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Report of The City Solicitor

Report to Plans Panel (South and West)

Date: 11 October 2012

Subject:APPLICATION TO REGISTER LAND AT PIT HILL CHURWELL AS TOWN OR VILLAGE GREENS UNDER PROVISIONS OF SECTION 15(1) OF THE COMMONS ACT 2006

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Morley North	X Yes	☐ No
Are there implications for equality and diversity and cohesion and integration?	☐ Yes	X No
Is the decision eligible for Call-In?	☐ Yes	X No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	☐ Yes	X No

Summary of main issues

1. The Council as Commons Registration Authority considers village green applications and received an application to register land at Pit Hill Churwell as a town or village green on 14 December 2010, to which the landowners objected.

2. Following consideration of a Report submitted to Plans Panel (East) on 1 December 2011, Members determined that a Public Hearing be called and an inspector be appointed by the City Solicitor, with a view to undertaking an examination of the evidence submitted by the parties concerned and to prepare a report in relation to his/her findings for consideration at a future meeting of the Plans Panel.

3. Members are now asked to consider the Inspector's report attached hereto detailing her findings in respect of the Public Hearing that took place between 16 and 18 May 2012 and to determine if the report of the Inspector should be accepted and the application to register land at Pit Hill Churwell as a town or village green be rejected.

Recommendations

4. Members are recommended to accept the report of the Inspector and determine that the application to register land at Pit Hill Churwell as a town or village green be rejected.

1 Purpose of this report

1.1 To notify Members that a report has been received from the Inspector following the holding of a Public Hearing into the application for the purpose on examining of the evidence submitted by the parties concerned.

1.2 For Members to determine if the recommendation of the Inspector should be accepted and the application to register land at Pit Hill Churwell as a town or village green be rejected.

2 Background information

2.1 On 1 December 2011 Plans Panel East considered a report concerning the above application and determined that in view of all the circumstances outlined a public hearing should be held with a view to undertaking a further and more detailed examination of the issues raised and evidence submitted by the applicant and the objectors.

2.2 Ruth Stockley, a barrister with experience of village green registration matters, was appointed as Inspector in relation to the Public Hearing that was held between 16 and 18 May 2012.

3 Main issues

3.1 The Council is the Registration Authority for the registration for Town and Village Greens and has a statutory duty to decide whether an application should be accepted or rejected. Plans Panel (South and West) has delegated authority to accept or reject the application.

3.2 Whilst Panel is not bound to follow the recommendation contained in the Inspector's Report, it will need to give full consideration to the findings of the Inspector on the law and facts when reaching its decision. Also, it is important to note that in determining whether or not to register the Land as a town or village green it is not possible to take into account the merits of the Land being registered; the Panel's consideration is limited to whether or not the statutory criteria set out below have been established.

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

3.4 The Application seeks the registration of the Land by virtue of the operation of section 15(2) of the 2006 Act. Under that provision, land is to be registered as a town or village green where (1) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and (2) they continue to do so at the time of the application.

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

3.5.1 the Application Land comprises “land” within the meaning of the 2006 Act;

3.5.2 the Land has been used for lawful sports and pastimes;

3.5.3 such use has been for a period of not less than 20 years;

3.5.4 such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;

3.5.5 such use has been as of right; and

3.5.6 such use continued at the time of the Application.

4 The Inspector’s Report

4.1 In her report the Inspector makes clear that the burden of proving that the Land has become a village green by satisfying each element of the above statutory criteria rests with the Applicant and the standard of proof is the balance of probabilities. She goes on to confirm that it is not appropriate for her or the Registration Authority to consider the merits of the Land being registered.

4.2 The Inspector has set out her findings in respect of each element of the statutory criteria within her report. The full report is attached as an appendix to this report.

4.3 She is satisfied that the application meets certain elements of the criteria, in that Application Land comprises ‘land’ within the meaning of the Act, that use of the Land has taken place for a period of not less than 20 years and that such use continued up to the time of Application.

4.4 On the basis of the evidence before her, however, the Inspector has also found that the following elements have not been satisfied on the balance of probabilities to a sufficient extent to enable the Application to be accepted.

4.5 Use of the Application Land for Lawful Sports and Pastimes

4.5.1 Lawful sports and pastimes include present day sports and pastimes and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and children’s play. However, that element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way.

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

4.5.3 It was contended by the Applicant that the Application Land has been used for various recreational activities during that period. References were made in evidence to recreational activities such as dog walking, general walking, nature watching, children's play, running, cycling, blackberry picking, picnicking, sledging and kite flying. There was no evidence of any formal or organised games having taken place on the Land, but informal activities are sufficient in principle to establish town or village green rights.

4.5.4 Whilst the Inspector accepted that the Application Land has been used for these purposes, the fundamental issue in relation to this element of the statutory criteria is whether those activities have taken place on the Land to a sufficient extent and degree throughout the relevant 20 year period to enable town or village green rights to be established over the Land.

4.5.5 The Land is crossed by two definitive public footpaths, Footpaths No. 40 and No. 30, running in a generally north to south and east to west direction respectively across the Land. Walking along those footpaths, whether with or without a dog, and for recreational purposes or otherwise, amounts to the exercise of a public right of way. Such use cannot itself be relied upon in support of the registration of a town or village green. The Applicant acknowledged that although much of the use had taken place elsewhere on the Land, the most intensive use had been on the footpaths.

4.5.6 Although it is accepted that walkers, particularly with dogs, also used other parts of the Land, the impression that the Inspector gained from the evidence was that there had nonetheless been a material use of the footpaths, which must be discounted from the qualifying use. A number of other uses of the Land were more akin to the exercise of a right of way than the exercise of recreational lawful sports and pastimes over a village green. In relation to walking, both with and without dogs, a number of witnesses in support of the Application referred to walking along specific routes rather than recreating over the Land generally. The material extent of use along defined routes is further supported by other worn tracks such as the one runs along the M621 motorway, which is acknowledged to be a very popular footpath.

4.5.7 Whilst the Inspector acknowledged that the Land was also used more generally, the evidence supports the finding that a material amount of the use of the Land for walking and dog walking was more akin to the exercise of a right of way than the exercise of recreational rights over a village green and such use must be discounted from the qualifying use.

4.5.8 The evidence of each of the witnesses that they have used the Land for recreational activities throughout the relevant 20 year period was accepted. The impression the Inspector gained from such evidence, however, was that the primary use of the Land was for dog walking. The evidence establishes that the qualifying use of the Land for dog walking was carried out more than sporadically throughout the 20 year period by the general community.

4.5.9 Each of the witnesses who gave oral evidence in support of the Application, including the third parties, used the rights of way, other informal paths and other specific routes on the Land, albeit in addition to also using other parts of the Land to a greater or lesser extent. Hence, the Inspector concluded that a material amount of the use those witnesses must be discounted. In addition, the Inspector found that the written statements do not provide any information as to the frequency of any of the uses carried out nor can the extent of the qualifying use be ascertained from them.

4.5.10 Other recreational uses were carried out less frequently. Picnicking, blackberry picking, and sledging are necessarily seasonal activities. Moreover, none of the witnesses who gave oral evidence referred to their regular and frequent use of the Land for any other activities. None of the objection witnesses had observed any use of the Land off the paths beyond individuals occasionally straying off them.

4.5.11 In addition, the Inspector observed that detailed evidence as to agricultural use of the northern part of the Land must be taken into account. Cogent documentary evidence was provided by the current tenant farmer as to how he had used that area of the Land since 1991 from which it is apparent that barley was grown there for much of the relevant 20 year period. Photographic evidence is also consistent with his evidence and it is concluded that the northern section had been regularly cropped.

4.5.12 Taking into account all the evidence, the Inspector concluded that the use of the Land for lawful sports and pastimes has been sporadic and occasional during the relevant 20 year period, and insufficient on the balance of probabilities to demonstrate to a reasonable landowner that recreational rights were being asserted over the Land. Consequently, the conclusion of the Inspector was that element of the statutory criteria has not been established.

4.6 Use as of Right

4.6.1 The Inspector made the point in her report that the requirement that the use be without force in order to be “as of right” does not merely require the use to be without physical force, such as by breaking down a fence. It must also not be contentious.

4.6.2 In 2005, four signs were erected in four locations on the Land stating “Private Property Keep Out Manor House Farm”, which remain on the Land to date. If a landowner displays his opposition to the use of his land by erecting a suitably worded sign which is visible to and is actually seen by the local inhabitants then their subsequent use of the land would not be as of right.

4.6.3 The Inspector pointed out that as three of the signs were erected at public footpaths and said “Keep Out”, they were somewhat misleading. A reference to a requirement to keep to the footpath and keep off the remainder of the Land would have been clearer. Nonetheless, a sign stating “Private Property Keep Out” does make it sufficiently clear that a landowner is not acquiescing in the use of his land by trespassers, provided the signs are visible and would have been seen by users.

4.6.4 Two of the notices were located at the northern end and two on the eastern side. None were erected at the southern end of the Land. The locations chosen were the Landowners' own main points of access onto the Land. Although some of the users would have seen a sign, not all the users would have done so.

4.6.5 The Inspector made the point that it is unknown whether those users who submitted written evidence in support of the application saw, or ought to have seen, the signs as it would have been largely dependent upon their point of access. It cannot be assumed on the balance of probabilities that none of the use was from the access points where the signs were located. Therefore, the Inspector concluded that the extent of the qualifying use is thereby further reduced in that some of it would not have been 'as of right' from 2005 onwards.

4.7 Use by a Significant number of Inhabitants of the Locality or Neighbourhood within a Locality

4.7.1 The Applicant originally identified the electoral ward of Churwell as the Locality for the purpose of the Application. However this ward only came into existence in 2000 when Morley Town Council was established and consequently had not been in existence for the 20 years comprising the relevant period. Therefore, the Inspector concluded that the electoral ward of Churwell is not capable of being a relevant locality for the purposes of section 15(2) of the 2006 Act.

4.7.2 The Applicants subsequently confirmed at the Inquiry that the Application was instead being pursued on the basis of an alternative locality being relied upon, namely the ecclesiastical parish of St Peter's. A map of that parish boundary was provided by the Applicants to the Inquiry. An ecclesiastical parish is an established administrative area with fixed and identifiable boundaries. It is a recognised area known to the law, and, therefore, according to the Inspector, does amount to a qualifying locality within the meaning of the statutory criteria.

4.7.3 The Inspector made the point that in order to establish that element of the statutory criteria, there must be a reasonable spread of users across the locality rather than the users being confined to a particular part of the locality. It is not merely the number of users that are significant, but also their geographical distribution across the locality.

4.7.4 The Inspector concluded that the requisite geographical distribution of users across the locality has not been established. The evidence shows that the vast majority of users of the Land during the relevant 20 year period have been from the part of the locality that comprises the village of Churwell and not from the areas to the south and south west of Churwell that are included in the parish, such as Daisy Hill and New Brighton.

4.7.5 The absence of such evidence of use during the relevant period by inhabitants of the locality beyond Churwell means that a sufficient geographical spread of users across the locality to satisfy that element of the statutory criteria has not been established. Therefore, on that further basis, the Inspector concluded that the Applicant has failed to establish that the Land has been used by a significant number of the inhabitants of the identified locality.

4.8 The Inspector's Conclusions and Recommendation

4.8 The Inspector came to the following conclusions:-

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

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

4.8.8 In light of these conclusions, the Inspector's recommendation to the Council as Registration Authority is that the application should be rejected and that no part of the application Land be added to the Register of Town and Village Greens maintained by the Council.

5 Corporate Considerations

5.1 Consultation and Engagement

5.1.1 Following initial consideration the application was circulated to the land owners and the parties holding an interest and relevant Ward Members. A public notice concerning the application was advertised in the Yorkshire Post and posted on Land.

5.1.2 Members determined that a Public Hearing should be held to examine the evidence submitted, which was held at Morley Town Hall between 16 and 18 May 2012. All interested parties were informed of the hearing and a public notice giving details of the venue and date was in the Yorkshire Post and posted on Land prior to this date.

5.2 Equality and Diversity / Cohesion and Integration

5.2.1 The proposal in this report has no adverse implications for the Council's Policy on Equality and Diversity.

5.3 Council policies and City Priorities

As Commons Registration Authority, the Council is legally obliged to determine Town and Village Green applications impartially and with reference to the statutory provisions concerning Town and Village Green applications and relevant case law.

5.4 Resources and value for money

5.4.1 A fixed fee of £7500.00 was agreed with the Inspector in respect of her entire costs in relation to the hearing itself and all other pre and post hearing matters. No costs were incurred in respect of hiring a venue for the Hearing as it was held free of charge at Morley Town Hall. Costs of £1600.00 in total have been incurred in respect of three statutory newspaper notices.

5.5 Legal Implications, Access to Information and Call In

5.5.1 The determination of an application involves the taking of a quasi-judicial decision which may be the subject of legal challenge. It is therefore essential that the evidence relating to the application is properly tested prior to the taking of any decision. Having read the report of the Inspector and with particular reference to her conclusion and recommendation, Legal Officers consider that she has undertaken a thorough inquiry in relation to all the relevant aspects of both the village green application and the objections thereto. She has fully considered all the evidence and submissions that have been presented to her and in reaching her conclusions has taken into consideration all the appropriate legal provisions.

5.6 Risk Management

5.6.1 All decisions made by the Council are susceptible to legal challenge, decisions concerning village green applications appear more so in view of the imprecision of certain elements of the statutory test.

6 Conclusions

6.1 Following the testing of evidence at the Public Hearing the Inspector has concluded that the relevant statutory criteria have not been satisfied in relation to the application Land and that consequently no part of it should be registered as a town or village green.

7 Recommendations

7.1 Members are recommended to accept the report of the Inspector and to determine that the application to register land at Pit Hill Churwell as a town or village green be rejected and no part of the application Land be added to the Register of Town and Village Greens.

8 Background documents[1]

8.1 The Application Land plan.

8.2 Footpath plan.

8.3 The Inspector's Report.

[1] The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT PIT HILL, CHURWELL, LEEDS, WEST YORKSHIRE AS A TOWN OR VILLAGE GREEN

REPORT

of Miss Ruth Stockley

11 September 2012

Leeds City Council

Civic Hall

Leeds

LS1 1UR

Ref: A76/JL

Application No: VG 211

IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT

PIT HILL, CHURWELL, LEEDS, WEST YORKSHIRE

AS A TOWN OR VILLAGE GREEN

REPORT

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1. INTRODUCTION

1.1 This Report relates to an Application ("the Application") made under section 15(1) of the Commons Act 2006 ("the 2006 Act") to register land at Pit Hill, Churwell, Leeds, West Yorkshire ("the Land") as a town or village green. Under the 2006 Act, Leeds City Council, as the Registration Authority, is required to register land as a town or village green where the relevant statutory requirements have been met. The Registration Authority instructed me to hold a non-statutory public inquiry into the Application, to consider all the evidence and then to prepare a Report containing my findings and recommendations for consideration by the Authority.

1.2 I held such an Inquiry over 3 days, namely between 16 May 2012 and 18 May 2012 inclusive, and I also undertook an accompanied site visit on 18 May 2012.

1.3 Prior to the Inquiry, I held a Pre-Hearing Meeting on 13 March 2012 to discuss procedural matters. Subsequently, I issued directions as to the exchange of

evidence and of other documents. Those documents were duly provided to me by both Parties which significantly assisted my preparation for the Inquiry. The Applicants produced a bundle of documents containing their supporting witness statements and other documentary evidence in support of the Application and upon which they wished to rely, which I shall refer to in this Report as "AB". The Objectors produced a bundle of documents containing their witness statements and other documentary evidence in support of their Objection and upon which they wished to rely, which I shall refer to as "OB". I have read all the documents contained in the bundles and taken their contents into account in this Report.

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

2. THE APPLICATION

2.1 The Application was made by Save Pit Hill Churwell, C/o Churwell Action Group of 2 High Street, Morley, Leeds LS27 9AW ("the Applicants") and is dated 9 December 2010.[1] It was received by the Registration Authority on 14 December 2010. Part 5 of the Application Form states that the Land sought to be registered is usually known as "*Pit Hill*", and its location is described as "*Land to the east and west side of Hepworth Avenue, Churwell, Leeds, West Yorkshire*". A map was submitted with the Application attached to the Statutory Declaration which showed the Land subject to

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

the Application outlined in red.[2] In part 6 of the Application Form, the relevant "locality or neighbourhood within a locality" to which the claimed green relates is stated to be "*Churwell, Morley shown on the map at Appendix 2 marked as "Morley Town Council's Churwell Ward" and showing the electoral boundary of Churwell.*". I shall return to the relevant locality later in this Report.

2.2 The Application is made on the basis that section 15(2) of the 2006 Act applies, which provision contains the relevant qualifying criteria. The justification for the registration of the Land is set out in Part 7 of the Form. The Application is verified by a statutory declaration in support made on 9 December 2010. As to supporting documentation, a statement in support was submitted with the Application together with 120 witness statements and other documentary evidence in support.

2.3 The Application was advertised by the Registration Authority as a result of which an objection together with supporting documentation was received dated 14 July 2011 ("the Objection")[3] on behalf of Terence Wooding, Jean Wooding, Harry Gaythorpe and Margaret Gaythorpe ("the Objectors") who are the joint owners of the Land. Objections were also received from Paul Blakeley, Persimmon Homes and Christopher Wilson.[4] Mr Blakeley and Mr Wilson supported the Objectors' case presented to the Inquiry. The Applicants duly responded to the objections made on 8 September 2011 and supported their response with additional photographs and a letter

[2] At AB pages 11 and 12.
[3] The Statement of Objection is at OB pages 1-105.
[4] Their objections are at OB pages 5, 11 and 12.

from West Yorkshire Police dated 4 August 2011.[5] The Objectors replied to that response on 12 October 2011 with further documentary evidence in support.[6]

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

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

2.6 At the Inquiry, the Applicants were represented by Mrs Kathleen Hall, the Vice Chair of the Applicants, and the Objectors were represented by Counsel, Mr Alan Evans. Any third parties who were not being called as witnesses by the Applicants or the Objectors and wished to make any representations were invited to speak, and four additional persons did so.

3. THE APPLICATION LAND

3.1 The Application Land is identified on the map submitted with the Application on which it is outlined in red.[7]

3.2 It is an irregular shaped parcel of land measuring approximately 24.4 acres in area and is located within Churwell. It is an open, undeveloped site which generally comprises rough grassland, and slopes from east to west across its central areas and

[5] At AB tab 11.
[6] At OB tab 2.
[7] At AB pages 11 and 12.

from south to north from its central area to its northern end. There is a steeply rising hill in its central area to the eastern side known as the Pit Hill. Its western boundary comprises a tree belt positioned at the foot of the M621 motorway embankment with the M621 beyond. To the south is a mix of open land and residential development, and to the east is a mix of scrubland, housing and an enclosed open area. There is a track along its northern boundary.

3.3 Two definitive footpaths cross the Land in a generally north to south and east to west direction respectively. The former, Morley Footpath No. 40, runs from Daffil Avenue, across Hepworth Avenue in a generally north western direction, and then to Farnley Wood Beck in a north western direction. The other, Morley Footpath No. 30, runs from Hepworth Avenue to the M621 motorway. A further right of way known as Smools Lane, Morley Footpath No. 27, runs along the southern boundary of the Land, but outside the Land, from Elland Road, across the end of Grange Park Drive and over the M621 motorway on a bridge.[8] In addition, there are a number of other visible tracks crossing the Land. The Land is unfenced, and unrestricted access to it on foot is available from a number of points round the Land.

4. THE EVIDENCE

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

[8] The definitive and claimed rights of way on and in the vicinity of the Land are marked on the plan at OB page 164.

4.2 The evidence was not taken on oath.

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

CASE FOR THE APPLICANTS

Oral Evidence in Support of the Application

4.4 **Mrs Kathleen Hall**[9] is the Vice Chair of the Applicants and she has lived in Churwell village since 1978. Between 1978 and 1992, she lived on Woodcross, and from 1992 onwards, she has lived at 40 Grange Park Drive. Her use of the Land has taken place over a 25 year period, particularly with her two daughters who were born in 1979 and 1981, and they all used the Land together from her children being 4 or 5 and until they went to university when they were 18. The frequency of her use of the Land over that period was approximately once a week or once a fortnight. As a family, they walked on the Land, and as her children grew older, she took them there to go nature watching, bird watching, cycling, walking, picnicking during the summer and sledging when it snowed. Bonfire night is celebrated on the Land. She has also used the Land regularly for dog walking and general exercise, using it around twice a

[9] Her witness statements are at AB tab 12.

day with her dog over the last 10 years. She met many other dog walkers, cyclists, runners and walkers on the Land until it was recently ploughed. Dog walkers did not tend to keep to the tracks, but followed their dogs. The route she particularly took with her dog was to walk along the top of Pit Hill, go through a gap in the hedge, walk across the Land to the beck, and then follow a similar route back. It depended upon the weather, though, as the Land became very wet, particularly at the bottom end. She has seen the local junior rugby team doing fitness training around the Land during the summer periods over the last 3 or 4 years. They trained round the perimeter circuit of the entire Land. She has never been challenged when using the Land, has always had open access to it, and has never sought permission to use it.

4.5 She has never seen any agricultural use of the Land that would be inconsistent with its recreational use or which stopped recreational activities being carried out. The only time she has seen any such activity has been subsequent to the making of the Application. In the northern part of the Land, she had only previously seen long grass and gypsy ponies. She acknowledged that the Objectors' photographs showed a growing crop on that northern area.[10] She further accepted that aerial photographs produced to the Inquiry by the Objectors from 1991 ("the Objectors' 1991 aerial photograph") and from 1992 ("the Objectors' 1991 aerial photograph") showed the northern area as having been ploughed. However, she had used that part of the Land regularly as she and her family used to go there to feed the gypsy ponies, but she had never seen it being ploughed or harvested. She accepted the evidence that it had been ploughed, but not to the extent that it stopped people using the Land. Nothing had interfered with her and her dogs using the northern part of the Land where she had not

[10] At OB pages 284 and 285.

stuck to the footpath. She accepted that that part of the Land had not been as well used as the remainder. As a general pattern, evening use of the Land had tended to be mostly of the southern part of the Land, with the northern end being used more during the weekends when people had more time to get there. In relation to the northern part of the Land, she had not seen a crop of hay there in 1991. She would describe it as "*scraggy grass*" that grows there each year. She had never seen a baler nor a tractor there until post the making of the Application.

4.6 She confirmed that the address provided in the Application for the Applicants was the address for Churwell Action Group. However, she is not a member of that Group and has never attended any of its meetings. As to the Applicants themselves, an informal committee was established when they were set up comprising herself, Mr Hunter and Mrs Harrison, and they are the only members. The Applicants were not set up to prevent development at Pit Hill, but to prevent its loss as an area of open space. That was her objective and that of the 120 local residents who had completed the witness statements in support. Their intention was to "*save it*" as an area of open space for its future use as such by local residents rather than to react to a threat of its development. However, she acknowledged that the authors of the press release on the Applicants' website regarded the Applicants as part of "*a campaign to stop future development*" on the Land.[11]

4.7 In relation to the 120 witness statements submitted with the Application, she agreed that they were all in substantially the same format. She produced them, having researched various websites, including the open spaces society's. They were designed

[11] At OB page 122.

to give people the maximum number of choices in indicating matters such as how they had used the Land. She did not take any advice in relation to their format, but they had discussed it themselves, namely herself, Mr Hunter and Mrs Harrison. As to the method of distribution of the witness statements, the target audience was those they met daily on the Land. They put notices up at various entrances to the Land and advertisements in the local press. The statements could be downloaded. There was no door to door distribution.

4.8 A plan of the Land referred to in the statements as "Pit Hill" was on the Applicants' website. The first plan initially on the website was more limited than the Application Plan as she had understood that it was necessary to identify the area that was used most intensively and so that area was shown on the initial plan. However, within about a month, people informed her that the plan was incorrect because they had used a wider area, so it was amended to reflect the usage of the majority of users and a new plan was put onto the website. A plan was only attached to approximately 4 out of the 120 witness statements, but she was unaware which the 4 statements were as it was Mr Hunter who collated the forms. She identified that earlier plan.[12] It included an area of fenced grazing land to the west of houses on Hepworth Avenue that has subsequently been removed from the Application as the Applicants accepted that that area should not have been included as it was fenced. She agreed that insofar as individuals had signed a witness statement with reference to that erroneous plan, it could not be identified whether they were referring in their statements to having used that area that is no longer part of the Application. In addition, that plan did not include the northern part of the Application Land. At the time that plan was drawn up, she had

[12] At OB page 168.

only spoken to around ten people, but had formed the impression from those people that the northern part had not been used as intensively as the other parts of the Land and there had not been sufficient usage of it to justify its registration.

4.9 She confirmed that the extension of the area referred to in the blog reference for 12 November 2010 on the Applicants' website[13] is a reference to the extension to include the northern part of the Application Land. It was written by Mr Hunter, and states "*After taking advice and further discussions with locals who use Pit Hill, and especially those from Churwell New Village, it has been decided to extend the proposed area north toward Churwell New Village*". Churwell New Village was built in 2005. The Applicants had received a bundle of petitions from New Village, but no one from that area had used the Land for more than 20 years and so those petitions were not regarded by the Applicants as particularly relevant to the Application. The extension to the area did not result from discussions with the residents of Churwell New Village as the blog suggested, and she agreed that the blog was misleading in that regard. She was unaware of the date when the plan was changed, but was of the view that it was much earlier than 12 November 2010 despite that being the date of the blog referring to the extension. However, she acknowledged that if the amendment to include the northern area only occurred in November 2010, that would have post-dated all the witness statements. Those who did not have a plan attached to their witness statement were reliant upon the website for the plan or upon being shown a plan if they requested to see one. She accepted that there was nothing on the face of the witness statements themselves indicating the area of land being referred to. It is

[13] At OB page 128.

not possible to say whether any or which particular individuals looked at the plan on the website when filling in a witness statement or had the plan shown to them.

4.10 The Land is crossed by two definitive footpaths as marked in yellow on the aerial photograph provided.[14] Footpath 40 runs north to south starting at Daffil Avenue, whilst Footpath 30 runs east to west towards the motorway. There is another definitive footpath to the south of the Land, but outside it. She referred to there also being a number of informal paths across the Land as marked in red on the aerial photograph. They had not all existed throughout the relevant 20 year period, but had varied over the years. She acknowledged that a number of the activities listed in paragraph 4 of the witness statements were capable of being carried out on footpaths, although in her view they were not. There was nothing in the witness statements to indicate whether those activities had been carried out on or off the paths, although activities such as picnicking, kicking a ball and organised games would not be carried out on the paths. Dog walking is not an activity listed on all the pro-forma witness statements which she could not explain. She agreed that the paths would be where the most intensive use had been. On the aerial photographs, it was difficult to discern any informal paths on those dated 2002 and 2003,[15] whilst a more distinct pattern of markings was apparent on the one from 2006.[16] The Land had been used for off-road motor cycling, and she had challenged some of the riders. The tracks shown on the 2006 aerial photograph were not caused by that activity as the motor cyclists did not follow any paths but rode all over the area. No applications have been made by the Action Group to add any footpaths to the Definitive Map, although consideration has

[14] At AB page 167 and as also shown at OB page 164.
[15] AB pages 187 and 188.
[16] AB page 189.

been given to add the route along the motorway shown on the 2006 photograph,[17] and reference is made to that proposed application on the Applicants' website which refers to "*the very popular footpath*" running parallel to the M621 with a photograph of a worn path with the land to the side of it overgrown.[18] She was unaware whether any other footpath applications had been considered in relation to the Land.

4.11 The pro-forma witness statements do not refer to the frequency of activities carried out on the Land. It is therefore unknown whether the activities carried out have only been carried out once a year or daily or anything in-between. They also make no reference to whether the pattern of an individual's use has changed over the relevant 20 year period. The Application Land is approximately 25 acres in area. It includes three separate field parcels, the "Pit Hill" area itself, and a small area to the north of Daffil Woods. The access points onto the Land are identified on a plan prepared by the Applicants.[19] There is an informal access to the Land via the gap between the houses to the rear of Hepworth Avenue, but she was unable to say whether or not that access was reasonably well used. There is a formal access onto the southern part of the Land. She accepted that the witness statements do not indicate which parts of the Land have been used by individuals.

4.12 The witness statements do not ask whether individuals have ever seen notices on the Land. The Applicants do not dispute that notices were erected on the Land around 2005, but they were not obvious to people entering onto the Land. The Applicants were aware that there were signs on the Land when the Application was made, one of which is shown on one of the Applicants' photographs at the informal

[17] And on the plan at OB page 164.
[18] AB page 125.
[19] AB page 162.

access.[20] It is an obvious and clear sign, but it was generally assumed from the 11 or so people she had spoken to about it that the sign referred to the area where the garages had been that had been demolished 4 or 5 years ago as there had been asbestos in the garages. She agreed that it was also reasonable to regard the sign as requiring people to keep off the Land. However, the first time she saw what that notice said was around a week ago. She had not previously seen what the sign located near to Footpath 30 from Hepworth Avenue said as she did not use that means of access. There is also a sign at the point where Footpath 40 meets the northern point of access onto the Land.[21] She was unaware what that sign stated as it was behind her when she had used that access. The pro-forma witness statements do not ask any questions about the signs on the Land.

4.13 The only photographs showing use of the Land are those on the front cover of the Application.[22] The kite flyer is on Footpath 40; the cyclists, the dog walkers and the group of people are all or near to an informal path; and the sledging and the bonfire are on Pit Hill. She recalled there being a bonfire on the Land annually on the same part of the Land.

4.14 The pro-forma witness statements all refer in paragraph 2 to the author being "*an inhabitant of the locality of Churwell when using Pit Hill*". There was no plan available to those witnesses on the website or elsewhere indicating the area of that locality, but she pointed out that anyone who lives in Churwell knows where that area is. She confirmed that the Application was not being advanced on the basis of the Land having been used by the inhabitants of a neighbourhood within a locality. She

[20] AB page 165 photograph 13.
[21] The pole to which the sign is attached is shown on photograph 9 at AB page 165.
[22] AB page 1.

was the author of the Application's supporting statement. In that statement, the locality relied upon was Churwell, as defined by the boundaries of the electoral ward.[23] The Application is now being pursued on the basis that the locality is the ecclesiastical parish of St Peter's. No reliance is placed upon the locality being the township. The parish boundaries have been taken from the website. It extends to the north of the M621 in contrast to the ward boundary. There is a broad correspondence between the two eastern boundaries. The southern boundary of the parish extends further to the south than the electoral boundary. It also extends significantly further to the west than the ward boundary.

4.15 **Mrs Janet Harrison**[24] has lived at 45 Daffil Grove since 1988, and has used the Land from that time onwards. She has walked on all the Land throughout that period, having entered from various open access points, and has never been challenged, asked to stick to the footpaths or been prevented from using the Land. She regarded it as common land. She never saw any agricultural activity on the Land. She entered the Land from one of the accesses at the southern end and did a circular walk along the M621. However, she also meandered over the Land generally. Her main interest on the Land was to survey the local flora and fauna, which is a particular interest of hers. She is a voluntary ranger for Leeds City Council and provides information to their rangers. As the Land had not been farmed for crops or ploughed, it was a haven for native plants and wildlife. She took her niece and nephew with her when they were younger. They picnicked there in the summer months, and sledged and made snowmen when it snowed. The south end of the Land has self seeded ash trees growing and is gradually returning to woodland, which indicates that the Land

[23] As marked on the aerial photograph at AB page 14.
[24] Her witness statements are at AB tab 13.

has not been ploughed or farmed for a considerable period. In 2009, she found wild orchids in three locations on the Land, namely two at the field edge of the area of self-seeded trees and one at the base of the slag heap on the east side, which were Southern Marsh Orchids.[25] They were on the periphery of the Land. She had never noticed any on the Land until 2009. Such orchids generally thrive in nutrient-poor conditions, which is a further indication that the Land has not been ploughed or fertilised for a long period. They could not have thrived if the Land had been ploughed as alleged by the Objectors. When the Land was ploughed in February 2011, the orchids were destroyed. She had not discovered any orchids on the northern part of the Land, although she had not done any botanical surveys in that area. She had merely regularly walked the path parallel to the M621 and looked from there.

4.16 In relation to the Objectors' photograph showing crops growing on the northern part of the Land,[26] the M621 was completed in this area in approximately 1973. It is reasonable to assume that the tree planting on its embankment occurred around 1973 to 1975. She estimated that the trees on that embankment as shown on the photograph had been growing for between 10 and 15 years. She therefore accepted that the Objectors' contention that the photograph was taken in 1991 was within the bounds of her estimated range. She further accepted that the photograph showed a crop growing in that northern area of the Land. However, she had never seen a tractor pulling machinery cutting the grass on that area nor had she ever seen evidence that the grass in that location had been cut. She had seen no cropping of the northern area. Nonetheless, she accepted that from the photographic evidence "*you can't deny some kind of cropping has taken place there and therefore it must have been when I wasn't*

[25] The locations of the wild orchids she found are identified at AB page 185.
[26] OB page 284.

walking that part of the Land that it took place". She did not use the northern part of the Land as much in the earlier part of the relevant 20 year period as she did not have as much time then, but she visited it more frequently in the later years and did not see any cropping then. She used it in those earlier years to do a circular walk round its perimeter, and she saw others doing that similar circuit walk, although people also walked over the Land as shown by the criss-cross paths that have been made. She agreed that the Objectors' 1991 aerial photograph showed that the northern part of the Land had been ploughed and would not suggest any other alternative explanation for its appearance on that photograph. She further agreed that the 1992 aerial photograph showed some activity over the entirety of the Land and that there was no other reasonable explanation than it was agricultural activity. She had no recollection of such activity during those years, though.

4.17 She had seen the notices that are currently on the Land and accepted that they were erected in 2005. The two notices at the northern end just say "keep out", and as one of them is by the footpath sign it is misleading. She understood the signs to mean "do not enter". However, as a footpath goes across the Land, the signs are unclear because they do not state "please keep to the footpath". She had not used the informal access to the Land where the demolished garages had been and where the other sign is located. She had not seen others use that access either, but acknowledged that there was a worn track there. It is not an easy means of access due to the nettles, but children use it with their bicycles. The access point she mainly uses is the formal one along Footpath 40 nearest to where she lives.

4.18 She has been a member of the Churwell Action Group since 2004. It came into existence in 2002. It has a formal structure. The Applicants do not have such a formal structure, but they command support in the local area. She has not been involved in the blog on the Applicants' website. Mr Hunter is its author. She had no independent memory as to when the amended plan showing the Application Land came to be put on the website.

4.19 **Mr Steven Hunter**[27] has lived at 45 Daffil Grove since 1988, and is part of the same household as Mrs Harrison. He has walked on the Land regularly from that time onwards and has also enjoyed wildlife watching on the Land. He has walked on the Land more frequently since obtaining a dog approximately four years ago, and has seen others using the Land walking with and without dogs and playing with their children. During the early 1990's, he used the southern part of the Land, which was nearer to where he lived, around two or three times per month, and the northern part around two or three times a year. His main dog walking route was the top of Pit Hill and the southern end of the Land. At the southern end, he usually entered via the public footpath at Hepworth Avenue or at Smools Lane. He then walked along the side of the motorway and on the footpath. He had seen the sign at the southern end, but he understood it to refer to that piece of land only. He had never seen the signs at the northern end despite being there approximately two or three times a year. He has never been challenged or restricted from walking on the Land. He has never seen Mr Blakeley on the Land. In 2008, he became a voluntary Tree Warden working with Leeds City Council's Parks and Forestry departments monitoring and managing the local woodland green spaces around Churwell with a group of local volunteers. From

[27] His witness statements are at AB tab 14.

around 2008, there was regular off-road biking on the Land and he frequently contacted the police over that. It was a real problem for a time. Fly tipping also occurred in Daffil Woods. The garages to the rear of Hepworth Avenue were demolished by the Landowners. It was thought that the Land was common land. It was not maintained by the Landowners, but the local residents have managed it.

4.20 He had never seen any agricultural activity on the Land, such as ploughing, harvesting, fertilising, cutting, hay crops, tractors or combine harvesters. However, he acknowledged that the Objectors' 1991 and 1992 aerial photographs showed agricultural activity on the Land and he could provide no other explanation for what was shown on those photographs. He had seen horses grazing on the Land. They were tethered at the southern end, and he had also seen them at the northern end virtually every time he walked to that part of the Land.

4.21 He is responsible for writing the blog on the Applicants' website and has made all the entries. As soon as he was aware that it was intended to extend the Application Land, he put the amended map on the blog. There was no methodology as to where the map was placed on the blog as he was able to put it anywhere. Nonetheless, he acknowledged that the text in the blog was all written in chronological order, and that entries were made to the blog on a chronological basis. The reference to the map showing the amended area is contained in the entry dated 12 November 2010,[28] although the date he entered something on the blog could be a while after it occurred. It was not necessarily the case that he would have placed the reference to the amended area on the blog as soon as the decision was made to extend that area. It was not done

[28] OB page 128.

immediately, but as soon as possible given his work commitments. It could have been entered on the blog two or three weeks after the decision was taken. He had no independent memory as to when the decision to extend the area of the Land was arrived at. However, he accepted that most of the witness statements would have already been completed at the time when the decision was taken to extend the area if the above time periods were correct given that the latest forms are dated 12 October 2010. He further accepted that until that decision had been taken, no one could have been aware of the amended area. Hence, if the amendment was not made until the end of October 2010, none of the witness statements would have had an amended plan attached. Indeed, his own witness statement was dated 17 September 2010 and so was one of the forms which related to the original plan. Nonetheless, he maintained that most people were aware of the extent of the Land. There was nothing on the face of the form referring to the map. He stapled the plan to the back of the witness statement forms that he posted; it was also attached to the e-mails he sent; and it was placed on the website so that it could be downloaded. As soon as the Applicants made the decision to amend the area, the amended plan was attached to witness statements that were subsequently sent out.

4.22 **Mrs Wenda Whitehead**[29] lives at 71 Elland Road, and has used the Land since 1960. It has always been regarded locally as common land, and she had never sought permission to use it. She was unaware who owned the Land. Her children played on the Land when they were young, which was prior to the relevant 20 year period, and her grandchildren used it until it was recently ploughed over. They live on Park Street in Churwell and she sees them daily. During the relevant 20 year period,

[29] Her witness statements are at AB tab 15.

she exercised her dogs on the Land, when she tried to keep to the footpaths, but her dogs did not and she had to chase them a couple of times. She tried to keep to the paths because it was easier to walk on them. The grass became overgrown in parts. She always saw other dog walkers using the Land. She had one dog for around two years and another one at a different time for approximately five or six years. She was aware that off-road motor cycling had taken place on the Land which would have made tracks on the Land. Until 1998, she assisted with the local Brownies Pack associated with Back Green Methodist Church in Churwell for over 20 years, and often took them onto the Land when the weather was good to look at the flora and fauna, to walk and to play games. A couple of years ago, her grandchildren and other children used the top of Pit Hill for kite flying. During periods of snow, the Land was used for sledging. She and her family also enjoyed the bonfires and firework displays organised on the Land annually on the south eastern part of the Land near to the houses to which anyone could come along. There were no other organised activities on the Land. A few years ago, she saw children camping on the Land during the summer holidays. She did not recall there being any crops on the Land and had seen no agricultural activities on the Land. However, she had never been onto the northern part of the Land. She had never seen Mr Blakeley until the Inquiry. She was aware of a sign being erected, but assumed it related to that particular area of land where the garages had been. There was a well worn path onto the Land there, but she rarely used it.

4.23 She was a founder member of the Action Group and remains a member. The Action Group has a history of campaigning to stop development, but that is not the

reason she is supporting this Application. She has also been a Morley Town Councillor since 2003. The New Village was completed around 2005.

4.24 **Mr John Bilbie**[30] has lived at 29 Hepworth Avenue for approximately 10 years. Prior to that, he lived in Cottingley for approximately one year, and before that, he lived at five different addresses in Churwell. He has lived in Churwell throughout the relevant 20 year period with the exception of the 12 months he was in Cottingley. He was born in 1941, and as a child, he played on the Land, including football and cricket. Children camped out on the Land during the summer, and families had picnics. On Sundays, half the village would be using the Land. Those matters all pre-date the relevant 20 year period, but support his belief that it was common land. Moreover, he has also used the Land as an adult and within the relevant 20 year period, and continues to do so on a regular basis, for activities such as dog walking, playing with his grandchildren and showing them the flora and fauna on the Land. He has used the northern part of the Land during that period to exercise his dog, but not frequently. He did not have a particular route that he followed. However, there were tethered horses all over the Land, not merely in the southern area, and he avoided them. They have been on the Land for many years, including during the relevant 20 year period. He was unaware to whom they belonged or whether they were gypsy horses. He tended to walk round the footpaths, but he would follow his dog if it went off the paths. Bonfires have been held on the Land for as long as he can recall. A communal "Hepworth Estate" bonfire has been held on the Land annually over the last 4 or 5 years. He also had his own family bonfire on the Land just over the fence of his garden. Nothing stopped people using the Land until its recent ploughing. There

[30] His witness statements are at AB tab 16.

were never any restrictions on using the Land, and no one ever sought to prevent anyone from using it. Access to the Land has always been open from quite a few points of entry, and only recently have warning notices been erected. His main access point onto the Land now is via the formal access from the footpath from Hepworth Avenue. He recalls a sign recently being erected there, but he understood it to refer to the small area by the garages and not to the Land itself which he regarded as common land to which there was open access and free use by all residents of Churwell. He has occasionally used the informal access through the garages, but not often because it smelt in that area and there were lots of nettles there. It was used mainly by the gypsy ponies. His use of the Land has never been challenged. He has never seen Mr Blakeley. He saw a person on a tractor on the Land, but only in 2011, and he never saw any agricultural activity on the Land during the relevant 20 year period. The field between the Pit Hill and the M621 motorway,[31] which he called the rhubarb field, lay fallow for many years and only within the last year has it been ploughed over twice.

Written Evidence in Support of the Application

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

4.26 However, whilst the Registration Authority must also take into account all such written evidence, I and the Authority must bear in mind that it has not been tested by cross examination. Hence, particularly where it is in conflict with oral

[31] He identified those fields as the Part of the Land shown outlined in red on the map at OB page 325.

evidence given to the Inquiry, I have attributed such evidence less weight as it was not subject to such cross examination.

CASE FOR THE OBJECTORS

Oral Evidence Objecting to the Application

4.27 **Mr Terence Wooding**[32] is a joint owner of the Land and one of the Objectors. He and his wife bought the Land jointly with Mr and Mrs Gaythorpe in 1983 as part of a wider area, which included an area of land on the other side of the M621 motorway that they sold in 2008.[33] The Land has only been used for agricultural activities since they acquired it. Moreover, Mr Gaythorpe had been the tenant farmer of the Land since 1959, and he farmed it until his retirement in 1991. The extent of the Application Land has changed during the course of the collation of evidence in support.[34] The initial plan included an area to the east at the top of the embankment known as the Pit Hill that is, and has been for many years, rented out by the Landowners as grazing land for horses.[35] That is no longer included as part of the Application. To the north of that is an area rented out and used as allotments which has never been part of the Application.[36] The current plan has also been extended to include a further area to the north which is currently farmed by Mr Blakeley and previously by Mr Gaythorpe.

4.28 The Land was farmed by Mr Harry Gaythorpe until his retirement in 1991. From the late 1980's until 1991, he cultivated seed hay on the southern part of the Land. That area where the seed had previously been sown is a darker greener colour

[32] His witness statement is at OB tab 4.
[33] The area of land acquired is outlined in red on the plan at OB page 150.
[34] The original area is shown at OB page 168 in contrast to the revised area at OB page 166.
[35] That area is outlined in green on the plan at OB page 170.
[36] That area is outlined in blue on the plan at OB page 170.

on the aerial photograph dated 1 January 2002.[37] Once a year, Mr Wooding assisted with the harvesting of the seed hay when it was cut using an implement attached and pulled on the back of a tractor. The hay was turned over about a week after it had been cut, and was then baled once it had dried out using a tractor and a baler. The bales were then transported to Manor House Farm where they were stored. Whilst the seed hay was growing and particularly near to the time when it was harvested, the Land was unsuitable for recreational use as the crop grew to be extremely long and was an irritant. On the northern part of the Land, Mr Gaythorpe grew a variety of crops, namely rhubarb, potatoes and winter barley until 1992 when Mr Blakeley took over farming the Land. The presence of crops on that northern area would make it unsuitable for recreational use. The majority of the Land[38] has been rented to Mr Blakeley since Mr Gaythorpe's retirement in 1991/1992 who pays an annual rent of £350. He has farmed that area since that time, and until 2005 when all that land was put on set aside, he grew crops on the northern area. The Land is unsuitable for recreational use when there are crops growing. Mr Wooding gave permission to the owner of horses to keep them on the southern part of the Land.[39] They kept the grass down. He was unaware of the dates, but the horses were on the Land for in the region of 20 years.

4.29 Motorcycles apparently started trespassing on the Land around 2003, although he had never seen them. It is not possible to fence off the entire area of the Land because there are several public rights of way running across it. Further, the cost of doing so would be enormous. By 2005, Churwell New Village was being built and due to the increased number of residential properties in the area, he and the other

[37] At OB page 174.
[38] Namely the area outlined in red on the plan at OB page 170.
[39] Namely the area outlined in red on the plan at OB page 172.

Landowners took steps to reinforce the position that the Land was private and not for public use. It was not the Land's recreational use that was a concern but, rather, the increased fly tipping on the Land. There was already an old sign in situ stating "Keep Out Private Property Manor House Farm" near to the northern area that was present when they bought the Land in 1983.[40] There was also a wooden gate in that location next to a stile that was present in 1983, but it was damaged by vandals and the locks snapped over time. Its current condition is shown on a recent photograph taken after the end of the relevant 20 year period.[41] In March 2005, he purchased four signs stating "Private Property KEEP OUT, Manor House Farm" with posts. He referred to a copy of the invoice dated 14 March 2005 made out to A.R.A. which was his business.[42] He had the signs put up in four separate locations on the Land which were chosen because they were the main access points onto the Land that the Landowners used in order to make it clear to people that the Land was private property and not for public use. The four locations were at the northern end close to the broken gate, at the northern end on public Footpath No 40, on the eastern side on the track leading to the allotments on public Footpath No 30, and at the access near to the now demolished garages.[43] He had taken contemporaneous photographs of each of the signs.[44] They were metal plate signs mounted on metal posts which were secured in place with concrete and they remain in situ. The Council subsequently put up its own signs on those posts in relation to tipping on the Land. He acknowledged that the majority of users of the Land lived to the south of the Land,[45] and so the access points in those locations would be likely to be the most well used although there is no survey

[40] The position of that sign is marked with an X on the plan at OB page 189.
[41] At OB page 178.
[42] At OB page 180.
[43] The locations of the four signs are marked on the plan at OB page 182.
[44] At OB pages 404-410.
[45] As shown on the plan at AB page 169.

evidence relating to the access points used. He accepted that no signs were erected at any of such access points.

4.30 He was on the Land approximately once a month on average. The purpose was to check that no unauthorised persons were on the Land, such as gypsies, and to check the allotments. He merely saw the odd dog walker on the footpaths, and only saw dogs straying off them. The footpaths were not used much until Churwell New Village was built. They are now used as a short cut, such as to school. Children have also sledged down the steep Pit Hill slope during snowy conditions.

4.31 **Mr Paul Blakeley**[46] is the tenant farmer of the Land. He objected to the Application by letter dated 30 June 2011,[47] and he responded to the Applicants' response to his objection.[48] He has rented the Land since Mr Gaythorpe retired towards the end of 1991. His current rent is £350 per annum. He previously also farmed the land on the other side of the M621 motorway, but that was sold off by the Objectors to another farmer in 2008.[49] He has planted crops on the northern part of the Land.[50] He has not farmed the southern part of the Land[51] because when he tried to plough that area in 1994, a grey ash came to the surface of the soil about 2 acres to the south of the northern area making that area unsuitable for planting. As a result, that southern area has not had crops grown on it for most of the time that he has rented the Land save that he planted the 2 acres with corn between around 1994 and 2000.

[46] His witness statement is at OB tab 8.
[47] His objection is at OB page 5.
[48] His response is at OB page 135.
[49] That land is hatched blue on the plan at OB page 305.
[50] That area is outlined in blue on the plan at OB page 307.
[51] As outlined in green on the plan at OB page 307.

4.32 In 1992, he registered some of the Land[52] in the Defra IACS Scheme which compensated farmers for the low price of corn.[53] He referred to his tenancy copies of the field data printouts relating to that area of the Land as submitted by him to Defra up to 2005, save that the printouts for 1992 and 2003 are missing.[54] The 2 acres of the southern area that he planted were not part of those documentary records because it would have been too complicated and not worthwhile. The IACS Scheme was a system of recording what agricultural land had been used for in order to enable a farmer to claim payment for it. He had completed the data sheets himself up until 2005, and thereafter he employed a land agent who completed the paperwork. There were financial penalties imposed if the paperwork was not accurate which were deducted from the payment received, and random checking took place so anyone could be checked at any time. It was therefore very important for the paperwork to be correct. The data sheets show that barley was being grown on both fields in the northern part of the Land as of 1993; that one of those fields was left for natural regeneration, or set-aside, in 1994, which is part of normal agricultural practice, and the other was used for the growing of winter barley; that both fields were used for the growing of winter barley in 1995; for the growing of barley in 1996; for the growing of barley and for set-aside in 1997; for the growing of barley in both fields in 1998 to 2001 inclusive; both fields were set-aside in 2002; and both were used for barley growing in 2004. Therefore, up until 2005, he mostly used that part of the Land to grow barley.[55] The entirety of that area was planted with a one metre strip being left all round the edge. If the crops had been walked on, that would be apparent. In May 2002, Defra physically inspected all the land registered in the Defra Scheme that he

[52] Namely that area edged red on the plan at OB page 309.
[53] The IACS Scheme was changed to the Single Farm Payment Scheme in 2005.
[54] At OB pages 311-321.
[55] A table showing the crops grown on the Land compiled by Mr Blakeley from the field records is at OB page 371.

farmed. He referred to a copy of their report.[56] Such checks are carried out by Defra to check that farm land is being used as claimed by the farmer. They ascertain what has been over-claimed for and what has been under-claimed for in determining the appropriate payment. At the time of that inspection, the Land was being set-aside.

4.33 In 2005, he registered the Land into the Single Farm Payment Scheme. That also included an area further to the south.[57] It was a new scheme which superseded the previous one. He referred to copies of the field data printouts submitted to the Rural Payments Agency,[58] although the printouts for the years 2005, 2007 and 2008 are missing. His land agent prepared that paperwork. No crops were grown on the Land post 2005 as the Land has been in set-aside since then, but the use of the Land still had to be recorded for the purposes of the payment scheme. When the Land is on set-aside, he goes over it with a large machine resembling a lawnmower and tops it off in accordance with good farming practice. It would take approximately one day to top off the Land, and it would be evident that such had taken place. The soil in the southern part of the Land is improving, and in January 2011 he was able to plough all the Land that is registered in the Single Farm Payment Scheme to an 8 or 9 inch depth. He ploughed the Land again in 2012 and hopes to plant a crop of spring barley. However, he acknowledged that during the relevant 20 year period, he only cropped the northern area save for the additional 2 acres of the southern area.

4.34 As to the processes involved in growing barley, the Land is firstly ploughed in September which involves going over it with a tractor and ploughing to a depth of around 8 or 9 inches. The crop is then planted, he goes over the ploughed land with a

[56] At OB pages 374-382.
[57] The area registered is outlined in red at OB page 325.
[58] At OB pages 327-369.

roller and then drills the seed. He usually goes back to the Land once or twice before the spring to tend to it if weeds have started to grow which involves spraying the Land to kill the weeds using a large tractor. In spring, he returns to the Land in a tractor to put nitrogen fertiliser on the crop, and a further top dressing is added with a spreader a few weeks later. At the end of April or early May, he sprays the crop twice with fungicide, and the crop is subsequently harvested using a large combine harvester, a tractor and trailer which takes about one day. Shortly afterwards, he bales the straw which is then removed from the Land. The Objectors' 1991 aerial photograph dated August 1991 shows the northern area when the barley has been cut. The white lines on the photograph are the straw that has come out of the combine harvester. The Objectors' 1992 aerial photograph shows a crop of barley growing in that area. The tramlines where he sprays are apparent, and the marks in the crop are what would be expected for barley. The barley grew to varying heights between around 3 feet down to 1.5 feet.

4.35 Up until around 2 years ago, a man named John kept horses that grazed on the southern part of the Land. When there have not been horses there, he has topped off that area. When cropping the Land, he would visit it around 12 times a year; when it was on set-aside, he only visited once a year. He has only seen people on the Land straying from the public rights of way "*occasionally*". When he has done so, he has shouted from his tractor or approached them and informed them that the Land is private and pointed out the public rights of way, but that has only occurred infrequently when he has been working on the Land. The only people he has seen on the Land have been joy riders on motor bikes, and the occasional dog walkers who

mainly walk on the public rights of way but sometimes stray off them to retrieve their dogs.

4.36 **Mr Stephen Gaythorpe**[59] is the son of two of the joint Landowners. He has lived in Churwell since he was nine months old. During the relevant 20 year period, he lived at 53 Old Road from 1986 until 2003, and then Manor House Farm from 2003 onwards. His father farmed the Land from 1959 until his retirement in 1991. During that period, he visited the Land daily to assist his father and to exercise his dog. He subsequently used the Land a couple of times a week to exercise his dogs. His son was born in 1990 and he went on the Land to see his grandfather working in his tractor. He referred to a photograph taken around 1993 showing his son and father in a tractor with baled straw on the attached trailer that had been harvested on the Land.[60] The land on the other side of the M621 motorway was sold off by his parents and the other Landowners to another farmer in 2008.

4.37 Whilst farming the Land, his father grew various crops on virtually all of the Land, including winter barley, seed hay, rhubarb, cauliflowers, potatoes and other vegetables. He cropped the area where Mr Blakeley had found grey ash in the soil and had no problems with grey ash. He rotated the crops he grew, but from the late 1980s until his retirement, he mainly grew winter barley on the Land. The only part of the Land that has always remained unplanted is the steep Pit Hill slope itself. It was very important to his father to make the best use of all of the Land as he only had 75 acres and that was his livelihood. He referred to two photographs showing winter barley growing on the Land taken by his wife in 1991 at the northern part of the Land

[59] His witness statement is at OB tab 7.
[60] At OB page 276.

looking towards the M621.[61] When his father planted winter barley on the Land, he used a tractor to plough the Land in September, and then returned with a tractor and roller in October to roll and then drill the barley seed. His father then checked the crop regularly. In November, he returned to the Land in a tractor to weed and spray it. Then in spring, fertiliser would be put on the Land twice using a tractor and sprayer, and in summer, he and his father harvested the crop using a combine harvester, baled the straw and took it away.

4.38 Up until around ten years ago, he only very occasionally saw people on the Land walking on the public rights of way. He went to the Land a couple of times a week after his father retired in 1991 until around 2002. Those numbers of people walking dogs on the public rights of way increased once Churwell New Village was built, but that use remains occasional. Most people he has seen walking dogs on the Land stick to the public rights of way whilst an odd one veers off. When he has seen that, he has challenged the individuals and shown them where the footpaths are located. Over the last couple of years, people seem to be deliberately walking off the footpaths and there has been a gradual increase in that. He has also seen children sledging down the steep Pit Hill slope on a handful of occasions.

4.39 **Mrs Margaret Gaythorpe**[62] is a joint owner of the Land and one of the Objectors. She confirmed the evidence contained in her witness statement. From 2003 onwards, she was responsible for collecting the rent for the Land from Mr Blakeley. It had previously been collected by Mr Wooding. She referred to extracts from her rent

[61] At OB pages 284-285.
[62] Her witness statement is at OB tab 6.

book.[63] He paid in arrears by one year. Up until 2008, he paid £550 annual rent which included the rent for the farmland on the other side of the M621. When that was sold in 2008, his rent was reduced to £350 per annum.

4.40 **Mrs Jean Wooding**[64] is a joint owner of the Land and one of the Objectors. She confirmed the evidence contained in her witness statement.[65] She pointed out that she had been to Majorca for around 6 weeks and returned on 10 September 2010 at which time when she went onto the internet, the Applicants' website still referred to the unamended plan of the land that was subject to the Application. She went onto the Land about once a fortnight to exercise her father's dog from the early 1960's until around 2000. They always had a dog throughout that period. She never saw anyone using the Land other than on the footpaths. The footpath leading down to Churwell New Village was little used, but the footpath close to the Pit Hill was heavily used. She has not used the Land with any regularity since around 2000.

Written Evidence Objecting to the Application

4.41 In addition to the evidence of witnesses who appeared at the Inquiry, I have also considered and had regard to the written evidence submitted in support of the objection to the Application in the form of the additional witness statement of Mr Colin Barran.[66] However, in relation to such written evidence, I refer to and repeat my observations in paragraph 4.26 above that whilst such written evidence must be taken into account, I and the Registration Authority must bear in mind that it has not been tested by cross examination. Hence, particularly where it is in conflict with any

[63] At OB pages 230-256.
[64] Her witness statement is at OB tab 5.
[65] Subject to making an amendment to paragraph 27 relating to her visiting the Land once a fortnight until about 5 years ago which she corrected to about 10 years ago.
[66] His witness statement is at OB tab 9.

oral evidence given to the Inquiry, I have attributed such evidence less weight as it was not subject to cross examination.

THIRD PARTY EVIDENCE

4.42 During the Inquiry, I invited any other persons who wished to give evidence to do so. Four individuals did so, and their evidence was subject to cross examination.

4.43 **Mr Alfred Mann**[67] has lived at 36 Manor Farm Drive since 1962 which overlooks the fields comprising the Land at the rear. He always understood the northern part of the Land to be common land. He has walked over the Land for 50 years, and has been blackberry picking on the Land. His children have also used it, and he has taken his grandchildren onto the Land with motorbikes. He entered the Land via the garages, and has never seen any notice there. He has never seen any notices on the Land. The only agricultural activity he has seen on the northern part of the Land was ploughing for a short period when he first came to the area in the 1960's, but not in the later years. As to the southern part of the Land below Pit Hill, he recalled rhubarb and potatoes growing there during the early years when he used the paths in that area. He did not go the southern part of the Land frequently, but recalled some agricultural activity on that area, and had seen a tractor there but only rarely. He had never seen a combine harvester there. He acknowledged that he had "*possibly*" seen that area in the condition as shown on the Objectors' 1991 aerial photograph at that time, but it was not a regular occurrence. In relation to the Objectors' 1992 aerial photograph showing a crop growing in two fields at the southern end of the Land, he also acknowledged that there were "*probably*" crops

[67] His pro-forma witness statement is at AB page 114.

growing there but only very rarely. He never regarded the southern area as common land, but he did not use it often. He agreed that he would not regard any land that was being ploughed as common land, but he walked on a path on that southern area.

4.44 **Mr Michael Mills**[68] has lived at 1 Daffil Grange Way since November 1989 with his wife and two children who were aged 4 and 9 at that time. He acquired a labrador in 1990 which he had for 16 years and he took her for a walk around three times a day. He walked everywhere with his dog, including on the Land which was part of his regular route. His particular route changed, though, dependent upon the weather and his time constraints. He walked on the Land nearly every day where he let his dog off the lead. Some of the routes he took across the Land were clearly rights of way, but there were also numerous informal routes across it, and his dog would run on the Land and he sometimes followed her. He described taking linear south to north routes across the Land, and stated that he had also walked east to west across it. He did not go to the northern part of the Land as regularly due to time constraints, but went there around once or twice a week. The access to the Land he used most often was the one nearest his house, and he never accessed the Land at the garages. His daughter now has a dog which he looks after while she is at work. He also used the Land with his children, playing ball games there, riding bikes, and flying kites on the Land as it was a windy area given the M621, and he sledged there with his children in the winter. He takes his 5 year old grandson there now who stays with him two days a week. He has seen horses tethered on the Land, and there are blackberries along the footpath. He met one of his neighbours whilst taking his dog for a walk on the Land who handed him a questionnaire which is how he became interested in the

[68] His pro-forma witness statement is at AB page 155.

Application. He was surprised that it was not common land because he has never been stopped from using it.

4.45 He has only recently seen the Land ploughed. He had not seen any previous agricultural activity on the Land save for horses being there. He acknowledged that the northern part of the Land appears to be ploughed in the Objectors' 1991 aerial photograph, but he had never seen that. He also recognised the southern part of the Land on other photographs showing crops on that area,[69] but he had never seen such crops growing in that area. He had never seen a growing crop, a tractor or a combine harvester on the Land. If there had been crops there, he would not have walked on them. He was not aware of any notices being erected on the Land in 2005. He recalled the whole area being a mining area and a large pit being there. There has been a lack of maintenance of the Land and fly tipping has taken place there.

4.46 **Mr Christopher Wilson**[70] has lived in Churwell for 50 years, and at his current address at 45 Manor Farm Drive for the last 40 years. He is 63 years of age. He is the brother of Mrs Jean Wooding, one of the Objectors and joint Landowner. During the last 40 years, he has owned 7 dogs which he walked on the Land two or three times a day. He never saw anyone picnicking or camping on the Land, but had only seen people dog walking there. It was unsuitable for football, and children would use the park. He has five children and they only used the Land to sledge down the Pit Hill during snowy conditions. He had only ever used the footpaths and he had only seen people using the rights of way.

[69] At OB pages 284 and 285.
[70] His letter in support of the Objection is at OB page 11.

4.47 **Mrs Stephanie Gaythorpe** lives at Manor House Farm and has lived in Churwell since 1986. She has farmed the Land with her father-in-law on many occasions, driven tractors on it and brought the bales in, and she has also walked her dogs on the footpaths. She has not seen many people using the Land. She continues to walk her dogs on the Land. Since New Village was built, there are marginally more people using the Land, but she has only seen them on the footpaths walking dogs. She has never seen any children playing on the Land.

5. THE LEGAL FRAMEWORK

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

Commons Act 2006

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

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

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

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

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

(i) the Application Land comprises "land" within the meaning of the 2006 Act;

(ii) the Land has been used for lawful sports and pastimes;

(iii) such use has been for a period of not less than 20 years;

(iv) such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;

(v) such use has been as of right; and

(vi) such use continued at the time of the Application.

Burden and Standard of Proof

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

5.6 Further, when considering whether or not the Applicants have discharged the evidential burden of proving that the Land has become a town or village green, it is important to have regard to the guidance given by Lord Bingham in ***R. v Sunderland City Council ex parte Beresford***[71] where, at paragraph 2, he noted as follows:-

[71] [2004] 1 AC 889.

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

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

Statutory Criteria

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

Land

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

5.9 However, it was stated by way of *obiter dictum* by the majority of the House of Lords in ***Oxfordshire County Council v. Oxford City Council***[72] that there is no

[72] [2006] 2 AC 674 per Lord Hoffmann at paragraphs 37 to 39.

requirement that a piece of land must have any particular characteristics consistent with the concept of a village green in order to be registered.

Lawful Sports and Pastimes

5.10 It was made clear in ***R. v. Oxfordshire County Council ex parte Sunningwell Parish Council***[73] that "*lawful sports and pastimes*" is a composite expression and so it is sufficient for a use to be either a lawful sport or a lawful pastime. Moreover, it includes present day sports and pastimes and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and children's play.

5.11 However, that element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way. In ***R. (Laing Homes Limited) v. Buckinghamshire County Council***[74], Sullivan J. (as he then was) noted at paragraph 102 that:-

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

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

> "*from the landowner's point of view it may be very important to distinguish between the two rights. He may be content that local inhabitants should cross*

[73] [2000] 1 AC 335 at 356F to 357E.
[74] [2003] EWHC 1578 (Admin).

his land along a defined route, around the edge of his fields, but would vigorously resist if it appeared to him that a right to roam across the whole of his fields was being asserted."

5.12 More recently, Lightman J. stated at first instance in ***Oxfordshire County Council v. Oxford City Council***[75] at paragraph 102:-

"*Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. Use of a track merely as an access to a potential green will ordinarily be referable only to exercise of a public right of way to the green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential green may be recreational use of land as a green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green).*"

He went on area paragraph 103 to state:-

"*The critical question must be how the matter would have appeared to a reasonable landowner observing the user made of his land, and in particular whether the user of tracks would have appeared to be referable to use as a*

[75] [2004] Ch. 253.

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

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

Continuity and Sufficiency of Use over 20 Year Period

5.13 The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period: ***Hollins v. Verney***.[76]

5.14 Further, the use has to be of such a nature and frequency as to show the landowner that a right is being asserted and it must be more than sporadic intrusion onto the land. It must give the landowner the appearance that rights of a continuous nature are being asserted. The fundamental issue is to assess how the matters would

[76] (1884) 13 QBD 304.

have appeared to the landowner: ***R. (on the application of Lewis) v. Redcar and Cleveland Borough Council***.[77]

Locality or Neighbourhood within a Locality

5.15 A "*locality*" must be a division of the County known to the law, such as a borough, parish or manor: ***MoD v Wiltshire CC***;[78] ***R. (on the application of Cheltenham Builders Limited) v. South Gloucestershire DC***;[79] and ***R. (Laing Homes Limited) v. Buckinghamshire CC***.[80] A locality cannot be created simply by drawing a line on a plan: ***Cheltenham Builders*** case.[81]

5.16 In contrast, a "*neighbourhood*" need not be a recognised administrative unit. Lord Hoffmann pointed out in ***Oxfordshire County Council v. Oxford City Council***[82] that the statutory criteria of "*any neighbourhood within a locality*" is "*obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries*". Hence, a housing estate can be a neighbourhood: ***R. (McAlpine) v. Staffordshire County Council***.[83] Nonetheless, a neighbourhood cannot be any area drawn on a map. Instead, it must be an area which has a sufficient degree of cohesiveness: ***Cheltenham Builders*** case.[84]

5.17 Further clarity was provided on that element recently by HHJ Waksman QC in ***R. (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and***

[77] [2010] UKSC 11 at paragraph 36.
[78] [1995] 4 All ER 931 at page 937b-e.
[79] [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.
[80] [2003] EWHC 1578 (Admin) at paragraph 133.
[81] At paragraphs 41 to 48.
[82] [2006] 2 AC 674 at paragraph 27.
[83] [2002] EWHC 76 (Admin).
[84] At paragraph 85.

Oxford Radcliffe Hospitals NHS Trust) v. Oxfordshire County Council[85] who stated:-

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

Significant Number

5.18 "*Significant*" does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers: ***R. (McAlpine) v. Staffordshire County Council***.[86]

[85] [2010] EWHC 530 (Admin) at paragraph 79.
[86] [2002] EWHC 76 (Admin) at paragraph 71.

As of Right

5.19 Use of land "*as of right*" is a use without force, without secrecy and without permission, namely *nec vi nec clam nec precario*. It was made clear in ***R. v. Oxfordshire County Council ex parte Sunningwell Parish Council***[87] that the issue does not turn on the subjective intention, knowledge or belief of users of the land.

5.20 "Force" does not merely refer to physical force. User is *vi* and so not "*as of right*" if it involves climbing or breaking down fences or gates or if it is under protest from the landowner: ***Newnham v. Willison***.[88] Further, Lord Rodger in ***Lewis v. Redcar*** stated that "*If the use continues despite the neighbour's protests and attempts to interrupt it, it is treated as being vi…user is only peaceable (nec vi) if it is neither violent nor contentious*".[89]

5.21 "Permission" can be expressly given or be implied from the landowner's conduct, but it cannot be implied from the mere inaction or acts of encouragement of the landowner: ***R. v. Sunderland City Council ex parte Beresford***.[90]

Part Registration

5.22 The House of Lords in ***Oxfordshire*** also addressed the issue of whether a registration authority can determine to register a smaller area of land than that referred to in an application. It was found that a registration authority could, without any amendment of the application, register only that part of the subject premises which the

[87] [2000] 1 AC 335.
[88] (1988) 56 P. & C.R. 8.
[89] At paragraphs 88-90.
[90] [2004] 1 AC 889.

applicant had proved to have been used for the necessary period, subject to it resulting in no prejudice to anyone.

6. APPLICATION OF THE LAW TO THE FACTS

Approach to the Evidence

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

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

6.3 I shall now consider each of the elements of the relevant statutory criteria in turn as set out in paragraph 5.4 above, and determine whether they have been established on the basis of all the evidence, applying the facts to the legal framework set out above. The facts I refer to below are all based upon the evidence set out in detail above. In order for the Land to be registered as a town or village green, each of the relevant statutory criteria must be established by the Applicants on the evidence adduced on the balance of probabilities.

The Land

6.4 There is no difficulty in identifying the relevant land sought to be registered. The map submitted with the Application shows the Land outlined in red and is the definitive document on which the Land that is the subject of the Application is marked. The Land has clearly defined and fixed boundaries, and there was no dispute at the Inquiry nor in any of the evidence adduced that that area of land comprises "land" within the meaning of section 15(2) of the 2006 Act and is capable of registration as a town or village green in principle and I so find.

Relevant 20 Year Period

6.5 Turning next to the identification of the relevant 20 year period for the purposes of section 15(2) of the 2006 Act, the use must continue up until the date of the Application. Hence, the relevant 20 year period is the period of 20 years which ends at the date of the Application.

6.6 The Application Form and the accompanying statutory declaration are dated 9 December 2010, and the Application was received by the Registration Authority on 14 December 2010. It follows that the relevant 20 year period for the purposes of section 15(2) is December 1990 until December 2010.

Use of Land for Lawful Sports and Pastimes

6.7 Turning next to whether the Land has been used for lawful sports and pastimes in principle during the relevant 20 year period, it is contended by the Applicants that the Land has been used for various recreational activities during that period. References were made in both the oral and the written evidence to recreational activities such as dog walking, general walking, nature watching, children's play,

running, cycling, blackberry picking, picnicking, sledging and kite flying. The witnesses who gave evidence in support of the Application referred to their own and/or their family's and/or other people's recreational uses of the Land at different times. Such evidence is supported by a large volume of written evidence. There was no evidence of any formal or organised games having taken place on the Land, but informal activities are sufficient in principle to establish town or village green rights. Although people's recollections may fade over time, particularly in relation to details, I accept the evidence of those witnesses that they did in fact use the Land for the stated purposes.

6.8 Further, such activities are, in my opinion, lawful recreational activities, and there was no suggestion to the contrary.

6.9 Instead, the fundamental issue in relation to this element of the statutory criteria is whether those activities have taken place on the Land to a sufficient extent and degree throughout the relevant 20 year period to enable town or village green rights to be established over the Land. As indicated above, the question for determination is whether the qualifying use of the Land for lawful sports and pastimes has been of such a nature and frequency throughout the relevant 20 year period to demonstrate to the Landowners that recreational rights were being asserted over the Land by the local community. The Land must have been used for qualifying lawful sports and pastimes to such an extent and with such a degree of frequency throughout the relevant 20 year period to show the Landowners that rights were being asserted for registration to take place. It is insufficient for the qualifying use to have been merely sporadic or occasional in nature.

6.10 In determining that issue, it is firstly necessary to identify the relevant qualifying use and, in doing so, to identify the elements of the use of the Land which must be discounted.

6.11 In that regard, walking on the Land which was of such a character as would be more akin to the exercise of a public right of way must be discounted. I have set out the detailed legal position on that issue in paragraphs 5.11 and 5.12 above. In my view, that principle is of some significance to the Application.

6.12 The Land is crossed by two definitive public footpaths, Footpaths No. 40 and No. 30, running in a generally north to south and east to west direction respectively across the Land. Walking along those footpaths, whether with or without a dog, and for recreational purposes or otherwise, amounts to the exercise of a public right of way. Such use cannot itself be relied upon in support of the registration of a town or village green.

6.13 From the evidence, I find that those footpaths were used to a material extent during the relevant 20 year period. In terms of the live evidence in support of the Application, I note in particular the following. Mrs Hall acknowledged that although much of the use had taken place elsewhere on the Land, the most intensive use of the Land had been on the footpaths. Mrs Whitehead stated that she had tried to keep to the footpaths whilst exercising her dogs on the Land as it was easier to walk on them. Mr Bilbie tended to walk round the footpaths, albeit followed his dog if it went off the path. In terms of third parties, Mr Mann referred to walking along a path whilst Mr

Mills sometimes walked along the rights of way and took other linear routes across the Land. The evidence of the Objectors and those in support of the Objection suggested a similar use of the footpaths having taken place. Mr Wooding had seen the odd dog walker on the footpaths, and stated that the use of the footpaths had increased from 2005 when Churwell New Village was built. Mr Blakeley had seen people using the footpaths, and had directed those he occasionally saw straying from them back to the paths. Mr Gaythorpe had seen people walking on the footpaths, which use increased post 2005. Both Mr Wilson and Mrs Stephanie Gaythorpe used the footpaths themselves and had seen others using them. Moreover, from my site visit, it was apparent that the definitive footpaths had been relatively well used. They were clearly defined on the ground as worn tracks. In my view, given their condition and the routes they took, they would be particularly attractive for walkers and dog walkers and I find it unsurprising that they have been so used.

6.14 Although I accept the Applicants' evidence that walkers, particularly with dogs, also used other parts of the Land, my impression from the evidence was that there had nonetheless been a material use of the footpaths, which must be discounted from the qualifying use. That is also of particular relevance in relation to the written evidence relied upon. The pro-forma witness statements do not indicate the extent to which the activities carried out took place on the footpaths. I acknowledge that activities such as children's play, ball games and picnicking would be unlikely to occur on the paths, but many of the other activities could well have done so, including walking with and without dogs, nature watching, running and cycling. Given the burden of proof on the Applicants, I am unable to assume that the references to such activities in the written evidence took place off the footpaths.

6.15 Furthermore, it seems to me that a number of other uses of the Land were more akin to the exercise of a right of way than the exercise of recreational lawful sports and pastimes over a village green. In relation to walking, both with and without dogs, a number of witnesses in support of the Application referred to walking along specific routes rather than recreating over the Land generally. Hence, by way of example, Mrs Hall identified a particular route she took; Mrs Harrison did a circular walk although she also meandered over the Land, she had seen others walking around the perimeter of the Land, and she regularly walked along the path parallel to the M621; and Mr Hunter described a particular walking route he often took. They referred to also walking on other parts of the Land, but I find that a material degree of the walking on the Land by the witnesses who gave live evidence in support of the Application was more akin to the exercise of a public right of way. Again, for the same reasons as referred to above, I cannot assume in relation to the written evidence in support that users were recreating over the Land generally in relation to their walking use rather than walking along specific routes. The material extent of the Land's use along defined routes is further supported by other worn tracks I noted during the site visit, such as along the M621 motorway, which route I note is described on the Applicants' website as a "*very popular footpath*" and in relation to which consideration has been given by the Action Group to make an application for a modification order to add that route to the Definitive Map.

6.16 It is my view that walking around the perimeter of the Land or across a specific route would amount to a use that was more akin to the exercise of a public right of way than a recreational right over a green. Indeed, that seems to me to be the

very use Sullivan J. (as he then was) was referring to in ***Laing Homes*** when he noted at paragraph 102 that:-

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

and at paragraph 108 that:-

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

6.17 In addition, the use of the Land for exercising dogs where such use merely involved the owners walking on the footpaths or other specific routes whilst their dogs ran over the Land must similarly be discounted, in contrast to where owners themselves went onto the Land generally. Sullivan J. noted in ***Laing Homes*** at paragraph 103 in relation to dog walking that:-

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

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

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

He also indicated that "*the same would apply to walkers who casually or accidentally strayed from the footpaths without a deliberate intention to go on other parts of the fields*". In that regard, although there was evidence of some dog owners going onto the Land to exercise their dogs, the evidence indicated that some merely let their dogs off the lead and allowed them to run on the Land while they stayed on the paths for the most part. Hence, Mrs Whitehead tried to keep to the footpaths but sometimes had to leave them to chase her dogs. Similarly, Mr Bilbie tended to walk round the footpaths, but followed his dog if it went off the paths.

6.18 Therefore, although I acknowledge that the Land was also used more generally, I find from the evidence I heard that a material amount of the use of the Land for walking and dog walking was more akin to the exercise of a right of way than the exercise of recreational rights over a village green and such use must be discounted from the qualifying use.

6.19 In addition, I discount from the qualifying use those uses which occurred outside the relevant 20 year period. A number of the witnesses, including those who provided written evidence, referred to their use of the Land both within and outside the relevant 20 year period, but only the former is part of the qualifying use.

6.20 Having discounted such uses, it is then necessary to assess the extent of the qualifying use. Starting with the oral evidence in support of the Application, I accept the evidence of each of the witnesses that they have used the Land for recreational activities throughout the relevant 20 year period. The impression I gained from such evidence was that the primary use of the Land was for dog walking. Each of the witnesses referred to that activity and it appears to be the use that was undertaken most regularly on the Land. Indeed, apart from Mrs Harrison whose main use of the Land was to survey the flora and fauna, the most regular use of all the other witnesses was for dog walking, which was also the evidence of Mr Mills, Mr Wilson and Mrs Stephanie Gaythorpe. That was also the particular activity the Objectors had noted taking place on the Land, albeit only occasionally. Moreover, from my site visit, it seems to me that the Land would be particularly suitable for that activity. As the pro-forma witness statements do not indicate the extent to which any of the described uses take place, I find nothing in those statements that is inconsistent with my finding that dog walking was the primary recreational use of the Land.

6.21 Yet, that is the very activity in relation to which much of the use must be discounted from the qualifying use. As noted above, each of the witnesses who gave oral evidence in support of the Application, including the third parties, used the rights of way, other informal paths and other specific routes on the Land, albeit in addition to also using other parts of the Land to a greater or lesser extent. Hence, a material amount of the use of each of the seven witnesses must be discounted. In addition, the written statements do not provide any information as to the frequency of any of the uses carried out nor can the extent of the qualifying use be ascertained from them. I

also take into account that the land subject to the Application changed after some of the evidence had been collated. As the specific date of that change was unknown by the Applicants, I cannot assume that any of the use referred to in the written evidence was undertaken by the particular individuals concerned on the Application Land itself. Consequently, from all the evidence in support, it is my opinion that it fails to establish that the *qualifying* use of the Land for dog walking was carried out more than sporadically throughout the 20 year period by the general community.

6.22 Other recreational uses were, in my view, carried out less frequently. Picnicking, blackberry picking, and sledging are necessarily seasonal activities. Moreover, none of the witnesses who gave oral evidence referred to their regular and frequent use of the Land for any other activities, and that finding cannot be made from the written evidence given the lack of information provided as to the frequency of the uses carried out.

6.23 Furthermore, I also take into account the evidence in support of the Objection. None of the witnesses had observed any use of the Land off the paths beyond individuals occasionally straying off them. In so noting, I take into account that those witnesses were not on the Land continuously but, rather, only from time to time. Hence, the Land could well have been used at other times when they were not present. Nonetheless, that evidence is consistent with the qualifying use of the Land being relatively infrequent.

6.24 In addition, I take into account the evidence in relation to the agricultural use of the Land during the relevant 20 year period. As to the northern part of the Land, Mr

Blakeley gave detailed evidence as to his farming of that area from 1991 onwards. I found him to be a particularly reliable witness and I accept his evidence in its entirety. He provided cogent documentary evidence as to how he had used that area of the Land since 1991 from which it is apparent that barley was grown there for much of the relevant 20 year period. I have also seen photographic evidence consistent with his evidence.

6.25 Moreover, the Applicants' evidence was not materially inconsistent in relation to that northern area. The photographic evidence was accepted as showing growing crops in that area and no other explanation for those photographs was proffered. It also seems to me from the evidence that the northern area was not used as frequently as the southern area in any event. Mrs Hall accepted that the northern area was not as well used as the remainder, and indeed it was not initially included as part of the Application Land for that very reason; Mrs Harrison did not use that area as much as the remainder during the earlier part of the relevant 20 year period; Mr Hunter only used that area two or three times a year in those earlier years; Mrs Whitehead had never used that northern area; Mr Bilbie had not used it frequently; and Mr Mills had not used it as regularly. It cannot be ascertained from the written statements where the particular activities where carried out on the Land and I am unable to assume that they were on the northern area given where the burden of proof lies.

6.26 From the evidence, I find that the northern area has been regularly cropped to the extent stated by Mr Blakeley. I further find that that area has not been used with any degree of frequency or to any material extent for lawful sports and pastimes throughout the relevant 20 year period. Had it been otherwise, it is my opinion that

such would not only have been apparent to Mr Blakeley from time to time, particularly at times when the barley had grown to an appreciable height, but it would have been harmful to the crops and thus to Mr Blakeley's livelihood. It is also of note that none of the witnesses suggested that they had walked over growing crops, which further suggests that that area was not being regularly used. Moreover, the infrequent use of that area would also explain the lack of sightings of any agricultural activity taking place there.

6.27 As to the southern area, I accept Mr Blakeley's evidence that he did not grow crops in that area having discovered grey ash in the soil save for growing corn in a small 2 acre area. Mr Gaythorpe nonetheless indicated that his father grew crops in that area up until he retired in 1991 and the grey ash had not prevented that. Such crop growing in that area generally was consistent with the photographic evidence and with the evidence of Mr Mann. However, in terms of the very specific time period in question, given the lack of detail of such agricultural use in that area during that very specific time period of December 1990 until Harry Gaythorpe's retirement in 1991, I am unable to find from the evidence that during that very particular time period the agricultural use of the southern area resulted in it being unsuitable for recreational use. Further, that area was not subsequently used for agricultural purposes that would render recreational uses unsuitable.

6.28 Nonetheless, although I also find that the southern area has been used more frequently than the northern area, it is my view for the reasons given above that it has not been established that such use was of a sufficient extent and frequency to

demonstrate to a landowner that recreational rights were being asserted over it by the local community.

6.29 Instead, taking into account all the evidence, I find that the use of the Land for lawful sports and pastimes has been sporadic and occasional during the relevant 20 year period, and insufficient on the balance of probabilities to demonstrate to a reasonable landowner that recreational rights were being asserted over the Land. Consequently, I find that that element of the statutory criteria has not been established.

Use as of Right

6.30 Turning to whether the qualifying use of the Land was "*as of right*", there was no suggestion that any of the use relied upon in support of the Application was by stealth nor with the permission of one of the Landowners. However, it was contended on behalf of the Objectors that some of the use was with force, namely *vi*.

6.31 As noted in paragraph 5.20 above, the requirement that the use be without force in order to be "*as of right*" does not merely require the use to be without physical force, such as by breaking down a fence. It must also not be contentious. It was stated by Lord Walker in ***Lewis***[91]:-

> "*it would be wrong to suppose that user is "vi" only where it is gained by employing some kind of physical force against the owner…It was enough if the person concerned had done something which he was not entitled to do after*

[91] At paragraph 88.

the owner had told him not to do it. In those circumstances what he did was done vi."

Hence, use would be *vi* and not as of right if it was done in defiance of an erected sign or after challenges had been made by or on behalf of a landowner.

6.32 In that regard, the evidence was undisputed, and I so find, that in 2005, four signs were erected in four locations on the Land stating "Private Property Keep Out Manor House Farm", which signs remain on the Land to date. The issue arising is whether the effect of such signs made use of the Land *vi* thereafter.

6.33 In terms of notices, Patten LJ noted in ***Taylor v. Betterment Properties (Weymouth) Limited***:-[92]

"*If the landowner displays his opposition to the use of his land by erecting a suitably worded sign which is visible to and is actually seen by the local inhabitants then their subsequent use of the land will not be peaceable. It is not necessary for Betterment to show that they used force or committed acts of damage to gain entry to the land. In the face of the signs it will be obvious that their acts of trespass are not acquiesced in.*"

6.34 Applying that to the evidence, I have some sympathy with the point made by Mrs Harrison that as three of the signs were erected at public footpaths and said "Keep Out", they were somewhat misleading. I tend to agree that a reference to a requirement to keep to the footpath and keep off the remainder of the Land would have been clearer. Nonetheless, it seems to me that a sign stating "Private Property

[92] [2012] EWCA Civ 250 at paragraph 38.

Keep Out" does make it sufficiently clear that a landowner is not acquiescing in the use of his land by trespassers, provided the signs are visible and would have been seen by users.

6.35 Two of the notices were located at the northern end and two on the eastern side. None were erected at the southern end of the Land. The locations chosen were the Landowners' own main points of access onto the Land. It seems to me, taking into account the Applicants' evidence relating to the different access points used and the fact that a number of the witnesses had not seen the signs until recently, that more steps could reasonably have been taken by the Landowners to make their position clear, namely by erecting signs at additional access points. Indeed, it appears from Mr Wooding's evidence that the main objective of the signs was to prevent tipping on the Land rather than to prevent any other use. My view from the evidence is that although some of the users would, and did, see such a sign, not all the users would have done so. In those circumstances, it seems to me that some of the use of the Land post 2005 would have been *vi*, but some of it would have remained as of right.

6.36 The effect of that finding when applied to the written evidence in support of the Application is that it is unknown whether those users saw, or ought to have seen, the signs as it would have been largely dependent upon their point of access. Again, due to the burden of proof, I cannot assume that none of them used the access points where the signs were located. Instead, it seems to me that, as a result of my finding, although I am unable to quantify it on the basis of the available evidence, the extent of the qualifying use is thereby further reduced in that some of it would have been *vi* post 2005.

Locality or Neighbourhood within a Locality

6.37 I turn next to the identity of the relevant locality or neighbourhood within a locality for the purposes of section 15(2) of the 2006 Act. In the Application, reliance was placed upon the locality of the town council's electoral ward of Churwell for the purposes of section 15(2).

6.38 There are conflicting authorities over whether an electoral ward may constitute a qualifying locality. Sullivan J. (as he then was) in ***Laing Homes***[93] suggested that they may not be so capable, whereas HHJ Waksman QC suggested otherwise in the ***Oxfordshire and Buckinghamshire Mental Health*** case.[94] However, it does not seem to me to be necessary to determine that issue in this instance as the electoral ward of Churwell only came into existence in 2000 when Morley Town Council was established.[95] It has therefore not been in existence for the 20 years comprising the relevant 20 period. In my view, in order to satisfy the statutory criteria requiring the use of the Land for lawful sports and pastimes to have taken place by a significant number of the inhabitants of a locality for the relevant 20 year period, that locality must itself have existed throughout that period. Indeed, that was so found by Sullivan LJ in ***Adamson v. Paddico Limited***.[96] Therefore, I find that the electoral ward of Churwell is not capable of being a relevant locality for the purposes of section 15(2) of the 2006 Act.

[93] At paragraph 138.
[94] At paragraph 69.
[95] See OB page 411.
[96] [2012] EWCA Civ 262 at paragraph 30.

6.39 Nonetheless, the Applicants confirmed at the Inquiry through Mrs Hall that the Application was instead being pursued on the basis of an alternative locality being relied upon, namely the ecclesiastical parish of St Peter's. A map of that parish boundary was provided by the Applicants to the Inquiry.

6.40 An ecclesiastical parish is an established administrative area with fixed and identifiable boundaries. It is a recognised area known to the law, and I accept that the parish of St Peter's does amount to a qualifying locality within the meaning of the statutory criteria.

Use of the Land by a Significant Number of the Inhabitants of the Locality

6.41 Turning to whether the Land has been used by a significant number of the inhabitants of the locality of St Peter's, for the reasons given above, I find that it has not been so used for lawful sports and pastimes as of right throughout the relevant 20 year period.

6.42 However, in addition, in order to establish that element of the statutory criteria, I accept the Objectors' submission that there must be a reasonable spread of users across the locality rather than the users being confined to a particular part of the locality. The user must have been of such a nature to bring it to the attention of the reasonable landowner that a right of recreation was being claimed by the inhabitants of the particular identified locality, namely by that identified local community, and not merely by the inhabitants of some unidentified part of it. Thus, it seems to me that it is not merely the *number* of users that are significant, and I have addressed the extent of the use above, but also their *geographical distribution* across the locality.

The number of inhabitants whose use is proven must be distributed in such a way as to indicate to a landowner that the right is vested in the locality claimed and not in simply a part of it.

6.43 Applying that approach to the evidence, I find that the requisite geographical distribution of users across the locality has not been established. Instead, it seems to me from the evidence that the vast majority of users of the Land during the relevant 20 year period have been from the part of the locality that comprises the village of Churwell and not from the areas to the south and south west of Churwell that are included in the parish, such as Daisy Hill and New Brighton. Indeed, the Applicants' own assessment of the users from the supporting evidence is that 91.4% of users are from Churwell and only 8.6% from other areas.[97] However, the parish is considerably larger than Churwell and includes a much wider area. Yet, there is no evidence of any material use of the Land by users across the locality beyond Churwell, and such has not been demonstrated by the evidence.

6.44 In my view, the absence of such evidence of use during the relevant period by inhabitants of the locality beyond Churwell results in there not having been established a sufficient geographical spread of users across the locality to satisfy that element of the statutory criteria. Therefore, on that further basis, I find that the Applicants have failed to establish that the Land has been used by a significant number of the inhabitants of the identified locality.

Continuation of Use

[97] At AB page 169.

6.45 The final issue is whether the qualifying use continued up until the date of the Application. As the use of the Land remains ongoing to date and has not ceased, I find that, subject to all the above matters, that particular element of the statutory criteria has been satisfied.

7. CONCLUSIONS AND RECOMMENDATION

7.1 My overall conclusions are therefore as follows:-

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

7.1.2 That the relevant 20 year period is December 1990 until December 2010;

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

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

7.1.5 That the ecclesiastical parish of St Peter's is a qualifying locality;

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

and

7.1.7 That the use of the Application Land for lawful sports and pastimes continued until the date of the Application.

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

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

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

8. ACKNOWLEDGEMENTS

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

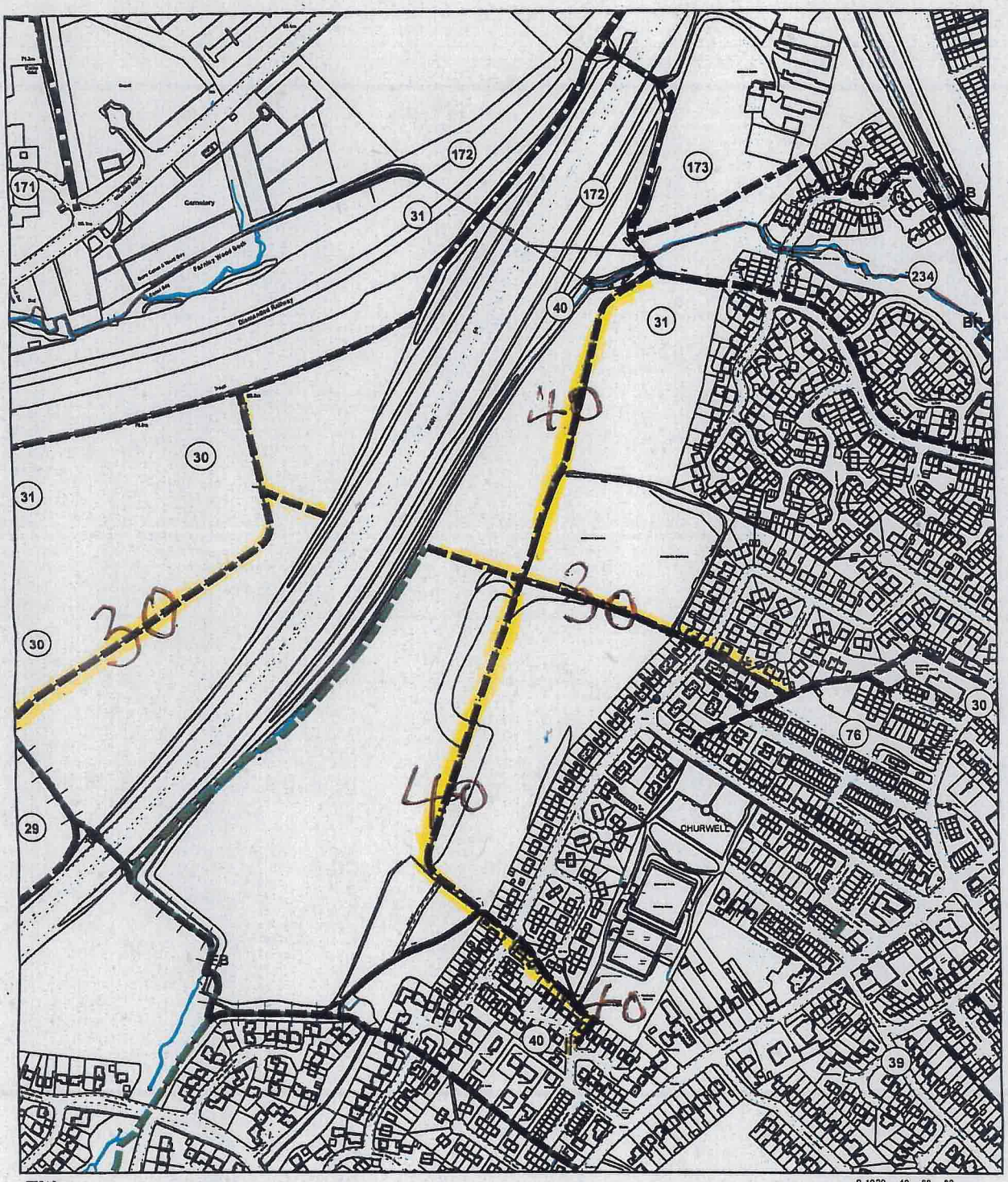
8.2 I am sure that the Registration Authority will ensure that all Parties are provided with a copy of this Report, and that it will then take time to consider all the contents of this Report prior to proceeding to reach its decision.

RUTH A. STOCKLEY

11 September 2012

Kings Chambers
36 Young Street Manchester M3 3FT

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



Title

0 10 20 40 60 80 Meters

Key

	Definitive	Claim/Review	Permissive
Footpath			
Bridleway			
Restricted Byway			
Byway			

Please Note: This is a working copy of the Definitive Map and is not a legal document. It should only be treated as an indication of public rights of way.
Furthermore, the data shown on this map has currently not been corrected according to the OS Positional Accuracy Improvement Programme. The map base used by Leeds City Council follows the Ordnance Survey data from Pre August 2004 as some rights of way may be misaligned to the current Ordnance Survey maps.
Any queries or errors in relation to public rights should be raised with the Definitive Map Team on 0113 2378248.

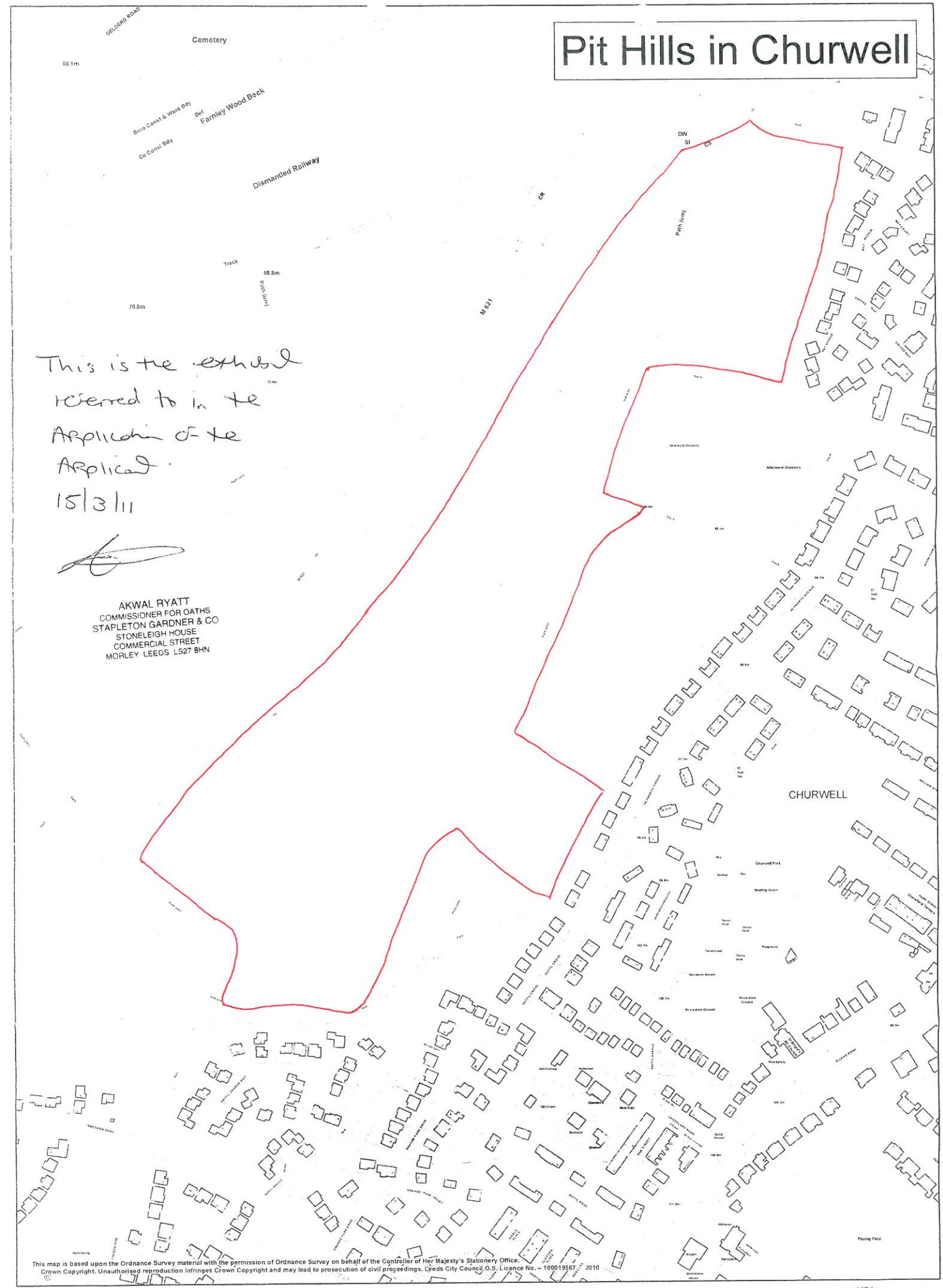
N

Leeds City Council

MORLEY 40

MORLEY 30

Pit Hills in Churwell



This is the exhibit referred to in the Application of the Applicant.
15/3/11

AKWAL RYATT
COMMISSIONER FOR OATHS
STAPLETON GARDNER & CO
STONELEIGH HOUSE
COMMERCIAL STREET
MORLEY LEEDS LS27 8HN

THIS MAP (OR AN EXTRACT) IS AVAILABLE AT A LARGER SIZE
PRODUCED BY COMMUNICATIONS, GRAPHICS & GIS MAPPING, LEEDS CITY COUNCIL

Scale 1:2,500 @ A3 GIS No.GIS 5104 WLM 27/07/2010

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