



<b>AGENDA ITEM NO.:</b>  Originator: Chris Bramham  <hr/> Tel: 2474418
---

**REPORT OF DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES  
REPORT TO PLANS PANEL (WEST)**

**DATE : 15TH MAY 2008**

**SUBJECT : APPLICATION TO REGISTER LAND AT Highbury Mount Leeds 6 AS A TOWN OR VILLAGE GREEN UNDER THE PROVISIONS OF SECTION 13 OF THE COMMONS REGISTRATION ACT 1965 – INSPECTORS REPORT**

<b>Electoral Wards Affected :</b>  <p style="text-align: center;"><b>WEETWOOD</b></p>	<b>Specific Implications For :</b>  Ethnic Minorities <input type="checkbox"/> Women <input type="checkbox"/> Disabled People <input type="checkbox"/>	
<b>Executive Board Decision</b> <input type="checkbox"/>	<b>Eligible for Call In</b> <input type="checkbox"/>	<b>Not eligible for Call In</b> <input type="checkbox"/> (details contained in the report)

**1. PURPOSE OF REPORT**

- 1.1 For Members to consider the Inspector’s report attached hereto concerning the public inquiry held at Meanwood Working Men’s Club on the 16<sup>th</sup> and 17<sup>th</sup> October 2007 regarding the application made by Dr. Graham Mann and Mr. Ian Oldroyd under the provisions of section 13 of the Commons Registration Act 1965.
- 1.2 For Members to determine if the report of the Inspector should be accepted and the application made by Dr. Mann and Mr. Oldroyd to register land at Highbury Mount (The Highbury Mission Land) be rejected.

**2. BACKGROUND INFORMATION**

- 2.1 On the 17th May 2007 the Plans Panel considered a report concerning the above application and determined that in view of the circumstances outlined a public inquiry be called with a view to undertaking a further and more detailed examinations of the issues raised.
- 2.2 Alun Aylesbury (barrister) with experience of such matters was appointed as Inspector for the public inquiry and at a pre-inquiry hearing held on the 11<sup>th</sup>

July 2007 he informed all parties present of the manner in which the inquiry would be conducted.

- 2.3 On the 16<sup>th</sup> and 17<sup>th</sup> October 2007 a public inquiry was held at Meanwood Workingmen's Club and on the 18<sup>th</sup> October the Inspector undertook an official site visit.
- 2.4 Attached is the Inspectors report following the public inquiry and the official site visit for members consideration.
- 2.5 The Council is the Registration Authority for the registration for Town and Village Greens and must take the decision whether to register or reject an application. The Panel has delegated authority to approve registration or refusal but is not obliged to accept the Inspector's report. The Panel will, however, need to give full consideration to the Inspector's comments on the law and facts when reaching its decision and would need to give reasons for its decision either in adopting the Inspector's report or in disagreeing with it.
- 2.6 Members should note and consider:
  1. Having read the report of the Inspector and with particular reference to his conclusion and recommendation, Legal Officers consider that he has undertaken a thorough inquiry in relation to all the relevant aspects of both the village green application and the objections thereto. He has painstakingly considered all the evidence and submissions that have been presented to him and in reaching his conclusions has taken into consideration all the appropriate legal provisions.
  2. In relation to the use of the land the Inspector finds on balance that the evidence does not support the claim of a continuing use by local inhabitants for 'lawful sports and pastimes' over the relevant 20 year period. The Inspector believes and finds that for most of that period such use as there was would have been very sporadic and limited, and not at all such as to amount to a general assertion of a right to use the field for such purposes. (Page 44)
  3. The Inspector concludes again on balance the applicants have not made a case that the application site, or any part of it, has been used for not less than 20 years by a significant number of the inhabitants of the neighbourhood to indulge in lawful sports and pastimes.
  4. The Inspector's recommendations to the Council as Registration Authority are that the application should be rejected and that no part of the application site added to the register of town and village greens maintained by the Council.

### **3. RECOMMENDATION**

Members are recommended to accept the report of the Inspector and determine that the application made by Dr. Mann and Mr. Oldroyd to register land at Highbury Mount (The Highbury Mission Land) as Town or Village Green be

rejected and no part of the application site be added to the register of town or village greens maintained by the Council.

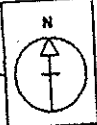
**Background Papers:**

Public Inquiry File 864533

Application File 864525

IR

TITLE NUMBER






ORDNANCE SURVEY MAP REFERENCE:

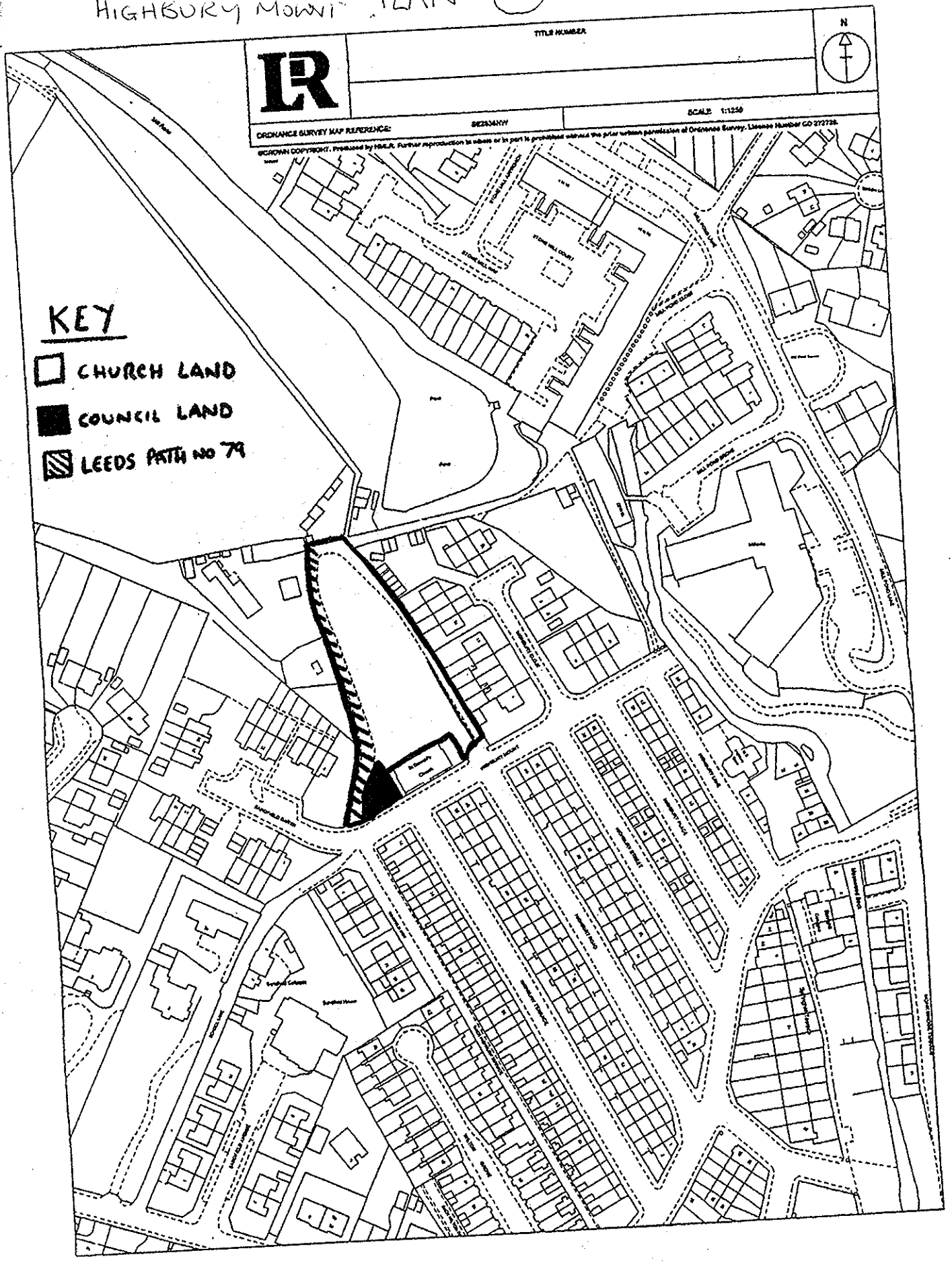
SE2304177

SCALE: 1:1250

CROWN COPYRIGHT. Prepared by HM Land Registry. Further reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. License Number G0 272728.

**KEY**

-  CHURCH LAND
-  COUNCIL LAND
-  LEEDS PATH NO 79



**RE: LAND KNOWN AS THE Highbury Mission Land  
Off Highbury Mount, Leeds 6**

**COMMONS REGISTRATION ACT 1965**

**REPORT OF THE INSPECTOR**

**MR ALUN ALESBURY, MA, Barrister at Law**

**into**

**AN APPLICATION TO REGISTER THE Highbury Mission Land**

**as a**

**TOWN OR VILLAGE GREEN**

## **CONTENTS**

- 1. Introduction**
  - 2. The Applicants and Application**
  - 3. Split Ownership**
  - 4. The Objectors**
  - 5. The Pre-Hearing Meeting**
  - 6. Site visits**
  - 7. The Hearing**
  - 9. THE CASE FOR THE APPLICANTS – Evidence**
  - 8.5 Oral Evidence**
  - 8.92 Other Evidential Material**
  - 9. The Submissions for the Applicants**
  - 10. THE CASE FOR THE OBJECTORS – Evidential Material**
  - 11. Submissions for the Objectors**
  - 12. DISCUSSION AND CONSIDERATION**
  - 13. CONCLUSION AND RECOMMENDATION**
- Appendix I -       Appearances at the Hearing**
- Appendix II       -       List of Documents produced in evidence**

## 1. Introduction

- 1.1. I have been appointed by Leeds City Council, in its capacity as Registration Authority, to consider and report upon an application dated 28<sup>th</sup> April 2005 and made to the City Council, for the registration as a Town or Village Green under the Commons Registration Act 1965 of land known as the Highbury Mission Land, close to Highbury Mount, Leeds 6, which is within the City Council's area.
- 1.2. I was in particular appointed to hold a Public Local Hearing into the application, and to hear and consider evidence and submissions, in support of the application and on behalf of the objectors to it. However I was also provided with copies of the original application, and all the material (including letters and statements) provided in support of it; the objections duly made to it; and further correspondence and exchanges in writing from the parties. Save to the extent that any aspects of it may have been modified by the relevant parties in the context of the Public Hearing, I have had regard to all of that earlier material in compiling my Report and recommendations.
- 1.3. In the period between the making of the application in this case, and the holding of the Public Hearing, Parliament passed the *Commons Act 2006*, whose ultimate purpose when fully in effect is wholly to repeal and replace the Commons Registration Act 1965, including all of its provisions relating to town and village greens. Substantial parts of the 2006 Act have now been brought into effect in England pursuant to Statutory Instruments made in the latter months of 2006, and in 2007. These include many of the provisions relating to the registration of Town and Village Greens. However, under *Article 4(4)* of the *Commons Act 2006 (Commencement No 2, Transitional Provisions and Savings) (England) Order 2007* SI No. 456, it is provided that where an application is made to a registration authority before 6<sup>th</sup> April 2007, pursuant to Section 13(b) of the Commons Registration Act 1965, and not determined before that date, the registration authority shall continue to deal with the application as though Section 13(b) had not been repealed [which it otherwise has been]. I drew this matter to the attention of the parties at the Public Hearing and they were content that the application should still continue to be dealt with under the 1965 Act. That is the basis on which I produce this Report.

## 2. The Applicant and Application

- 2.1. The Application dated 28<sup>th</sup> April 2005 was made pursuant to the Commons Registration (New Land) Regulations 1969, and Section 13 of the Commons Registration Act 1965 by Dr Graham Mann and Mr Ian Oldroyd, who were both local residents (although Mr Oldroyd has, since the date of the application, moved to another address which is less local albeit still within the same general sector of northern Leeds).
- 2.2. The application form claimed that the Highbury Mission Land had become a town or village green because it had been “*used by local residents without let or hindrance for informal recreation for more than 20 years*”. It also asserted that the land had become a town or village green on 2<sup>nd</sup> January 2005. However at the Public Hearing it was agreed on all sides that since the decision of the House of Lords in the case of *Oxfordshire County Council v Oxford City Council* [2006] 2 WLR 1235 it had become clear that the period which needs to be considered in order to make good (or not) a village green claim is that of 20 years up to the date of the application, i.e. in this case 28<sup>th</sup> April 2005. It was further agreed between all parties at the Hearing that I (and the City Council as Registration Authority) should consider the application as being amended to claim the use for informal recreation for a period of not less than 20 years up to that date. Once again, this is the basis on which I address matters in this Report.
- 2.3. The application was accompanied by 90 witness statements (some written in letter form), and also a plan of the Highbury Mission Land (Plan A), a “*Locality map*” (with an area marked by a circle), an aerial photo with the Mission Land marked in red, and several copied photographs of the land and people on it at various times. Another 11 supporting statements were sent to the registration authority at a later date (and provided to me).

## 3. Split Ownership

- 3.1. Although the area covered by the application (as shown on Plan A) is not particularly large, it is in at least two ownerships. The main part of the land, an elongated, approximately triangular, finger of rough grassland and other vegetation running roughly



NNW from behind the former St Oswald's Church, is in the freehold ownership of the Ripon and Leeds Diocesan Board of Finance (as trustees).

- 3.2. Along the entire eastern edge of that land (but still included in the application site) is a strip of land consisting principally of an unmade up track capable of being used by vehicles as well as pedestrians. Its precise status in terms of public (or indeed private) rights was unclear. It lies between the Diocesan Board's land and the rear boundaries of properties in Highbury Close. No-one at my Hearing (or in writing) claimed to own it; it is not shown as included within the Diocesan Board's documents of title, which I saw. On the other hand neither was it a part of the land to which the evidence of 'town or village green' uses really related. I consider the evidence in later sections of this Report.
- 3.3. To the immediate west of St Oswald's (former) church, and included in the application site is a small area of land, with a frontage to Highbury Mount, currently heavily overgrown, which is in the ownership of Leeds City Council itself, held for education purposes.
- 3.4. Immediately to the west of that, but this time running northwards up the entire western boundary of the application site (and within it), is another strip of land which is apparently also in the ownership of the City Council. It is principally the route of Leeds public footpath No.79, and strips of land either side, including the mostly well vegetated (and treed) western boundary of the whole application site. Some of the evidence suggested that the footpath, which is now visible as such on the grass, was once more of a made up track, possibly with stone setts or similar. Unlike the track along the east side of the site, mentioned above, this western strip is not currently distinguishable visually from the bulk of the site in the ownership of the Diocesan Board.
- 3.5. Leeds City Council in its capacity as landowner has not objected to the present application in respect of its part of the land. I consider the evidence later, but would express the preliminary view that (unlike some other cases) this is not really a situation where there are two distinct parcels of land, and evidence which might justify the registration of one but not the

other as town or village green. Certainly as between the Diocesan Board land and the City Council land, the view I reached on the evidence is that the two ownership areas effectively ‘stand or fall together’ as far as this application is concerned, and none of the parties at the Hearing sought to suggest otherwise.

#### **4. The Objectors**

- 4.1. Objection was duly made to the application on behalf of the Ripon & Leeds Diocesan Registry, on behalf of the Diocesan Board of Finance. 57 other letters of objection were received by the City Council (as registration authority) including, but (clearly) not limited to the Rev’d Barry Overend, the Vicar of St Chad’s, Far Headingley, in which Church of England parish the application site lies, and to which the former mission church of St Oswald was until fairly recently (as the evidence related) a subsidiary place of worship.
- 4.2. In the event ‘the Objectors’ were collectively represented as one case at the Hearing, effectively on behalf of the Diocesan Board, but calling witnesses who had in fact submitted individual objections (i.e. among the 57).

#### **5. The Pre-Hearing Meeting**

- 5.1. In order to secure the smooth running of the eventual Hearing itself, on 11<sup>th</sup> July 2007 I held a Pre-Hearing Meeting at the Meanwood Working Men’s Club, which is reasonably close to the application site. It was attended by the Applicants, and representatives of the Objectors, and some other interested persons. At the Pre-Hearing Meeting a considerable number of matters were agreed between myself and the parties in relation to the procedure to be adopted at the Hearing, and the production and exchange before the Hearing of any further material to which the parties would wish to refer at the Hearing. Since those provisions were for the most part observed, and no issues arose from them, it is unnecessary to comment on them any further.
- 5.2. A matter which I myself raised at the Pre-Hearing Meeting was that since the question of use by the inhabitants of a ‘locality’, or a ‘neighbourhood within a locality’, can be highly relevant to

the law of town and village greens, I would welcome the parties' further views on the most appropriate identification of any relevant locality or neighbourhood in this case.

## **6. Site visits**

6.1. I paid an informal visit to the application site (having told the parties that I intended to do so) on the day of the Pre-Hearing Meeting, in order to familiarise myself with its location, general character and extent. Subsequently, after the end of the Hearing itself, I made a formal site visit, on 18<sup>th</sup> October 2007, in the company of representatives of the Applicants and the Objectors. In addition to the whole of the application site and its immediate surroundings, including the residential area known as 'the Highburys', we looked at various pieces of land, and footpaths, extending towards the north, which had been referred to in evidence.

## **7. The Hearing**

7.1. The Hearing was held over the two days of 16<sup>th</sup> and 17<sup>th</sup> October 2007 in the hall of Meanwood Working Men's Club.

7.2. By express agreement of both main parties (i.e. the Applicants and the Objectors) given at the Pre-Hearing Meeting, all of the oral evidence to the Hearing was given on oath.

7.3. I report on the evidence, and the submissions of the parties in later sections of this Report.

## **THE CASE FOR THE APPLICANTS**

## **8. Evidence**

8.1. The evidence produced in support of the Applicants' case consisted of the 90 statements and supporting material submitted with the original application, the 11 slightly later written statements, the oral evidence of the Applicants' witnesses at the Hearing, and a small amount of other documentation.

8.2. As noted above, the Applicants submitted 90 witness statements with the application, and a further 11 at a later date. I have read

all of them, and have taken them into account in forming the views which I have on the balance of the evidence.

- 8.3. However I made it clear to the parties, both at the Pre-Hearing Meeting and during the Hearing itself, that it is inevitable that more weight will be accorded to evidence which is given, in person, by a witness, in this instance on oath, who is then subject to cross-examination, and questions from me, than will be the case for simple written statements where there is no opportunity for challenge or questioning. The question arose at the Pre-Hearing Meeting of how many oral witnesses the parties intended to call and I indicated that it was a matter for the parties themselves to decide, but that they would be well-advised to call a representative sample or selection of persons who could, they felt, convincingly cover in their evidence the whole of the period the Hearing was likely to be interested in, and all of the evidential issues which were likely to arise. Both main parties (i.e. Applicants and Objectors) expressed themselves content with this approach, and in the event the Applicants called a total of 8 oral witnesses including the two Applicants themselves, each of whom had been responsible, solely or jointly, for one of the original 90 written statements.
- 8.4. As mentioned previously, I have read all of these statements, and the subsequent ones. Having regard to the considerations I have discussed in the preceding paragraphs of this section, I do not think it is necessary for me to summarise in this Report all the evidence contained in those written statements. They are broadly consistent with the tenor of the evidence given by the oral witnesses, and nothing material stands out as being particularly worthy of having special attention drawn to it in this Report. In any event all of these written statements are available to the Registration Authority as supplementary background material accompanying this Report, and may be referred to as necessary.

## **The Oral Evidence for the Applicants**

*What follows is not intended to be a verbatim transcript of all that was said, but a summary of the main points addressed by each witness.*

- 8.5. *Dr Graham Mann*, one of the Applicants, of 8 Sandfield Garth, Leeds 6, gave evidence (as well as making submissions, which I summarise later). He had been jointly responsible, with Ms Lisa Mulherin, who I understood to be his partner, for one of the original statements submitted to the Council with the application (Council ref no.76).
- 8.6. Dr Mann said he and his partner had lived at 8 Sandfield Garth since August 1998. They had been drawn to its semi-rural environment, while still having easy access to urban facilities. The Highbury Mission Land, also known as ‘Highbury Field’, and the mature hedgerow running along its NW boundary were integral to that attraction.
- 8.7. Since 1998 he and his partner had enjoyed chatting with friends and neighbours on the field, blackberrying, snowballing and photographing the landscape. He said they had also attended an annual bonfire on the field with other local residents.
- 8.8. He and his partner frequently walk across the land and watch birds and bats, which thrive there. Many other local residents walk their dogs there daily, and children use the green open space to play, or build swings in the trees.
- 8.9. Horses have grazed on the land throughout the period since 1998; other wildlife is seen.
- 8.10. The field has always been openly accessible for local residents to use throughout the time since 1998. It is possible to see the field from the upstairs back windows of his house – you can see over the hedge onto the land.
- 8.11. In cross-examination as to his reference to ‘annual bonfires’ Dr Mann said there had indeed been a number of them, some organised by the Highbury Residents Association, and publicised in its newsletter. In general firewood would be placed on the land by people living in the Highburys.

- 8.12. The Highbury Residents Association was formed in 2004. There had been some bonfires between 1998 and 2004, but informal not organised – there was no association to organise them – but not every year between 1998 and 2004.
- 8.13. Children had made swings in the trees at the top (SW) corner of the land, near the church.
- 8.14. To me Dr Mann explained that he had been vice-chair of the Highbury Residents Association (“HRA”) for the whole time of its existence – and likewise Mr Ian Oldroyd its Chair.
- 8.15. The HRA does not have a membership list; people do not pay to belong. The HRA distributes a newsletter to every house in the neighbourhood, and when it holds meetings people are invited to attend.
- 8.16. Such meetings may for example have included a talk on local history. The HRA’s aim is to improve the local environment, and people have alerted it to planning applications. Its meetings are 3 or 4 times a year.
- 8.17. The HRA Newsletter comes out every few months; various people have contributed, but Dr Mann has tended to edit it and put it together.
- 8.18. HRA meetings have been held at Highbury Cricket Club, but more recently at the Meanwood Institute, and two public meetings at Meanwood Methodist Church.
- 8.19. One of the public meetings was for discussion about the Highbury Mission Land following a planning application in respect of it, and some other planning applications, on which there was opportunity to comment. The other was about Houses in Multiple Occupation. There are usually 15 – 20 people at HRA meetings, but it is sometimes down to 5 or 10.
- 8.20. The HRA was formed spontaneously. A sign had been placed on a part of the mission field, on the corner by the church, saying something like ‘Tayman Holdings – Keep Out’. Neither the church nor the Council claimed to know anything about it, so it was decided to form an Association.

- 8.21. ***Mrs Tracy Ann Cooper***, currently of 10 Moor Grange View, had submitted a written statement (Council ref no. 26) jointly with her husband. She and her husband currently own 1 Highbury Lane and the adjoining 37 Monkbridge Road (a shop). They had previously lived at 6 Highbury Terrace from 1984, then moved to 9 Highbury Road only about 1 year later.
- 8.22. In their statement Mr & Mrs Cooper pledge their support to the Highbury Residents Association ‘for the saving of St Oswald’s Church and surrounding field’.
- 8.23. On moving to the area Mr & Mrs Cooper were delighted by the close presence of “*the Mission*” (i.e. the application land), an area allowing them to benefit from open land for leisure and recreation, and leading to the beautiful Meanwood Park. Their son was born in 1986. On moving to the larger house at 9 Highbury Road they still benefited from the close community, the Mission land, and the close access to the park.
- 8.24. The Mission land has been used by her family and neighbours for over 20 years. Her child and neighbours’ children played there; they walked their dog there, community bonfires are held there, children can sledge or build dens, there is fruit picking in the autumn, and socialising with neighbours in the summer; and it is part of the ‘Meanwood Valley Trail’. Her son had been taught to ride his bike on the unmade road by the church. Horses frequently graze the land, and it is used to exercise them. No restrictions have been faced by residents in all this time.
- 8.25. In cross-examination Mrs Cooper said she personally had attended only two community bonfires on the land, around 1990 to 1992. She was not aware that the church, as owners, had been concerned about illegal dumping on the land, and had not participated in organised clean-ups of the field. She could not see the field from where she lived.
- 8.26. She told me she had stopped living in the Highburys in 1998.
- 8.27. ***Ms Judith Elinor Scott*** (statement Council ref no.5) has lived at 17 Brookfield Road, Meanwood since 1990, with her husband and 3 children, and has lived in the area for some 10 years longer.

- 8.28. She has been walking to Meanwood Park using the Meanwood Valley Trail ever since she has lived in Leeds (about 30 years).
- 8.29. She said Highbury Field has always been used by local people, to her knowledge, for community gatherings, children to play safely, and pet exercise; also in the winter for safe sledging. Since her children were small she had always brought them to play on the field, on the way to the park, or just to look at the horses or run down the slope. She herself had used the area for bird watching. As a parent helper at Bentley School, she knew they would make regular school trips via the field to the park, stopping at the field on the way to look at grasses, insects or tethered horses (if there).
- 8.30. There have never been any restrictions on people using the field, or notices. The annual barbecue and bonfire is a good example; she had attended the bonfire on more than one occasion.
- 8.31. In cross-examination Mrs Scott said that the community gatherings she was aware of had been mostly unstructured ones – people putting wood on the fire and then just attending.
- 8.32. It was mostly when her children were small that she took them to Meanwood Park; from when her family moved, in about 1990, and then she had another baby. They would walk through the area, along the unmade road and the allotment path. These trips would be about weekly, usually weekend trips. Once her children were older they would go on their own.
- 8.33. During the times she had been with them, her children would get off their bikes and explore Highbury Field, and run down the slope; they were more wary if horses were there.
- 8.34. The Bentley Primary School trips to Meanwood Park had been annual ones, in summer, to look at insects – “*minibeasts*”. The route would use the unmade track at the bottom of Highbury Field.
- 8.35. She had never seen illegally dumped rubbish or garden waste on the land; nor had she been involved in any ‘clean-ups’ of the land.



- 8.36. She thought the barbecues had seemed rather more organised than the bonfires on the land. They were generally held not on the sloping part, but nearer the flat part. She conceded that the bonfires may not have been annual events, and that where she lived was ‘a little bit separate’ from where Highbury Field is.
- 8.37. To me Mrs Scott explained that the ‘flat part’ of the land she had referred to was up towards the allotments (i.e. north) end, although she herself had never actually attended a barbecue on the land. She could not recall whether the bonfires had been towards the top or bottom of the land, but she had personally attended them a couple of times.
- 8.38. Her third child was born in 1990. But even when her children did not need her to go with them she would go up with other, younger children, especially to look at the horses, or go to the allotments. She was not sure when she had last seen a horse on the land.
- 8.39. In more recent times, up to April 2005, she would walk past the land about once a week, perhaps walking her dog; about once every month to 6 weeks she would go up there with other children from Brookfield Road, where there is a close neighbourhood community. Part of her contribution to that community is to take neighbouring children out as well as her own.
- 8.40. *Mr John Hardy Kilburn* (statement Council ref no. 38) had moved into 14 Highbury Road in 1984, with his girlfriend who one year later became his wife. Their two children, Emily and Beth, had grown up on the street.
- 8.41. Houses in the Highburys have little or no gardens; the land behind the Mission had been the children’s safe playground, away from parents, yet in shouting distance. When his children were young there were some 10 – 15 other children in Highbury Road. They would all spend time playing on the mission field, and meet children from the other local streets.
- 8.42. His daughter Beth (he said) remembered making rope swings in the trees above the Mission, while Emily remembers making

hideouts in the long grass; both remember sledging down the field.

- 8.43. When his children were small he was a keen birdwatcher, and spent many hours on the field doing that; other local residents would graze their horses and goats; children would be given rides on the horses.
- 8.44. He (Mr Kilburn) had understood the mission field had been left to "*the children of Meanwood*". Local residents have always held their annual bonfire and 'clean up day' there.
- 8.45. In cross-examination Mr Kilburn said he had been to the bonfire about 5 or 6 times, and attended the clean up twice – these latter being in more recent years. The bonfires however were over a 20 year period.
- 8.46. He understood his daughter's rope swings had been on the side of the site; the sledging was down the slope nearer to the church (south) end, where the slope is steeper.
- 8.47. His children were born in 1985 and 1988, and some of the Applicants' bundle of photographs showed them on the land in the 1980s. Later the children went out and played there by themselves. So in all his children had played out on the mission land from about 1985 to 2000, when Beth was 12.
- 8.48. Children would play either on the grass or on the unmade track; where it was would depend on the activity.
- 8.49. To me Mr Kilburn explained that he now thought he had attended the 'clean-up' 3 times. It is done every year. The first time he got involved was about 3 - 4 years ago, when the Council placed a skip there. The 3 times he had participated have been since the Highbury Residents Association ("HRA") was formed. Mr Kilburn is active in the HRA.
- 8.50. The bonfire he has attended 5, 6 or 7 times, of which two have been in the HRA period. However he had seen a bonfire on the land every year since 1985 – certainly seen the bonfire built if not burnt.

- 8.51. He personally did not really go onto the field with the children to play; the children would go though.
- 8.52. As for the horses on the land, people in the stables had horses there, and children would be given rides from time to time. He had seen that happening 3 or 4 times, and heard of it at other times. Broadly speaking that happened in the less recent past, say up to 2000. He has a photo of one child feeding a goat there; that was early on, in about 1986. Typically there would be just one horse on the land, occasionally two. It seemed obvious that the horses were associated with the nearby stables.
- 8.53. It was when Mr Kilburn first started bird watching that he would go to the land – for a couple of years he did quite a lot of bird watching there – around 1990-92.
- 8.54. The barbecues on the land have all been during the last 4 years or so, the HRA period. In addition to all he had mentioned before, Mr Kilburn has regularly gone past the land while out running over the last 20 years.
- 8.55. Evidence was then given by *Ms Jennifer Ward* (Statement Council ref no. 50) of 26 Highbury Terrace. She said that her statement (dated January 2005) was a letter originally written in connection with a planning application on the land. Ms Ward has lived at her present address since 1982.
- 8.56. Over the years she has been a part of, and witnessed, the use of ‘Highbury Field’ for the local community. This included: children playing (including making dens); grazing of horses from the nearby stables; the Hollin Lane Allotment Association have used the area for their annual show for many years; it has long been used for a local bonfire. People walk their dogs and pick elderberries.
- 8.57. In cross examination she could not recall the particular proposal her January 2005 letter had related to [it had been suggested to her that there was no planning application at that time].
- 8.58. Children’s’ dens had been along the top (west) side of the land, among the elders. She was not aware that a gentleman called Harry Jackson had paid to graze horses on the land.

- 8.59. The Allotment Association's show had in fact been mainly at the church, not out on the field, but people would often sit outside on the field at that time.
- 8.60. Ms Ward has an allotment and walks there a lot, via the land. She always *goes* via the unmade track and *comes back* via the western path through the field. Dog walkers also use both paths equally.
- 8.61. Horse riders going to Meanwood Park would come through the Highburys, alongside the mission field, and then along by the allotments. From her house she can see the church and part of the field.
- 8.62. In re-examination she said that the horse kept on the land would be on the grassy part, rather than the path. Usually there was a horse there in summer. Most of the horses would be from the stable which is on the left looking north from the church.
- 8.63. Very little rubbish is generally dumped on the land. What there is would generally be smaller items, not big things like three piece suites.
- 8.64. Dogs taken on to the land are by no means always on a lead; a lot of dog walkers congregate on the land to talk, because the allotment path is too narrow. She has seen people using the land for ball throwing.
- 8.65. The horse tether is moved from time to time to keep the grass short on different patches. Children do pat or stroke the tethered horse, but obviously they are very careful.
- 8.66. To me Ms Ward confirmed that walkers would use either path, but horses would *not* use the western footpath. It was occasionally that horses would pass along the (eastern) unmade-up track. However horses are often taken out of the stables near to Highbury Field.
- 8.67. Her own use of the mission field would be that in summer she was there most days, when visiting her allotment; also she does pick elderflower and elderberries from alongside the top (western) path. In winter she would go to her allotment every weekend.

- 8.68. She thought there must have been a couple of years without a bonfire. It was nice to see them, though she had never been involved in organising them. She had been to the more formal one last year (2006). The bonfire is somewhere towards the middle of the field.
- 8.69. *Ms Andrea Oz* (Council Statement No. 72) lives with her husband at 2 Sandfield Garth. She had (in late 2007) been there for about 6 years. Like Jenny Ward, her written statement had been prepared in early 2005, and was prompted by a *proposed* development at that time. She is quite an active member of the Highbury Residents Association (HRA).
- 8.70. She herself, over the last 6 years, has used Highbury Field for walking, socialising, children's parties, children's play area; blackberry and elderberry picking; bird, bat and deer watching; and snowballing. Over 9 years or so, since she first moved to the Meanwood area, she had seen the land being used for other informal purposes by local residents, including: horse grazing, dog walking, chatting, children playing, blackberry picking, using as a right of way, bonfires, and as a wheelbarrow route to the allotments.
- 8.71. In cross-examination Ms Oz explained that elderberries are in the hedgerow all the way down (on the left), while blackberries are mainly to the right of the western footpath. Deer she had seen twice on the land, from her own house windows, once about 3 years ago, the other about 18 months ago.
- 8.72. She had seen a heron when walking from her previous house – once in the beck, and once in the middle of the mission field.
- 8.73. As for her observation of dog-walkers, those from Sandfield Garth tend to use the western path; others meet on the unmade road on the east side, and then walk through to Meanwood Park, and then back. However others let their dogs run round on Highbury Field itself. Probably about 80% pass through, and 20% use the field itself.
- 8.74. As for children, she regularly sends her own daughter, sometimes with nieces and nephews, out onto the field to play, and her daughter (now 14) often sits in the field, with friends.

Other children are on there just about every day, some building dens.

- 8.75. Harry Jackson used sometimes to use the western footpath with his horse and cart; apparently there used to be cobbles underneath the grass, and a drystone wall beside it.
- 8.76. Bonfires have been organised affairs since the HRA came into existence, however Ms Oz had noticed them on the field before that. She was 90% sure there had been one every year she had known the land. No-one had been leafleted; people from the Highbury Mount area just came out. She had seen people standing round the bonfire, or occasionally taking chairs to sit around it.
- 8.77. In re-examination Ms Oz explained that the best blackberry patch was more at the back of the church; she had seen someone tipping paint debris on the blackberries right by the right of way.
- 8.78. Her own daughter would not go out on to the field by herself, but would with a friend. Horses are usually grazed on the land every day, especially when the grass is long. They are from “*Bev’s stables*”, because Bev has no land with her stables. The horses are on a tether, in a central position on the land, and children do go up to them.
- 8.79. Dogs are sometimes on a lead on the land, sometimes let loose. Some owners do both. Of the ones who let their dogs off to ‘go to the toilet’, local residents do tend to clean up after their animals.
- 8.80. To me Ms Oz said that from her house she can see through to the land a bit in summer, more in winter, when there is a long view over the land. In summer it is more a view through the hedge of the closer parts. There are some visible remains of drystone wall on the left (west) of the footpath.
- 8.81. *Mrs Mary Elizabeth Bernadette Oldroyd* gave evidence (Statement Council Ref No. 18). She currently lives at No. 183A Stonegate Road, but from 1978 to 2006 had lived at 5 Highbury Close.

- 8.82. One of the reasons she and her husband bought their previous house was the St Oswald's field, which she understood had been bequeathed to the children of the Highburys. Her son, who was seven in 1978, could play on the field and always be in sight. There was then no fence at the rear of the Highbury Close properties, only a low wall. Her son and his friends, and neighbouring children from the Highburys, all spent many happy hours playing on the field.
- 8.83. There was always a bonfire and many people from the Highburys would come to enjoy it. Mrs Oldroyd's son has grown up and moved on, but she and her husband are foster carers, and (as of 2005) their foster children still continued to play on and enjoy the land.
- 8.84. In cross-examination Mrs Oldroyd said she knew the church owned the land, but had been told it was for the benefit of the children. She had never asked permission to use it.
- 8.85. Bonfires had usually been on a part in the middle of the land where it flattens out a bit. She personally had helped children make bonfires there in a number of years.
- 8.86. Where children played would depend on the particular activity, eg cricket would be played towards the flatter end at the north end. Other activities would be all over. When her son was small she could sit in the garden and watch the children in all parts of the field – and the same for her foster children. They had a back extension, where they lived, and she constantly saw people on the field.
- 8.87. There has sometimes been rubbish on the land, and it has been cleaned up. A man from the church used to come round and clean up, about once a year, as far back as 1978. His name was Alfie (or Alf) Johnson; she thought perhaps he did the clean-up off his own bat, rather than as organised by the Church, though she knew he was a churchwarden; her son had been a choirboy.
- 8.88. In re-examination she said that children used to play on the land the whole time she was living at Highbury Close – mostly on the field itself rather than the track. They would ride bikes on the track, but anything else would be all over the field. She could see part of the field from her old house, not the whole of

it. She thought local people could use the field as of right; she had never heard of anyone asking permission. She would encourage her children to play on the field.

- 8.89. At a later stage in the Hearing evidence was given by **Mr Ian Oldroyd**, husband of Mrs Oldroyd, and one of the two applicants. As with his wife, he now lives at 183A Stonegate Road, but had lived at 5 Highbury Close from June 1978 to June 2006.
- 8.90. Mr Oldroyd's oral evidence related to a particular incident in July 2004, leading to the letter of 29<sup>th</sup> July 2004 from the Rev'd Barry Overend, Vicar of St Chad's, Far Headingley, in respect of which Mr Overend's initial recollection was that Mr Oldroyd had telephoned him [though he later, with the aid of a file note he had found, confirmed that he – Mr Overend – had initiated the call].
- 8.91. Mr Oldroyd said that he had not (in July 2004) telephoned Mr Overend; Mr Overend rang him. Mr Overend had picked up from somewhere the point that Highbury Residents Association planned to hold an event on the field on 8<sup>th</sup> August 2004. Mr Overend said he would not give permission for the event to take place on the land. He (Mr Oldroyd) had said he was not asking for permission, and nor would he ever. It was quite a heated conversation.

### **Other Evidential Material**

- 8.92. In addition to the previously submitted written statements referred to earlier, and other documents and photographs produced at the time of the application or in response to the objections, the Applicants produced for the Hearing a map of the area (with some supporting documentation), marked to show the addresses of those who had supported, and those who had objected to the Application. They also produced a further folder of photographs showing various uses of the land by local residents. At the Hearing itself they assisted by producing copies of a number of editions of the Highbury Residents Association's Newsletter.



## 9. The Case for the Applicants – Submissions

### Initial Submissions

- 9.1. The Highburys neighbourhood has always had a distinct community, ever since the houses were built in the late 1800s.
- 9.2. St Oswald's chapel was built in 1889 for the residents of the Highbury neighbourhood. A local history booklet explains how the mission field behind the church came to pass to the diocese from the wife of a former vicar of St Chad's. There has been a long held local belief that it had been bequeathed to the children of the Highburys as a place to play on. Indeed one of the supporting statements (Mr & Mrs Greaves, No.4) said that in the 1960s there had been a sign saying it was a children's play area. A similar recollection, on the part of a Mr Peter Hobson, had appeared in a recent Yorkshire Evening Post article (of which a copy was provided by the Applicants).
- 9.3. With the houses in the area having small or no gardens, it was natural that the field had served as a safe local green, even though its sloping, bumpy nature made it less suitable for organised games like football or cricket, which tended to be played in Meanwood Park. However the evidence of over 100 supporting statements backs up the long use of the field by children for informal recreation. This use by children is the main evidence the field is used as a village green.
- 9.4. However the field is not just a children's play area. The evidence shows it is well used by adults of the Highburys for: dog-walking, blackberrying in season, summer picnics, barbecues and parties, and bonfire night celebrations. The wildlife living on and passing through the land is a further draw.
- 9.5. Generations of Highbury residents have used the land as thus described. Throughout the relevant 20 year period the uses have been open, unrestricted, and without the need for permission.
- 9.6. The Highbury Residents Association was founded in May 2004, with the aims of protecting and enhancing the area. The map provided, showing the addresses of supporters and objectors, shows that the supporters (of the Application) cluster densely in

the Highbury area, while of the objectors, only 2 are from the Highbury neighbourhood, while most are from a long way away. The suspicion is that many of the latter were prompted to object by a letter circulated by the Vicar of St Chad's (Mr Overend) urging them to do so. Many of the objections are on irrelevant grounds, notably the financial implications for the church.

### **Other submission material**

- 9.7. The letter from the Applicants of 30<sup>th</sup> July 2005, at an earlier stage in the proceedings, in reply to the written objections, was accompanied by quite a lengthy series of comments, in the nature of submissions, on all those objections. I have read all that commentary, and taken it into account in my consideration of this matter, but it does not seem to me appropriate or necessary to summarise all that earlier material (which is already before the Council) here.

### **Closing submissions**

- 9.8. The case has been made in the evidence, which demonstrates the requisite 20 year use; the number of people who have so used the land is significant enough to meet the criteria in the Act.
- 9.9. At no point was permission asked for to use the land. The evidence shows there was never any approach from the HRA (Highbury Residents Association) to the Rev'd Mr Overend to ask permission to use the land.
- 9.10. The cancelled event (in summer 2004) was not cancelled because permission was denied, but because it may have saved St Chad's a great deal of trouble if a claim had been made against them.

## **THE CASE FOR THE OBJECTORS**

### **10. Evidence**

- 10.1. As noted above, the objections to the application were from the Ripon & Leeds Diocesan Registry, on behalf of the Diocesan Board of Finance, and 57 other objectors, who included the

Rev'd Barry Overend, Vicar of St Chad's, Far Headingley. Many of the written objections were at least partly evidential in nature; I have read all of them, but as with the case of the letters supporting the application, I do not feel it is appropriate or necessary to summarise their contents here. I would however draw attention to the fact that a significant number of them were at least partly (and sometimes wholly) directed at the point that confirmation of village green status on the land would have adverse financial implications for the church. I agree with the submissions of the Applicants that this is a matter which is wholly irrelevant to the present application.

- 10.2. Some of the objection letters were accompanied by other documents which came to be referred to during the Hearing, and these will be mentioned at the appropriate places in the summary of the oral evidence which follows – as will the small number of additional documents produced by the Objectors for the Hearing itself.

#### **The Case for the Objectors – the oral evidence**

- 10.3. *Mrs Lorraine Banning* (objection letter ref. 20), of 12 Highbury Terrace, told me that she had lived in the Highburys since 1984, and was a regular attendant at St Oswald's Church, Highbury Mount, which closed in 2002. During all that time she had seen hardly any community use of the land in question. Until quite recently the land was far too badly overgrown to be of use to anyone. She had never seen children playing there, or known of functions there, organised by local residents. The only part she had seen used was the footpath alongside, to Meanwood Park.
- 10.4. There was one occasion after the church closed down when some people, who had hitherto shown no interest in the land, partially cleared it and held a private barbecue. She opined that this had been done merely to make it appear that the land had been in use. Since then the land had been overgrown again.
- 10.5. In cross-examination Mrs Banning said that her house was at the Monkbridge Road end of Highbury Terrace, so she could not see the field from it. However she regularly passes the field, about 3 or 4 times a week.

- 10.6. She had never been to a bonfire on the field, or seen one, or been invited to one. She is not very interested in bonfires. The land had generally been overgrown, to a height of several feet, until it was cleared when the church closed down. She was referring to the majority of the field, though she recognised that was not the case at the times some of the photos were taken. The reality was probably that more often than not the field was overgrown, but just cleared on odd occasions. She did see the field at least on every Sunday, when she attended St Oswald's Church. She was aware that a horse had often been on the field, eating some of the grass.
- 10.7. She did vaguely recall the circular letter from the Vicar (the Rev'd Mr Overend) being handed out in 2005, urging people to object to the village green application, and saying it would deprive the church of income. However she had written her own letter (in 2005) because she had her own personal knowledge of the field.
- 10.8. Mrs Banning told me that she had never had any children. Entry to the lower rooms at St Oswald's (where meetings were held) was on the right-hand (eastern) end of the church building. One got a clear view over the field from there.
- 10.9. Up until about 6 years ago she used regularly to take walks along the paths by the field – about once a week in summer. More recently she has tended to see it while in a vehicle along Highbury Mount.
- 10.10. *Miss Elizabeth Johnson* (Objection ref no.17) lives at 3 Grovewood, but had lived at 43 Highbury Road from 1956 until October 2001. For over 15 years she had been a member of St Oswald's Church Committee, and as such had been fully aware of the issues of dumping (of rubbish) on the mission land, which were regularly brought up at meetings.
- 10.11. During her period living in Highbury Road she had frequently walked along the back of Highbury Close (beside the field), because her family had an allotment on the Holkin Lane site, and for walking through to the Meanwood side.
- 10.12. She did not recall seeing children playing football or other games on the field. In fact the children used to play on the track

at the end because the field was always long, full of nettles, and uneven.

- 10.13. There was a local man, Harry Jackson, who grazed a horse on the field and gave a regular donation to the church. He also used to cut the nettles down.
- 10.14. The blackberries on the land are accessible from the public right of way, not the body of the land. She was never aware of any organised community events on the land. There have been no organised church bonfires there in the last 20 years. The church used to organise 5<sup>th</sup> November bonfires on the land in Miss Johnson's youth, some 30-40 years ago.
- 10.15. In cross-examination she said that you could see the field from her former house in Highbury Road. She was on the St Oswald's Church Committee until it closed in 2002; she is still a PCC member at St Chad's.
- 10.16. She used to visit her family's allotment once a week in summer; it was about 5 minutes walk from the end of the mission field to the allotment.
- 10.17. She thought the nettles she recalled were visible in one of the photos of a bonfire, and accepted it was true to say that perhaps *part* of the land was typically full of nettles.
- 10.18. She definitely did not recall children playing football on the field; they played at the end, where the track 'turn-round' is, not on the triangular field itself. They would usually be kicking a ball or playing tig or something like that. Children might have walked across the field, but she had not seen them playing there.
- 10.19. In addition to the blackberries alongside the right of way, there were elderberries alongside Harry Jackson's land (on the western boundary). She could not recall seeing any bonfire on the land in the last 20 years.
- 10.20. To me, Miss Johnson said that when she was living in the Highburys she would see the land every day, when going to work, during the period 1985 – 2001. She was also on the St Oswald's Committee for most of that period; it met in the

downstairs meeting room, about 8 times a year; you can see the mission land clearly when you go to the committee room.

- 10.21. Apart from the visits to the allotment, or occasional visits to the Meanwood Park side, she would also see the land when going for a walk, for recreation.
- 10.22. The church used to organise bonfires on the land when she was a child – a teenager up to 14/15 or so, but then they died off. Subsequently she was not aware of any proper organised bonfires; there might have been informal ones. During the winter she would not pay particularly close attention to this, although she would make occasional visits to the allotments even in winter.
- 10.23. ***Christopher Geoffrey Holmes*** (Objection reference 45) lives at 480 Spen Lane, in the Lawnswood area. Previously, from 1982 to 1985, he had lived at 42 Bentley Lane, in Meanwood, quite close to the Highburys. He had friends who lived at Wilton Grove, and Highbury Terrace, where they met regularly to walk into Meanwood Park and the valley trail. This meeting to walk from Highbury Terrace into the Park continued from 1985 to 1995, after moving from Meanwood to Lawnswood.
- 10.24. Mr Holmes has two young boys, born in 1996 and 1999. He and his wife regularly took them to the playground and for walks around the Meanwood Park area, from 1996 to 2006, including visits to Highbury Terrace. He had not seen any activity on the mission land, or evidence of the local community using it as a recreational space.
- 10.25. In cross-examination Mr Holmes said that back in 1982-5 his walks would start from Bentley Road, walking through the mission field area to get to Meanwood Park. On average this would be once a fortnight. After 1985 it would have been about monthly that he and his friends met to do the walk – more in summer than winter. It was for about 5 minutes of that walk that you could see the mission field.
- 10.26. It was from the letter handed out at St Chad's that he had learnt of the application to register the field as a village green.

- 10.27. To me he explained that in the post-1985 period his meeting with friends to walk would have been *on average* once a month – in summer it could be fortnightly, but correspondingly less in winter. They would always meet at the Highburys because his friends there had a big room – and she was the best cook!
- 10.28. The walks would always be in the Meanwood direction. He did recall seeing dogs on the mission field. He would keep his children on the path, for example, because of the dogs using the field as a toilet.
- 10.29. Typically the walks would use the unmade road on the lower side of the field. He had never seen bonfires on the land, and had no recollection of seeing bonfire piles there. He personally could not recall seeing a horse grazing the land – he remembered seeing horses at the nearby stables. The walks were usually circular, so only in one direction would they usually pass the mission land.
- 10.30. The *Reverend Barry Malcolm Overend* is the Vicar of St Chad's, Far Headingley, and lives at St Chad's Vicarage in Otley Road (Objection Ref no. 42). I should perhaps record here that in this instance, and for fairly obvious reasons, as well as receiving a copy of Mr Overend's original written objection, with attachments, and his oral evidence, Mr Overend has been involved in considerable further correspondence etc, relating to the village green application, and the circumstances leading up to it. Much of this was then referred to during the course of Mr Overend's oral evidence at the hearing, and I have taken all of it into account in forming my views on his evidence, insofar as it was made available to me and the other parties to the hearing.
- 10.31. The Rev'd Mr Overend said he had been Vicar of St Chad's, Far Headingley, since January 1987. He had therefore had long and close association with St Oswald's Church (which was in his parish) and its surrounds. He estimated he had made in excess of 2000 visits to the St Oswald's vicinity over 20 years, and only once had he seen the field being used for recreational purposes. That occasion was the erection of a child's den on the field, immediately prior to a public meeting in September 2005 [outside the period these proceedings are concerned with]. He had never seen a ball being kicked or thrown, a kite being flown, or a picnic being held there. Following her marriage,

one of his daughters had lived in Sandfield Garth, adjacent to the field, from 2001 – 3, and on his frequent visits to her house he had seen no evidence of recreational usage of the land. Had such usage been as regular as now claimed he would have expected to have seen or heard evidence of it on at least some of his professional and family visits. The unkempt nature of the field, in his view, mitigated against recreational usage.

- 10.32. With his original objection he had enclosed letters from the two previous incumbents of St Chad's Parish, the Rev'd Roger Robinson from 1970-81, and the Rev'd Canon Brian Abell from 1982-1986. Together with Mr Overend's evidence, this showed (he said) that there had been no consistent public usage of the land, but only occasional usage with implicit and explicit permission from St Chad's PCC.
- 10.33. In both July 2004 and October 2004 permission for public usage of the land was (in writing) withheld by St Chad's PCC, and a very clear statement was made to the Chairman of the Highbury Residents Association to the effect that this is private property, not public open space. (This refers to letters of 29<sup>th</sup> July 2004 and 15<sup>th</sup> October 2004, both addressed to Mr Ian Oldroyd).
- 10.34. That the Parochial Church Council could and did expressly withhold its permission for usage of this land was acknowledged in the Highbury Residents Association Newsletter (Volume 1, Issue 2 of October 2004), in which it was stated that the community clean-up of the mission land [preparatory to a planned barbecue which in the event took place elsewhere] had to be cancelled after permission was denied by the owners of St Oswald's church. The fact that the residents sought and were denied permission for usage was an acknowledgement on their part that free and unrestricted access had not been allowed.
- 10.35. Mr Overend also spoke of an exchange in June 2006 [outside the relevant 20 year period] when Mr Oldroyd and Dr Mann had requested St Chad's PCC to cut back the grass because "*it is custom and practice for us to use the land for recreational purposes, however the grass on the land has not been cut back this year and it is approaching the point where it could become difficult for us to continue this tradition*". In his reply Mr Overend had pointed out this was the first such request ever



received; it was therefore obvious that in the previous 19 years, when the grass was also left uncut, the field would have been regarded as unsuitable for recreational use, as indeed it always had been.

- 10.36. Further, at a Public Meeting at St Chad's Parish Centre in September 2005, when the PCC outlined its proposals to landscape part of the field, local residents objected on the ground that they preferred its wilderness nature as a wildlife habitat.
- 10.37. For the last 20 years the field has not been suited to playing ball games; it is uneven terrain with uncut grass. The tethering of a horse, under a nominal payment arrangement with its owner, has been the only method of grass control employed.
- 10.38. There is considerable written evidence in both St Chad's PCC minutes, and those of St Oswald's Church Committee, of an ongoing problem of residents using the field as a tip for domestic rubbish. He quoted examples, e.g. from 27<sup>th</sup> April 1987: "*suggested that the field be cleared then a letter go to the houses overlooking the field pointing out that it has been cleaned again and asking that they report ... anyone they see dumping on the field*". From 25<sup>th</sup> April 1994: "*Mr Harry Jackson and a man from the stables have cleared and burnt the rubbish from the field*". From 1<sup>st</sup> September 1997: "*dumping of rubbish and chopped down tree by local resident ...*"
- 10.39. Prior to very recent times, attempts to encourage the residents to assist in clearing the land had met with no success. The St Oswald's Church Committee minutes show: 30<sup>th</sup> June 1986 – "*Field clearance. Poor turn out. All committee members*". 15<sup>th</sup> June 1987 – "*Field cleared by a few of the Committee members*".
- 10.40. It is only (said Mr Overend) since the future of the field has been in contention that the PCC has been approached by residents with a view to using the field for community events. The first approach, to his 20 year knowledge, was that in July 2004, when the residents expressed their intention to hold a Community Clean-Up and Barbecue on the land on 8<sup>th</sup> August 2004.

- 10.41. On advice from the Ripon Diocesan Registrar, the PCC refused permission for the Clean-Up and Barbecue on Health and Safety grounds. That decision was conveyed to Mr Oldroyd in Mr Overend's letter of 29<sup>th</sup> July 2004 [already referred to]. The event was duly cancelled, and the barbecue relocated. The subsequent circular [Newsletter] from the Highbury Residents' Association stated, under the headline 'HRA – Aims & Objectives': "*On August 8<sup>th</sup> the Highburys came together at Highbury Cricket Club for a community barbecue*", and explained [as referred to above] that the 'clean-up' on the mission land earlier in the day "*had to be cancelled after permission was denied by the owners ...*"
- 10.42. Then in October 2004 Mr Oldroyd wrote [to Mr Overend] to say that residents were intending to hold a Bonfire Night celebration on the field. The PCC again withheld its permission, as was communicated to Mr Oldroyd in Mr Overend's letter of 15<sup>th</sup> October 2004. Mr Overend believed that, like the barbecue, the bonfire event was then cancelled.
- 10.43. During the past 20 years as Vicar, Mr Overend had never been asked to advertise in the church, or the Parish Magazine, any community event on the St Oswald's field. His four children had grown up in the parish, and he had never been asked to bring them along to any community event on the field.
- 10.44. A further barbecue was proposed for 18<sup>th</sup> June 2005 [outside the relevant period], and again permission was denied.
- 10.45. In cross-examination, the Rev'd Mr Overend said that his estimate of 2000 visits to the neighbourhood referred to the neighbourhood as the Objectors had sought to define it. This included making visits to properties in the Highburys. All the visits would have been for a purpose – about two thirds to visit people's houses, one third to go to St Oswald's church.
- 10.46. Usually on visiting a house he would not see the field, but on some such visits he would go and look at the field because of the rubbish problem on it, or for other reasons. He estimated that probably on one third of his visits he would have looked at the field.

- 10.47. When his daughter lived in Sandfield Garth for two years from 2001-3 he would visit her about once a week, so about 100 times over the two years. His trips to St Oswald's church would usually be on Sunday mornings, but there were visits at other times, e.g. to go to St Oswald's Committee meetings.
- 10.48. His daughter had lived at No. 15 Sandfield Garth, which is in the end block (of houses), from which the mission field is not visible.
- 10.49. The '2000 visit' estimate was the professional visits. As a family the Overends had also visited the field reasonably often, walking the Meanwood Trail, probably about 10 times in total. The family has dogs. These visits would be additional to the 2000 estimate.
- 10.50. The arrangement with the horse grazing the field lasted a long time, with Mr Jackson paying £5 per annum to the church to do that. It stopped when he died, about 4 to 6 years ago, at a guess. Mr Overend was aware that other horses had grazed the field since then. He thought they belonged to Beverley Seymour, but was not aware that she had ever asked permission. His assumption was that any horse there prior to Harry Jackson's death was his horse, covered by the arrangement.
- 10.51. The grass was normally overgrown except where the horse grazed it. The rest would be unkempt. However the horse would graze in different places when its tether was moved, as a measure of grass control.
- 10.52. But at any given time 90% of the field would be unsuitable for recreational purposes, e.g. ball games, or running around. In his view, the photographs produced tended to show people standing around, or walking round the edge.
- 10.53. After the minutes quoted from 1987 and 1997, letters were sent to local residents, saying they were not at liberty to dump rubbish on the field. It was made clear people were not free to do as they wish over the field.
- 10.54. To Mr Overend's knowledge, the first time the PCC was ever approached with any request to use the field was in July 2004, leading to his letter to Mr Oldroyd of 29<sup>th</sup> July 2004. [Mr

Overend at first thought that Mr Oldroyd had telephoned him, but subsequently, following the finding of a note in his files, he accepted that he had in fact first telephoned Mr Oldroyd, having become aware that the Residents Association proposed to hold a 'clean-up', followed by a barbecue, on the land, in the way explained by Mr Oldroyd in his evidence to the Hearing. N.B. the proposal to hold the clean-up, followed by a barbecue, on the land had been announced in the Highbury Residents' Association Newsletter, Volume 1, Issue 1, circulated in July 2004 – a copy of which was produced to the Hearing].

- 10.55. Mr Overend's letter of 29<sup>th</sup> July 2004 had told Mr Oldroyd that the Church Council was "*very surprised that the Residents' Association felt able to plan an event on private property*", and refused permission for the event. It also said that any further proposals concerning the church land must be brought to the attention of the PCC in advance. The letter did not threaten legal action.
- 10.56. The subsequent HRA Newsletter (Volume 1, Issue 2 of October 2004) shows that by implication permission had been asked to use the field, and clearly says the event was cancelled because permission was denied.
- 10.57. Mr Overend accepted that the Association had not actually asked for permission – they stated their intent. But he had denied permission, and the event did not happen. Mr Overend said he would not have expected the event to be cancelled if it had really been the custom and practice to hold it there in the past.
- 10.58. Then there was a letter of 10<sup>th</sup> October 2004 from Mr Oldroyd, referring back to the July letter, about the intention to hold a November bonfire on the field. Mr Overend had written back on 15<sup>th</sup> October 2004, on behalf of the PCC, denying permission, and again pointing out that the field was not a public open space, but private property.
- 10.59. The proposed community bonfire was cancelled. Mr Overend accepted that a fire had been lit, because there was a patch burnt out on the ground – but that was a bonfire lit by *Mrs* Oldroyd, he had understood from a telephone conversation. His understanding was that he had withheld permission, but a

bonfire did then take place, which was not a residents' group bonfire; he believed it was one for which Mrs Oldroyd had accepted responsibility. The planned, larger one for residents did not take place, as permission had been withheld.

- 10.60. Mr Overend did not at all believe or accept that bonfires had previously taken place as an annual event on the land. If they had happened at all in the previous 20 years, they would have been very rare in his view.
- 10.61. There was a later proposal for a Residents' Association barbecue on the land in June 2005 [outside the relevant period], which led Mr Overend to write a letter to Ms Mulherin (Association Secretary) to deny permission. Mr Overend was not aware if that event had taken place; he rather thought it had not.
- 10.62. Mr Overend reiterated his view that the planned November 2004 Residents' Association bonfire had been cancelled, to be replaced by a lesser, non-HRA event. He understood Mrs Oldroyd to have accepted this on the phone – she had not wished to implicate other members of the HRA. He did not know who attended the bonfire which actually happened. However it would have been quite clear from the telephone conversations which took place that permission was required.
- 10.63. In re-examination Mr Overend said that the newly provided batch of 'HRA' photographs, particularly one showing high vegetation with two young girls sitting in it, were typical of the state of the field during summer periods.
- 10.64. The *Rev'd Kingsley Dowling* was called to give evidence. He had been curate of St Chad's from January 1999 to May 2001, and had had pastoral responsibility for St Oswald's church.
- 10.65. During his time there he made many visits to the church for services (which took place every Sunday) and meetings, and to the local community for pastoral visits. On no occasion did he recall seeing children playing or family activities on the adjacent grassed area. On occasions he had to walk on that area surrounding the church, and found it to be very uneven ground with lots of debris.

- 10.66. In cross-examination Mr Dowling said he would usually visit the Highburys by car – he made many such visits – but you could see the land as you drove. Also, when going to services he would park his car on the hill, and usually see the land from where he had parked. It is not possible to see the land from the interior of the church. He used to attend evening meetings in the meeting room, from the access to which it is possible to see the land.
- 10.67. There were a number of troublesome incidents at St Oswald's. An area of York stone paving was stolen. He used regularly to walk all round the church building to make sure it was secure. Accordingly every visit of his to the church would involve seeing the field; he would invariably look round to make sure everything was in order; this would be at least 2 or 3 times a week, it was very regular. These visits would be either for a church service, or a meeting, or occasional coffee mornings.
- 10.68. Mr Dowling told me the curate's residence had been in Becket's Park (not in close proximity to St Oswald's). His checking up on the building of St Oswald's had been a matter of routine. It was on a weekly basis that he would walk right round the church to inspect it. He would sometimes walk further out onto the field, for example when rubbish had been left there. It was not easy ground to walk on; lots of bricks and the like had been left there.
- 10.69. *Mrs Hilary Taylor* was the last witness. (Objection Ref No.10). She lived at 26 Drummond Avenue, Headingley, very near St Chad's Church, and had done so since 1994.
- 10.70. Between 1986 and 1994 she had lived at Moor Park Villas, which backs on to Sandfield Garth and Highbury Mount. During that time she regularly walked past St Oswald's and the Mission Land on the way to Meanwood Park, with her children. It was the easiest route, e.g. with a pram. They would walk along the track at the bottom, rather than actually across the site. This was because that area was eerily deserted; the ground was very rough, uneven and overgrown with long grass, nettles and brambles. There was also a lot of garden rubbish and other tipped items; for example a fireplace which had been left under a hedge at the top of the site. She did not feel that this was a pleasant or safe place to be, particularly with young children.

- 10.71. She never on any occasion saw any local residents or their families using this land, even at weekends or during the school holidays.
- 10.72. In cross-examination Mrs Taylor said she thought she had heard about the village green application via the church.
- 10.73. The frequency of her walks past the site would depend on the time of year and the needs of her family; there was a period when it was daily. During the later period of living locally, she and her family would go via that route to the park at least once a week. She always used the lower track; she never considered walking across the grass, because of its appearance, with long grass and rubbish – the whole area appeared to be overgrown. Nettles, specifically, were probably more at the edges where the hedge was – and there were brambles around the hedge.
- 10.74. She did remember seeing a horse on the land on some occasions, but not most of the time; her recollection was that the horse was not particularly effective at keeping the grass down.
- 10.75. To me Mrs Taylor confirmed that her evidence only related to the period 1986 – 1994; she did not recall any noticeable differences or changes on the land in those eight years.
- 10.76. Her period of going past daily had only been for 2-3 months. More typical was going there at least once a week, sometimes more. However this would be through the winter as well as in the summer months. She had no recollection during her period of living locally of ever seeing bonfires on the land, or piles got ready for a bonfire.

### **Other evidential material**

- 10.77. In addition to the previously submitted written statements, referred to earlier, and various items of correspondence, much of which has been mentioned in the evidence I have already recorded, the Objectors produced for the Hearing an Analysis of the written statements in support of the application; a map showing the boundaries of the ecclesiastical parish of St Chad's, Far Headingley; a copy Deed of Conveyance relating to the land of April 1947; and a copy of a planning permission for the

conversion of St Oswald's church to 3 residential flats, with associated parking and landscaping, of 15<sup>th</sup> August 2006.

- 10.78. I ought perhaps to record here also that among the items produced earlier by the Ripon & Leeds Diocesan Registry was a Statutory Declaration, dated 8<sup>th</sup> November 2003, by Mrs Francesca Mary Johnson, of 3 Grovewood, Grove Lane, Headingley, Leeds (aged 77 in 2003).
- 10.79. In general what the declaration said was consistent with (and thus effectively repetitive of) other sworn evidence given at the Hearing itself. However in her declaration Mrs F M Johnson did additionally record that for the previous forty years at least the Church had accepted responsibility for grass-cutting and general maintenance of the Land from time to time, and that for a number of years the Land was used as a playing field for children associated with the Church. She recalled also that social events organised by the Church were held there on Bonfire Nights over a period of at least ten years.

## **THE CASE OF THE OBJECTORS - SUBMISSIONS**

### **11. Opening Submissions**

[ *I do not here record various pieces of factual information given in opening which were confirmed in other evidence* ].

- 11.1. On the question of **Locality**, the Objectors submit that it should be taken to be the ecclesiastical parish of Far Headingley St Chad.
- 11.2. As for “*neighbourhood within a locality*” (if relevant), the Objectors saw themselves as in basic agreement with the area identified by the Applicants, except that the Applicants had included properties on the south side of Monkbridge Road (from which 5 of the supporting statements had been received), at a point where that road itself is the southern boundary of the ecclesiastical parish. With that minor quibble the issue of a potential “*neighbourhood*” was agreed; the area concerned is generally known as the Highburys and comprises a total of over 300 properties.



- 11.3. Contrary to a popular belief widespread among some residents of the Highburys, the land behind St Oswald's Church had *not* been left to "*the children of the Highburys*" by the widow of a former Vicar (Mrs Stables), as the documentary evidence showed. It had been conveyed in 1947 to the Diocesan Board, on behalf of the St Chad's PCC, by the Stables Trustees, "*for any ecclesiastical purposes*", as defined.
- 11.4. Of the 97 statements lodged in support of the village green application, nearly two thirds were from residents within the 'neighbourhood' as defined by the Objectors. It was notable that 55% of the statements (and 56% of those from within the 'neighbourhood') contained observations objecting to development on the land, and/or of the church building itself.
- 11.5. Over half of the statements were from supporters who had lived at the address, or in the area, for less than 20 years, or whose statement is silent on the length of residence.
- 11.6. Analysis was provided of the activities claimed to have been 'taken part in' on the land, and of claimed 'activities seen', according to the statements. Of the 'activities seen', horse grazing was by far the most reported activity; indeed a significant proportion of statements only record observing horse grazing. Walking is the next most recorded 'activity seen', followed by children playing.
- 11.7. Of the claimed activities 'taken part in', walking was the highest (with and without dogs), again followed by children playing. When taken together, the most commonly recorded activities 'taken part in' were walking, with blackberry/elderberry/ elderflower picking. These are activities most likely to have been accomplished by incidental use of the rights of way – Leeds Path No. 79 at the top, and the track at the bottom. The significant number of statements referring to walking through to the allotments, to Meanwood Park or beyond, tends to confirm that it was the footpath or track, rather than the main body of the land, that were being used.

### **Closing Submissions**

- 11.8. The Objectors' position on Locality and Neighbourhood remained as in their opening statement.

- 11.9. On matters relating to claimed *Use* of the land, matters could be broken down into their elements. As to *elder or blackberry picking*, Mrs Oz's evidence had been that they are found by the path at the top, or by the corner of the church building, not on the body of the field. Thus access had been from the path, or from Highbury Mount, or a short deviation from those, except for one occasion when contractors had deposited paint on the nearer bushes.
- 11.10. As to *walking*, much of the oral evidence had referred to walking through the site, to the allotments, Meanwood Park or beyond, including the use of the Meanwood Valley Trail and the Dales Way. Mrs Oz had also said that 80% of dog walkers used one or other of the tracks; Jenny Ward had said dog walkers used both paths equally.
- 11.11. As to *bonfires*, Miss Johnson's evidence was that there had been no church-organised bonfire events from about the late 1970s. Others had spoken of bonfires 20 to 25 years ago. Mr Kilburn said he had been 5 to 7 times over a 20 year period, 2 of which were since the Highbury Residents Association was formed. Mrs Cooper said she had attended only 2 bonfires, in the period around 1990-92.
- 11.12. As for *barbecues*, the photographs submitted by the applicants showed one close to the track at the rear of Highbury Close, on a small cleared area of field, with very long grass on the rest of the field.
- 11.13. *Wildlife watching*: Mrs Oz's evidence was that she did it from her house, through her picture window, or from her garden – not from the field itself.
- 11.14. The Objectors' witnesses had given evidence about the general state of the field between 1985 and 2005. There was little evidence of recreational use over that period, sustained over the whole land by a significant number of people from the relevant neighbourhood.
- 11.15. There was a lot of evidence of a continual problem with *rubbish dumping* on the land, as shown by the PCC or St Oswald's committee minuted references to this, given in evidence by the

Rev'd Mr Overend. It was plain that any 'clean-up' was left to church members. Even Mr Kilburn had said that there had been a general build-up of garden rubbish opposite the houses.

11.16. As for *permission*, the evidence was clear as to what had happened in 2004. There had been a denial of permission, and the Highbury Residents' Association Newsletter reported that the summer event was cancelled due to refusal of permission by the landowner.

11.17. Thus in conclusion, the evidence produced by the Applicants, at the Hearing and otherwise, and their submissions, do not meet the tests for registration as a town or village green under the 1965 Act.

## 12. DISCUSSION AND CONSIDERATION

12.1. As noted in Section 1 of this Report above, it is a matter of agreement between all parties that this application must be determined under the relevant provision of the *Commons Registration Act 1965*, even though those provisions have been repealed by the *Commons Act 2006* for the purpose of 'new' applications for village green registration made from April 2007 onwards.

12.2. Consequently the formal position is that, in order to add the 'Highbury Mission Land' to the Register of Town and Village Greens, the City Council as Registration Authority must be satisfied that, as at the date of the application in April 2005, the land fell within the definition contained in *Section 22(1A) of the 1965 Act*:

*"Land ... on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and ... continue to do so"* [i.e. continued to do so in April 2005]

12.3. As for the law, the City Council must determine the application on a proper and correct understanding of the law. As for the facts, I take the position to be that where they are in dispute, they should be determined on the balance of probability, but the

onus to prove the required factual basis is essentially on the applicants. I do not understand any of this to be in dispute.

- 12.4. I indicated in Section 3 above the preliminary view that this did not appear to be a case where it was likely that different conclusions would be reached in respect of the parts of the application site which are in separate ownerships, in spite of the fact that the City Council itself, as owner of part of the land, had not objected to the application. None of the parties to the Hearing argued that the respective ownership parcels should be considered and treated separately. There was a very important element of the evidence, which I discuss later, which really only applied to the bulk of the site which belongs to the Ripon & Leeds Diocesan Board but, as will be seen, my eventual conclusion has indeed been that the two separately owned areas do in reality ‘stand or fall’ together.

### **Locality and Neighbourhood**

- 12.5. This is not, perhaps fortunately, a case where there has been any significant dispute between the parties on this topic, even though they had initially put forward slightly different views. No time was spent at the Hearing arguing about this aspect of the matter.
- 12.6. Having regard to my understanding of the law in this field, and to the evidence, I prefer the views put forward on behalf of the Objectors as to what might be the most appropriate ‘locality’ and ‘neighbourhood within a locality’ to identify in this case. The apparent requirement for a ‘locality’ to be an area known to the law suggests to me that the ecclesiastical parish of St Chad, Far Headingley, would be the most appropriate to identify as being the potentially relevant locality in this case. It is clearly defined (much more so than the circle on the map which the Applicants had originally suggested), and the great majority of the claimed users of the application site came from within it. It appears to me that the only legally possible alternative as a ‘locality’ (as the law seems to stand) is likely to be the whole of the City of Leeds. That does not appear to me to be at all appropriate, and in any event no one argued for it.
- 12.7. There is no doubt, in my view, that if registration were to take place in this instance, it would be on the ‘neighbourhood within

a locality' basis. Both main parties at the Hearing stage appeared to be agreed on this, and put forward extremely similar suggestions as to what the potentially relevant 'neighbourhood' might be. I prefer the Objectors' suggestion because (unlike the Applicants', which was shown on a plan they produced for the Hearing) it actually is wholly within the 'locality' which I conclude is the most appropriate one to identify. It is also entirely consistent with the evidence, in that the claimed users of the application site do indeed (by a very large majority) come from within it.

12.8. Thus, were this to be a case where registration was to take place, I would conclude that the relevant 'neighbourhood' (which is quite appropriately to be referred to as 'the Highburys' – and commonly is) should be identified as the area which lies between (and is partly bounded by) School Lane to the west, and the Monkwood Beck to the east, including within it the houses on the north side of Monkbridge Road between those points, and the whole of the following streets:

- Highbury Lane
- Highbury Place
- Highbury Street
- Highbury Road
- Highbury Terrace
- Wilton Grove
- Sandfield Avenue
- Sandfield View
- Sandfield Garth
- Highbury Mount
- Highbury Close

12.9. As noted previously I was told, and have no reason to doubt it, that this 'neighbourhood' contains over 300 residential properties. It also has, in my view, a generally cohesive character which justifies the term 'neighbourhood'.

### **User as of right for [the relevant] 20 years**

12.10. In this case there are two distinct sub-issues under this heading which are in dispute. The first is whether the evidence supports the claim that there really has been user of the right kind, by a significant number of the inhabitants of the neighbourhood,

during the whole of the relevant period of 20 years, ending in April 2005. The second is whether any such use has been ‘as of right’ for the whole period, in the sense in which the law understands that term.

- 12.11. I should say that there was no real dispute at the Hearing that the types of use *claimed* by the evidence supporting the application were for the most part inherently capable of being use for ‘lawful sports and pastimes’, although there was an issue whether a significant part of the claimed use might not really have been activities incidental to the use of the rights of way on or adjacent to the land.
- 12.12. I should perhaps say that it seems to me that the quite extensive evidence about the tethering of a horse, or occasionally horses, on the land is not of any real assistance to the decision. Most of the evidence about this seemed to relate to the tethering of a horse for grazing by a Mr Harry Jackson, a nearby smallholder, in respect of whom the evidence is clear that he had some sort of licence agreement, in return for a small payment, with the church as owners of the land. There is a claim that in the latter years (from about 1992 onwards) another horse or horses were grazed there from time to time by a Ms Beverley Seymour, one infers without payment. I do not see how this in itself can add weight to a claim based on lawful sports and pastimes ‘of the inhabitants’, though I can see that the reasonably regular presence of a horse or horses may have had some effect in keeping the grass down so that other activities could more conveniently take place on the land.

### **Use over the full 20 year period**

- 12.13. It has to be accepted that it is always difficult to make a judgment based on balance of probability when there is a significant amount of evidence, including in particular that given on oath and subject to cross-examination, from two groups of clearly well-meaning people, as well as all the written statements lodged supporting or objecting to the application. I have also had to bear in mind that a significant amount of the ‘evidence’ one way or the other, particularly in terms of the written material, has come from persons who were also (or in some cases solely) either expressing views in opposition to the principle of any development taking place on the mission field,

or conversely deploring the fact that registration as a green might deprive the church of the opportunity to realise some money from one of its assets. I have ignored such considerations.

- 12.14. I have also noted the interest in the case taken by the local Member of Parliament for Leeds North West, Mr Greg Mulholland MP, including a letter from him dated 20<sup>th</sup> September 2007, expressing support for the application. I am sure Mr Mulholland will readily accept that he is not in a position to put anything forward which relates to the legal or evidential criteria which apply in a case like this. Accordingly I have been unable to take his support into account in reaching my conclusions and recommendation on the application.
- 12.15. I do not propose in this report to set out any kind of minute analysis of all the large volume of evidence which has been contributed. I have read and taken into account all of the written statements, and have every carefully considered all of the oral evidence which was given, on oath, at the Hearing. What I propose to do is to indicate the conclusions I have come to, on the balance of probability, having fully considered the totality of all that written and oral evidence, giving reasons where it seems to me to be appropriate.
- 12.16. In my view, from such evidence as there was of the more distant past, it is clear that at some point well before 1985, probably back in the 1970s and earlier, there was a period when the church itself used to organise local 'social' activities on its land consisting of the 'Mission Field', including the regular holding of organised November bonfires, and possibly other social events and the encouragement of local children to use the land as a playing field. I believe that what may be termed a 'folk memory' of that earlier state of affairs survives and colours what some of the older members of the local community say they recall about past use of the land.
- 12.17. However, on the balance of probability, the evidence overall strongly suggests to me that at some point, probably in the 1970s, and almost certainly no later than about 1980, that sort of church-organised or church-encouraged activity on the land ceased, and the site went into a period of becoming extremely overgrown and neglected. No doubt there were underlying

social reasons behind this, but I am not in a position to go into them.

- 12.18. I found particularly convincing the evidence of Mrs Hilary Taylor, who had lived in the vicinity (just outside the ‘neighbourhood’ I have identified) during the period 1986-94, and had particular reasons to pass the land regularly at all seasons during that period. She considered the land, particularly the upper parts, “*eerily deserted*” during that period; the ground was “*very rough, uneven and overgrown with long grass, nettles and brambles*”. There was also a lot of garden rubbish and other tipped items. This evidence is corroborated by the reference in PCC and Church committee minutes during that period (and other evidence) to the serious problem of rubbish dumping on the land.
- 12.19. I also found convincing a large part of the evidence of Miss Elizabeth Johnson, who had lived in Highbury Road for a very long period until late 2001. I was particularly persuaded by her evidence that during the relevant period children would tend to play, particularly ball games and the like, on the flat area where the unmade track (continuation of the line of Highbury Road) broadens out at its northern end near the stables, rather than on the overgrown, sloping and uneven ground of the main part of the application site.
- 12.20. That area of the track is in fact technically part of the application site, but I do not believe that it would be appropriate to register it by itself as ‘town or village green’, because I see the use there as being incidental to the track’s probable status (and certain use) as a right of way, rather in the way that children might traditionally have played in the street, or on quiet country lanes.
- 12.21. I accept that there will have been periods, whether through horse-grazing or otherwise, when at least some of the vegetation on the main part of the land will have been kept shorter – indeed a few of the (mostly undated) photographs I was shown were suggestive of this. However I was not convinced by the evidence that this really led to a significant level of use of the site between 1985 and fairly well past 2001, such that a reasonably prudent and observant landowner would or could



have been aware that village green-type rights were being asserted.

- 12.22. I also conclude from the evidence that, children being what they are, there will probably have been some small-scale incursion of children on to the main part of the application site to make dens and the like, in spite of the somewhat forbidding and overgrown state of the site which I am persuaded frequently prevailed from the 1980s (at least) through to the early years of the present decade. However I do not believe that use was on a scale anywhere near sufficient to amount to an assertion by local inhabitants of a right to use the land generally for sports and pastimes.
- 12.23. I also accept that it is probable that informal (rather than organised) local bonfires did take place on the land on a small number of occasions during the earlier years of the 20 year period, possibly around 1990 to 1992, but again I am not persuaded, on the balance of probability, that this was anything like enough to amount to an (implicit) assertion of a general right to do so.
- 12.24. Another witness whose evidence I found particularly convincing was the Rev'd Kingsley Dowling, the former curate who had specific responsibility for St Oswald's. Although his evidence related to only a comparatively short part of the relevant period, from January 1999 to May 2001, he had had very particular reason to scrutinise the surroundings of St Oswald's Church carefully, on an extremely regular basis. He saw no sign of the claimed regular occurrence of children playing or family activities on the land during the whole of the time of his curacy.
- 12.25. I am aware that in concluding that certain witnesses were particularly convincing I run the risk of offending others, particularly those whose evidence was contrary to the tenor of my findings on the balance of probabilities. I did not in general conclude that witnesses were deliberately telling me untruths, but that there has been a certain tendency in some witnesses to 'run together' in their minds what I have described as the local 'folk memory' of church-organised or encouraged events on the land in the more distant past, and the undoubted resurgence of local activity on and interest in the land which has come in the

present decade, with the circumstances leading to the formation of the Highbury Residents' Association, and since its formation. In doing so they rather seemed to me to gloss over the intervening period of general neglect and disuse (apart from some rough grazing) which I have concluded prevailed through most of the 1980s and 90s.

- 12.26. I do note with interest that the second edition of the HRA Newsletter (Volume 1, issue 2), published in October 2004, made much of the fact that it was in that year that the previously overgrown right of way on the land (the footpath on the western side) was cut back by the Council (presumably the City Council), following lobbying by local residents. This, although not a decisive point in itself, seems to me to be more consistent with the evidence of witnesses like Mrs Taylor, Miss Johnson, Mr Dowling and others, who recall that the land was mostly neglected and overgrown for many years, than with those who assert that the field was continuously, and widely, and openly used by local inhabitants during the 20 year period 1985-2005.
- 12.27. In conclusion then (on this aspect) I find on the balance of probabilities that the evidence, when considered overall, does not support the claim of a continuing use by local inhabitants for 'lawful sports and pastimes' over the relevant 20 year period. I believe, and find, that for most of that period such use as there was would have been very sporadic and limited, and not at all such as to amount to a general assertion of a right to use the field for such purposes.

#### **'As of right'**

- 12.28. It is generally understood that the law requires that a use claimed to be 'as of right' must be "*nec clam, nec vi, nec precario*" – not done in secret, nor by force, nor with permission. I did not receive submissions specifically addressed to this maxim, neither party being legally represented at the Hearing. I must indicate however that it is my understanding of the law in this field that to qualify as continuous use for lawful sports and pastimes, such use, as well as not being carried on *with* permission from the landowner, also must not be carried on in the face of express prohibition or denial of consent so to use the land. In reality this seems to me to be an aspect of the "*nec vi*" principle.

- 12.29. My conclusion on the evidence is that the circumstances which occurred in July/August 2004 did amount to an express assertion of right by the landowner, and denial of permission to use the land. Although it eventually became clear (and agreed) that Mr Oldroyd, as chairman of the Highbury Residents' Association, had not initially asked the Vicar (Mr Overend) for permission to use the field (for the proposed clean-up and barbecue), it is completely clear that Mr Overend pointedly denied permission so to use the land (on behalf of the PCC), and strongly asserted the right so to deny – Mr Overend's letter of 29<sup>th</sup> July 2004.
- 12.30. What is more, the proposed events actually were cancelled as a result of that denial of permission by the landowner, a fact which was clearly reported, in more than one place, in the Highbury Residents' Association Newsletter, Volume 1, Issue 2. Dr Mann's evidence was that that newsletter is routinely delivered to every household in the neighbourhood.
- 12.31. The view which I have reached is that once that prohibition, or denial of permission, was delivered on behalf of the landowner, and particularly when news of it was disseminated to the whole neighbourhood, any further use of the land without permission by local people cannot have been 'as of right', even if it took place. Both the denial of permission, in late July 2004, and the general dissemination of news of it (in October 2004) were well within the 20 year period for which the Applicants have to show 'as of right' use in order to succeed.
- 12.32. Furthermore the Revd. Mr Overend's letter of 29<sup>th</sup> July 2004 specifically requested that any further proposals concerning the church land must be brought to the attention of the PCC. That request was in fact acceded to, in that Mr Oldroyd as 'Chair of the HRA' wrote to Mr Overend on 10<sup>th</sup> October 2004, referring to the 'previous correspondence in July this year', in connection with the proposal to hold a November bonfire on the land. Once again Mr Overend, on behalf of the PCC, denied permission for the event – his letter of 15<sup>th</sup> October 2004, in which he again asserted that the field is private property, not a 'public open space'.

- 12.33. What then actually happened is slightly unclear on the evidence. On the balance of probabilities I incline to accept the Revd. Mr Overend's understanding given in evidence that the originally planned, larger 'Residents Association' event did not take place, but that a smaller 'private' bonfire for which Mrs Oldroyd took responsibility was nevertheless lit on the land. I note that Volume 1, Issue 3 of the HRA Newsletter (published December 2004) records that "*On November 5<sup>th</sup> a group of Highbury residents and children gathered together around a small bonfire ... Over the years residents have had many such parties although this year's was an intimate little gathering*".
- 12.34. I do not see how, in the face of these events which came to pass in 2004, the Applicants can possibly succeed in their claim of local use 'as of right' through to April 2005, at least insofar as the land owned by the church is concerned.
- 12.35. The church (which I use as a convenient short-hand for the ecclesiastical landowners) clearly, and in the event publicly, asserted their rights over the land as private property – and the need to obtain permission from them before any activities could be carried out on the land.
- 12.36. It might perhaps be said (though no one actually argued this) that the church only prohibited and/or denied permission for certain organised activities, and did not expressly say anything about other claimed areas of use by local people, e.g. the walking (with or without dogs), blackberrying, children playing etc. However my findings on the evidence are that such activities were either incidental to use of the rights of way, or (as extensively discussed previously) so trivial and sporadic, looking at the 20 year period as a whole not to amount to any general assertion by the local inhabitants of a right to use the land for recreation.
- 12.37. As foreshadowed above, I accept that the findings which flow from the church's denial of permission to use its land in 2004 do not apply to the smaller portion of the application site which belongs to the City Council. However the City Council's land is essentially a former track (now technically a footpath) and its verges, and the small and heavily overgrown plot of a former educational building immediately to the west of the old St Oswald's church. In respect of the 'track' land, my conclusion

on the evidence is that it does not really show anything more than use incidental to that of the public footpath as such (during such times as it has been reasonably passable). It is also subject to my general conclusion earlier that the evidence does not (on balance) clearly demonstrate the requisite 20 years of use during the relevant period. As for the small, overgrown plot there was not really evidence about any significant local use of it at all, except for a reference to picking blackberries there once when bushes nearer the path had been spoilt by inconsiderately tipped paint debris. None of this amounts, in my view of the balance of the evidence, to a case for the registration of the City Council's own land within the application site.

### 13. CONCLUSION AND RECOMMENDATION

- 13.1. Accordingly my conclusion is that the Applicants have not, on the balance of probabilities, made out a case that the application site, or any part of it, has been used for not less than 20 years (ending on 28<sup>th</sup> April 2005) by a significant number of the inhabitants of the neighbourhood I have identified, to indulge in lawful sports and pastimes as of right.
- 13.2. Without prejudice to the generality of that conclusion I also specifically find that in respect of what I shall briefly call the church's land, any claim of use of that land 'as of right' for the requisite period would (on the evidence) as a matter of law be defeated by the express refusals of permission to use that land which were clearly conveyed to the local inhabitants in 2004.
- 13.3. It follows that my recommendation to the City Council as Registration Authority must be that the application should be rejected, and no part of the application site added to the register of town or village greens maintained by the Council.

**ALUN ALESBURY**

6<sup>th</sup> February 2008

2-3 Gray's Inn Square  
London WC1R 5JH

## APPENDICES

### APPENDIX I – APPEARANCES AT THE HEARING

- THE APPLICANTS - Dr Graham Mann  
of 8 Sandfield Garth, Leeds, LS6 4JL
- Mr Ian Oldroyd  
Of 183A Stonegate Road, Leeds, LS6

(Both applicants appeared in person, and both gave evidence)

They called additionally:

Mrs Tracy Ann Cooper  
Ms Judith Elinor Scott  
Mr John Hardy Kilburn  
Ms Jennifer Ward  
Ms Andrea Oz  
Mrs Mary Elizabeth Bernadette Oldroyd

### FOR THE OBJECTORS

Mr Michael Willison, Member of St Chad's Parochial Church Council; and  
Mr Christopher Milestone, Churchwarden, St Chad's, Far Headingley

They called:

Mrs Lorraine Banning  
Miss Elizabeth Johnson  
Mr Christopher Geoffrey Holmes  
The Rev'd Barry Malcolm Overend, Vicar of St Chad's  
The Rev'd Kingsley Dowling  
Mrs Hilary Taylor

## **APPENDIX II – LIST OF DOCUMENTS PRODUCED IN EVIDENCE TO THE HEARING**

[does not include notes of submissions, the Application and its supporting material and statements, the original objections, letters between and from the parties in 2005, or notes of oral witness statements produced for the Hearing].

### **1. *By the Applicants***

- (i) A map of Far Headingley and Meanwood showing the distribution of addresses of those who wrote statements in support of the application, and those who wrote statements of objection, and also showing a suggested boundary for a ‘Neighbourhood within a Locality’; together with a supporting schedule of names and addresses.
- (ii) A bundle of photographs showing various uses of the land by local residents, with some press cuttings.
- (iii) Volume 1, Issues 1 and 3 of the Highbury Residents’ Association Newsletter (Issue 2 had already been provided as part of an objection).

### **2. *By the Objectors***

- (i) Opening Statement (partly submission, but containing factual analysis of the content of the statements in support of the application, and some other evidential material).
- (ii) Plan showing boundary of ecclesiastical Parish of St Chad, Far Headingley.
- (iii) Copy correspondence (each way) from 2004/5 between the Rev’d Barry Overend and either Mr Ian Oldroyd or Ms Lisa Mulherin.
- (iv) Letter 14<sup>th</sup> August 2002, with plan, from Leeds City Council to the St Chad’s Parish Office, showing boundary of City Council’s land in the area.
- (v) Copy conveyance of land of 7<sup>th</sup> April 1947.
- (vi) Copy planning permission of 15<sup>th</sup> August 2006 for residential conversion of former St Oswald’s Church, with accompanying plan.

### **3. *By Leeds City Council (as Registration Authority)***

- (i) Letter of Mr Greg Mulholland MP, dated 20<sup>th</sup> September 2007.