 20 year period.

7.3 Given my conclusions and the reasons for them, I am also unable to recommend that only a smaller part of the Land ought to be registered as a town or village green by the Registration Authority, as I find that no smaller part of the Land satisfied the statutory criteria referred to in paragraphs 7.2.2 and 7.2.3 above for the same reasons as I found for the Application Land in its entirety.

8. ACKNOWLEDGEMENTS

8.1 Finally, I would like to thank the Applicant 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 representatives from the Registration Authority for their significant administrative assistance prior to and during the Inquiry.

8.2 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

21 August 2012

Kings Chambers
36 Young Street Manchester M3 3FT

5 Park Square East Leeds LS1 2NE
and
Embassy House, 60 Church Street, Birmingham B3 2DJ

Appendix 4

GEN

72-So-70656

WITHOUT PREJUDICE

2 Rosemount Road
Whitby
North Yorkshire
YO21 1LB

Tel: 01947 600549

08.10.2012
Ref: NewVG50/CNS/500807

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

Dear Mr Stanford

Re: Village Green Application at Highfield Road Castle Park Whitby YO213LW & subsequent Judicial Review 30.04.2012 at Mulgrave Castle Castle Park Whitby.

With reference to the above and on learning of Miss Stockley's apposing view of the Village Green Application the whole community including myself is in total disbelief after the compelling evidence of usage "as of right" could not have been more clear, it is incomprehensible that she is basing her decision on the **assumption** that the children and the community at large were in the minority of the number using the land " as of right" as against those from the RAF families using it "by right"!

We are talking of facts here and not assumptions everyone knows that the use of the whole of this green dates back to the 1960's and has been in continual use by the community at large for sports, leisure and all manner of activities "as of right" which they have all enjoyed over forty years they have neither asked for nor been given permission to exercise this "as of right" therefore it remains exactly as stated.

The importance of this green space is paramount to each and every part of this community which is borne out by the way they all knuckled in to do their part in cutting the grass and generally taking care of the area as they were not going to let it go to rack and ruin just because the objector flatly refused to look after the green.

This threat to their green has strengthened this already strong community still further and they are more resolute and determined than ever that No Tom, Dick or Harry is going to take away **any** part of this green that they value so much for the safety and security of somewhere for their children to play and they will continue to fight to the bitter end for it all to remain so for their children and future generations to come.

Anningtons did not pursue litigation against the VGA after being advised by Counsel they were unlikely to win and it would fly in the face of adversity if the VGA failed now and could have serious repercussions for what they have lost after selling the green at auction for only £48,000 which was bought by the objector for a gamble as he obviously thinks that he knows more than an educated legal expert and is out to prove a top Counsels opinion counts for nothing.

Having attended every session at the above Judicial Review and taking particular interest it appears that some of the statements in Miss Stockley's report are not consistent with our recollection of events, for instance Cllr J Kenyon's evidence was in the same vein as was given in her speech that we all heard at the Planning and Regulatory Functions Sub Committee on 3rd June 2011 in Sleights Village Hall Sleights Whitby which bears no comparison to what Miss Stockley stated in her report and we are sure Cllr J Kenyon will confirm that she did **not** say the children had permission to play on the green as this was not the case.

When Cllr J Kenyon took the stand she began to state her name and position of Cllr of our ward and that she was in support of the VGA but before she could go any further Mr Booth seemed to take great exception to what she said and just ranted into her for no apparent reason, I and everyone present were visibly shocked and angry at this onslaught but she kept her composure which clearly annoyed him, he was out of order behaving in this derogatory manner to a very credible witness.

Surely Miss Stockley should have cautioned Mr Booth in this respect? we were all of the opinion the proceedings seemed to be very much one sided given the number of times she backed Mr Booth's constant objections against our Miss Grimoldby for leading the witness yet never once reprimanded Mr Booth when he was doing the same thing, it was blatantly apparent that he was trying to coerce the witness to say what he wanted to hear which was quite disconcerting to us all.

It was obvious that Miss Stockley and the Objectors legal team were well known to each other which was again rather disconcerting and after making enquiries found that they had in fact both been previously involved in similar circumstances objecting to another VGA which would have probably been successful had it not been for Miss Stockley (Chairlady) supporting the Walker Morris objection when she recommended refusal and the VGA was turned down because of her intervention.

We were all under the impression and accepted that this would be a fair Judicial Review and would be judged by totally unconnected independent parties and this seems not to be the case therefore in view of the foregoing we respectfully request that Miss Stockley's recommendation be struck out and the VGA be upheld as supported by The Planning and Regularity Functions Committee Sub-Committee and our own Whitby Town Council who are more in tune with the needs of the Whitby people.

We honestly feel that if this had been reviewed in a dispassionate manner the result would have been a resounding commendation for the VGA to be granted, it is the only green space in the area where children can play safely out of harms way and this is not only from the danger of traffic but more importantly from the risk of abduction which is now every parents nightmare after the abduction of little April Jones last week.

Hopefully the VGA will be successful as the objector has already made a healthy financial gain plus an investment property on an excellent covenant so everyone wins.

Yours Sincerely

Pat Hopkin

Mrs. Joanne Wood,
23 Field Close,
Whitby,
North Yorkshire.
YO21 3LR.

9th October, 2012.

FAO Simon Evans,
North Yorkshire County Council,
Commons Registration,
Highways North Yorkshire,
County Hall,
Northallerton.
DL7 8AH.

Dear Mr. Evans,

Re: Village Green Application – Land at Castle Park, Highfield Road, Whitby.

Further to the Inspector's Report on this matter would you kindly forward my comments listed below to the Planning and Regulatory Functions Committee Sub-Committee for them to take into consideration before making a decision on the Village Green Application. Sue, the Applicant is fully aware of me sending this letter and having worked closely with her throughout the case I have had full sight of all documents and correspondence. I represented Sue at the Committee meeting held at Sleights Village Hall on the 3rd June 2011 due to her having already booked a family holiday at that time. Being a resident of Castle Park I have given written and oral evidence in support of the Village Green Application, along with my husband who spoke out at the meeting on the 3rd June.

Based on all correspondence and evidence given throughout the case please could the Committee, in not already done so, consider the following:-

1. That the North Yorkshire Coast and Moors Committee resolved that the Planning and Regulatory Functions Committee Sub Committee be advised that they wish the Application to be 'approved' for the reasons put forward by Councillor Jane Kenyon and also that they wished to support the local residents.

2. That at the Planning and Regulatory Functions Committee Sub Committee meeting on the 3rd June, 2011 the Committee voted in favour of the Application to be approved and members at the table spoke out to the residents attending,

including myself and said that 'they did approve of the application but due to the objection by Yorkshire County Homes a non-statutory Inquiry must be held to clarify any legality issues' they then said 'we apologise to you all for having to now wait many months for the matter to be resolved. After the meeting myself, husband and other residents were told 'we had nothing to worry about'.

3. That the Public Notices displayed around the land, and also in the Whitby Gazette stated that the 'deadline' for any representations was 5th April, 2010.

4. That Annington Developments were given an extension up to 5th July, 2010.

5. That Annington Developments did not submit any objections.

6. That Annington Developments put the land up for 'sale, no reserve' at Auction in London on the 27th May, 2010.

7. That in order to secure the Application for village green status, because of the strength of feeling from all us residents that this land, known to us as the playing field has always been recreational land since the early 1960's and should be kept as such for all to carry on using and so that others in years to come can do the same, it prompted myself and a couple of other residents to bid at the Auction as we had immediate funds available and were the only residents in a position to bid at such short notice. However, we could only bid as high as our 10% deposit held and could not exceed £45,000, to which we were outbid!

8. That on 27th May, 2010 it was Yorkshire County Homes, Ltd who 'won' the bid, at £48,000, secured by their deposit. They did not purchase the land outright on that date! It can take several weeks before a completion date can be agreed upon which date would be the date Yorkshire County Homes Ltd legally became the 'landowner'!

9. That the Inspector has mentioned in her report that Mr. Gareth Jones, company secretary for Yorkshire County Homes states that the company purchased the land from Annington Developments on 27th July, 2010. It is made clear that this must have been the completion date of the sale of the land as Mr. Gareth Jones goes on to say that....from the 27th July, 2010 they then had the benefit of a resolution by the local planning authority to grant planning permission etc. etc....It is also mentioned that building work did not commence on the small plot of land adjoining the land in question, until the end of July! Obviously due to the fact that until the final contract was signed and balance monies received i.e. completion date, then Yorkshire County Homes were not in a position to proceed with anything..

10. That surely Annington Developments were still the owners of the land up until completion of sale.

11. That after winning the 'bid' for the land Yorkshire County Homes immediately instructed solicitors to place objections in respect of the Village Green Application. The deadline for such was 5th April, 2010. The Council had agreed to extend the deadline to Annington Developments up to the 5th July, 2010. Then upon request from Yorkshire County Homes' solicitors an extension was granted to them up to the 19th July, 2010.

12. That even up to the 19th July, 2010 final completion of sale of the land had not taken place.

13. That..why was an extension granted to Yorkshire County Homes? What right did they have to object considering they 'won' the bid for the land on 27th May, 2010 knowing fine well a Village Green Application had been submitted months before? And what right did they have to object as 'landowner' before the 27th July?

14. That if it had not have been for Yorkshire County Homes submitting objections, North Yorkshire County Council and it's Committees would have granted village green status on 3rd June 2011.

15. That it was very unfair indeed that the case had to go to Public Inquiry, especially due to the fact that any 'objector' did not do so within the stated 'deadline' date on the Public Notices of 5th April and for all us residents to be questioned in a rude an abrupt manner by a Barrister acting for Yorkshire County Homes and to answer with a straight 'yes' or 'no' as requested by the Barrister was very upsetting and totally out of order. And for him to accuse one of our witnesses of copying another witnesses' statement was very upsetting indeed. During the first day of the Inquiry a few residents were that upset they left the room.

16. That not everyone likes to speak out in public at such hearings and it is very difficult to trace families who have lived in the Castle Park area and since moved on.

17. That with regard to the tennis courts, there is no concrete evidence on exact dates nor as to where and which houses keys were left. Keys were evidently, as stated, left at houses rented by MOD staff and also houses privately owned by Castle Park residents purely due to the fact that they needed to be locked to prevent further vandalism to the centre net. Keys would no doubt have still been in possession of residents many years after they were actually required. The courts were in such a bad condition that they were not fit for any couples to have tennis matches and with holes in the netting entry was gained by young children who made use of the concrete ground to play games and have done on a regular basis. Also tennis is a game that needs to be arranged in advance to avoid clashing with other users and having to wait lengthy periods of time outside the court. A tennis court has netting around it purely to keep a ball 'in the game'....if the playing field was for the use of MOD staff only, then signs would have been erected and

all other play equipment would have been enclosed. Evidence shows that from the early 1960's the land has been used 'as of right'. The whole area is open and always has been.

18. That the tennis court area also has grassed areas around it and to the side, all of which have had usage by Castle Park residents as can be seen in evidence given.

19. That the evidence of Company Secretary of Yorkshire County Homes, Gareth Jones is pathetic to say the least.. his observations of what he saw and what he did not see were not in the 20yr period! He could not provide any written evidence from the MOD in respect of the keys to the tennis courts nor to any other evidence he gave.

20. That after Gareth Jones read out his statement at the Inquiry, he said that the Company was a well known Development Company in Whitby and that they provide for green space! When Sue, the Applicant asked him what developments they had built..he said the house adjoining the land at the bottom of Section A and a property in Whitby town that they renovated into flats. He then said that they have not built anything else!

21. That with regard to the.statement of Managing Director of Yorkshire County Homes, Tom Bentley…his long drawn out story of using the tennis courts and having to obtain a key etc. etc. inbetween a certain period within the 20yr timeframe is somewhat trivial evidence compared to the fact that Sue, the Applicant and residents have had to work hard to prove all their evidence in the case and cover the 20yr period.

22. That when Sue, the Applicant cross examined Tom Bentley with regard to the pile of soil and debris that had been dumped onto section A and the dumper truck and digger used regularly from top to bottom of this section, causing danger for safe play in the summer of 2011… he said 'the reason for the mess was because a septic tank had to be installed in the rear garden of the house they had built as Yorkshire Water refused to let them connect the drainage up to the draining pipes into the Yorkshire Water main drain because there wasn't enough fall on the pipes to the drain which would have caused blockages…he then carried on to say..'we did not know this problem'! A development company usually does their homework before building a house!

23. That as mentioned in the Inspector's Report, by the both objectors, they contract out to development companies as 'groundworkers'.

24. That Yorkshire County Homes have been approached with a view to negotiating and offering them the £48,000 that they paid for our playing field! They did not send a reply…..

25. That Yorkshire County Homes seem willing to let the residents of Castle Park lose this recreational land which has been used as such since the early 1960's, purely for financial gain.

26. That myself, my family and Castle Park residents will fight all the way with Sue, the Applicant should she have need to appeal for the case to go to Judicial Review.

Thank you for reading and please kindly acknowledge receipt.

Yours sincerely,

Joanne Wood. Joanne Wood