COMMONS ACT 2006, Section 15

LEEDS CITY COUNCIL
(Registration Authority)

RE: LAND KNOWN AS GLEDHOW FIELD,
GLEDHOW,
LEEDS

REPORT OF THE INSPECTOR
MR ALUN ALESBURY, M.A., Barrister at Law

into

AN APPLICATION TO REGISTER THE
ABOVE-NAMED AREA OF LAND

as a

TOWN OR VILLAGE GREEN

CONTENTS:

1. INTRODUCTION

1.1. I have been appointed by Leeds City Council ("the Council"), in its capacity as Registration Authority, to consider and report on an application, officially noted as received by the Council on 4th August 2015, for the registration of an area of land known as Gledhow Field, or sometimes, apparently, as "the Postage Stamp", at Gledhow (situated behind and to the west of Gledhow Primary School), as a Town or Village Green under ***Section 15(2)*** of the ***Commons Act 2006***; and also on the objections which were submitted to that application. The application site is within the administrative area of the City of Leeds, for which the Council is responsible, and is also, I understand, entirely within the freehold ownership of the Council.

1.2. The Council itself, in its capacities as owner of the site concerned, and as local education authority, made an objection to the application in this case, as did the Governors of Gledhow Primary School, and a very considerable number of other persons (see further below). It is important to record at this point that my instructions in relation to this matter have come from the Council solely and exclusively in its capacity as Registration Authority under the Commons Act. I have had no involvement with the Council in relation to this matter in its capacity as landowner, as local education authority, or indeed in any of its other capacities, other than by way of receiving evidence and submissions on the Council's behalf as an Objector to the application.

1.3. The Registration Authority asked me at an early stage to consider whether, in the circumstances of this particular case, and in the light of what had been said in the application and supporting documents, the objections to it, and the Applicant's initial response to those objections, it might be possible for a decision on the application to be properly and fairly reached, without the need for seeking any further oral or other evidence from the parties. The basis for this was the suggestion that, because of an argument which had been raised by the two principal Objectors, based on the principle known as "statutory incompatibility", it might be possible properly to dispose of the application in this case following a further exchange of written legal submissions on that topic alone, or failing that, following the convening of a hearing confined to the consideration of submissions and argument from the parties on that topic.

1.4. I myself initially took the view that it *might* be practicable, while bearing in mind the importance of giving a fair and impartial hearing to both sides in the present dispute, to hold a 'preliminary' hearing confined just to the consideration of the arguments about "statutory incompatibility", and the hearing of any further evidence which the parties believed necessary to establishing more fully the relevant factual position to which those arguments were then said to apply in this present case. This was on the basis that it *might* then be possible for the Registration Authority fairly and properly to dispose of the application in this case, without the need for the holding of a public hearing or inquiry into the full range of factual and legal issues raised by the application and the objections to it as a whole.

1.5. However, that result would only have followed if the conclusion on the "statutory incompatibility" argument went in one particular direction. Upon further consideration of the matter, and in the light of new reported case-law which was emerging on that topic, I advised the Registration Authority (which advice was accepted) that the interests of fairness and justice to the parties, and of a proper determination of this case, would be better served by the holding of a local public inquiry into the full range of issues raised by the application and the objections to it.

1.6. Accordingly I was appointed by the Registration Authority to hold a non-statutory Public Local Inquiry into the application generally, and to hear and consider all relevant existing and further evidence and submissions in support of the application, and on behalf of the Objectors. I had, in the circumstances briefly outlined above, already been provided with copies of the original application and the material which had been produced in support of it, the objections which had been made to it, and the further correspondence and exchanges which had taken place in writing to and from the parties, which included a proposal by the Applicant to clarify or alter his application in relation to the definition of a relevant "neighbourhood", and the reactions of Objectors to that change [a matter which I shall discuss more fully, later in this Report]. Save to the extent that any aspects of that early material may have been modified by the relevant parties in later material, or in the context of the Public Inquiry, I have had regard to all of it in compiling my Report and recommendations.

1.7. In the light of the somewhat complex issues which had arisen in written exchanges with and from the parties, I and the Registration Authority took the view that it would be appropriate in this case to hold a Pre-Inquiry Meeting, which parties on both sides were invited to attend, in order to discuss and where possible agree the further procedure to be adopted, leading to, and at, the proposed Public Inquiry hearing. A Pre-Inquiry Meeting was therefore held by me as Inspector, in Leeds, on 22nd February 2017; it was attended by the Applicant and representatives of both of the principal Objectors, and a number of other objectors and interested persons. Directions as to procedure, etc. (to which I refer further below) were issued to the parties following that meeting.

2. THE APPLICANT AND APPLICATION

2.1. The Application was itself dated 3rd August 2015; it was stamped as received by the Registration Authority on the following day, 4th August 2015; the latter is therefore the effective date of the application. It was made by Mr [redacted], of 3[redacted]. Mr [redacted] is therefore "the Applicant" for the purposes of this Report.

2.2. The application form indicated that the application was based on ***subsection (2)*** of ***Section 15*** of the ***Commons Act 2006***. The application was supported by a number of written statements of relevant evidence. There were also a number of further submissions of written material from the Applicant, prior to the issue of Directions for the Inquiry, including a fairly lengthy statement in response to the objections which had been made to the application. That response was accompanied by further written evidence statements.

2.3. On the question of the relevant 'neighbourhood' or 'locality', the application form itself as submitted referred simply to 'Gledhow', which is the area of northern Leeds in which the application site is situated. That was on the face of it a sufficient answer to satisfy the requirements of the statutorily prescribed application form (Form 44), which in 'Note 6' clearly envisages that an area might be 'sufficiently defined by name', without the need for a map.

2.4. However I understand (although this was before my own professional involvement in the matter) that the Registration Authority subsequently pressed the Applicant to provide a map or plan defining the limits of the suggested neighbourhood or locality of Gledhow, and this was a point also pursued in some of the original objections to the application, submitted after the application was first publicised. In any event, in his written response to those original objections, the Applicant sought to define more clearly (and by reference to a plan) the boundaries of the claimed relevant 'neighbourhood'. This he did by reference to the boundaries of an officially recognised (electoral) Polling District known as 'ROB', which on the face of it defined an area considerably smaller than might have been expected to be covered by the geographical name 'Gledhow'.

2.5. This proposed change or clarification by the Applicant proved to be highly controversial, and attracted a considerable volume of further written objection, both to the change itself, and to the application. This is not the point in my Report at which it is appropriate to comment on these arguments. I shall discuss the whole question of 'neighbourhood', and its definition, much later on, when I consider and comment on the matters which are in dispute in this case.

2.6. As far as the application site itself was concerned, its intended boundaries were clearly shown on a map which accompanied the application. It is roughly triangular in shape, and not easily visible from any public roads, being effectively 'behind' (and to the west of) the grounds of Gledhow Primary School, which itself fronts onto Lidgett Lane, and behind other property which fronts onto, or is accessed from, Chandos Gardens or Brackenwood Drive.

2.7. I myself saw the site in February and December 2017. At those times (which were of course well after the application date), the site was a mainly grassy area, predominantly flat, with some trees, bushes and scrub, mainly around the perimeter, especially to the south-west and north-west. Although the site does not really face onto any public roads (except arguably at its extreme southern tip), it was when I first saw it fairly easily accessible on foot from the 'public realm' at points on its south, west, north and north-east, albeit there was some temporary fencing enclosing much of it. By the time I saw it again (in December 2017), most of it had been more substantially fenced off, leaving only a strip around the west/south-west which was practically accessible by members of the public, or the local community.

3. THE OBJECTORS

3.1. I have already noted that Leeds City Council, in its capacities as the owner of the application site, and as local education authority, registered an objection to the application. A substantial and reasoned objection was also submitted on behalf of the Governors of Gledhow Primary School. In the event, the City Council (as Objector) and the school governors were jointly represented at the Inquiry which I held. They will be referred to by me as "***the Principal Objectors***".

3.2. Written objections to the application were also submitted by several hundreds of other objectors, many (but by no means all) of whom had apparent connections, whether as parents or otherwise, with Gledhow Primary School. I have read and considered all of these written objections, and (insofar as they raise matters relevant to ***Section 15*** of the ***Commons Act 2006***) have had regard to them in reaching my overall conclusions and recommendations. They do not however raise any substantial points relevant to the Commons Act which add anything to the case made on behalf of the Council and the School Governors, and I do not record them separately in this report. In the event none of these other objectors participated in the Inquiry which I was appointed to hold (although they were given the opportunity to do so, had they so wished).

4. DIRECTIONS

4.1. As already briefly noted above, once the Registration Authority had decided that a local Inquiry should be held into the application, and the objection(s) to it, and following the Pre-Inquiry Meeting, the Authority duly issued Directions to the parties, drafted by me, as to procedural matters. Matters raised in the Directions included the exchange before the Inquiry of additional written and documentary material, such as any further statements of evidence, case summaries, legal authorities, etc. The spirit of these procedural Directions was broadly speaking observed by the parties, and no material issues arose from them, so it is unnecessary to comment on them any further.

4.2. I note briefly at this point that, as well as dealing with procedural matters, the Directions in this case also asked the parties to consider addressing certain specific questions which appeared likely to arise at the Inquiry (as well as presenting their own intended evidence and submissions in the normal way). I consider the parties' evidence and submissions in relation to these particular matters (along with all the other evidence and submissions) in the appropriate later sections of this Report.

5. SITE VISITS

5.1. As I informed parties at the Inquiry, I had the opportunity on the day before the Pre-Inquiry Meeting took place, in February 2017, to see and go on to the application site, unaccompanied. I also observed the surrounding area generally.

5.2. After all the evidence to the Inquiry had been heard, I made a formal site visit to the site on 13th December 2017, accompanied by the Applicant and representatives of

the Principal Objectors. In the course of doing so, I was again able to observe some of the surrounding area more generally, and we walked around the boundaries of the area which the Applicant puts forward as the "neighbourhood" for the purposes of the application.

6. THE INQUIRY, AND POST-INQUIRY EXCHANGES

6.1. The Inquiry was held at the Civic Hall, Leeds, over six days, on 5th, 6th, 7th, 8th, 12th and 13th December 2017.

6.2. At the Inquiry extensive submissions were made on behalf of both the Applicant and the Principal Objectors, and oral evidence was heard from witnesses on behalf of both sides, and subjected to cross-examination, and questions from me as appropriate. With the agreement of the parties participating in the Inquiry, all of the oral evidence was heard on oath, or solemn affirmation.

Post-Inquiry Submissions

6.3. The normal expectation, after a public local Inquiry such as the one I held in this case, would of course be that once the Inquiry had finished, I as Inspector would receive no further evidence or submissions from the parties, other than in exceptional or unusual circumstances; and indeed that normal expectation was reflected in the original Directions which I had caused to be issued in this case.

6.4. However in this particular case a great deal of weight had been placed by both of the Principal Objectors, in their original objections, and at the Inquiry itself, on the principle of 'statutory incompatibility', as a very major aspect of their cases. By the date of the Pre-Inquiry Meeting in this case, two apparently somewhat inconsistent High Court judgments (in completely unrelated, separate cases) had emerged as to the application of this principle to Commons Act (Section 15) cases. It was known that both of those cases were proceeding to the Court of Appeal, and that they were likely to be heard together.

6.5. By the time of the Inquiry in this present (Gledhow) case, a conjoined appeal hearing had taken place (in early October 2017) into the appeals in both of those cases; however judgment had not yet been handed down by the Court, and that remained the position at the end of the Inquiry on 13th December 2017.

6.6. All of the principal parties to this present (Gledhow) dispute, and I myself, agreed that the Court of Appeal's impending judgment was likely to be highly relevant to the resolution of this aspect of the case here. Accordingly (subject to one *caveat* which I mention below) it was agreed by the principal parties in this case (and me) that I should not issue my Report and recommendations in this case until after the Court of Appeal's judgment had been delivered, and the opportunity given (in a manner which would be fair and just to all parties) to the parties in this dispute to make submissions or representations as to the effect of the Judgment on their cases and arguments, and on those of their opponents.

6.7. The *caveat* which I mentioned above was that it was suggested by Counsel for the Principal Objectors, on the last day of the Inquiry, that if I as Inspector concluded that the Applicant's case was bound to fail anyway, regardless of the tenor of the Court of Appeal's anticipated judgment on 'statutory incompatibility', I might be able to issue a Report and recommendation, and the Registration Authority to make a decision, without waiting for that judgment.

6.8. I gave serious thought and consideration to this proposition. However it seemed to me that the argument about 'statutory incompatibility' had formed such a significant and weighty part of the case advanced for the Principal Objectors that it was likely to distort the entire balance of the way in which I might present and lay out my consideration of this case in my Report, if I were simply to ignore that aspect, and produce a shorter report dealing just with the other arguments, even if I might, on full consideration, conclude that I should make recommendations against the application on one or more of the other grounds.

6.9. Accordingly I took the view that (as discussed with the parties on the last day of the Inquiry) resolution of these proceedings needed to await the Court of Appeal judgment. In the event that judgment was handed down on 12th April 2018, as ***R(Lancashire County Council) v Secretary of State; R(NHS Property Services Ltd), and Surrey County Council V Timothy Jones*** [2018] EWCA Civ 721.

6.10. Upon receipt of a copy of that judgment, I took immediate steps to circulate it to the principal parties in this present case, with (as previously discussed and envisaged with those parties) Supplementary Directions as to the order and procedure by which any further submissions or representations should then be made. In this Report, therefore, I take into account the recent Court of Appeal judgment which I have just referred to, and the post-inquiry submissions etc. in the light of it which have been duly received from the principal parties.

6.11. In the event, during the period when submissions were being exchanged pursuant to the Supplementary Directions, another High Court judgment was handed down, in another completely separate case, which again dealt with the topic of 'statutory incompatibility', and also concerned facts which included open land (with a history of playing field use) wanted for use for a school. That case was ***R (Cotham School) v Bristol City Council*** [2018] EWHC 1022 (Admin). In the circumstances, I invited the principal parties in the present (Gledhow) case also to include in their new submissions anything they might wish to in relation to the significance (if any) of this latest judgment to the issues in the present dispute. This the principal parties duly did, and I note those further submissions later in this Report.

6.12. Reverting now (briefly) to the evidence and argument which had emerged in the normal way, before the end of the Inquiry, I would say this: as well as the oral evidence, and matters specifically raised at the Inquiry, I have had regard in producing my Report to all of the written and documentary material submitted by the parties, including the material submitted in the earlier stages of the process, some of which I have referred to already above. I report on the evidence given to the

Inquiry, and the submissions of the parties, in the following sections of this Report, before setting out my conclusions and recommendation.

7. THE CASE FOR THE APPLICANT – EVIDENCE

Approach to the Evidence

7.1. As I have noted above, the original Application in this case was supported and supplemented by a number of written statements from individuals.

7.2. Additional written or documentary material was then submitted to the Registration Authority on behalf of the Applicant [and also the Principal and other Objectors], and then further such material was submitted in the run-up to the Inquiry, in accordance with the Directions which had been issued. Some of this consisted of written statements from witnesses who would in due course give evidence at the Inquiry itself.

7.3. I have read all of this material, including documents and photographs, with which I was provided, and have taken it all into account in forming the views which I have come to on the totality of the evidence.

7.4. To the extent that there were factual matters in dispute, and as was mentioned in the pre-Inquiry Directions, and at the Inquiry itself, more weight will inevitably be accorded to evidence which is given in person by a witness, who is then subject to cross-examination and questions from me, than will be the case for mere written statements, etc., where there is no opportunity for challenge or questioning of the author.

7.5. With all of these considerations in mind, I do not think it is generally necessary for me specifically to summarise in this Report such evidence as was contained in the statements, etc. by individuals who gave no oral evidence.

7.6. In any event all of the written and documentary material I have referred to is available to the Registration Authority as supplementary background material to this Report, and may be referred to as necessary.

The Oral Evidence for the Applicant

7.7. ***Mr*** [redacted], the Applicant, lives at [redacted], Leeds.

7.8. He had been living in this area for about 5 years at the time of the Application; during that time he had been a regular user of the field constituting the application site. He had walked there, walked his dogs there, and played with his grandchildren on the field. He had also spent many evenings observing bats there, and days watching other wildlife.

7.9. Ever since moving to Leeds he had made many friends who he had first met on the field. It is a centre for the local community, who gather there to walk, play and generally to relax. The field is used by all age groups, all walks of life and all backgrounds. The field had not at the time of the application been used by the school for more than 20 years. During that period it had been adopted by then local community. There are no other green open spaces for local children to play safely within a reasonable distance. The community considers this field to be their village green. It is where they can meet to play, socialise or relax.

7.10. Mr [redacted] had also submitted a completed evidence questionnaire, and much other documentation, during the course of the consideration of this application.

7.11. *In cross-examination* Mr [redacted] acknowledged that he was the person who had signed the application; however it had been a group idea on behalf of the 'Friends of Gledhow Field'. That is not a formal membership organisation, and therefore does not have a formal membership. It was difficult to say how many active members there were. Mr [redacted] believed there was a document setting out the aims of the organisation, which had been set up about 2½ years before the Inquiry. The meetings of the organisation are informal ones. There is no formal process, everything is decided as a result of discussion. In reality the group is an informal collection of friends and acquaintances.

7.12. Potential witnesses for the Inquiry had come forward as a result of word of mouth contact.

7.13. It was common ground that the land concerned in this case had been bought by Leeds City Council in 1945, and the relevant documents said it had been acquired for educational purposes. Some land at Gledhow had been separated off by palisade fencing in 1994. The application land was outside that fencing. In 2005 the Chief Education Officer for Leeds had said that the surplus land outside the fencing had not been used for educational purposes for over 10 years. Mr [redacted] did not know whether any formal decision had ever been taken by the Council to appropriate the land outside the fence away from educational purposes.

7.14. He accepted that in theory land which is no longer required for one purpose needed to be formally appropriated to change its use to some other purpose, but there was no evidence that the delegated decision notice to the effect that this land was surplus for education had ever been overturned.

7.15. He accepted that in a 'School Visioning' document produced in July 2014 it had been indicated that the full area of Gledhow field, including the application site would be required for the expansion of Gledhow Primary School that was being considered at that time. The associated plans showing the expansion concept had shown the whole field being used. A consultation document about plans to expand the school which had been published by the Education Department of the City Council in July 2014 had referred to the point that the land to the rear of the school (meaning the application site) had the potential to offer both school expansion and some shared community sports use as part of a joined-up plan. He accepted that there had been a report in September 2014 about the outcome of the consultation exercise; a statutory notice about the proposals for expanding the school had then been published in late September 2014. However this did not mention the playing field. He accepted that many people would probably have known that the plan was to include the field within the school site. He did not however accept that this meant that the field had been statutorily assigned to school purposes.

7.16. He accepted that in November 2014 the School Organisation Advisory Board of Leeds City Council had resolved that the Executive Board be recommended to support the proposals to expand Gledhow Primary School. It was clear in the report of the meeting of that Board that the issue had been raised that the current use of an area of green space to the rear of the school would be affected by the proposals to protect that land and bring it within the curtilage and control of the school.

7.17. He accepted that in December 2014 the City Council's Executive Board had had reported to it the outcomes of the statutory notices to increase primary school provision, relevant to the Gledhow expansion proposal. There seemed to have been only a small number of responses, and he accepted that one of the responses appeared to have been a concern that there may be more dog fouling in the streets around the school if the application site field was taken into the school grounds. At the meeting of the Executive Board in December 2014, it had been resolved that the expansion of Gledhow Primary School should be approved. There was no reference to Gledhow Field in that resolution, but Mr [redacted] accepted that it would have been understood that that was the case by those involved in the process.

7.18. He accepted that at the time the school expansion project began fully to be considered in 2014, the relevant advice in place as to the dimensions of facilities required for schools in various categories was Building Bulletin No.99. He also accepted that if the figures quoted by one of the Council's witnesses (Mr Gosling) were correct then the school as expanded to three form entry would be short of outdoor space without the addition to its grounds of the application site, measured against the guidance in that Bulletin. However [redacted] pointed out that the current advice was in an updated Building Bulletin known as BB103.

7.19. He questioned whether any significant level of use had been made of the field constituting the application site since it had been fairly recently fenced off on behalf of the school. His understanding was that only token use had been made of it. He himself does not live in a position overlooking he site, however. He accepted that some use had been made of the field.

7.20. He accepted that it appeared to be the case that in recent times there had been consistent pressure for more primary school places in North Leeds. He was also aware of a bid that there had been to launch a free school in the area. He accepted that there had appeared to be difficulty in finding a site for such a project. He acknowledged that needs might arise either to expand or to reduce school rolls in the area. He pointed out that reductions had happened in the past. He personally had no knowledge about the facts relating to this matter.

7.21. He had no knowledge of any benefits that there were claimed to have come about for Gledhow Primary School since it had incorporated the land of the application site within its premises.

7.22. It is legitimate for a school to want to provide the best possible facilities for its pupils. However that did not mean that the application field should not be registered as a town or village green. In his view the field could be used for the sort of thing the school wants to use it for, consistent with being registered as a town green. He did not accept that the only way that safeguarding for children using the field could be provided was by keeping members of the local community off the land. If that were true, one would never be able to take children to anywhere other than enclosed school sites.

7.23. As for anti-social behaviour Gledhow Field, he accepted that at some point behaviour of that kind must have happened there. Littering had occurred from time to time, but not much, not more than happens in other parks. In his view dog faeces on this field had not been a significant problem. He had not seen quad bikes being used there, as apparently some people had alleged. Nor had he witnessed drunkenness or rowdiness there. In his view it was perfectly feasible and reasonable for shared use of the field to take place, as between the school and the local community. This matter should be dealt with in the same way as when children are taken to any public place. He noted that in the ***Lancashire*** litigation Ouseley J had expressed the view that schools could conduct some of their activities perfectly well if the public were there on a piece of land. Everything depended on the scale of the use envisaged.

7.24. He accepted that in the period around 2015 some adverse behaviour such as damaging of fencing or lighting of fires had taken place on the site.

7.25. It was his understanding that the primary school at Meanwood made extensive use of a public park with its children, not just the school's own playground. That very point is stated in that school's curriculum. Therefore he disagreed with points made by Ms [redacted] the Head Teacher of that school, in a rebuttal proof which the Objectors had obtained from her.

7.26. On the question of the relevant *"neighbourhood"* he was proposing (based on a polling district known as *"ROB"*), he accepted that a polling district *per se* is not necessarily a 'neighbourhood'. However a polling district's boundaries are not necessarily irrelevant either, because such districts tend to follow natural boundaries. Their only statutory function is of course for polling purposes. His eventually proposed neighbourhood follows the same boundaries as a polling district, it is true. Polling districts can contain within their boundaries properties of varying age and type. For example this polling district contained many properties built in the late 1950s and early 1960s, but he did not agree that the properties were essentially the same on both sides of Allerton Grange Way to the north-west. The general nature of the housing on either side of that road makes them quite distinct neighbourhoods, he thought. On the north-east side of the proposed neighbourhood boundary, there is a school site on the other side of Lidgett Lane. On Lidgett Lane further south, going past Gledhow Primary School itself, he accepted that there was a small area where there is housing on both side of the road of a similar character, but only for a short stretch. Further south the housing is very different on the other side. Lidgett Lane is not a barrier, but it is a distinguishing feature, and is also quite a busy road.

7.27. By way of example (he said) Councillors on the City Council had fairly recently requested that a Polling Station should be reinstated in the Brackenwood area, west of Lidgett Lane, instead of people from that area having to go to one to the east side of that road.

7.28. The southern part of his proposed boundary runs through an area known locally as Little Switzerland; he believes it follows a natural boundary.

7.29. Facilities within the neighbourhood include the primary school itself, although he accepted that that school's catchment is not restricted to the neighbourhood proposed to the west of Lidgett Lane.

7.30. There is a play park organised by the Brackenwood Community Association. There are some shops, but he accepted that they do not only serve his claimed neighbourhood. They are nevertheless heavily used by people from the neighbourhood. Likewise there are in places shops on the other side of Lidgett Lane which would be used by people from his claimed neighbourhood.

7.31. As far as the Chandos Medical Centre is concerned, it is not necessary to be from the claimed neighbourhood in order to be on the roll of that practice. There is also a community centre used by people from the neighbourhood. There is a public house, which would be used by people both from inside and outside the neighbourhood.

7.32. Nevertheless in Mr [redacted] view the advantage of the application site is the sense of community which it engenders. People using it would tend to know others who use it. There are woods on the south-west side of the claimed neighbourhood, through which there are paths which people use. He accepted that people using those paths

would not all be from the claimed neighbourhood. The same went for various other facilities in the area.

7.33. There is a steep valley to the west along Gledhow Valley Road. His overall view is that there is a very different look and feel to the area which he had claimed, as against surrounding areas. The overwhelming majority of the people in the area he has claimed feel that it is a neighbourhood. Most of the property in the area is distinct from that in the areas outside. There is a very different background ethos, and in his view there are distinct topographical boundaries.

7.34. As far as his own use of the site is concerned, that extended for about 5 years before 2015. As stated in the questionnaire which he had completed, he had used the land for walking dogs, playing with his grandchildren, other walking and bat-watching. Playing outdoors on grass is much preferable to playing on hard ground. During his period of use he had generally gone to the site twice a day, because dogs are creatures of habit. Clearly there would have been times when he went away on holidays or when occasionally one is ill. On days when he did not take his dog for a walk, a dog walker would do so. The normal position however was that he took his dogs for several walks a day. At least two walks a day would typically take in the application site field, winter or summer. He also often took dogs for a long walk during the day as well, which walk may well not involve this field.

7.35. His walks in the field usually involve him staying in the field for quite some time. He was sure he had been there about twice a day, several times a week, for at least a period of 5 years. He had spoken to the school caretaker while he was doing so.

7.36. The petition which had been produced showed that there was support for the application beyond just the witnesses appearing at the Inquiry. However it was not put in as evidence, as not all of the addresses were clear or available. Although there had been some inaccuracies in the information presented as part of the petition exercise, it was not essentially inaccurate. It had been based on a letter issued by the school Governors. There had in fact been a letter from the school Governors to parents, saying that a company had expressed interest in carrying out some sport-related development on the field. That had justified what had been put at the heading of the petition. That plan was later withdrawn, and the Friends of Gledhow Field corrected what had been said.

7.37. As for a Rugby Club having leased the application site in the past, that that had been before his time and he did not really know about it.

7.38. He did not know the population of the neighbourhood which he was suggesting. The Commons Registration Authority had not known what the population was, and it did not appear to be available for that particular area. It would therefore be guesswork to assign a population to it. He nevertheless accepted that it might well be around 2,500 or so.

7.39. As for a sign affixed to a post on the land, his understanding was that it had been there for a good 20 years. He was aware of the wording on it. It was reasonably close to one of the informal entrances to the site.

7.40. *To me* [redacted] said that his understanding was that before the late 1950s the area he was putting forward as the relevant neighbourhood was largely open countryside. The area was then mostly built as social housing. It still retains some differences in social character, as well as topographical features, when compared with the other areas surrounding it.

7.41. The area he had put forward as the neighbourhood was not arbitrary. Clearly people can argue one way or another, but in his opinion the area he suggested had a distinct look and feel. The boundaries he had put forward approximately represented the boundaries of that distinct look and feel which he identified.

7.42. ***Miss*** [redacted] lives at [redacted]. She had been in her present house since May 2003.

7.43. She supported the re-opening of the application site field for people to use. It is a valuable local resource for people in the surrounding area. Having a public space where families in the area can go and walk around is vital to the well-being of the local community.

7.44. Her own experience of using the field was in taking her dog Max for his daily walk there, and meeting other dog walkers there too. Her dog was aged 7 at the time of the Inquiry; she had had no other dog before that. However her children used to play on the application site when they were young. Their current ages were 23 and 24.

7.45. *In cross-examination* [redacted] said that her dog had been born in 2010. She had had him from a puppy. Her children do not live at home any more. They had stopped playing on the field when they were aged about 13, in other words about 10 or 11 years before the Inquiry, and therefore in the year 2006 or 2007 or so.

7.46. She had walked her dog on this land from 2010 right up to the application date in 2015.

7.47. She had completed one of the evidence questionnaires lodged by the Applicant. She used to go to the site twice a day with her dog. She would go for a run but take a ball with her. Then she would take the dog home, and then a couple of hours later she would go back for a walk there. Then sometimes she would go there in the evening again, for 20 minutes or so.

7.48. The Rugby Club were still there using the field when she started using it. She had seen a sign saying that the land was private. She had not gone looking for that sign; she had walked past it and gone onto the site.

7.49. *In re-examination* [redacted] said that she had seen the sign when walking through the site. It said something about this being private land.

7.50. ***Miss*** [redacted] lives at [redacted]. She had lived at that address since she moved there with her mother in January 1989.

7.51. The application field has always been used by the local children to play football, cricket, rugby as well as rounders, and just passing a ball to each other.

7.52. Her son was born in March 1996. When he was small they used the field together, teaching him how to fly a kite, playing football, and on sunny days they would have little picnics with his friend. He learned to ride his bicycle on the field, starting at the top and riding down to the entrance on Brackenwood Drive. If he fell off his bike onto the grass it would not hurt as much as falling onto concrete roads. When it snowed in the winter they would play on the field, sledging, building snowmen and snowball fighting.

7.53. She and her partner adopted a dog from the Dogs Trust nearly 7 years before the Inquiry. They had to undergo a home visit to make sure that their garden was secure. They showed the officer the application field, and he had shown them how they could make best use of the field in training the dog, by socialising with other dogs, getting to know the environment etc. They had met a lot of people while walking the dog on the field. One of the first men and a dog they met helped with their dog training. His dog became a good friend of Miss Scaife's dog. There was a regular group of dog walkers that met up and let their dogs play together.

7.54. Some people may no longer use the field because they had moved away, perhaps because of the 'bedroom tax' policy. Walking their dogs on the field had been the only time those people had contact with others. Miss Scaife knew that they enjoyed their time, laughing and watching their dogs playing and growing up.

7.55. She personally had used the field in order to get fit. In 2011 they had booked a holiday, and she needed to lose some weight. At first she started by walking around the field, then she started running for a while.

7.56. When her son left Roundhay High School in 2013, a lot of his year group threw a leaving party on the application field. Many of them lived nearby and they thought it would be a good place to meet. A lot of parents went too, as they had also become friends and knew that with students going away to university etc., or starting work, then such a gathering would not happen again. A good time was had by all.

7.57. She regularly saw groups of friends sitting talking on the field, people using the field to sunbathe on sunny days. Some of them live in the flats nearby and so do not otherwise have access to a garden. Large family groups have used the field to play football and cricket. In the winter when it snowed families would play in the field.

7.58. Since 1989 there have always been paths to allow access onto the field, and no one had ever stopped the field from being used in such ways.

7.59. She had stopped using the field for walking her dog since the fence was erected in 2015. This is a great shame as she has lost contact with some other great people. It is a loss to the surrounding community.

7.60. *In cross-examination*, she acknowledged that she had seen the sign on the field saying that this is private land. It is very mossy but still readable. However she thought it had probably not been there in 1989. Nevertheless she did see it, and walked past it to get to the site. She has usually had two dogs with her.

7.61. She recalled two sets of Rugby Club posts on the site; one was near where the garages are and the others were near the sign.

7.62. She could not recall whether the field had been fenced when the Rugby Club had used it. They could still enter the field where the garages are near Chandos Green, she thought.

7.63. In her evidence form she had said that she had used the field daily; that would have been every day since 1987. She did accept however that they do go on holiday occasionally. She would have used the land once a day, perhaps some four times a week, on average. Since she has had dogs however she does go onto the site every day.

7.64. She works as a cook and has long hours, and consequently for a few years she took her dog every morning to the site. Then they would typically go to Roundhay Park in the evening. She does use Roundhay Park as well.

7.65. When she has taken her dog to the field at lunchtimes and playtimes then other people would be there and she would see them. There would not just be her dog. She was often walking with other people and their dogs on the land. She would see other dog walkers every time she was on there. She had never seen needles on the site. She had seen a little litter and a little dog mess, but not much.

7.66. *In re-examination* [redacted] said that before she had her dog she had not been on the field very often. She would go onto it and pick blackberries, and before that

there was a period when she went there with her son. She would have gone on there with her son from about 1999. Before that any visits would have been just blackberry picking.

7.67. *To me* [redacted] said that her visits to go blackberry picking would only have been occasional ones. Later on, when she went there with her son her visits would have been much more often. She had talked to the school caretaker when she had been on the land, as his dog runs up and down the fence near her dog.

7.68. The times she had been to the field at lunchtime would have been when she was a teaching assistant and came home at lunchtimes. That teaching assistant post had lasted for 7 years, and had ended about 3 years before the Inquiry. Her period being a cook was before that. She has also been a cook again since 2014.

7.69. ***Mr*** [redacted] lives at [redacted]. He expressed sadness and concern over the fencing of the Gledhow field. He had lived in Chandos Gardens for over 13 years by the time of the Inquiry.

7.70. He had used the field on a daily basis to walk his dog, play games with his children when they were younger, and then with grandchildren. The field had been a safe place for people to meet, especially dog walkers, and over the years friendships had been made and in a small way communities created. There are few other open spaces where people can meet openly and feel safe, knowing people are nearby, and being visible should they feel threatened.

7.71. The field was a place not only where social interaction and dog interaction took place but also other activities such as picnics, children's games, community activities etc. Litter picking also took place on a community basis.

7.72. Green spaces can easily be lost. The Rugby pitch at the rear of his own house had been sold off to developers some 5 years ago against the wishes of the local residents.

7.73. When on the field [redacted] had seen the occasional discarded crisp bag, but other than that the field was never tidy or unkempt. There was a gentleman who went round with a bin bag cleaning up on the site. He was a member of the community, not an official.

7.74. *In cross-examination* [redacted] said he had moved to his present house in 2004. He had always had a dog since 2004. Going to the field was sometimes part of a longer walk which he would indulge in, or a shorter walk would be when he knew someone on the field. His circular walk would take him back to his house. Therefore sometimes his visits were part of a longer walk; that was maybe once or twice a week.

7.75. As for litter picking on site, he would see the old gentleman doing it once or twice a week he thought. He was one particular man who did it. He did not just do it on this field, but also on roads around the area.

7.76. He ([redacted]) had played on the application land with his children when younger, until about 2008 or so, in other words in his first 4 years of living there. As for his grandchildren, the first one arrived about 5 years ago (at the time of the Inquiry). They live in Wakefield and come to visit about once a week.

7.77. Before the application land was fenced off [redacted] would go to the field with his grandchildren about once a week as part of a dog walk, whatever the weather.

7.78. As for the sign on the field, the back of which was shown on a photograph in the Applicant's bundle, he could not recall ever seeing that sign. Indeed he could not envisage where it is situated. It looked as if it was facing into trees.

7.79. ***Mrs*** [redacted] lives at [redacted], off [redacted]. She moved to that address in 2010, and since then she had always been able to use Gledhow field unimpeded, and was never asked to leave by anyone until the fences went up in August 2015.

7.80. It was because of Gledhow Field that she knows the people in her community. She had used the field first as a safe green area in which to exercise and just enjoy being outside. Then she had used it at least twice a day to walk her dog when she became a dog owner.

7.81. She had witnessed people using Gledhow Field for a number of different reasons, such as dog walking, children playing football, cricket, riding bikes and flying kites. She had seen parents teaching children how to ride bikes, people painting and reading; people sunbathing or playing in the snow. She had seen teenagers socialising.

7.82. She had never seen or heard of any kind of anti-social behaviour on Gledhow field. She believed it was the hub of the community. Indeed it was because of the field that she herself purchased a dog.

7.83. She recalled that a disabled parent had used the field to teach his children how to ride a bike. The teenagers socialising on the field never caused any problems. She had never seen any anti-social behaviour there. Where she lives in Brackenwood Green anti-social behaviour has been worse, with children kicking a ball against garage doors for example. Since Gledhow Field had been fenced, one neighbour had had to move because teenagers have abused her property.

7.84. No-one had ever asked her to leave Gledhow field. She used to speak to the children in the school, and to the caretaker. The children would stroke her dog through the fence around the school grounds.

7.85. She had never seen a sign on the land. She enters the field by a snicket from Chandos Gardens into the field. She learned about that route from a lady in the community. She has certainly seen other members of the community using the field. Indeed she was amazed by the number of people using it.

7.86. *In cross-examination* [redacted] said she had purchased her dog in 2011, she now thought. She had had the dog since a pup. Her dog is a Labrador.

7.87. She acknowledged that she had helped her neighbour [redacted] to write his letter, which was in the Applicant's bundle.

7.88. When she first got her dog she only used the field to walk on. Since the fence was put up there she had had to go to Gledhow woods. Before the fencing was put up the application field suited her dog. She had seen lots of people using the field. In summer people played cricket there. She talked to the schoolchildren through the fence because the school grounds and the field were next to each other. Children would call out, asking to stroke her dog. Everything had seemed quite happy in terms of the use of the land.

7.89. Members of the community do not see each other in the street now, since the field closed. The field was the hub of the community. Everybody seems to walk their dogs in different places now, and teenagers play ball by the garages near her house. Conversely she had never seen any anti-social behaviour on the field itself. She had been on there when some teenagers were drinking, but they had not been behaving anti-socially and had taken their litter away with them. Nevertheless she accepted that there was sometimes some everyday litter on the field.

7.90. She had not seen a sign on the field. If she had seen a sign saying that you shouldn't go onto the field she would not have gone there. She does not have to come through onto the site by the garages, but by a little snicket, when she comes from her house.

7.91. ***Mrs*** [redacted] now lives in Wetherby, some distance to the north of Leeds, but had lived at [redacted] Leeds from 1960 to 1979.

7.92. She had started at Gledhow Primary School in 1962 when she was aged 4, and from 4 to 12 years old she played most days on the application field with her older brother and all her friends that lived in the area. In the summer they would play rounders, or when the grass had been cut they would pile it up into a mountain and dive into it. In the winter they would all go to build huge snowmen or massive snow boulders, or they would make slides going down to the running track.

7.93. She had also had friends that lived in the children's home that was next to the school. She and her friends had been envious of them when they used to say that the field was theirs, and that they could play on it if they wanted to. Now that she is older Mrs [redacted] realises that it all belonged to everybody in the community.

7.94. She used to take her sister there when she was a baby to have picnics and play there. When she was babysitting like that there were always others there with prams and pushchairs. When she was about 15 in 1972-73 she had a boyfriend who lived on Lidgett Lane, and they often sat around the field on their own or with a group of other teenagers. She moved away in 1979 but her parents and sister still lived there and used the field, and used it for her sister's four children to play on as well. Recently in the last 2 years she had gone back there for a walk while visiting her mother, and had had walks on there with her great niece. However the last time she went there it was completely fenced off.

7.95. *In cross-examination* [redacted] confirmed that her sister's name is [redacted]. The children's home that she had referred to was on the south-west side of the site.

7.96. ***Mrs*** [redacted] lives at [redacted]. She moved into her home with her husband in November 1995, and has accessed this land unimpeded since then. Without that lovely oasis of calm she would not have met so many people from the lovely Gledhow community.

7.97. The field is used daily for access by people going to work, or just going about their daily routine. Children play safely on the field away from the danger of traffic. She used to take her son on there to play as a child, although he is now aged 18.

7.98. She would take her two dogs onto the field, which is a really nice community hub. One does not see people in the community since the field has been fenced off. Gledhow woods is not an area which feels safe, and is open onto a main road.

7.99. She had on occasion done some blackberry picking around the application field. Her house backs onto the field. She had never heard nor seen anything untoward taking place on the land. She had seen joggers and people exercising. It is a lovely place. No-one had ever asked her to leave the field. The school caretaker was always saying hello to people on the field.

7.100. There were never any needles on the land; it was simply a lovely place. The caretaker would be on the school side of the fence when one talked to him. She had never seen a sign on the land at all. Her house is situated between two ginnels onto the field. To get onto the land she does not need to go around via where the garages are.

7.101. *In cross-examination* [redacted] said that she had moved to her house in November 1995. She had used the land from 1998, because her son had been born in 1997. Nevertheless she and her husband had known that the field existed when they first purchased the house. They did not access it however until after her son had been born.

7.102. People would regularly walk dogs on the site; people also used it for access, for example to get to the school. She could remember the Rugby Club using the field, but could not recall the rugby posts.

7.103. She had not always had dogs. The first one was in 2011. The information she had given in her evidence form about using the field twice a day meant since she had had a dog. It did not relate to the period all the way back to 1998.

7.104. She herself is active in the Friends of Gledhow Field ("FGF"). She is a member, but not as involved in it as [redacted] is. She had been to some three meetings. The typical number of people there would be about 5 or 6 people.

7.105. *In re-examination* she confirmed that prior to having her son in January 1997 she had not used the field, because she was working. Thereafter as her son got older they went onto the field a couple of times a week. Her son had played regularly on the field with his friends also.

7.106. ***Mr*** [redacted] lives at [redacted]. He acknowledged that the written statement attributed to him had been a joint statement by his wife and himself.

7.107. Before the application field had been fenced off either his wife or he had used the field on a daily basis; they had used the field for over 15 years until the fence was erected. Initially they used the field while their children were young. It was an ideal safe place for children to play. Over the last 11 years they had used the field regularly to walk their dog. While using the field they often saw other people using it for a variety of purposes. It was a well-used communal space which provided opportunities to socialise with other people. While using the field there was never anything to stop people getting onto the land, and nobody ever asked them to leave.

7.108. He had mainly played on the field with his son, but he took his step-daughter there too. His son had played football for hours on end on the land, and had also played cricket there.

7.109. *In cross-examination* [redacted] said that the family had got a dog in 2005, and the reference to daily use of the land would refer to the period since then.

7.110. After they had moved into their house, he had begun using the land from 1997 in order to cross it to go to the bus stop, as part of his journey to work.

7.111. His step-daughter had been born in 1991, and he thought she was aged about 4 when he started going onto the field with her. However from the age of about 6 or 7 or so she did not want to go onto the field any more. His son was born in 1997. [redacted] took him there from the age of about 3 until he was about 11 or 12.

7.112. [redacted] had not seen a sign on site, and could not work out where it was said to be. He did not recall use of the site by the Rugby Club, or any posts being on the land.

7.113. ***Mrs*** [redacted] lives at [redacted]. She had continually accessed the application land unimpeded and openly for significantly more than 20 years. She was aged 48 at the time of the Inquiry and had lived in the Gledhow area all of her life. Gledhow Field is an oasis of beautiful green land in the middle of her community. She has played on the field since she was around 12 years old. She has also taken her own 4 children (of whom the oldest is now 26) on there when they were growing up. They would play football, or they would have a family game of football or cricket, or they would go for picnics there. Many of those things they still do as a family, but also now with her granddaughter.

7.114. She had also used the field to access the shops and the bus terminus, and to get to the different parts of the estate that come off it. She herself does not drive as she suffers from epilepsy. She is registered as disabled because of this. Gledhow Field is the nearest and safest green space she has to go onto. She would also meet a lot of other members of her community on there at any one time, these are people who know her and know about her condition. It would have a detrimental effect on her health if she could not have the use of the field that she has enjoyed for well over 30 years.

7.115. She has often seen a lot of people on the land. Sometimes there would be no-one else there, but often a lot of people. She had never seen a sign on the land. Before the fence went up the field was lovely, especially when it had been freshly mowed.

7.116. She herself had worked at the school for 12 years. One cannot really see the field from the school playground because of the trees and bushes in between, although they were later cut back somewhat.

7.117. *In cross-examination* [redacted] said that she had been a supervisor at Gledhow Primary School at lunchtimes. This was outdoor work usually, except when it was raining.

7.118. In her family they had always had a succession of dogs. There was always a dog in the family.

7.119. She did recall the Rugby Club use of the land. She would see them on there now and then. She could vaguely recall rugby posts on the land. When the Rugby Club used the land, it was not fenced all the way round. Parts of it had had an old remnant fence around it. There was a gate at the top of the land, but only old remnant fencing around the site. This fencing was a mesh type of fence, but there were other ways in.

7.120. Her oldest child is now 28, and takes her own daughter on the field regularly nowadays. When [redacted] daughter was about 16 she stopped coming onto the field. Mrs [redacted]'s youngest child is now 21. She would always come with [redacted] onto the field, and still lives at home. That daughter has extra needs and likes to be with her mother. [redacted] has two grandchildren, but only one of them comes onto the land. That child was born in August 2010.

7.121. When [redacted] took her dog onto the land, sometimes she would go via the shop, but often she would just go onto the field with her dog because the dog likes it very much, it was more social. She herself had never noticed a sign on the land, and had only seen a picture of it standing among the bushes. From where she lived she would get into the site by going up Chandos Avenue and via a little ginnel alongside the field. That way in is not near the post with the apparent sign on it, which she has seen since in the bushes, but had never seen before.

7.122. As for the condition of the site, that had been a lot better before the field was fenced off. She recalled that there had been one stall on there at the time of a school fair recently, but the field is much more uneven and overgrown now, she thought. It is nowhere near as nice as it used to be.

7.123. The condition of the field was very pleasant when the Rugby Club played there, or when she played cricket on there with her family. It is not nice now.

7.124. ***Miss*** [redacted] lives at [redacted]. She has been at her current address since 1996, and for 10 years before that she lived in a flat in the area.

7.125. During the years she lived in the flat, Gledhow Field proved invaluable to her on many occasions. She had no children of her own then, but when friends visited her with their children this field was a godsend. It only took a few minutes to walk there, where the children could run around and play safely while the grownups could sit and have a good chat.

7.126. Her son was born in 1996 and in the years that followed Gledhow Field became his football pitch and cricket ground, and was used for numerous other sports.

7.127. In 2005 she had helped as a witness the police and the anti-social behaviour team with a severe case of anti-social behaviour from some children in the area. That case

had gone to court. The anti-social behaviour had included damage to residents' property, harassment, damage to bus shelters and buses, and nuisance in local shops. A large part of reaching a solution to that problem was in fact to encourage the children to play on Gledhow Field. It was acknowledged at the time that to expect young children to walk to the next nearest open area in Roundhay Park was unacceptable due to the distance involved, and an intervening main road.

7.128. After that court case the issues were effectively resolved. She could not say how much the Gledhow Field had contributed to that, but without being able to offer the children an alternative play area the case would have proved more difficult. Her understanding was that the field was considered by the police, local council and anti-social behaviour team to be public land, and no objections to its use were ever issued, to her knowledge. It was also around that time that a local councillor arranged for a football pitch to be marked out on the field, so that children could play football there, and that was in fact done.

7.129. Over recent years her mobility had suffered, but Gledhow Field was still close enough for her to use with friends, their children and dogs. On no occasion over 30 years had she been prevented from going on the land, or asked to leave.

7.130. The condition of the field had been good when she used it. There had never been any problem for example of her son falling onto broken grass on the land.

7.131. *In cross-examination* [redacted] explained that the flat she had lived in before 1996 had been in Lincombe Drive, parallel to Brackenwood Drive. However she would still take her son to play up in Gledhow Field, up to his reaching the age of 11 or 12 or so. She would go there with his friends as well as her son.

7.132. As for the Rugby Club, she had been aware of the club, but she had no recollection of ever seeing them using the land. She might have seen the rugby posts however.

7.133. As for the football pitch being marked out, her recollection was that there was a lot going on at the time. A friend of hers had bumped into the relevant councillor, and mentioned that this was an ideal spot for a football pitch. Shortly after that some men had arrived with paint and sprayed lines for the pitch. She could not say exactly when that had happened, but it had been about the same time as the anti-social behaviour problem which she had referred to.

7.134. There had been an incident in 2005 of anti-social behaviour at the Council's Rent Office in the area. The problem had been with youngsters creating a nuisance, and was solved by use of the field. There was a vast improvement in respect of that problem after the matter went to court. She did not know exactly what it was that had been decided in court, but it was a proper court hearing, she recalled.

7.135. In her evidence questionnaire she had answered that sometimes her use of the land was weekly and sometimes daily. She explained this on the basis that she is a dog owner, and her use was daily when her son was young, aged about 4, 5 or 6 or so. If her son had wanted to fly a kite on the land every day, then that is what they would do every day. The application site was simply used like a back garden. At other times her use would be less frequent. Her oldest dog is aged 14 now (at the time of the Inquiry), but she had not had any other dog prior to that.

7.136. ***Mrs*** [redacted] lives at [redacted]. She has continually accessed the application land unimpeded and openly for more than 20 years. She was aged 44 at the time of the Inquiry. She had lived in the area since she was 6 years old, and had been able to go on the field all the time until it was fenced off.

7.137. She had sat on the field in the summer months with her friends growing up, played in the snow in the winter, and even now she goes there for a summer stroll, to watch nature in the spring, or to watch the bats fly about in the trees at dusk. She also cuts across the land when going to catch the bus, or to the shops or visit a friend. It would be a major loss if she could not use the field any more.

7.138. *In cross-examination* [redacted] said that from the age of about 6 until she was about 16 or 17 she went onto the field as a child. Since then she has gone onto the field with her husband in the summer for picnics. For most of her life she would say that she has used the field about 2 or 3 times a week. That figure however would include crossing to catch the bus or to visit friends.

7.139. She could vaguely remember the Rugby Club using the site. However she did not remember any posts in connection with it. She did remember paint being sprayed on the field for lines.

7.140. She had never seen any signs on the site. She would get onto the site via Chandos Gardens and a ginnel which leads through. She would usually go back the same way. To catch the bus she would be going through to a bus stop at the other end of the field, but would always get onto the site through the same ginnel.

7.141. *In re-examination* [redacted] said she has a dog which is 3 years old. She takes the dog onto the field, and had from when it was 12 weeks old. She had been on the field with the dog in order to play ball.

7.142. *To me* she said that she had had a dog before her present 3 year old one. She took previous dogs to the land. There were only gaps of a few months or so between dogs. She always picks dog mess up, and does not leave it on the land.

7.143. ***Miss*** [redacted] lives at [redacted]. She had moved there in 1973, and her son was born in 1974. So for many years she had lived just a few hundred yards from Gledhow Field.

7.144. This field has been an amenity for local people, both adults and children, to enjoy in an area where open green spaces are in short supply. She remembered walking regularly in the field in the early 1990s, before she started working full time in 1994. When she retired in 2010 she began walking her neighbour's dog, and used the field at least 3 or 4 times a week for that purpose.

7.145. At no time was she asked to leave. That activity with the dogs ceased in 2015 when the fence was erected. The field has naturally attracted dog walkers, some of whom she has made friends with. People have also engaged in various ball games during the winter and summer months, and particularly in the school holidays. She has also seen people just relaxing, and having picnics occasionally while watching their children playing, and when the weather has been good.

7.146. *In cross-examination* [redacted] confirmed that she had stopped using the field for a while in 1994 when she got a job. She did not remember the Rugby Club using the site. She did perhaps remember seeing posts, but she could not remember when that was.

7.147. Her use of the land had started again in 2010, walking her neighbour's dog. She sometimes walked through the woods as well. She would visit the field about 3 or 4 times a week. She would go in by an entrance near Gledhow Lane (she said) and go round the field and back again.

7.148. She acknowledged that in her questionnaire she had said that during the 1980s an original fence around the field had been opened up by the Council, although she did not know the exact date. Prior to that children used to climb through a hole in the fence in order to play on the field. It was the case that there was a time when the field was fenced, but the fence was in a poor condition and got worse. She was not sure of the dates in relation to all of this, but her son was sure, and she believes the approximate dates she had given are correct.

7.149. *In re-examination* [redacted] said that her view that the site had been opened up by the Council in the 1980s was an assumption on her part, rather than actual knowledge. She herself had not gone onto the field with her son around that sort of time. Her son went onto the field with his friends.

7.150. ***Miss*** [redacted] lives at [redacted]. Prior to the fencing off of the site she would usually on any day of good weather go onto Gledhow Field to exercise her dog and get some fresh air and exercise herself, as well as meeting other dog walkers, parents and members of the community for a catch-up. She would usually see groups of children kicking a ball around, small groups of teenagers sitting

around, socialising and enjoying the sunshine, and the dogs chasing each other around and generally having fun. The loss of this field has had a huge impact on the community as a whole.

7.151. At the time of the Inquiry she had lived in the area for over 10 years, and when she moved there she did not know anyone in the area. Until the fence was closed she walked her dog on the field every single day, at least once and usually twice. Gradually she got to know many of the other users of the field. Many friendships were formed. She has always been keen to ensure that her dog is fit and healthy. This was a wide open space where she could run freely and safely. Her dog loves children and seems to have a knack for encouraging them to play with her. Her dog is a rescue dog and in her early days she was quite wary of other dogs and humans, but with the support of the people they met on the field she soon built her confidence.

7.152. As well as keeping her dog fit, her own health also improved after she got the dog and spent time on the field with her. During her time using the field access was completely open. The field had never been fenced off. The entrance onto Brackenwood Drive is the only point wide enough to allow the tractors on to mow the field. There was no fence or gate or signage to discourage or prevent entry onto the field there.

7.153. The field is a particularly safe area to walk and play for children, adults and dogs alike. It would get high use and therefore, as a female often walking her dog on her own, she would feel very secure there as she knew that for the majority of the time there would be others on the field. The field is triangular in shape, edged by shrubs or a wall or fencing, and is a good place to play with balls or Frisbees etc, as they cannot go into a road. Since the field was closed some children have started to play football in the playground area near to the field; that is very unsafe. She personally had stopped a young child climbing over the fence to run straight into the road after a ball.

7.154. Gledhow Field is also a very safe place for dogs. It is impossible to see any passing distractions, so they are unlikely to run off or cause danger by running into a road. The entrances are mostly narrow pathways or slightly concealed by trees.

7.155. The field was used by all walks of life, from young children who live nearby, who regularly dragged their football posts onto the field, through to an elderly lady who walks an ex-greyhound racer, and many others in between. The field was a great community space, it was also a great area for families to spend time together. She had seen parents teaching their children to ride their first bikes. Often you see parents with their dogs and children all playing together.

7.156. Gledhow Field is the only safe green space in the area. The woods are close by, but you cannot play ball games in a wooded area; it is certainly not a safe area for children to play. North Leeds is very lucky to benefit from having an amenity such as Roundhay Park, but more local recreation playing fields are completely different.

The park is somewhere one might go to on a trip or go for the day. Gledhow Field is used for regular local children playing on an almost daily basis, sometimes for short bursts of time. Most of the users of the field are from the Brackenwood Estate. Parents cannot be expected to take their children all the way to Roundhay Park every day.

7.157. The field is also a great place to appreciate wildlife. Red Kites are frequently seen overhead, and there are often bats flying around the trees at dusk. She had also seen foxes on the field as well as other birds, butterflies etc. Schools tend to use their land for only just over half the year, so if this land were enclosed for the school there would be almost half the year when it was largely or wholly unused. By restricting use in the early evenings as well, the result of giving the field over solely to school use would mean that it would be out of use more than it is in use, which is deeply unfair to the local community. The problem here is the school's unwillingness to compromise over their proposals.

7.158. *In cross-examination* [redacted] said that she had been in her present house since 2007. She personally is involved with the Friends of Gledhow Field. She had attended a number of meetings with the Governors of the School, for example in July 2015. She had also been involved in the petition, collecting signatures. She had given the school the report that resulted from that petition. The meeting with the Governors had been held in the school hall; she gave a summary of the report, and then she emailed it to the Governors.

7.159. She had not been exaggerating in the account she gave the amount of use that was made of the application land. When she went there, there were sometimes more people there and sometimes less. It would depend on the time of year. On a warm sunny weekend one would see plenty of people using the site. On a wet December morning there would be less. She personally went on the land most days, so on most days she saw lots of people there, especially between 4pm and 7pm in the afternoon.

7.160. She did not agree with the view of the usage of this land which had been expressed in the evidence statement by Mr [redacted], a parent governor at the school. She had discussed this situation with [redacted], who in her understanding originally thought that it was a good idea for the community to share the use of the land with the school.

7.161. Since the issue had arisen on Gledhow Field, she had seen the sign at the other end of it, but not before, as she would come in from a different direction. However that sign is largely concealed by trees. The sign clearly has two sides; she knows where it is and has seen it from the back surrounded by vegetation. She thought she had probably first seen that sign after the present application had been submitted. She had never previously known of the existence of that sign, during the period when she had used the field.

7.162. ***Mrs*** [redacted] lives at 32 Chandos Gardens, Leeds. Her husband's late Aunt grew up in a house in Chandos Avenue, and had moved into Chandos Gardens in the 1950s. [redacted] had lived with her family in Gledhow since 1984. Her two children had gone to Gledhow School, and she also worked there for 10 years. They had used the field from 1984 onwards. They always used the ginnel at the end of the road to gain entry into the field; there were no signs there restricting access.

7.163. Her children had spent summer holidays playing on the field, meeting friends and enjoying being outside. They have used the field from 1984, and her son used it for rugby training at the age of 25 in 2003. Prior to the fence being erected across the field in 1996, it was possible to use the whole of it.

7.164. It was a safe space where all the children could play. Her daughter met friends she still has today on the field. There were lots of groups of children that used the field to play, it was safe and still near to their homes.

7.165. She and her husband had taken their children to the field to teach them how to ride a bicycle and play games of cricket, rounders or rugby. Her daughter particularly enjoyed that space, and said her childhood would have been very different without it. It was a wonderful place that they could use to play and to meet other children. [redacted] now has a young grandchild, and would hope that in the future she too would be able to learn to hit a ball on that field, and have picnics and smell the flowers there.

7.166. [redacted] now lives in the house which her husband's Aunt had originally lived in. They had never been asked to leave the application field. The condition of the field had always been reasonably clean, and it was always mown reasonably well down, with the outside hedges left uncut to encourage wildlife. She had often seen other people there; it was well used by both children and adults.

7.167. *In cross-examination* [redacted] said that she had moved into 32 Chandos Gardens in the 1980s. Her son was born in 1978, and her daughter in 1982. Her children had used the field extensively in the 1980s. Her son had done rugby training on the field by himself, not as part of the Rugby Club. She did however remember the Rugby Club using the field. She remembers posts and the marking out of a pitch. It was not however fenced at that time. There was a pathway made from the top of Chandos Gardens onto the field. But at one time there was no fence at all near the school. As for dates, it was hard to be specific but she believed that the school fence had appeared in about 1996.

7.168. The field was always reasonably clean and not full of litter, not off-putting in any way. It was a happy and safe place to use. Dog mess was not a particular issue, but clearly one had to watch where to step. In her questionnaire she had estimated that her use of the site had been weekly. However in the early days they would have used the land more often with their children. Later on they had used the land to cut

through and walk to the woods. [redacted] had done that with her husband. Her predominant use in more recent times had been as a cut through.

7.169. *In re-examination* [redacted] said that she had always been interested in the state of this field. It is still a pleasant area to walk through.

7.170. *To me* [redacted] said that when cutting through she regularly saw dog walkers on the field, and also saw children playing there. More often than not one would see other people about on the field. Generally speaking the field has been well used by people living nearby.

7.171. ***Ms*** [redacted] lives at [redacted]. She had lived there in her retirement flat since June 2005.

7.172. Her lounge window looks out onto Gledhow Field. She had spent many hours enjoying that view, watching the trees change with the season, and observing people using the field. Because she is disabled and does not walk very much, she has only enjoyed the field herself a few times. However she has watched many other people enjoying it, and it has brought a great deal of enjoyment.

7.173. For several years she had taken sunrise photographs from her window, and noticed how the field looks according to weather conditions etc. She had also observed many people enjoying the field over some 12½ years until it was fenced in. On beautiful summer days she has seen families out there having picnics, with children playing. Sometimes it is one family and sometimes there have been several enjoying the field. She has seen young couples walking around, and many other people walking around alone or with friends. She has also observed many flocks of birds using the field. She also sees and hears youngsters kicking a ball around on the land and enjoying themselves. On those occasions when she did go onto the field it was easy to get to it out of her flat, along the drive and then into the field. It was the closest place she could go to walk, and no-one ever stopped her doing so.

7.174. She has also seen quite a lot of people walking their dogs on the field. Often they would be walking with friends, and they could be people of all ages. She had also seen people cleaning up a mess that their dogs had made.

7.175. In spring before the grass is cut on the field she would call it a meadow, as there can be some beautiful wild flowers there. When she first moved in she enquired about this field and was told that it was open access and available, that a Rugby Club had a lease on it but was no longer using it.

7.176. Her eldest daughter is a teacher and has told [redacted] that the school here already has quite a large play area compared with other schools that she knows.

7.177. In summer she saw people on the field every day, unless it was raining. Especially when the school was out, one would see families there a great deal, probably most days. It was a very pleasant well used area. She had never seen people behaving badly or anti-socially. There was a brief period when children used motorised bikes on there, but it stopped very quickly. She had never seen broken glass or litter in her view of the field.

7.178. *In cross-examination* Ms Strickler agreed that from her flat she would not be able to see any dog mess, although she had seen people picking it up. When she had gone onto the field she had looked for dog mess and did not see any.

7.179. As for her enquiries before purchasing her flat, she had phoned the City Council, although on reflection she thought that was actually after she moved in. She had seen the field and wanted to know about it. So she had phoned the City Council and was told that the field was leased to a Rugby Club but who were no longer using it; it was all rather a vague recollection. Her recollection was that she was told something like that it was highly unlikely it would ever be built on. She could not remember the type of Council Officer that she had spoken to; it was in 2005.

7.180. When she had referred to the field looking like a meadow before it was cut in the spring, this was a cut which happened in every year. Other than that she did not know how often the field had been cut. In January to March the grass would not be growing, but then it would start growing and she would see the colour of flowers on the field.

7.181. As for the evidence questionnaire which she had completed, she did see children going to and from school who would play on the field and run around on it a bit. They would play tag for example. She would assume that those children were from the neighbourhood. From her flat she could also hear people in the gardens of houses to the north-west, playing in those gardens.

7.182. She thought that people had on occasion climbed over a wall near her flat in order to get into the field; on one occasion a fence around her property had been damaged but she repaired it.

7.183. ***Ms*** [redacted] lives at [redacted]. She had moved into the area 31 years ago when her children were small. Her son and daughter had attended Gledhow School, and during that time the field was unfenced and open for anyone to access. There were no visible fences or gates. From the time that she moved to the area until it was recently fenced the field had been used by children, dog walkers, old ladies, teenagers etc. Families would play and picnic there.

7.184. Many people walk across the field every day to the shops or the bus stops. It is the only green flat accessible land left in the area. There are woods nearby, but they are not safe for children to play in. Indeed there had been guns found in the woods, and

also a dead body (gangland related). The nearest park is across a very busy main road and quite a walk away.

7.185. She had never been asked to leave the field. [redacted] the caretaker of the school used to actively engage her in conversation when she was on the field. The condition of the field was always very good, and her recollection was that people would clear up any dog mess. She had never seen discarded needles on the land, and only seen broken glass there once. She had seen litter there only once, when some schoolchildren had dumped on the land a lot of old party stuff, and local people picked it up.

7.186. *In cross-examination* [redacted] confirmed that she is married to [redacted], the Applicant. She and [redacted] often use the field together. She herself dislikes organised sport, and would avoid the field if anyone was playing organised sport there. She could not remember any rugby posts being on the field.

7.187. In the entire time that she had used the field, there had never been a locked gate. Many people used the field just to cross it, but that is not the exclusive use of the field.

7.188. *To me* [redacted] said that she had been in her present house since April 1994. Prior to that she had lived in Gledhow Avenue, which is situated opposite the school to the east. She had not at that time realised that the field behind the school was accessible. She had only started using the field when she moved to the west of Lidgett Lane. In her view there as a big difference between the two sides of Lidgett Lane.

8. The Submissions for the Applicant

8.1. In the course of these proceedings, since the application was made in August 2015, there have been a number of opportunities or occasions on which the Applicant has been able to put forward what are in effect submissions or arguments. Clearly the most important or weighty arguments are likely to be those advanced in the context of the Inquiry I held into the application, or in this particular case also in the submissions which were received subsequent to the end of the Inquiry. In many instances submissions made at earlier stages are likely to have been superseded by the arguments being advanced at the Inquiry stage. Nevertheless it is appropriate in this case to take note of some of the arguments and submissions which were put forward at the earlier stages of the proceedings, and this I do at the start of this section of my Report, to the extent that seems to me to be necessary.

8.2. Another point to make briefly at this stage is that, as is not uncommon in cases of this kind, on occasion arguments have been put forward which in reality contain more than insignificant amounts of evidential material also. Clearly one of the main

purposes of holding an inquiry was so that areas of evidence which were in dispute could be effectively challenged by questioning from opposing parties. However on other aspects of the case evidence of an uncontroversial character might have emerged in the context of what were otherwise statements of submissions or arguments, and I have not adopted an over-fastidious approach in separating out such items of evidence for the purpose of recording them (for example in the previous chapter of the Report), partly at least because of the risk of isolating them and leaving them out of any context in which their sense could be properly understood. I am clearly aware of the distinction between evidence and argument, so any evidential matters which are set out in this section of my Report, for example, should be seen in that context.

8.3. The original application in this case recorded that the application was made under ***s.15(2)*** of the ***Commons Act 2006***. Attached to it were a number of written statements of evidence, but the application itself contained little argument, apart from the claim that the evidence provided supported the view that the relevant statutory criteria were met in this case.

8.4. One point which was made in the original application was based on a Report of May 2005 from the Chief Executive of Leeds City Council to the Chief Education Officer, which report had stated that the land the subject of the application had not been used for educational purposes for more than 10 years prior to that date. It was also recorded that the field had last been used by a local Rugby Club, but that all use of the field had now ceased. The Chief Education Officer had been requested to agree that the field to the rear of Gledhow Primary School be declared surplus (for educational purposes), and transferred to another department with the view to disposal.

8.5. Later on, the Applicant submitted a reasoned response in writing to the voluminous objections which had been made to the application. One of the key points which arose in that response related to the question of the identification of the 'neighbourhood' to which the application was said to relate. In the original application the relevant neighbourhood had been stated simply to be Gledhow. In response to arguments from Objectors that this was not an area which had been clearly or accurately defined by the Applicant, and/or that it was a substantial area with a large population, the Applicant indicated in his response that the way he had dealt with the question of neighbourhood in the application form had been mistaken. He accordingly put forward a smaller area as the relevant neighbourhood, which he identified by reference to its being an electoral polling district referred to as ROB in the relevant local electoral documentation. This new and smaller neighbourhood was said to comprise approximately 1,382 dwellings and to be shaped like a triangle. The Applicant produced a map showing the boundary of the polling district now claimed to be the neighbourhood, and explained why it had logical boundaries. He also explained the type of development to be found within the newly suggested smaller neighbourhood, and explained to some extent the distinctions between it and the areas to the outside of it in various directions.

8.6. On the question of use by a significant number of inhabitants of the neighbourhood, he pointed out that case-law supported the view that the number did not have to be a large one; it was a matter of impression for the decision maker; what was needed was a use sufficient to signify a general use by the local community for informal recreation.

8.7. The Applicant also discussed the 'as of right' test. He pointed out that a *"No Trespassing and No Ball Games"* sign on the field, which had been referred to in some of the objections, was situated among a dense patch of undergrowth and nettles, and would not have been visible to the bulk of the users of the field. He suggested that the sign would not have been visible for decades. There were no signs elsewhere around the site.

8.8. Suggestions that there had been some illegal activity on the field did not preclude legal activity by members of the local community which would meet the tests of ***s.15*** of the ***Commons Act***. It was acknowledged that another piece of open land on Gledhow Field, to the east of the application site, had been separated off by a steel palisade fence erected in 1994. Since then the primary school had made only very limited and sporadic use of the application field. Conversely the community since then had enjoyed unrestricted access to the field. The evidence suggested that this had happened for at least the requisite period of 20 years.

8.9. Lengthy argument was advanced on the topic of *"statutory incompatibility"*. However this topic has been fully addressed by the parties much more recently in the proceedings, and the case-law in this area has moved on very considerably since the date of these response submissions. The Applicant's general point was that the educational statutory provisions which had been relied on by Objectors are too general to engage the principle of statutory incompatibility. It was suggested that there was no statutory incompatibility between registering the land here as a town or village green and performance of its functions by the education authority.

8.10. In response to the numerous objections from individuals and others, (aside from the Principal Objectors in this case), the Applicant pointed out that many of the individual objectors did not in fact live in the newly defined neighbourhood for the town or village green application. Most of them lived to the east of Lidgett Lane, which the Applicant's choice of a more narrowly constituted neighbourhood had excluded. Many of the individual objections were clearly not statements of personal experience, but based on second-hand accounts. Various other factual points were questioned, relating to such matters as needles being found on the land, litter or rubbish being dumped there, quad biking etc.

8.11. Many of the individual objections also appeared to be based on a pro-forma letter of objection, effectively repeated by numerous individual Objectors. It was said that Gledhow Field had been used by the local community for more than 20 years; it was used openly and people engaged in lawful pursuits and had not been asked to leave. The land had been used for part of the previous 20 years by the Roundhay Rugby

Club. The field therefore could not have been in an unusable state as claimed by many of the Objectors.

8.12. In the Applicant's Statement of Case prepared for the purposes of the Inquiry, the history of the land of the application site was briefly summarised. It was noted that the land had been bought in 1945 by Leeds City Council. In the late 1950s and early 1960s, around the time that the Brackenwood Estate was being built, Gledhow Primary School was also built. At that time the land bought in 1945 was used by the school and enclosed by a fence.

8.13. It was accepted that the land of the application site was leased to Roundhay Rugby Union Football Club in 1981, and the lease was specified to run until 2006. That lease was surrendered in 2006, when the club sold their nearby ground for housing development and moved to a new site. £20,000 worth of the ***section 106*** money paid to Leeds City Council in those circumstances was apparently used for the improvement of what is now the claimed town or village green land at Gledhow.

8.14. In 1994 a steel palisade fence was erected around the school, enclosing part of the land purchased in 1945. It is the part of the land which was not enclosed by that fence that is the subject of the town or village green application. In autumn 2015 a fence was erected around most of the land that is the subject of the application.

8.15. When the steel palisade fence was erected in 1994, entrances to the land of the application site were left open. One at the south allowed tractors using grass cutting machinery to access the land. A second narrow path was left between the steel palisade fence and the boundary fences of neighbouring properties, so that the land was accessible from the junction of Chandos Gardens and Lidgett Lane.

8.16. The land had never been used by members of the local community in circumstances which can be described as *"by stealth"*, nor with the licence or permission of the owner. It was once again accepted that there had been one sign which discouraged trespassing, although it was again stated that this had been barely visible.

8.17. Recreational use of the land had clearly been taking place for a period of at least 20 years, and a Freedom of Information request to Leeds City Council had produced an acknowledgement that the land had been used for recreational purposes by the general public.

8.18. The question of the identification of the relevant neighbourhood was again discussed. There is no reason why a polling district should not also be reasonably and sensibly regarded as a neighbourhood for the purposes of the ***Commons Act***. In this case there are clear natural and man-made boundaries to the suggested neighbourhood. Most of the suggested neighbourhood is the Brackenwood housing estate, built by Leeds City Council in the late 1950s and early 1960s, around the same time as Gledhow Primary School. Most of the housing to the east of Lidgett

Lane had existed before 1908, as can be seen from historic mapping evidence. That in part accounted for the clear differences between the areas to the east and west of Lidgett Lane. All of this suggested that the area which had been identified by the Applicant, based on the polling district, is indeed a distinct and cohesive neighbourhood. It also contained shops, a school, a doctor's surgery, a public house, post office and other community facilities.

8.19. The topic of statutory incompatibility was again discussed at some length. It was pointed out that the City Council had leased the land to the Rugby Club in 1981, and that the Secretary of State considers leasing of land to be a third party 'disposal'. In any event on erection of the palisade fence in 1984 the school stopped using the land, as confirmed by the Report of the Chief Executive to the Chief Education Officer in the year 2005 (referred to earlier).

8.20. A Strategic Investment Board Report of November 2009 had noted that, although fenced from Gledhow Primary School, the land in question had previously been part of the school site. It had said that the space concerned is an area of disused council land. This and other factors cast doubt on any assertion that the application land has always been held for educational purposes.

8.21. There was much discussion of the first instance decisions in the ***Lancashire v Secretary of State*** and ***NHS Property Services Limited v Surrey*** litigation. The position in relation to these cases has now altered significantly as a result of the conjoined Court of Appeal decision in those two cases. It is therefore not necessary for me to record further submissions in relation to the earlier stages of those cases here.

8.22. It was noted that children from Gledhow School had been able to make some educational use of the land while use by the local public continued. This showed that there was no incompatibility between such use by local people and the school's statutory duties. Another primary school in North Leeds, Meanwood Church of England Primary School, which is rated 'outstanding' by Ofsted, is run in a way that part of the grounds are used for school use during the day and the public at night, and during the holidays and weekends. It was also noted that the adjacent park could be used by the children from that school. That school's PE policy apparently stated that Meanwood Park was used for physical activity, clubs and the school's sports day. There was obviously no incompatibility between public and school use of the land there.

8.23. School pupils commonly take part in supervised activities in other public places, and indeed that has happened in the case of the pupils from Gledhow School itself.

8.24. The Applicant's opening submissions at the Inquiry were essentially based on the statement of case to which I have just been referring. It was additionally pointed out that in the published statutory proposals for the expansion of Gledhow Primary School, on which much weight was being placed by the Objectors, there had in fact

been no mention of the land of the application site being required as part of those statutory proposals. It would follow that no question of statutory incompatibility could possibly arise here.

8.25. In closing submissions the Applicant again acknowledged, on the question of *"as of right"*, that there had been a 'No Trespassing' sign on the land for many years. However it is barely visible. In front of the sign there are trees approximately 25 or 30 ft in height; when the trees are in leaf the front of the sign is not visible. Only people using one small entrance would venture anywhere near that sign. One would not see that sign from the main entrances to the field.

8.26. The evidence of Ms [redacted] and others confirms that there was no secure fence around the school before the palisade fence was erected in 1994, and no fencing was put around the application site after 1994. Mr [redacted] the Caretaker had confirmed that people were not asked to leave the land which was outside the 1994 fence.

8.27. Several witnesses for the Applicant have given evidence that they individually used the field for more than 20 years for lawful sports and pastimes. All of them said they had regularly seen others using the land over that period. Other witnesses have used the field for shorter or longer periods.

8.28. The well-known ***Sunningwell*** case in the House of Lords confirmed that it is not necessary in order to register a town or village green that formal sports activities have taken place. Informal games and communal activities are quite sufficient, as are solitary or family pastimes of an informal nature. Witnesses called by the Applicant have clearly shown that such activities have taken place.

8.29. On the question of significant numbers, 45 statements were submitted, and 16 witnesses had given oral evidence on oath. Many of those witnesses also spoke of seeing other people using the field. There had been difficulty contacting all people in the neighbourhood who might have used the field. Thus to some extent putting together the Applicant's case had relied on word of mouth. Conversely the school asking for letters of objection had ready contact to hundreds of parents. Guidance as to what constitutes a significant number of inhabitants was given in the well-known ***McAlpine Homes v Staffordshire*** case by Mr Justice Sullivan. 'Significant' does not necessarily mean a considerable or substantial number.

8.30. Many of the Objectors say the field was little used. One has to try to account for the difference between this and the evidence given by witnesses for the Applicant, who say the field was widely used. The question then is who were the objectors? They were mostly people with connections with the school, and also some people with properties backing onto the field. As for viewing the site from the school, the field is visible when there are no leaves on the trees, from late autumn through to early spring. However the weather at those times means that does not tend to be the time when people would be using the field so much. When trees along the palisade fence are in leaf the field is not visible from the school. Those are the times when people

are most likely to use the field for recreation. Teachers and people using the school unsurprisingly would tend to see the field on weekdays, during the working day. During that time most adults are working and children are under school. Many of the witnesses for the Objectors had not in fact visited the site or the area outside school hours, for example not at weekends or in school holidays. Even the parents and school governors would tend to be at the school at times when children are being dropped off or picked up during working days in the week. The only other likely sighting of the field might be at school governors' meetings which are relatively infrequent. These people would have had no cause to see or look at the site in the evenings or weekends. Indeed some of the Objectors did accept that some use of the field had taken place. For example Mr Powell, one of the Chandos Gardens residents, accepted that some lawful use had been made of the land. He also said that he had heard the school using the field on a couple of occasions. Yet other witnesses had said there had been use on many occasions.

8.31. Mr [redacted] had said in his evidence that he had seen dog walking, children kicking a football, children kicking a rugby ball. He had seen up to half a dozen people on the field at any one time. It should be borne in mind that Mr [redacted] agreed that the field could only be seen from an upstairs window in his house. Although Mr [redacted] had said he had no particular axe to grind in relation to this matter, he had in fact been lobbying the Councillors to improve and protect the security at the back of his property. The original plan had been to leave a wide path on the field at the back of his property; he was, for security reasons, not at all keen upon that plan. His evidence needs to be considered in that context.

8.32. Ms [redacted] had said in her evidence that she had seen the occasional dog walker on the field. She had said that she walked alongside the field from Chandos Fold to the playground and shops. She said that she had done this two or three times a week. She would tend to take the quickest route. In her statement she suggested that the field was covered in dog faeces and litter. It is hard to reconcile these statements. From her house to the playground and shops the shortest route would be along Chandos Gardens. If the field were as bad as she states, why would she choose to take a longer and more difficult route and go that way? This would be especially the case when she was using the pushchair.

8.33. On the question of neighbourhood, it is notable that in the well-known ***Oxford City Council v Oxfordshire County Council*** case in the House of Lords, Lord Hoffman had said that the expression 'neighbourhood within a locality' in the legislation is obviously drafted with deliberate imprecision. In an urban setting inhabitants of a neighbourhood might agree they live in a neighbourhood, but disagree about its precise boundaries. Inevitably the boundaries of an urban neighbourhood will exhibit imprecision, even to the inhabitants of the neighbourhood. It would therefore be near impossible to get 100% agreement as to the boundary of a neighbourhood. In this case however the neighbourhood has unusually distinct boundaries. That these boundaries should be the same as a polling district should therefore come as no surprise. The topography of an area is indeed taken into account in setting out polling district boundaries, in accordance with relevant guidance for that purpose. Geographical features are often distinguishing features of a neighbourhood. The neighbourhood here is roughly triangular in shape. About 1½ sides of it are steeply

wooded valley, and the third side is a major road and bus route. The historic mapping evidence shows that most of the housing to the east of Lidgett Lane was well established already in 1908, quite unlike the position to the west of that road. Apart from two or three streets it was open land to the west of Lidgett Lane at that time. It was not until 1960 or so that one sees substantial housing to the west of Lidgett Lane. That was when Leeds City Council built the large social housing estate known at the Brackenwood Housing Estate. Since then there has been a small amount of other infill housing, most notably on what had been the Chandos Park Rugby Ground. The neighbourhood which the Applicant is putting forward is known locally as Brackenwood, or the Brackenwood area.

8.34. Indeed it was notable that in 2013 Roundhay Ward Councillors were recorded as having wanted a Polling Station reinstated in the Brackenwood neighbourhood. It was recorded that a Councillor had complained about the distance that residents of Brackenwood had to travel to vote. Access was said to have been particularly difficult for the elderly and disabled. Other Councillors had supported the idea of a Polling Station physically situated within the Brackenwood area ,which is the same as the polling area known as ROB.

8.35. There is also a Brackenwood Community Association, which is a registered charity. While the original area intended to be served by that Association is not known exactly, it must have had something to do with the Brackenwood Estate, which had been built from the 1960s. This area has a very different character and feel from the area bordering it to the east. In summary, one should not set an impossibly high test for what constitutes a neighbourhood, and the Brackenwood area or the polling area known as ROB is quite adequate to be put forward as a neighbourhood.

8.36. On the question of statutory incompatibility [redacted] addressed the ***School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013***, and in particular ***paragraph 13*** of ***Schedule 3*** to those Regulations, which provides that proposals must be implemented in the form in which they were approved or determined. The statutory proposal to expand the school in this case had in fact made no mention at all of Gledhow Field, the Application Site, being integral to the expansion. Failure to mention the application land in the statutory proposal might even suggest that to include the land would be in breach of that statutory proposal. However the more important point was that the inclusion of this particular green space is not at all integral to the proposal, in the sense of being a statutory requirement. Therefore there was clearly no statutory incompatibility here. There is also no question of any kind of fundamental incompatibility between the local public carrying on using the field as a town or village green, and use for educational purposes for the school. This was exactly the sort of situation which had clearly been envisaged by Mr Justice Ouseley in the ***Lancashire*** case at first instance.

8.37. Furthermore the field here had been declared surplus in 2005. It had not been used for educational purposes for many years. Mr Farrington, one of the Objector's witnesses, had said that there was no written report in relation to the delegated decision notice. The question is whether the land was ever reclassified as not being surplus.

8.38. There is no statutory incompatibility of the type the Supreme Court had contemplated in the ***Newhaven*** case here at Gledhow. In fact since 2012 there has been no statutory requirement for any particular amount of open space to be provided for a school. Many, in fact most, other neighbouring schools would fail the target amounts for open space in the guidance criteria which the Objectors have sought to rely on. Furthermore there are examples of schools which do share space with the public. Reference was made to a Sunday Times article indicating that Meanwood School and its pupils made the most of the land of Meanwood Park, which adjoined that school. The park there is equivalent to a town and village green in terms of access by the public.

8.39. The Objectors had sought to portray the application site field as being in a bad or unusable condition. However Mr [redacted]'s evidence was to the effect that the Rugby Club had used the field primarily as a training ground, from 1994 through to 2002. Use from 2002 then tapered off until the surrender of the lease in 2006. Mr [redacted]'s evidence suggested that they had stopped using other sites for training, in favour of the application site, which he called *"the postage stamp"*. They used this land in preference as it was always clean and ready to use. As they were using the land for training, they would have had detailed knowledge of this field. All of this casts doubt on the evidence of those who portray the field has having been in a bad condition.

8.40. As had been arranged and agreed at the Inquiry, further written submissions were made by the Applicant on the Statutory Incompatibility issue, after the publication in April 2018 of the Court of Appeal's judgment in the important conjoined cases of ***R(Lancashire County Council v Secretary of State; R(NHS Property Services v Surrey County Council*** [2018] EWCA Civ 721.

8.41. He addressed first the claimed Statutory Incompatibility resulting from statutory procedures set out in ***Schedule 3*** to the ***The School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013***.

8.42. Schedule 3 of these regulations states: *"Manner of publication of proposals 1.—(1) The proposer must publish— (a) the proposals on a website; and (b) a notification of the proposals (including the address of the website where the proposals are published) in a local newspaper."*

8.43. At the inquiry, in evidence given by Mr [redacted], it was shown that the published proposals did not contain any reference to Gledhow Field. It was also confirmed at the inquiry that no revocation or alteration of the proposal had taken place. Therefore no statutory incompatibility can exist.

8.44. Further, ***schedule 3 paragraph 2 (1)*** states: *"Any person may send objections or comments in relation to any proposals to the local authority within four weeks from*

the date of publication.". As Gledhow Field was not included in the proposal, it was not possible to send objections or comments. ***Schedule 3, paragraph 13(1)(a)*** states: *"proposals must be implemented in the form in which they were approved or determined".* Gledhow Field was not mentioned in the published proposal, therefore the inclusion of Gledhow Field as part of the expansion project arguably puts the Council in breach of ***schedule 3, paragraph 13(1)(a).***

8.45. The second form of claimed statutory incompatibility is a matter of statutory construction, and is the main subject of the Court of Appeal's judgment on statutory incompatibility. Lindblom LJ, as lead judge, was clear in his judgement. Paragraphs 38 to 48 explain why statutory incompatibility does not exist in either of the cases heard at appeal.

8.46. The ***Newhaven*** judgement, in large part, dealt with the conflict between two Acts: the ***2006 Commons Act*** and the ***Newhaven Harbour and Ouse Lower Navigation Act 1847***. The key paragraph in ***Newhaven*** is paragraph 93: *"The question of incompatibility is one of statutory construction. It does not depend on the legal theory that underpins the rules of acquisitive prescription. The question is: "does section 15 of the 2006 Act apply to land which has been acquired by a statutory undertaker (whether by voluntary agreement or by powers of compulsory purchase) and which is held for statutory purposes that are inconsistent with its registration as a town or village green?" In our view it does not…."*

8.47. The objector's claim of statutory incompatibility in the present case rests on the duties of a local authority laid down in the ***1996 Education Act, sections 13 and 14*** in particular. Lindblom LJ considered this specifically in paragraph 39 of the judgement: " *I think Ouseley J.'s approach to this question in the Lancaster case was essentially consistent with the principles indicated by the Supreme Court in Newhaven Port and Properties, and that his conclusion, in agreement with that of the inspector, was correct. Mr Edwards' submissions to the contrary seem to extend the relevant principles beyond their true scope and to give them an effect that the Supreme Court did not intend – and with potentially far-reaching consequences. Assuming for the moment, as the county council contend, that it had acquired and held the land at Moorside Fields for educational purposes – a contention the inspector could not accept – I do not think this was a case in which the concept of "statutory incompatibility" stood in the way of the land being registered as a green. It seems to me that the statutory powers and duties in the Education Acts on which the county council sought to depend as giving rise to some decisive incompatibility with the 2006 Act, in particular sections 13 and 14 of the Education Act 1996, were materially different from the statutory provisions considered in Newhaven Port and Properties."*

8.48. This is stated again in paragraph 41: *" The statutory powers and duties relied upon here were general in their character and content, comprising a local education authority's functions in securing educational provision in its area. There was no statutory obligation to maintain or use the land in question in a particular way, or to carry out any particular activities upon it. The basis of the asserted incompatibility between section 15 of the 2006 Act and the provisions of the Education Acts on which the county council sought to rely could only be that the*

carrying out of its general obligations to provide schools in its area – its compliance with a "target duty" – might be or become more difficult or less convenient, not that it would be prevented from carrying out any particular statutory function relating specifically to the land whose registration as a town or village green had been applied for. There was no statutory duty to provide a school on the land, or to carry out any particular educational activity on it. There were no proposals to develop it for a new school. The fact that the county council, as owner of the land, had statutory powers to develop it was not sufficient to create a "statutory incompatibility" (see paragraph 101 of the judgment of Lord Neuberger and Lord Hodge in Newhaven Port and Properties). Nor was the fact of its having been acquired and held for such purposes – if, indeed, it was. The relevant statutory purposes were capable of fulfilment through the county council's ownership, development and management of its property assets as a local education authority without recourse to the land in question – notwithstanding that, on its own contention, it had owned that land for "educational purposes" for many years. The registration of the land as a town or village green would not be at odds with those statutory purposes."

8.49. The point made in paragraph 42 in particularly relevant in this case. The building work at Gledhow Primary School has been completed; no building work has taken place on Gledhow Field. The local authority has fulfilled its statutory duties to provide school places. There is no statutory requirement for the amount of playing field space for pupils, there are only guidelines. In ***Newhaven*** an argument based on Bennion, "*Statutory Interpretation*", 6th ed (2013), p 281, had held sway: *'Where the literal meaning of a general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. Accordingly the earlier specific provision is not treated as impliedly repealed.'* Lindblom LJ however was clear that the ***1996 Education Act*** is a general power therefore the ***2006 Commons Act*** does not yield to it.

8.50. In the case of Gledhow Field, the land is not being used to provide school places. The places have been provided within the existing school grounds. The objector claims Gledhow Field is needed to provide playing fields. As there is no statutory requirement for the amount of playing field space, there are only guidelines, to claim statutory incompatibility is to claim statute should yield to guidelines.

8.51. In paragraph 42 Lindblom LJ highlighted Ouseley J's point that the local authority would be able to carry out its statutory duties even if it could make no use of the land. Lord Justice Lindblom and Ouseley J both make clear that when considering statutory incompatibility there is a distinction to be made between the statutory duty of a local authority to provide school places, and any other use of the land by the local education authority. As stated in paragraph 42: *"...the county council, as local education authority, would still be able to carry out its statutory educational functions if the public had the right to use the land for recreational purposes, and this would also be so even if it could make no educational use of the land itself".*

8.52. The Applicant in this case has shown the amount of playing field space at neighbouring primary schools – all have less playing field space than GPS without Gledhow Field. There is no claim that these schools are failing in their statutory duties – they are able to carry out their statutory educational functions.

8.53. Lindblom LJ also showed that the existence of statutory powers that could be used for the purposes of developing the land in future is not enough to create a statutory incompatibility. Paragraph 46 of the judgment deals with this point.

8.54. The Court of Appeal had been clear in its judgment: no statutory incompatibility had existed in either of the cases it was considering. Equally there is no statutory incompatibility in the present case which overrides the normal working of the ***Commons Act***.

8.55. As had been provided for in supplementary directions, thos submissions just summarised were made before the Principal Objectors gave any part of their response to the new Court of Appeal decision. The Applicant accordingly had a further right of reply, in which context he submitted as follows.

8.56. The statutory notice of the Proposal to expand Gledhow Primary School of September 2016 had contained an internet 'link' where, according to the statutory notice, the complete proposal could be obtained. That link had led to the statutory proposal document entitled "*Statutory proposals for a prescribed alteration*". These statutory proposals did not mention Gledhow field. Any member of the public following the website link in the statutory notice would have seen the statutory proposal. Both the statutory notice and the statutory proposal were submitted in evidence to the Inquiry. Mr [redacted], called as a witness by the Objectors, had confirmed that this was the complete statutory proposal.

8.57. The Objectors had accepted that there is no reference to Gledhow field in the published, statutory proposals of 2014, but had argued that it was clear that they were prepared on the basis that they would include the field, and the consultation carried out in 2014 was on that basis [it had said "the land to the rear has potential to offer … school expansion …"]. The approach to statutory incompatibility in the ***Newhaven*** case had hinged on the view that a situation specifically provided for in earlier particular legislation should not be treated as impliedly repealed by a later piece of general legislation. That is, a general provision does not derogate from a special one (*generalia specialibus non derogant*). However the Objectors' claim in this case would mean a general statute should yield to what is merely an assumption.

8.58. The Objectors make an assumption that the public knew the field was part of the expansion proposal. As the Objectors themselves point out, there was only one comment relating, indirectly (likelihood of increased dog fouling in neighbouring streets), to Gledhow field. When the public did understand the impact on Gledhow field, more than 400 signed a petition to keep the field open to the public, more than 100 completed a survey stating the same thing, more than 40 people submitted signed

statements in support of the TVG application, and 16 people appeared in person to give evidence at the inquiry. This indicates it was not "absolutely clear" that Gledhow field was part of the proposal.

8.59. The statutory notice did make it clear that "the proposal will require additional building and the remodelling of school accommodation". The clarity of the terminology used ('building' and 'accommodation') in this statement would lead a reasonable person to believe the changes referred to would affect the structures, rather than the school grounds generally. It clearly does not mention playing fields in general or Gledhow field in particular. To suggest that a Council committee decision in 2010 "clearly meant" that Gledhow field was included in the 2014 statutory proposal is wrong.

8.60. The Objectors are correct in stating a consultation took place. However, the published, complete proposal did not mention Gledhow field. A person who wanted to keep Gledhow field open to the public would, on reading the published, complete proposal, have no reason to think there was cause for concern. This is one reason why there was only one comment relating, indirectly, to Gledhow field in response to the consultation, but were then many objections when the effect on Gledhow field became known.

8.61. The Objectors' point as to the obligation provided for in statutory regulations to carry out a school modification proposal once it has been decided upon is irrelevant, as the statutory notice and published proposals did not mention playing fields in general or Gledhow field in particular. There plainly was a proposal to expand the school. However, the published statutory proposal did not include Gledhow field. Therefore statutory incompatibility cannot exist with the ***2006 Commons Act***.

8.62. As to the Objectors' claim that the proposals "required the use of the application site for educational purposes", they have themselves acknowledged that "whether or not there was a statutory duty to provide an amount of play space which included the application site is not the point." It cannot be claimed that Gledhow field was "required" when there is no statutory duty to provide a specific amount of play space.

9. The Statement of Common Ground

9.1. In this case a substantial Statement of Common Ground was agreed between the Applicant and the two Principal Objectors in the case, Leeds City Council as Landowner and the Governors of Gledhow Primary School. This was produced in writing for the purposes of the Inquiry. Much of it relates to matters which were fairly obvious and uncontroversial. It is nevertheless appropriate that I should note some aspects of it in this Report. The location of the land of the application site was identified on a plan attached to the Statement of Common Ground, and it was indicated that the area of the site is 13,045 square metres. The position of the site in relation to Gledhow Primary School was set out, as were the speed restrictions along Lidgett Lane along the other side of the school.

9.2. Reference was made to a *"cut off map"* showing the area from which pupils were normally offered places at the school. The school is the nearest primary school for children whose home address is within the relevant line shown on that map.

9.3. A plan was also produced showing various services and facilities for the public which exist in the area surrounding the application land. Reference was also made to a facility just behind the school buildings known as the Roundhay Children's Centre. That centre hosts a number of weekly activities for local children and parents, and is also the main base for a privately run after-school club which is attended by pupils of the school.

9.4. An equipped play area/park known as the Gledhow Fields Playground Community Project adjoins the school boundary to its immediate north. That area is accessed from Chandos Gardens, and is situated on land which used for form part of the school grounds. That park opened in March 1999.

9.5. To the north of the school on the opposite side of Chandos Gardens is a parade of shops, including a convenience store and a post office, etc. Other commercial operations in the area were mentioned, as was the local medical centre slightly further to the north. Reference was made to other schools and the facilities further north, to the east side of Lidgett Lane. One of these facilities to the east of Lidgett Lane is the Lidgett Lane Community Centre.

9.6. There is an area of public open green space known as Allerton Grange Fields adjacent to Moor Allerton Hall Primary School. Those fields became publicly accessible in 2009 following the relocation and redevelopment of the High School buildings. The location of local churches and church halls was described. Other facilities in the area were described, by reference to their locations.

9.7. The Gledhow Sports and Social Club, which is the base for a number of local sports teams and a social venue, is situated approximately 600 metres to the south-east of the school.

9.8. The land of the application site was part of a larger parcel of land conveyed to Leeds City Council in January 1946. There is a notation on the cover of the conveyance which says that it was recorded in the Books of the Ministry of Education. It follows that the land was acquired for education purposes.

9.9. Historic maps of the area were produced, and show that the application site formed part of Gledhow Grange, until it was annotated as a sports ground around 1950. A school has existed on the existing school site since the 1950s. The existing school, now extended following recent expansion, was then built at some time between 1960 and 1962, when the land was annotated as a playing field next to the school which was labelled 'Gledhow County Primary School'. That annotation is also present on later maps from between 1967 and 1973.

9.10. The so-called steel palisade made was first shown on a map dated 2004. That map showed no particular annotation on the application site land.

9.11. The application land was leased by Roundhay Rugby Union Football Club by lease dated 14th December 1981, specified to run until 31st May 2006. The Club surrendered the lease in 2006, but had continued to use the land until at least autumn 2002.

9.12. On 26th May 2005 the Chief Executive of Education Leeds presented a Report to the City Council's Chief Education Officer in respect of the land, which recommended that the field to the rear of Gledhow Primary School be declared surplus, and transferred to the development department for disposal. The Chief Education Officer signed a delegated decision notice declaring the land surplus.

9.13. In May 2010 the Chief Executive of Education Leeds took a Report to the Council's Asset Management Group about the basic need requirements for sites for potential for new primary schools in 2012 and beyond. That report had explained that sites had been identified to meet a demographic need for primary education. It referred to a number of desk-top appraisals which had been undertaken to identify potential sites. One of them was land adjacent to Gledhow Primary School. The procedure which followed in 2010 was described. This led on to it being reported that Education Leeds requested that listed sites, including this site, be earmarked. There was a Report proposing that the making available of the application site in particular (with others) should be recommended to the Council's Executive Board. A resolution of the Strategic Investment Board of the Council was made in line with the recommendation (in November 2010). The Executive Board of the Council in December 2010 approved a recommendation that "the earmarking and utilisation of the sites listed in the report [to the Executive Board] for the proposals outlined be agreed. [I note here that the paragraph (3.11) in that Report (*attached to the SCG*) which referred to land at Gledhow Primary School had begun with the words: "*SIB supports and recommends that land at or adjacent to the following sites is made available for the expansion of provision provided within this report*", and concluded with: " *The proposals do not necessarily require the whole parcel of land in each case* …"]

9.14. The planning history of the application site land was also discussed in the Statement of Common Ground. An application had been made for a temporary classroom in July 2015. The planning application site had included the present application land, although that was not where the temporary classroom was proposed. A further planning application was validated in September 2015 which sought permission for extensions to the physical building of the school, and alternations to landscaping, external works and an extension to car parking. Once again the planning application site put forward included the present town or village green application land. The relevant planning permission was granted in December 2015. Various detailed

schemes pursuant to that planning permission were then later approved, as is normal in such cases.

9.15. There are statutory provisions, and space standards, which apply to schools. Various such statutory provisions were referred to in the Statement of Common Ground, but do not need to be summarised by me here. Non-statutory guidelines for school buildings and sites were also referred to. These guidelines include the setting out of how to establish the site area requirements for a school. There are also legal requirements in relation to consents which need to be sought when there is any proposal to dispose of publicly funded school land, including playing fields.

9.16. Between June and July 2014 the Council as local education authority consulted on proposals to increase primary school places in the area from September 2016. That included a proposal to expand Gledhow Primary School from a two form entry to a three form entry. Reasons were given for this proposal, which included that the school had "*land available as part of the school site… The land to the rear has potential to offer both school expansion and some shared community sports use as part of a joined up plan*".

9.17. A report by the Council's Director of Children's Services to the Executive Board in September 2014 made reference to an intention to extend the fence line so that the land which is the present application land would become a safe and secure part of the school site. What the Executive Board actually resolved (relevant to Gledhow Scool) was to approve "*the publication of a Statutory Notice to expand [the] School from a capacity of 420 pupils to 630 pupils … with effect from September 2016*".

9.18. A Statutory Notice to this effect was duly issued, which also included the words "*This proposal will require additional building and the remodelling of existing school accommodation*" [but (I note from the document) did not make any reference to the incorporation into the school's grounds of the present application site].

9.19. Consequential reports followed. A report in December 2014 in relation to this exercise noted that concerns had been raised in a representation in response to the Statutory Notice, which was treated as an objection. That had included concerns relating to the bringing of the application land to the rear of the school into school use. The report stated that the land was already part of the school site but not currently fenced and would be brought back into school use to compensate for outdoor areas lost to the construction of additional school accommodation.

9.20. The Council's Executive Board on 17th December 2014 made the resolution which it had been asked to, in the light of the outcome of the relevant Statutory Notice, namely "*That the expansion of Gledhow Primary School, by increasing its capacity from [420 to 630 …] be approved*"

9.21. The Statement of Common Ground also set out a number of matters which were not agreed. I do not need to set those out here. I should perhaps additionally note that what I have sought to set out above in this section is only a summary of what appeared to be the main points in the Statement of Common Ground. The full statement is of course available to the Registration Authority as part of the background papers which accompany this Report.

10. THE EVIDENCE FOR THE OBJECTORS

10.1. Even more so than was the case for the Applicant's side, the Objectors in this case produced a large volume of written documentary material, much of which was evidential in nature. The greater part of this material, or at least the salient parts of it, was in the event referred to either by the oral witnesses called on behalf of the Principal Objectors, or in the submissions made on behalf of those Objectors. Such reference as needs to be made to that written and documentary material in this Report will therefore be picked up in the sections which follow in this Report, where I consider the oral evidence and submissions for those Objectors. In the event the only oral witnesses called for the Objectors' side were those called on behalf of the two Principal Objectors. As noted earlier however there were in this case several hundreds of other objectors who had made written representations, in respect both of the original application and the Applicant's announced intention to change his approach to the definition of the relevant neighbourhood. Those representations often contained a mixture of some evidential material with what were in effect submissions. Any observations I need to make in respect of the submissions will be made in the next following section of this Report.

10.2. The first oral witness called for the Principal Objectors was ***Mr*** [redacted], who is a co-opted Governor of Gledhow Primary School. He lives at [redacted], Leeds.

10.3. He had lived in the local area for about 39 years. Between 1978 and 1998 he lived about 100 metres from the school. He now lives about a mile away.

10.4. He is a retired local government officer who had held a number of posts with Leeds City Council, including Director of Planning and Deputy Chief Executive. He retired from the Council in 2003. He had been a member of the Governing Body of Gledhow Primary School for more than 4 years. He was a lead Governor on the question of the expansion of the school, and dealing with the present ***Commons Act*** application.

10.5. He described some of the history of the school and explained how in 1992 it became a two form entry primary school, with approximately 500 children aged between 3 and 11.

10.6. Originally the school had enjoyed the unrestricted use of all its land (meaning all its land including the present application site). But in 1994, because of concerns about vandalism and inadequate fencing, a palisade fence had been erected to ensure that the school could be contained within a secure perimeter. That fence divided the school's land into two parts, leaving the present application site outside the palisade fence. There are access gates in the palisade fence to allow the school to continue to maintain the land on the other side. The school had continued to maintain that land, with the exception of the period during which it was leased to Roundhay Rugby Club.

10.7. He explained some of the gestation of the idea that the school should expand its intake, and concerns there had been about its ability to do that satisfactorily. Then in 2013/14 another approach was made to the school to consider expanding, because of the severe shortage of school places in the area. Many primary schools in urban areas are tightly constrained; Gledhow had the advantage of a land area which would allow some expansion, when the present application site was taken into account. Even then some Governors were reluctant to reconsider the issue.

10.8. However eventually the Governors accepted the responsibility to assist in the provision of additional places. Between February and June 2014 there were a number of preliminary design and feasibility meetings about this between the school and the Council. In May 2014 parents were informed about this.

10.9. At about the same time the school were approached by a local football training organisation with an interest in leasing the triangular shaped area which is the application site. That organisation suggested that a number of different forms of development on the land might be possible. Parents were informed about that approach, but the proposals were then overtaken by the school expansion plan and were not pursued. The football proposal was accordingly not taken up with the City Council. Nevertheless he understood that the Friends of Gledhow Field had informed and approached local residents and others for support, in their concern that the field might be developed.

10.10. Public consultation about the school expansion proposal was undertaken during June/July 2014. There was concern about various factors, including minimising disruption to the existing school, and maintaining the school's standards and ethos, as well as the adequacy of the land available for what was proposed.

10.11. The outcome of the public consultation was reported to the Council's Executive Board in September 2014, with a reference to extending the fence line so that the present application site would become a safe and secure part of the school site. In November 2014 the School Organisation Advisory Board approved the expansion of the school, including the use of the application land. In December 2014 the Council's Executive Board made a decision to expand the school to three forms of entry from September 2016, and supported the school's position on the use of the application land.

10.12. Although the decision had been for the school to expand to three form entry from September 2016, a crisis in the under-provision of school places meant that the school was persuaded to accept a *"*bulge cohort*"* in September 2014. Temporary classrooms for that purpose were approved.

10.13. Design meetings about the main school expansion took place through 2014. At a meeting of the Governing Body in June 2015 there was a discussion about the requirement for the application site land, and the need for fencing to secure the site. The Governors were also made aware of a petition opposing the fencing of the land. It became apparent at another meeting held in July 2014 that evidence was being collected for a village green application. The school Governors took the view that the application site land needed to be securely fenced to ensure that the school meets its responsibilities for safeguarding children. Nevertheless the school was prepared to allow for space to be left for a path to provide for those local residents who use the land as a short-cut to the local shops.

10.14. He was aware of references which the Applicant's side had made to the situation at Meanwood Church of England Primary School, which had been cited as a good example of the shared use of school playing fields. [redacted]'s view was that the situation at Meanwood is not in any way comparable to that at Gledhow. There is one piece of land which is shared between Meanwood School and the public. It is used as a basketball court, and during school hours it is locked to prevent public access. It is then made accessible to the public outside school hours. Even then Mr [redacted] understood that this arrangement caused some problems. There had been further reference to the use that Meanwood School apparently made of Meanwood Park, at lunchtimes and for sport. However Mr [redacted] understood from contact with the head teacher at that school that such use involved undertaking a risk assessment each time the park is used, and the school has to cone-off the area being used from the public, to ensure close supervision of the children. There are many reasons why a similar arrangement would not work at Gledhow, where secure access to the whole field will be required on a day to day basis, to meet the requirements of a three form entry school.

10.15. On 17th July 2015 [redacted], the Applicant, had given notice to the head teacher of Gledhow School and Council Ward members, of the intention of his group to submit a village green application, asking that works to enclose the land should be halted. The Chair of the School Governors then sent a letter to parents explaining the school's position.

10.16. Through July and August 2015 there were discussions about the extent of fencing to be installed at the site, and meetings were held with residents whose properties adjoined the field. Some residents were concerned about anti-social behaviour, and wished to see the entire area enclosed by the school, while others were equivocal about some of the land being left open for community use. The conclusion reached by the City Council and the school was that, given the shortage of time before the new school term and the arrival of the bulge cohort, and the need to decontaminate

the land before it could be used by the children, the whole site needed to be fenced off as soon as possible.

10.17. The village green application was submitted on 4th August 2015. However the school governors did not become aware of the date of the submission until much later on, when the application was advertised. The fencing off of the site was completed on 24th August 2015. The provision of the temporary classrooms and the approval of the full scheme for expansion of the school was also progressed. However the school governors concluded in 2015 that they could not proceed with the scheme for the permanent expansion of the school in view of the level of uncertainty about the future availability of the application land, caused by the news about the village green application.

10.18. At a meeting in January 2016 the school governors made clear to the City Council that they were not prepared to proceed with the school expansion in the present circumstances. At that meeting the Council offered to provide a multi-use games area, in the event of the town or village green application being successful. That proposal was not progressed however, and did not form part of the approved scheme which the Council has a duty to implement. Nevertheless it became clear that the Council's view was that the school was now irrevocably committed to the expansion to three forms of entry each year. Against this background the school governors by a majority decided to sign off the proposed design for the expanded school, in spite of their concerns. An early works contract started on 21st March 2016. The governing body also started to draw together the information that would be required to sustain an objection to the village green application, and agreed to lodge such an objection, and to work jointly with the City Council as landowner.

10.19. The school's existing head teacher left the school at the end of March 2016, and interim management arrangements were put in place pending the appointment of a replacement. However the building contract proceeded relatively smoothly, and the first stage, which comprised new reception facilities, was available as planned for the September 2016 intake, which coincided with the start of the school's new head teacher. The temporary classrooms were in use for another term before being removed as the new building became available. The new buildings were handed over to the school in December 2016.

10.20. By the end of 2017 the school would have received the increased intake for three years, and will reach its full capacity of 630 pupils in 2021. Nevertheless the school is still oversubscribed.

10.21. The school is currently using all its land (including the application site). It is however constrained as to the extent to which that land can be fully utilised by the uncertainty about its future availability. The land has been cleaned, levelled and reseeded, but it will be inappropriate to commit more funding other than for grass cutting for further improvements until the present application is resolved.

10.22. Mr [redacted] said that throughout his time living in the area it had been clear to him personally that the application land had been part of the playing fields belonging to the school. Ordnance Survey maps, for example the one from 1982, clearly showed the school and playing fields as a single entity, and he could recall the school using all the land for outdoor play and sports events. The land had been purchased as part of a single parcel of land in 1945, and held for education purposes ever since.

10.23. While living close to the school, it would never have occurred to him that he might use the field without the permission of the school, or enter the grounds illegally by breaking through the surrounding fences. In 1981 part of the school playing field was leased to Roundhay Rugby Club, who were based in Chandos Avenue. The leased land was a much needed additional resource for the club, and was used for training and second team and junior games. One of his sons had played junior rugby for the Roundhay Club, and Mr [redacted] recalled standing on the field watching games and practice.

10.24. A chain-link fence with at least one 'No Trespassing' sign enclosed the land of the application site. Access to the land could be obtained through the school, or from gates at Brackenwood Drive and Chandos Gardens. His recollection was that the Rugby Club controlled access to the land by locking the gates at the Chandos Gardens entrance. However over time that fence deteriorated or was broken down in places due to vandalism. In general however people living in the area have respected the fact that the land belonged to the school, and that the Rugby Club also used the land. Consequently people did not use the land for unauthorised purposes.

10.25. However the open nature of the site did leave the school open to opportunistic vandalism, and there were incidents of this, for example in 1994/5. As a result of that the school invested in the substantial security fence, the palisade fence, which is still in place, but which left the application site outside. He had been told that the school could not afford to fence the whole site. He understood there would also have been problems over the lease to the Rugby Club if the school had tried to fence off the whole site at that time.

10.26. The Rugby Club lease expired in about 2006, by which time the Club had merged with another club and its other site in Gledhow was being developed for housing. During the Club's tenure of the application land between 1981 and 2006, the Club was responsible for grass cutting and maintenance. After the surrender of the lease the school then became responsible for the costs of grass cutting and basic maintenance, and currently gets this done by the Parks and Countryside Division of the City Council.

10.27. Whereas the land was generally respected by local people during the period it was used by the Rugby Club, in more recent times since the departure of the Club there have been instances of anti-social behaviour, some of which have required attendance of the Police. The school's superintendent has also taken action to move people off the land on occasion.

10.28. Since 1998 Mr [redacted] has lived a little further from the school, but still within its catchment area. His grandchildren have been pupils at the school, and he makes frequent visits to drop off and collect the children and visit events, and also in his role as governor. He observes the field at different times of the day and evening throughout the year, and he has not seen evidence of members of the local community indulging in sports and pastimes on there, other than the occasional person, sometimes walking with a dog or dogs, or using the field as a short cut. He has never seen families enjoying picnics, or general sports, in the way that had been claimed. In his view allowing children to play and picnic there would be unpleasant and potentially dangerous, because of the amount of dog excrement that had been deposited there.

10.29. He had one experience in August 2015, when walking the field with the head teacher and Council officers, when a man with three dogs using the field as a short cut allowed one of the dogs to defecate on the field. A Council officer spoke to that man and advised him that it was an offence not to clear up after his dog. The offender did not carry dog bags, and under pressure moved the excrement into the undergrowth around the field.

10.30. Mr [redacted]'s view is that the land is part of the school grounds, and has been held for education purposes since 1945, and has not been used for lawful sports and pastimes as of right over the previous 20 years.

10.31. On the question of Mr [redacted]' originally identifying the neighbourhood relevant to this application as Gledhow, but then seeking to change the neighbourhood, Mr [redacted]'s view is that this was a self-serving change, contrived to artificially increase the statistical significance of Mr [redacted]' small number of supporters. It pays no regard to the community served by Gledhow Primary School. He doubted whether any of the Objectors or supporters would recognise themselves as residents of ROB (the polling district area now put forward by Mr [redacted] as the neighbourhood). The boundaries of polling districts change over time, and Mr [redacted] thought there had been at least one change in the present 20 year period relevant to the application.

10.32. He noted that the Applicant had drawn attention to shops, a doctor's surgery and other community facilities within his new suggested neighbourhood. That implied a self-contained and identifiable community, but ignored the fact that all the shops and other services serve a much wider community and geographical area than the one the Applicant now identifies. Lidgett Lane is not a barrier to service users. ROB is not some kind of self-contained village. It is not credible that a polling district whose boundaries may change when electoral arrangements are reviewed could form a proper basis for identifying a community of users of the land.

10.33. In defining the neighbourhood as polling district ROB, the Applicant appears to be drawing a distinction between different sections of the community served by the

school, based on the type of housing and accessibility to public and private open space. The effect of this change is to exclude a number of Objectors.

10.34. The school serves a diverse community, which is reflected in the school's population. In Mr [redacted]'s opinion the application is misguided, and does not serve the interests of the local community. It has resulted in significant costs being incurred that could otherwise have been spent on education or social care.

10.35. *In cross-examination* Mr [redacted] confirmed that gaps developed in the original fence around the land belonging to the school, and that people had in his view illegally entered through those gaps. There were incidents of vandalism by people approaching the school through that area and the old fence was clearly insufficient.

10.36. He acknowledged that the school had been prepared to consider the approach which was made to it by a sports operator, with a view to possibly installing some artificial pitches on the land. As it happened that matter was not pursued. There had been a number of options prepared and considered as to how that organisation might have wanted to use the land.

10.37. He reiterated that the original proposal was to expand the school from autumn 2016, but in the event they took in a bulge, i.e. a larger number of pupils, from autumn 2015. He acknowledged that a Sunday Times article about Meanwood School had appeared to suggest that that school made quite a lot of use of the park that was adjacent to it, and regarded it as a matter of good fortune that use of the park was available to them.

10.38. As to the possibility which had arisen of a multi-use games area being installed at the school, he himself had no expertise as to the adequacy of such facilities. It was merely offered as an option by the Council, but not part of the agreed scheme. It was not necessarily acceptable to the school to have such a facility.

10.39. He personally had usually entered the land from Lidgett Lane, but sometimes from Chandos Gardens. He can see the field when he is on the school premises. He acknowledged that some trees were planted by the school outside the palisade fence. It was true that to some extent those trees could obscure some views of the application field. However from ground level one could see under those trees. He would typically walk the school grounds and monitor the application site from the school site each time he went to the school. He would do that for example when he went to governors meetings, or at least once a week when he went there to pick up his grandchild, although he would not do that every time he picked up that child. His visits to the land in connection with governor's meetings would be at least one a term. He would also attend a curriculum and resources committee once a term and do the same thing. He visited the school for other things as well, and on none of those visits did he see usage of the field other than people cutting through. The evidence called on behalf of the Applicant did not match his own personal experience and observation.

10.40. On the question of neighbourhood, he accepted that neighbourhoods do exist in urban areas, and that in such areas the ways in which people and neighbourhoods interact is quite complex. The fact of there being a Post Office for example does not identify that an area is a neighbourhood. What Mr [redacted] says is that a polling district is not a neighbourhood. Anybody can use the shops on Lidgett Lane, whatever side of that lane they live on. The Applicant's proposed neighbourhood excludes many Objectors from the neighbourhood, but of course it does not stop them objecting.

10.41. *In re-examination* Mr [redacted] confirmed that a multi-use games area for the school was not a matter that had been pursued. It was not part of the agreed scheme for the expansion of the school, and there had never been a formal offer in relation to it. The school had reservations about the costs of maintaining such a facility.

10.42. As for the distinction between the so-called bulge cohort and the permanent expansion of the school, without the full expansion the school could still accommodate a bulge cohort with the use of temporary classrooms. That was in effect a one-off entry of reception children, as opposed to a full expansion to a situation where three forms would regularly enter the school each autumn. In other words a bulge cohort is quite different from full expansion.

10.43. ***Mr Christopher Gosling*** is a Senior Project Officer with Leeds City Council, with 9 years' experience in development and management of education projects and programmes. Prior to 2015 he had worked for the City Council as a Development Officer. His responsibilities include strategic evaluation of school sites for expansion, and subsequent project management of schemes arising from such analysis. In this instance he had also served as co-project manager for the bulge cohort 2015 project at Gledhow Primary School.

10.44. He explained the process of development of the Gledhow Primary School site to meet the requirements of a three form entry school. He explained the series of meetings and consultations which took place between June 2014 and the end of 2015, and the background to the way in which sites are considered for potential school expansion when the provision of more school places is necessary. This work is done against the background of design guidance, such as (in this instance) the guidance in *"Building Bulletin 99: Briefing Framework for Primary School Projects"*.

10.45. On identification of an appropriate school site, and completion of negotiations with the school leadership team and governing body, detailed analysis is undertaken leading to a project brief. Full consultation is undertaken. At Gledhow this process identified the critical requirements that the school needed to maintain its standards, while expanding some facilities and improving the circulation around the school, and also being able to use the Gledhow Field (the application site) to ensure no loss in external play and sporting standards.

10.46. Illustrative plans detailing the scale and extent of the proposed works were produced for consultation purposes in 2014. Gledhow Field was identified in that context as an area to include additional external physical education facilities in the form of a new full-size grass football pitch. Securing the use of the Gledhow Field was critical to the school's acceptance of a three form entry expansion, and also necessary to meet statutory requirements imposed by Sport England in instances where protected playing pitches are proposed to be developed upon. The existing school field (not the application site) within the palisade perimeter fence line of the school had been classified in the Leeds Unitary Development Plan as a protected playing pitch, and as such was subject to statutory consultation with Sport England.

10.47. Once the Council's Executive Board had agreed to a school expansion, following completion of the relevant statutory process, that decision must be realised by officers, and can only be revoked by the Executive Board. There was a serious risk therefore posed by the possibility that Sport England might object to the loss of part of the existing playing field to development, if that was not going to be replaced by further land, i.e. the land on the application site. Use of Gledhow Field (the application site) resolved that planning risk to the project.

10.48. Allowing use of the field without controlled access would pose significant safeguarding and health and safety issues to the school. Detailed management plans would need to be in place to ensure pupil safety was maintained at all times. For example staff would need to monitor all exits from the field, to prevent absconding. There would need to be a pick of the site prior to any use, to ensure no dangerous materials were present on the site. There would also need to be avoidance of any scenario where pupils can interact with strangers, etc. Shared usage was therefore not seen as viable. While such a scenario is present at a small number of primary school sites in Leeds, it is not the ideal configuration. One would not seek to create new learning places with compromised safety and security elements which would require intense management policies to mitigate.

10.49. At the time this project at Gledhow was being developed, the design guidance for schools was under review. The decision was taken to utilise the old document BB99. That document set out details of the amount of facilities of various kinds, indoor and outdoor facilities such as games areas, for any particular size of school. Due to the impending replacement of BB99 with *"Building Bulleting 103 – Area Guidelines for Maintained Schools"*, a decision was taken to make an adjustment to the plan based on BB99. The general adjustment was by reducing the scale of what was required by 5%, although for obvious practical reasons that could not be applied to all facilities, for example football pitches or games courts cannot be produced 5% smaller, because their size requirements are dictated by Sport England. A table was produced by Mr Gosling showing that the requirements for pitches and soft outdoor physical exercise space would not diminish with the introduction of the new briefing document BB103.

10.50. The analysis undertaken in the case of this school clearly indicated the scope for expansion at Gledhow Primary School, but noted some shortfalls in external sports

provision, in the form of pitches and hard surface games courts. Nevertheless it was concluded that the site was a viable one for expansion. More detailed analysis was then undertaken. Mr Gosling explained how the proposals for the expanded school were worked up, having regard to the relevant guidance in BB99. In the case of Gledhow Primary School, there were a number of changes in gradient or level on the site which needed to be considered, in the context of planning how the school's expanded grounds would be used.

10.51. While analysis showed that the Gledhow Primary School site is comparatively large, much of the space is constrained in terms of its potential for use. This is due to a combination of topography, positioning of the school buildings, and extensive foliage rendering large parts of the site unusable for curriculum obligations, particularly in relation to sports. These limitations meant that it would not have been practical or financially viable to seek a solution which excluded the use of the Gledhow Field to accommodate to the proposals.

10.52. Delivery of a three form entry expansion at the school necessitated providing a large six classroom block plus ancillary facilities, in addition to an extension to the existing reception class building. Those developments were implemented on an area historically used for games court provision, team sport pitches and informal hard play. By carrying out the development on those existing facilities, a further deficit in sports provision was created which needed to be dealt with. This resulted in the view being taken that the expansion at Gledhow Primary would be contingent on the use of the Gledhow Field (the application site). Without the proposed enhancements to sports provision, the school would not be able to successfully implement the physical education curriculum, once it was at the revised capacity of 630 pupils.

10.53. The school itself made it clear that expansion to three form entry would only be supported if the Gledhow Field was improved and brought into the secure boundary fence line of the school. As that field had been used historically as a Rugby field, no specific improvement works were specified for that area as part of the three form expansion project, in terms of irrigation. It was necessary to have regard to any public rights of way, and the final proposal for fencing the field to include it within the school grounds took account of that requirement, and also feedback from neighbouring residents.

10.54. The opportunity was taken to remove a significant change in level on the Gledhow Field, using some spoil generated by the school expansion project. In the event some ***section 106*** money arising from the relocation of the Rugby Club from its original land in Gledhow was used for the improvement of irrigation on Gledhow Field, because otherwise the money would have been wasted or lost.

10.55. Temporary classrooms were provided on the school site in order to cover the bulge cohort which arrived in autumn 2015. This required an acceleration of the use of Gledhow Field as an asset for the school, as against what would have been required for the proposed permanent expansion. Fencing of the Gledhow Field was therefore

accelerated and was carried out for use from the September 2015 academic year. Extensive consultation was undertaken with residents on the positioning of the fence, proximity to their properties etc. Sport England did not object to the placing of the temporary classrooms on what had been part of the school's pre-existing sports facilities, because of the information which had been provided about the further playing field land which would result from the full three form entry expansion, by incorporating Gledhow Field (the application site).

10.56. The full three form entry expansion is now complete, with all work on site finished and the new accommodation occupied. The bulge cohort accommodation has been removed, and the area occupied by it reinstated in line with requirements in the planning approval. Extensive enhancement has taken place across the entire site. An additional playground area has been provided adjacent to the field area, to offset the loss of hardstanding. An additional playground area has been provided to the south. Although the correspondence is not exact, the figures in relation to the scheme as eventually completed effectively meet the guidance requirements for such development.

10.57. The full three form entry expansion planning obligation was reviewed by Sport England under their statutory obligations. They essentially approved the proposal.

10.58. While Gledhow Primary School is perceived to be a comparatively large site, analysis showed that expansion here was more complex than first appeared. Significant level changes were present within the campus which affected placement and functionality of the available spaces, both before and after the project was carried out. Aesthetics and the character of the site also had a part to play in determining what could reasonably be carried out on the site. In his view the carrying out of the expansion project at Gledhow Primary School had led to significant betterment of the area known as the Gledhow Field (the application site). Large areas of that field had been levelled, and drainage installed to the pitch space. It is now capable of forming a sports pitch suitable for regular use by both the school and community groups.

10.59. Although the Gledhow Field is now safely and securely being used by the school, instances of anti-social behaviour and malicious damage have not ceased. There have been several instances where the fence has been damaged since its installation. Nevertheless the overall view must be that the school's expansion had been carried out successfully and satisfactorily.

10.60. *In cross-examination* Mr Gosling agreed that while there used to be a formal system of space requirements set for schools, according to the number of pupils etc., the current legislation and guidance is looser and merely requires the provision of adequate facilities for sport.

10.61. The statutory process leading to the expansion of Gledhow Primary School in this case was handled by a different team within the City Council, and was not Mr

Gosling's responsibility. An expansion project had to go to the Council's Executive Board, but in reality the decision to expand would have been taken previous to that.

10.62. As for the question of land being shared with members of the local community around the school site, in Mr [redacted]'s view it is not good design to have co-dependency. It is like giving a third party unfettered access to a sports field. In this instance it was concluded that it was not tenable to share the land.

10.63. Leeds had been incorporated as a City for a long time, and some schools within it were 100 years old. A lot of them had legacy problems, which at the time the schools were set up were not a problem. In many such instances one would not seek to provide for the same scenario to happen now.

10.64. The figures given in the document BB99 had the status of guidance or recommendations, not actual requirements. Nevertheless some matters are essential, for example there must be space for physical recreation when a school is provided or expanded. The Council's approach is to try to provide parity for all schools as far as practicable. Under the new guidance contained in document BB103, the question whether a school project would go ahead or not, without meeting that guidance, would depend on the circumstances. One might be able to use an artificial surface for example, which counts as double the area, but is much more expensive. There are also schools which are referred to as *"*confined schools*"* where the land available for the school is much more restricted and the requirement for facilities is therefore less. That is all detailed in the guidance, and is typical of schools in the inner city. As a matter of approach, the Council tries to avoid creating confined sites.

10.65. *To me* Mr Gosling explained that his reference to Council Officers being obliged to carry out a school expansion project exactly as it had been approved by the Council's Executive Board is a matter of the Council's practice, rather than a reference to some statutory requirement.

10.66. ***Mr Martin Farrington*** has been the Director of City Development at Leeds City Council since August 2010. His responsibilities include having delegated authority over the management of the City Council's land and property portfolio. He has 28 years' experience in local government.

10.67. In 2005 he was the Council's Head of Asset Management, with responsibility for the strategic management of the Council's land and property portfolio. That had included dealing with the decision by the Chief Education Officer to declare the land at the application site at Gledhow surplus. Following a report to the Council's Chief Education Officer, a delegated Decision Notice was signed by that officer to declare the land of the application site surplus. However that resolution was never implemented. The decision of the Chief Education Officer did not change the statutory purpose for which the land was held. That can only result from a formal appropriation by the Council from education purposes to another specified statutory purpose.

10.68. In order to appropriate land from one statutory purpose to another it is necessary for the Council to come to two separate conclusions, first that the land is no longer required for the purpose for which it is held, and second that it is needed for a new purpose. The decision whether the land is no longer required for the current purpose is one solely for the Council acting in good faith to decide. Any decision to appropriate land must be made in accordance with the procedures and protocols of the Council's constitution.

10.69. The decision to appropriate land is an executive function of the Council, and under the Council's constitution, in May 2005 decisions to appropriate land were delegated to the then Director of Development. Should a decision to appropriate land have been sought, the relevant officer would have presented a report either to the Director of Development, or the Council's Executive Board, and one or other of those would have come to a decision, which would have been recorded. The decision making process just described has not changed in substance since 2005.

10.70. In the case of this land none of the necessary procedural steps identified had been followed at any point, and the land was not appropriated from education purposes to any other statutory purpose at any time since its original acquisition. In May 2005 Mr Farrington himself was Head of Asset Management at the Council. That role covered the strategic management of the Council's land and property portfolio; it included identifying surplus land for disposal or alternative Council uses. Mr Farrington recalled the delegated decision report approved by the Chief Education Officer in the case of this land. At that time the education service was being delivered by Education Leeds, an arm's length company of the Council. As a company responsible for minimising their financial exposure, they took a more short term financial perspective on the holding of land than the Council would do traditionally. At that time there was a school closure programme in Leeds, due to falling demand for pupils. Against that background, and with a view to reducing their costs on estate management, they did not want responsibility for the extra land at Gledhow, and therefore wished to declare it surplus. In that context the Chief Education Officer therefore declared it surplus, as he had no resources to manage the land.

10.71. When that matter came to Mr Farrington, he took the view that there was no prospect of a sale, and that the land should remain part of the education estate, as the decision sought appeared to relate to short-term management convenience. His own perspective had been the long-term needs of the City, and the need for the land to be retained for education purposes for use at some point in time. He therefore did not support the transfer of the land, based on short-term convenience. For that reason no report was produced by him or any of his colleagues for the Director of Development to consider, and so no appropriation took place. Consequently the land continued to be held by the Council for education purposes.

10.72. Subsequent events show that the land is no longer surplus to requirements, but is indeed required for education purposes. The continued and future need to retain the land for education purposes is indisputable.

10.73. As to the 'No Trespassing' sign existing in one corner of the application site, it was notionally 'signed' by the Director of Education. The Council itself had run the education service in Leeds until 2001. Thereafter that service was undertaken by Education Leeds. It followed that the sign on the site must have been put up earlier than 2002, in Mr Farrington's view.

10.74. *In cross-examination* Mr Farrington again acknowledged that the Chief Education Officer had signed a notice in 2005 saying that the land here was surplus to education requirements. However the appropriation process within the City Council required both a donor department and a donee, i.e. a new purpose to which the land was proposed to be donated. In this instance the Council's Executive did not agree that the land was surplus. Mr Farrington's recollection is that he would have told the Education Department or the Education Officer, or telephoned, to give his reaction. It was in effect a non-decision. In other words, the Council did not intend that there should be an appropriation, and no appropriation took place. That meant that in a formal sense the land was never declared surplus.

10.75. *To me* Mr Farrington explained that he had taken the view in 2005 that there was in fact a prospect of this land being required in future for educational purposes in the longer term. This land actually was next to a school, and clearly had the potential to be used in the future.

10.76. ***Mr Richard Amos*** has worked for Leeds City Council since 2010, and is currently a Sufficiency and Participation Lead whose role includes reviewing and planning the sufficiency of learning places, etc.

10.77. For the purpose of planning primary school places, the City is divided into 42 areas known as Primary Planning Areas, which follow a rough geographical split in terms of the locality of schools and the communities they would naturally serve. They generally align with natural boundaries such as rivers, motorways, railways and other geographical features.

10.78. Due to increased demand for school places, the Council has permanently increased primary places within the Roundhay Primary Planning Area. This has happened over a number of years, and more recently bulge cohorts have been agreed at a number of local schools. Bids to establish free schools can also arise, which affect this process, and there had been such a bid in this part of Leeds. Even if permission were sought and granted for the establishment of such a free school, it is likely that its establishment would be some way off, and there would be the potential for Gledhow Primary School to be asked to offer further bulge places or to bridge the gap in the short to medium term.

10.79. Projections for the Roundhay Primary Planning Area showed the need for additional places, even with Gledhow Primary School expanded to three form entry each year. The Council is obliged to meet its statutory duty to provide sufficient school places, in accordance with the ***Education Act 1996***.

10.80. The permanent expansion of Gledhow Primary School was approved by Leeds City Council's Executive Board in December 2014, following a public consultation and statutory notice period. This was in part because it was a school with land available as part of the school site, and was located in an area of demographic need. The land to the rear of the school had potential to offer both school expansion and enhanced sports use, which could in turn offer added value to the area, as those facilities could then be accessed by the community via a letting arrangement between users and the school. That would ensure that both safeguarding and anti-social issues were addressed. Other schools were considered for expansion at that time, but were discounted for various reasons.

10.81. In determining the need to expand an existing school to meet rising demand, a thorough process of analysis and consultation takes place, and did in this instance. There are statutory regulations and statutory guidance which set out the process which must be followed when making such changes. That process was followed in relation to the proposed expansion here.

10.82. To provide the required facilities and outdoor space for a three form entry primary school, the application site is required. Once the Council's Executive Board approved the proposal to permanently expand Gledhow Primary School, the Council then had a statutory duty to provide for the proposed expansion.

10.83. *In cross-examination*, Mr Amos said that the City Council does sometimes carry out school expansions measured in terms of 'half-form' expansion, rather than an expansion always needing to take place by the increase of one whole form of entry in any given year.

10.84. Mr Amos said that the document 'Statutory proposals for a prescribed alteration', exhibited to the Statement of Common Ground, was the published proposal, which would have been formally approved by the Council.

10.85. ***Mr*** [redacted] lives at [redacted]. He is a Parent Governor of Gledhow Primary School. He has lived in and around the Gledhow area for almost all of his life, since his family moved to Leeds in 1975.

10.86. He had become a Parent Governor at the School in December 2016, attending his first meeting in 2017. He takes his duties as governor, both to the school and to parents and pupils, seriously.

10.87. As to the identification of a neighbourhood relevant to this application, Mr [redacted]'s experience is that the neighbourhood is named and referred to broadly as Gledhow. The area now proposed by the Applicant, polling area ROB, is an area which consists of a wide range of different housing types, mostly semi-detached housing. The majority he thought were privately owned, but some were tenanted. Part of the ROB area is referred to by some people as Brackenwood, but Leeds City Council includes Gledhow not Brackenwood in any formal address. It is known as Brackenwood locally because of the Brackenwood housing estate which was built in the 1950s as social housing. That estate uses the same facilities as the wider Gledhow community.

10.88. Mr [redacted] had lived within the area ROB until 9 years prior to the Inquiry. In many cases the properties there are no longer social housing, even within the Brackenwood estate. Of the houses within Brackenwood a fair proportion are now privately owned after being sold off through the Right to Buy. A large part of the estate is semi-detached housing of good brick built standard with large gardens. He had worked on the Right to Buy section of Leeds City Council, albeit he had recently changed his job. As a result he was well placed to comment on the high number of privately owned properties on the Brackenwood Estate, and could say that the property valuations there are very high for the property type.

10.89. There are also in the area some large Victorian era buildings, good sized semi-detached properties built in the 1940s, '50s and '60s and so forth, and some new private housing estates built in more recent times. He gave examples of all of these.

10.90. In his view properties bounding on either side of any of the roads around the boundaries of polling district ROB do not have any significant difference in value, or other obvious differences in property types. Outside the ROB area there are many properties falling into a very similar category and price range as those within district ROB.

10.91. ROB is a patchwork of modern houses, historic housing, flats and converted buildings with small, large or medium gardens. There is nothing cohesive in this other than the overwhelming variety. The reason that there is little in the way of distinction in prices is because there is so much variety. In his view the community has never recognised ROB as a community boundary. He noted that in the Applicant's Response to Objections it had been suggested that expensive large detached and semi-detached houses are confined to the east side of Lidgett Lane. That is not correct. On either side of Lidgett Lane there are a mixture of house types. There are many high value properties and medium priced properties to the west and east of Lidgett Lane. He produced sales particulars for some properties which he said showed this.

10.92. The Applicant had suggested that the Gledhow Beck formed a natural boundary. Yet the Beck can often be simply stepped across on many well-worn paths. Much of it is underground along the edge of ROB, and as such the Beck cannot be defined as a

boundary. It is in fact a well-used green corridor, not a limit to the neighbourhood. In fact it is quite the reverse, and the Friends of Gledhow Valley Woods are great ambassadors for community cohesion. The area is used by people from both Gledhow and Chapel Allerton on a daily basis. This is clearly not a boundary; the woods are busy interconnecting land that stitches together the fabric of the community rather than dividing it.

10.93. Another road forming the boundary of polling district ROB is Allerton Grange Way. That road is a minor one, and includes much of the same housing that is within ROB on either side of the road. There is no difference or delineation of neighbourhood there. Like Lidgett Lane the road is quiet, with traffic calming. There is again a green here that is well used and open, safe and flat. That green, although it is within the ROB area, is used by people from other areas beyond on a daily basis.

10.94. The Applicant suggests that Lidgett Lane is a major road because it forms part of a bus route. It is not a major road. It is an unclassified road with low to medium traffic flow, depending on the time of day. It has traffic calming and some 20 mph speed limit sections nowadays. Also there is a large section of the road that is not a bus route at all, along the front of the school.

10.95. As for the facilities claimed to relate to area ROB, Mr [redacted] himself uses the facilities on either side of Lidgett Lane, which he often walks to even though he lives in a different polling district. They include the play park, the primary school, the newsagent, a car wash, a hairdressers, a local convenience store, the pub until it closed recently, and another shop. Other than the convenience store, all of those facilities are in ROB, but he uses them on an almost daily basis, coming from where he lives. He also attends a summer fayre on the green in Allerton Grange Way. In past years when he lived on Lincombe Drive in polling district ROB, he used the same facilities. It is not possible to be self-sufficient and exist as a separate community without leaving polling district ROB.

10.96. As to his own experience of the use of the application land, over the years that he has lived within the locality he has walked across the field hundreds of times. That was exclusively as a short-cut to get from one part of the neighbourhood to another. He was aware that this was trespass, and knew that the land belonged to the school. He did not stop to partake in any lawful activities or pastimes.

10.97. During the relevant 20 year period he did not have a routine during the entire time, nor did he use it on a weekly basis during the whole period. His use was effectively sporadic, and his experience was based on traversing the land usually to go to one of a good many friends' houses. The times and days on which he walked across the school field varied. On average over the 20 year period he would say he cut through about once or twice a month, equating to hundreds of journeys.

10.98. As a child at Gledhow Primary, he and fellow pupils had access to the whole of the area, which was then fenced all around the perimeter. He had planted a tree there as

a 7 year old boy. In those days security was less of a concern, and one could access the school grounds, as even the front gates were not locked after school hours. In spite of that he remembered that everyone knew the land belonged to the school. If anyone behaved disrespectfully or badly the caretaker would move people along. People knew that to access the land was trespass, and there is still a sign to this day on the field that has been there for a long time.

10.99. Anyone who had long knowledge of the site would remember the rugby posts, and the matches that would take place on the field. They would also remember the running oval and long jump area. They would also know that the land was private and was never used like a park. People were respectful in general, and would use other areas for lawful sports and pastimes. There are many other green spaces within walking distance.

10.100. Later on in the 1990s he would walk across the field when travelling from his home to visit friends who lived off Lidgett Lane. He would often pop into the local post office/convenience store on his way. This route offered a useful shortcut on several journeys. He walked that route from 1987 until 1996, when he moved out of the family home. He moved back into the area in 1999 and between then and 2003 again repeated this walk on many occasions, at many different times of the day and night.

10.101. He moved to Lincombe Drive in 2003, within polling district ROB. He again traversed the field on countless occasions until December 2008, although this time he would access the field via a different place off Brackenwood Gardens, as a shortcut to get through to the other side of Lidgett Lane. Since 2008 he has moved to his current home at 345 Gledhow Lane. He has carried on walking across the field in the same manner as he did between 1987 and 2003, following the same route to travel to friends' houses.

10.102. When his daughter started attending Gledhow Primary School in 2012, he saw even more of the field from the raised vantage point of the school playground. Therefore he has seen the field and the use made of it over far more than the 20 year period.

10.103. In his view the only consistent use of the field was as a shortcut. People knew this land to be private and that was mostly respected. Being young enough in 1996 to remember teenage use of the field, he can say that there was some sporadic use that he was witness to, which involved groups of teenagers illegally drinking alcohol and consuming drugs there such as cannabis. That group of youths was sometimes involved in sexual activity on the field. The reason for this was that the area was not overlooked. In his view it is unsuitable to be a village green. It is not open or easily accessible.

10.104. Other than what he described, since 1996 all he has ever witnessed is people walking through the field, sometimes with a dog. However seeing anyone was extremely rare. In the last 10 years he could remember only the following things: a group of young teenagers openly smoking cannabis and drinking alcohol on two or three

occasions; a man letting a pit-bull type dog off the lead while walking it across the field in his direction; a small number of people using the field as a shortcut; and a motorbike driven across the field.

10.105. Once he found out about the existence of the Friends of Gledhow Field via a social website, prior to the fence being erected, he paid numerous visits to the field over the next year to see for himself what the online propaganda was about. He still saw nothing more than one or two people walking across the field. He would often walk across with his children and attend the play park, and then walk back again. Again there was no significant use that he could see, on the many occasions he visited the play park with his family. All he saw was a small number of people who he could count on one hand, walking across the field with a dog. He noticed the dog faeces on the land and was angry at stepping in it. During the early years there must have been much less dog walking, as he never saw large amounts of dog faeces or stood in it previously.

10.106. He attended the site each day while the fence was being erected. Only at one point did he see any lawful pastimes; a father and three children were playing cricket in the land being fenced. He recognised this for what it was, a protest rather than a sign of any regular use. He also spoke to the few people that he saw at that time when the fence was being erected. They were all dog walkers coming along to see what the fuss was about. A lot of interest in the field had been generated through the statements made by the Friends of Gledhow Field, much of which is now known to be untrue. One woman had told him that she felt harassed into joining the campaign against the school fencing the land.

10.107. In his understanding the Friends of Gledhow Field group has a very small core number of members. They had put out what he regarded as propaganda. He had challenged this propaganda, even though he was not a school governor at the time, and had no particular interest in the case through his work. He had tried to expose some of the inaccuracies that he felt the group had been putting out on-line. This was not well received. He had been involved in various exchanges with people supporting the Friends of Gledhow Field and opposing the school expansion project.

10.108. In relation to other issues of unlawful activity, he himself had not witnessed quad biking on the land. However he had seen a motorbike being ridden from Brackenwood Drive across the field. This was in 2015. In fact he and a nephew had helped the motorcyclist try to restart his motorbike on the steep part of Gledhow Lane. Once the bike was started the rider then cut through a gap and rode across the field. Even so the illegal rider crossed the field purely as a shortcut.

10.109. His own personal experience is that fly tipping and dog excrement is an issue on the site, and a barrier to use as of right. To suggest that school children can share this area is unrealistic. Mr [redacted] also made comments on the statements lodged by various of the witnesses who support the village green application. I do not need to

summarise these comments, although I both heard and have read what Mr [redacted] has said.

10.110. *In cross-examination* Mr [redacted] acknowledged that there is still social housing in the Brackenwood area. The whole Brackenwood estate was originally social housing, and some of it still is, but otherwise the houses on the estate have been sold off. In relation to his comments about the age of various properties, he could not say exactly when properties were built, and had not made it his business to ascertain the details of this information.

10.111. He accepted that Gledhow Valley Road is in a wooded valley. This runs along one of the boundaries of the proposed neighbourhood. The entire area is however full of pathways. Going up Allerton Green Way, one can turn right or left and on the right or left are both parts of the former Brackenwood estate. Indeed there is some private housing on the right of Allerton Green Way, called Allerton Grange Croft. Going south down Lidgett Lane he would say that most housing on the left is from the 1930s and 1940s. From the historic map he could see that in 1908 there was much more housing already present east of Lidgett Lane than to the west of it.

10.112. When he had referred to using facilities within polling district ROB, he was not suggesting that he had used all of them every day. Some of them he had used only occasionally.

10.113. As for the locking of the school gates, he did not know when it was that the school started locking them. It was certainly the case back in his younger years that the gates were not locked at night. He went to school there up to about 1984 or 1985. In the context of his evidence he had been most interested in providing information in relation to the last 20 years.

10.114. As for the trees running along close to the palisade fence erected in 1994, they did not totally impede views of the application site. There are places where one can see through those trees into the field. For example one could see a game of football taking place there, or hear it when one was in the school grounds. The view is not perfect, but the field can also be seen from the play park, and also when walking across the field. He would often walk back across the field with his children or by himself. One could also ascertain any use of the application site from the play park, from which one could see at least part of the site.

10.115. He had on an occasion seen underage sexual activity apparently taking place on the application site. He had seen drinking and cannabis smoking by youths there, maybe about 3 times over about 20 years. His own use going across the field had been sporadic, and not at particular times of day.

10.116. In his view the Applicant's witnesses were confused over the question of walking dogs on the field. He personally had never seen any of the people who had been the

Applicant's witnesses on the land. All he had seen was people walking across from A to B, with dogs, from time to time. In his view a relatively insignificant number of local people support the town or village green application.

10.117. ***Mrs*** [redacted] has been employed as the Business Support Manager of Gledhow Primary School since October 2016. She was employed to oversee and manage a reorganisation of the school's business and administration in order to meet the demands of the new three form entry school. She is very involved in the day to day running of the school. Until the completion of the building work for the school's expansion was completed in March 2017, much of her time was taken up with managing the impact of it upon the school. It took a great deal of staff time and resources. There was a period when, due to the building works, there was insufficient outdoor space for children to play during lunchtimes and play times, which was very difficult for staff to manage. It highlighted that as an expanding school adequate outdoor space will be essential for pupils wellbeing etc.

10.118. When she began her employment at the School, the application site, which she called the triangle field, had already been enclosed by the City Council as part of the school's expansion. She was informed by colleagues that an application to register the field as a village green had been made, but that the school could use the field until the application had been decided. She is aware that the school caretaker/superintendent Mr [redacted] has had to check the field on a daily basis, due to items being thrown over the fence of left on the field. He has also needed to check the fencing around the field, and the gates, as they have previously been damaged. He had also told Mrs [redacted] that a fire had been started next to the fence earlier in 2017. Fortunately it had not burnt through the fence.

10.119. There has been other damage to the fence as well. Because of that, temporary additional fencing had needed to be installed. On a date in June 2017 it was reported that someone was on the field, at the time when the children were due to go out there at lunchtime. Mrs [redacted] went out there, and saw two men lying on the grass drinking cans of lager. She had told them they should not be there. They said they thought everyone had a right to be there. Mrs [redacted] returned to the school office and reported the incident to the police community support officer. She was not sure if that officer had been able to speak with the men concerned.

10.120. She was aware that later that same day Mr [redacted] had also confronted another group of men on the field and asked them to leave. Following those recent incidents, all staff who work outdoors on the school site had been asked to be extra vigilant while in the school grounds. Mrs [redacted] could not imagine a situation in which members of the public could access the field at the same time as the children during school hours on a daily basis. That would go against the principles of safeguarding in education, and the legal responsibilities of the school to safeguard and protect pupils.

10.121. *In cross-examination* Mrs [redacted] agreed that she had had no experience of the school prior to October 2016, when she had joined the staff.

10.122. ***Mr*** [redacted] has been employed as the Superintendent of Gledhow Primary School since December 2007. He explained that the role of Superintendent is equivalent to being a caretaker.

10.123. It had always been his understanding, since he began his job at the school, that the present application site is part of the school site. He lives in tied accommodation adjacent to the school, and has done since 2007. He is responsible for the heating, lighting, maintenance and security of the school premises, including the grounds. He regularly patrols the premises as part of his work, and checks for damage to the building, fencing or gates. It is part of his duties to ensure the security of the school premises. He is accountable to the Head Teacher.

10.124. When he began his work at the school, it already had steel security fencing around the school grounds. The buildings were not as they are now; there were some portacabins for the reception classrooms, for example. Prior to his employment at Gledhow Primary School he had worked at several schools in Leeds in the same role from 1989. He recalled that before the mid-1990s, in particular before the Dunblane tragedy in 1996, there was far less security in schools than there has been more recently. Allowing access to school grounds in those earlier days generally came down to the judgment and discretion of the head teacher, depending on whether people were known or not, and were behaving lawfully or not. Then schools became much more security conscious.

10.125. When he began at Gledhow, Mr [redacted] was made aware by the head teacher that the steel fencing had been erected for security at around the time of the Dunblane tragedy. Mr [redacted] had subsequently discovered that the security fencing had in fact been erected at Gledhow before that tragedy, in about 1994.

10.126. He was informed by the head teacher when he joined that the school was still responsible for the field beyond the fencing, as that had previously been part of the school's playing field. He had seen documents which disclosed that fencing had been erected due to security issues, with the school being subject to vandalism, and people accessing the field without permission while the children were playing. The field beyond the steel fencing was referred to by people at the school as the triangle. The grass in the triangle was maintained by the school from its budget, under a contract with the City Council's Parks Service.

10.127. When he began working at the school he assumed that his responsibilities for security extended to the buildings and grounds within the security fencing. He was aware that the triangle outside the fencing was not secure, and not being used by the school. He was informed by the head teacher at that time that some people did access the triangle, and there were some problems with anti-social and unlawful behaviour there. He had never personally contacted the police in relation to anything happening

on the triangle. However he was aware that the head teacher and senior management in the school had done so.

10.128. In his early days at the school, he recalled that some older children began jumping over the steel fencing and breaking into the reception class portacabins. Mr [redacted] asked them to leave, and they responded in a cheeky way. That occurred periodically until about 2011.

10.129. In 2011 the school also began having increasing problems with drug use in and around the school grounds. In that year he discovered some lads sitting drinking cider and smoking pot in the part of the grounds *inside* the school's fencing. He asked them to leave. That situation then got worse, as several groups of youths began climbing over the steel fence and sitting around in the school grounds, drinking alcohol or using drugs, or playing football. He would find empty cans and bottles etc., in the grounds.

10.130. Eventually Mr [redacted] persuaded those youths to see reason, and stop coming into the school grounds within the steel fencing. Unfortunately those youths then seemed to relocate to the triangle (the application site), and that problem had continued intermittently. Prior to the new fencing being installed in September 2015, he had sometimes seen small groups of maybe 2 or 3 youths sitting on the sloped area of the application site, drinking alcohol and smoking, when he has been patrolling the school grounds. He suspected that they might have been using hard drugs on the field, although he himself had never found any needles. He had spoken to the police community support officers about the problems of drug use on the application site.

10.131. There were other occasions when the headmaster requested that he ask people to leave the application site due to anti-social or unlawful behaviour.

10.132. On occasions youths had entered the land and lit fires. Mr [redacted] had been asked by the headmaster or other staff to move them on and put out the fires. Sometimes he had been subjected to bad language, but the students left when he asked them to. There had been a few occasions when people had been seen engaging in sexual activity on the application field. He himself had observed some of this. He had also seen the field being used for riding a quad bike. He had occasionally seen a group of older people, who are known as hardened drinkers in the area, sitting in the field drinking cans and bottles. There had been a lot of rubbish and broken glass left on the field over the years. There was however a local man who sometimes collected litter from the field, although this was not part of any organised community activity, as far as Mr [redacted] was aware.

10.133. He had occasionally seen other people using the field as a cut through, to get from one side to the other. He had come to recognise a very small number of people who walk their dogs on the field, some of whom he had spoken to a lot. He thought there had been about 8 people who used the field regularly to walk their dogs, but not all of them had done that all year round. There were other occasional dog walkers who

did not use the field regularly, from his observations. There had been longstanding problems of some dog owners not picking up their dog's mess, in spite of signs in the adjacent playground relating to this.

10.134. During all his time at the school he had only ever seen one parent and child picking blackberries on the field, for a few months after the child had started in reception class in 2015. He had seen one father and son playing cricket in the field over the course of a few weeks, but that did not continue. Also he knew of one family who lived close to the field whose older boys had occasionally brought some plastic goalposts onto the field for a kick-a-about. He had seen one group of youths in their 20's, eating sandwiches in the field and smoking pot. He had never seen anyone having a picnic in the field. It is rare to see a few children playing or kicking a football there.

10.135. On the whole the field is used by a small number of dog walkers, some of whom do not pick up their dog mess from the field, a small number of people cutting through the field to the bus stop or the shops, and a handful of alcoholics and a small number of youths drinking and smoking pot, or engaging in other unlawful behaviour away from public view. He is not aware of the field being used for any organised community events or sports. He does not believe that the field has been used by a significant number of people for lawful sports and pastimes. Most of the time there is no-one on the field at all.

10.136. The state of the field owing to dog faeces, litter etc., prevented it from being used by the school, owing to the potential risks to the pupils. Nevertheless there was a time before the larger area was fenced in when a number of pupils went out to the school garden and planted some tree saplings in the corner of the field next to the passageway leading to the community playground. Unfortunately some of those saplings were damaged shortly afterwards.

10.137. In 2014 Mr [redacted] was told by the headmaster that the school was expanding from two form entry to three form entry, and that the field would be required for use by the school. He was subsequently shown the plans for this expansion. He was told that the field would be required for outdoor play, games and sports. Around that time he was approached by some dog walkers about the expansion, who said that it was not the school's land, and objected to it being used by the school for the expansion.

10.138. In 2015 Mr [redacted] was informed by the headmaster that the school would be fencing in the application site field as part of its expansion plans. There was some vandalism during the erection of the new fence.

10.139. Since the new fencing had been erected Mr [redacted] had regularly patrolled the area to check it, and had seen signs of vandalism. He had seen some youths on the field inside the fencing, drinking from cans and smoking pot, and had asked them to leave. A number of items had also been thrown over the fencing into the field.

10.140. Based on his knowledge of the use of the field over the years, his view was that the field should not be registered as a town or village green, because he had not seen a significant number of local inhabitants indulging as of right in lawful sports and pastimes on it. He believed it was only used by a very small minority of residents, and while some of them may have used it for dog walking or cutting through the field, most have taken advantage of the field's secluded location to engage in unlawful activities away from the public eye.

10.141. Vandalism had continued through to the date of the Inquiry. The fencing tended to be attacked by vandals all year round, but more often when the nights are lighter and the weather is warmer. There was for example extensive damage in early July 2016. In April 2017 he heard quad bikes being driven around the outer perimeter of the triangle field and in the adjacent streets. On the following day he observed significant damage to the fencing around the application site. Some time in that same month a section of the fencing had been damaged by fire.

10.142. During 2017 there had also been a number of instances of people climbing over the fencing to access the application site field. That had been more frequent in 2017 than in 2016. When it happened and Mr [redacted] was aware of it he asked those involved to leave the land. He was aware of other incidents of trespass on the field.

10.143. In the period since the new fencing in 2015 Mr [redacted] had also unfortunately had to deal with a lot of litter that had been thrown over the fencing into the school grounds.

10.144. The period of building works between March 2016 and March 2017 had produced the result that the amount of usable outdoor space at the school was limited. Part of the school grounds became a building site, and a number of additional health and safety measures had needed to be put in place. Mr [redacted] described those works and the effects they had. Since the building works were finished and the whole of the school site has been reopened to staff and pupils, it has been possible for the school to reuse the playing field, and to begin to make good use of the application site field.

10.145. He did not believe that the application field could be satisfactorily used by the school in conjunction with its availability to the local public as a town or village green.

10.146. He himself also did not believe that polling district ROB could sensibly be regarded as a separate neighbourhood from the rest of Gledhow.

10.147. *In cross-examination* Mr [redacted] said that during the relevant period, if he saw people on the field who were not doing anything wrong, he did not ask them to leave

the field. Mr [redacted], the headmaster, had told him not to. There was no fence around the application site then.

10.148. *To me* Mr [redacted] said that he did indeed chat to some of the people who used the land through the fence. That had happened quite regularly.

10.149. ***Miss*** [redacted] was employed as a teacher at Gledhow Primary School between September 2006 until July 2017. She was also a former pupil of Gledhow Primary School, and a resident of the local area.

10.150. She attended the school as a pupil between 1985 and 1992, when it had separate infants and junior buildings. She recalled that it had a large open playing field which stretched right across to the houses at the back. There was no steel fence across the playing field as there is now. There was a slight hill towards the top of the playing field, and she did not generally play past that point up to the very edge of the playing field. She thought that the reason for that had been because the teachers had asked the children to stay in sight for safety reasons. She could not specifically recall the fences at the outer edges of the field. She remembered the grass being cut, as it was exciting to watch, and to see the piles of grass cuttings after they had finished. She also recalled that the school site went around to the side of the school building where the community playground and park now are.

10.151. She did not remember anyone else using the playing field when she was at school. She also was not aware of anyone else using it for any specific purpose outside of school hours. However she did remember that on one occasion her mother took her onto the playing field to practise riding her bicycle. She remembered being aware that they were not really supposed to be there, although it was generally more relaxed in those days in terms of security. She thought there would have been a lot more people regularly using the school playing field if it had been more accessible.

10.152. She also recalled when she was at school sometimes finding dog mess on the playing field and reporting it to the teachers. They would be told to play in a different area until the caretaker had removed it. She remembered an occasion when there was a dog loose on the playing field.

10.153. After she left Gledhow Primary School she continued to live in the local area. She remembered the community playground and park being opened, and seeing local children using those facilities. She also remembered seeing the steel fencing around the school grounds. However she never used the field then for any reason at all. She was not aware of anyone else using it either, or of anyone using the field as a cut through. It was not somewhere that she would ever have thought of using for sport or recreation. It was only since she had been working at the school that she had become aware of the field being used for anti-social and unlawful behaviour, and also as a cut through.

10.154. She has lots of friends in the local area. She has never used the field, and she is not aware of anyone else who uses the field, for any kind of sport or recreation. She is not aware of any community events or activities taking place on the field. She has heard through a friend's teenage children that the field is used by other teenagers, during evenings and night times, to congregate and drink alcohol or use drugs.

10.155. When she started working as a teacher at the school in 2006, she was aware that the steel fencing had been erected across the middle of the playing fields. She assumed that that was for the safety of the pupils, to ensure that the children could be seen at all times while playing outside. She was of course aware as a former pupil that the field outside the fencing had been part of the original school playing field. Other teaching staff were aware of that as well.

10.156. In September 2015 she began working as a reception teacher in the temporary classrooms on the school's playing field (not on the application site). She often had to go outside, either to bring the children in after play time, or for outdoor PE lessons. She also had break duty sometimes, which involved supervising the children playing outside. That gave her the opportunity to observe activity on the triangle field at different times of the day, during school hours, over a prolonged period.

10.157. Since 2006 she had only seen the occasional dog walker or person cutting through the field. She had also seen the occasional couple lying on the grass. There was an occasion when some sexual activity was taking place there, and those involved were asked to leave.

10.158. She was also aware of two separate occasions in about 2009 and 2010 when she saw teenagers from the local high school on the field using inappropriate language, and shouting to Gledhow pupils through the steel fencing. That happened when she was on break duty on the school playing field, near the fencing. On those occasions she asked Gledhow pupils to move away from the steel fencing, and asked the teenagers to leave. She was aware that such incidents had occurred when other staff were outside as well.

10.159. It is only on rare occasions that she has seen anyone on the application land. It had either been teenagers using bad language, people with dogs, or couples being intimate with each other. However those events had only occurred sporadically, and most of the time she had not seen anyone on the field, or any activity of any kind. Nevertheless she was aware that the field had been occasionally used by dog walkers, and there had been a continuing problem with dog mess. She could not imagine that this would be a popular place to walk with a dog, when there are numerous other places in the local area.

10.160. She was aware that the proposal for expansion of Gledhow Primary School to three form entry was based on an understanding that the triangle field (the application site) would be used by the school, as it had been when she herself was a pupil.

10.161. She did not remember the field being used by people in anything other than a negative way, for anti-social or unlawful purposes. If the field had been used lawfully by significant numbers of people for recreation and pastimes, she thought she would have seen many more people on the field over the years. However that was not the case. On the whole from her observations there had been very little use of the school field by members of the public during the school day.

10.162. Since the school building work had been finished in recent years, and the field has been accessible, it has been used by children at playtime. It has also been used for PE and other lessons by some classes. She was aware that not long after the building works were finished members of the support staff had found beer cans on the field in the long grass. A decision was taken at that time to take the children off the field. The grass was subsequently cut, making it easier for health and safety hazards to be seen.

10.163. She personally did not agree that it was appropriate to regard polling district ROB as a distinct neighbourhood. She did not agree that Lidgett Lane is a boundary between two different neighbourhoods. She doubts from her own knowledge of the local area that other people would see it in that way either.

10.164. *In cross-examination* Miss [redacted]s said that outside of school hours she did not see the field at all. She had lived in Oakwell Avenue, to the south-east of the school, some 10-15 minutes' walk away, until May 2017, when she moved to Otley. She had lived at Oakwell Avenue from the age of 5.

10.165. ***Mr*** [redacted] lives at Fairfield, Almscliffe Drive, Huby, Leeds. He had been born in Leeds.

10.166. Mr [redacted] had attended Roundhay Rugby Union Football Club shortly after birth, because his father played there. He himself then played as a youngster, from 1968 onwards. He became secretary of the club in 1987, and had continued in that role or as treasurer throughout two mergers. The club became Leeds RUFC in 1993, and then West Park Leeds in 2006. Mr [redacted] had also been a trustee during that period.

10.167. During the 1980s, when the club first used the application site field, which was known as the *"*postage stamp*"*, he himself rarely played matches on this field, as he only occasionally played for the teams that used that pitch. He did however use this field for pre-season training, during July and August, on Tuesday and Thursday evenings, typically from 7.00pm to 9.00pm. When he himself stopped playing in the early 1990s, he still carried on training until 1993. Following that he would often watch training sessions, when and wherever they took place. From 1996, many training sessions also took place during the weekdays, between 10.00am and 3.00pm, throughout the year, probably averaging one a week. Those would have been far less frequent from around 2002, and had ceased by the end of summer 2004.

10.168. Roundhay Rugby Union Football Club was founded in 1924, and purchased some grounds known as Chandos Park, off Chandos Avenue in 1933. By 1960 the Club was fielding 5 men's teams and a colts team on a Saturday. There were over 25 clubs in Leeds at the time. Facilities at Chandos Park only included one pitch, and other match pitches were rented at various times elsewhere. The Club formally merged with Headingley FC in 1993, to form Leeds RUFC.

10.169. Despite the Club's pitch at Chandos Park being naturally well drained, the strain of matches and training was high, and the Club was regularly looking for improved or additional resources. An opportunity had arisen to take a lease on the area of land between Gledhow Primary School and the houses on Chandos Gardens. This was approximately the present application site. Posts were erected on that land, and a pitch was laid out there, albeit not full size. The contours were not conducive to high quality rugby, as the land sloped in two directions. It was known in the club as 'the postage stamp'.

10.170. The lease was entered into on 14th December 1981. He produced a copy of the lease, and of what had been the lease plan. The term of the lease was from June 1981 until 31st May 2006. Leeds City Council were responsible for the maintenance and repair of all boundary hedges, fences and walls. The land was to be used for Rugby Football Union activities only, and the land was for the sole use of the Club.

10.171. The land was used by the Club for two distinct purposes, playing matches and training. Matches were played during the period 1st September to 30th April, the playing season, on Saturdays and Sundays. On Saturdays it would generally have been either the Vets or the Colts teams who played on this site, generally in the afternoons. On Sundays there would have been junior age teams who would play typically in the morning. The training use of this land was mainly pre-season, in July and August, and therefore the period through May and June would have seen no activity there.

10.172. Access to the pitch was by way of a locked gate off Chandos Gardens, near to the post office, close to the junction with Lidgett Lane. During the term of the lease, Gledhow Primary School in 1994 erected a galvanised palisade fence around what they assumed was the school perimeter, including two soccer pitches between the school and the land leased by the Rugby Club. The fence line as erected actually crossed the corner of part of the Rugby pitch on the leased land. Mr [redacted] contacted the City Council, and an on-site meeting took place in November 1994. In consequence the Club agreed to relocate its pitch on the site, and also to undertake the grass cutting. That was done, and required access to be taken through a locked barrier/gate off Brackenwood Drive. Either contractors, or a club member who was a farmer, provided the grass cutting services.

10.173. During the period that matches were played on the site, little maintenance work was required as it was outside the growing season. In the period May to September, the grass would have been cut about 10 times. In September the pitch markings were

applied, usually with some chemical additive, and the white lines would be reapplied as required, probably on another 3 or 4 occasions during the season. The area of the application site had good drainage, and did not require fertilizers or over-seeding.

10.174. After the Club merger to form Leeds RUFC in 1993, the amateur club still carried on using the facilities in the way Mr [redacted] had described for the earlier years. Chandos Park was still used for the amateur club, including mini and junior sides and the women's team, and much of the training was still undertaken at the present application site until 2002. That included summer daytime, and evenings and weekend use.

10.175. The professional rugby team began to use facilities elsewhere from 2002 onwards, and the use of both Chandos Park and the leased land on the application site was required less and less, during the period leading up to the surrender of the lease on the application land. Chandos Park was sold for housing in 2007.

10.176. Throughout the period that Mr [redacted] had attended the application site, he could not recall ever finding anyone else using the site that was not entitled to use the facility. Whenever the club arrived there, it was in a suitable condition either to play or train as required, and he could not recall there being any wear or damage that would have suggested that others had been using the facility without the club's knowledge.

10.177. The Club generally enjoyed a peaceful relationship with the neighbours around both Chandos Park and the application site, and in fact there were hundreds of social members of the Club who would use the bar at the Club House on Chandos Avenue.

10.178. *In cross-examination* Mr [redacted] explained his reference to there having been locked gates around the land of the present application site. There had been a locked gate that they used, near where the children's playground is, at the north-east corner of the site off Chandos Gardens. At the other end of the site, near to the former Boy's Home, there had been a roadway leading to the right, and some barriers off that which one could lift in order to get grass cutting equipment into the site. However he was not actually training there himself at the time use of that entrance started happening.

10.179. Around 2002 the Club started moving its training down to a different location in Kirkstall. He could vaguely recall the community playground being built, he thought in about 1999. That playground shared the same entrance that had been the north-eastern entrance for the Rugby Club's use of the application field. He could not genuinely recall whether the gate there was locked during that period.

10.180. He confirmed that the field on the application site had always been in good condition when he and his colleagues in the Club went to play there. There were never any issues with it. They had used this land as a training ground until 2002, when they

started to wind down use of Chandos Park. There was very little training at the application site from 2002 onwards. The lease on the site ended in 2006.

10.181. He would go to Chandos Park virtually every day until about 2004. He would often also go and visit 'the postage stamp' i.e. the application site. His visits there would be a bit more hit and miss, in terms of frequency. Nevertheless he would be at the application site at least once a week, up until 2002 or so.

10.182. ***Mr*** [redacted] lives at [redacted]. He had written letters of objection to the village green application in 2016 and 2017.

10.183. He and his wife had lived at their current property since October 2007. Prior to that they lived at an address on [redacted], from 1997. Both he and his wife had lived in the area for a large proportion of their lives, and are very familiar with it. Mr [redacted] went to Roundhay school, and lived on Southerland Avenue at the time. He would describe his neighbourhood as Gledhow, and includes Gledhow in his address when writing correspondence.

10.184. When they moved into their house on Chandos Gardens, they were very pleased with the pleasant outlook across the field at the back, and the natural habitat. There is a hedge at the bottom of their garden, but from their upstairs window they can see right across the triangle field (the application site) where it borders with Chandos Fold and Brackenwood Drive. They can see the steel fence running across the field, and the school building beyond. There are a few trees and bushes, but their view across the field is mostly unobstructed. This has given them a regular opportunity directly to observe any activity on the field. They can also hear activity on the field from their garden, in which they spend a lot of time, and from inside their house.

10.185. When they purchased their house they were not aware of the direct association between the application field and the school. The school did not use the field, and they only became aware of this association later on. They sometimes use the field as a shortcut between their home and the bus stop on Brackenwood Drive, entering via the ginnel off Chandos Gardens. However they did not do that very frequently. His wife tended to use the field as a shortcut more than he did. While using the field as a shortcut, they never saw many others using it for that purpose. There are only a limited number of people who would benefit from using the field as a cut through, and it would only be people living very close by. Underfoot conditions would also be relevant, depending on the weather and time of year.

10.186. One of their concerns about the application field has always been security. A couple of years ago they had some garden ornaments stolen from their garden, which they reported to the police. They later found them smashed under some bushes at the other end of the application field. There had also been some incidents of people setting fire to the hedges behind their home. This is intimidating.

10.187. Over the past 10 years they had seen and heard very little activity on the field. The field is not a community facility which has been extensively used, either for informal or formal activities or events. The principal activity has been dog walking, which has been at a low level. Some dog walkers have evidently not cleared up after their dogs.

10.188. There has been a few groups of older children, who they assume are from the local high school, chilling out after school on the land, generally in the summer months. They had sometimes been rowdy and boisterous, but not malicious. There had also been some incidents in the evening of groups gathering to drink alcohol. They had occasionally seen a few children kicking a football or a rugby ball, but that was more or less all. From their experience the field had been used in a very ad-hoc fashion, and infrequently. They had certainly not seen families or friends gathering there in large numbers for picnics, sports or other recreation.

10.189. They had been aware of rumours of drug related detritus being found on the field, but they had never personally seen this. They had seen and heard a quad bike and a motorbike being driven on the field. There was a man living in Chandos Gardens or Brackenwood Drive who used regularly to drive his quad bike around the field in the evenings. That had occurred several times a week, and sometimes every evening when the weather was nice. That was extremely irritating, and they were going to complaint to the police when they discovered that there had already been several complaints by their neighbours. This activity then seemed to stop, although it occurred again very occasionally before the field was fenced off in 2015. There was a youth who would ride an off-road motorbike on the field quite regularly as well. It eventually stopped.

10.190. They became aware of the association between the field and the school at the point when it was proposed that the school should expand. Mr [redacted] recalled that there had been a consultation process about this. They had attended a consultation meeting. On hearing of the expansion plans, he and his wife had been concerned about any potential negative impact on their property. Initially it was not clear where any new building would be.

10.191. He had not heard of the Friends of Gledhow Field at that time. Someone did call at their house and ask what they thought about the school expansion proposal, and he had commented at the time that it would be a pity to lose any green space. That had been a comment based on no knowledge of the facts at issue. They also heard rumours of a covenant relating to this land. They eventually discovered that the land had been part of the school, and had then been leased to the Rugby Club. They also became aware of the actual nature and scale of the school expansion plans, and why the school wished to use this land. They did not believe that this field being used by the school would involve a real loss to the community. They now thought that the blocking off of access to the field behind their home would in fact improve their security.

10.192. Mr [redacted] did not believe that polling district ROB could sensibly be regarded as a distinct neighbourhood. Lidgett Lane is not some kind of barrier between the dwellings on either side. The land west of Lidgett Lane is not dissimilar to many of the streets on the opposite side of that lane. A boundary usually separates things, but Mr [redacted] could not see what Lidgett Lane would be separating. People living on both sides of the lane use all the community facilities on either side.

10.193. He and his wife live in close proximity to the community playground, which is just at the end of their street. They have seen far more use of that than they had ever seen of the application field. That area is heavily used by families and young people, and always has been since they lived at their address. In the 10 years since they had lived at their address, the application field simply had not been used for the kinds of activities described by the Applicant and his supporters. He had never seen more than half a dozen people using the land at any time, at the most, and that would be only on a busy day. It had been a convenience for those living nearby to cut through to the shops or to the bus stop, but it is not far to walk round. The very small number of people using it to walk a dog or kick a ball could simply go elsewhere.

10.194. *In cross-examination* Mr [redacted] agreed that he had seen people using the application land to walk dogs, to kick balls, and to play rugby or football. The field is only visible from the upstairs windows of his house, not from downstairs. However one can hear things going on from his house or his garden.

10.195. ***Mrs*** [redacted] lives at [redacted]. She and her husband had bought that property in 2005. She had lived in Gledhow for the majority of her life. When she was born in 1984 she lived at Lincombe Mount, which was where her grandparents lived. That property had been occupied by her family since it was first built in the late 1950s/early '60s. She then moved with her mother into a maisonette on Brackenwood Drive for a couple of years. In 1987 they moved to a house in Moor Allerton, and were then in 1997 given a house back in Gledhow, at [redacted]. Her mother still lives at that address, and now owns the property. She herself moved out of her mother's address at the age of 17, into a flat on Lincombe Drive, then back into her grandparents' house in Lincombe Mount, before getting a flat in Gledhow Towers until 2005, when she bought her current home on [redacted].

10.196. Although she was not living in the area between 1987 and 1996, she did attend Gledhow Primary School between 1987 and 1995. Her grandmother collected her from school, and she went back to her grandmother's house until her mother came to collect her. Her grandmother also looked after her in the school holidays, so she spent a lot of time in the area with her family and friends.

10.197. In 1995 she moved to another primary school nearer to her home, and then moved to Allerton High School in 1996, and then a year later to Roundhay High School, having moved home back to Gledhow.

10.198. When she attended Gledhow Primary School, she recalled that it had a large open playing field and three hard playgrounds. She described some of these facilities. The community playground to the north of the school had not then been built.

10.199. She remembered playing on the school playing field at break times and lunchtimes with her friends. There was a slope in the middle of the field where the land rose up slightly, and unofficially they were not supposed to go beyond that slope as it was harder for the staff to see the children and keep them safe, but there was no barrier to prevent them passing. They used to sit on the slope, and would play with the grass cuttings. She could not recall seeing any dogs or dog excrement or rubbish on the field at that time, nor anyone wandering onto the school field while they were playing.

10.200. After school her grandmother would collect her and her two younger sisters and four cousins, and they would walk down the side of the school field and out through a gap in the hedge into Chandos Fold. A lot of other people would also walk that way home from school.

10.201. She had no memory of the steel fence being erected across the playing field while she was at school, but she thought she may have left by then. In 2008 her eldest son started at Gledhow Nursery. A new reception building was built in 2009, and his was the first class to move there. By then there was a steel fence around the site and across the middle of the playing field, which had not been there when she was at school.

10.202. As a child she never went on the field outside school hours or in the holidays, and neither did her family or friends. They all knew it was the school field. They only ever used it as a route home after school. There were plenty of other places to play nearby.

10.203. When her son was about 5 or 6 years old (about 6 or 7 years ago) she and her husband took him onto the application field to learn to ride a bike. She knew the field belonged to the school, and thought this might be somewhere suitable to learn to ride. However the field was uneven and covered in dog mess, so they left and never took any of their children back there to play or ride bikes. After her son started school she began using the field as a cut through, to take him and her other children to and from school, and occasionally still does if she is picking up from the nursery school. That is the only reason she has ever used the field. Sometimes they would cut through from the shops and playground after school, although that is now fenced off. Most of the time when they cut through the field it was completely deserted and they never saw anyone. They saw the odd dog or person cutting across the field, but not very often. On one occasion about 4 or 5 years ago, when cutting through from the shops and playground, they saw a couple engaging in sexual activity behind a tree, and also with bottles of alcohol.

10.204. The grass in the field was generally cut, but was covered with dog mess which one needed to avoid, and there would sometimes be rubbish in the bushes. She had never

seen anyone having a picnic or socialising or playing games or sports or riding bikes or picking blackberries, or any other social or sporting activity on the field. She had heard that a needle had been found on the field. This field was not a place where one would want to spend any time, other than using it as a quick cut through.

10.205. She and her family have lived in the area for a long time, and her mother and grandfather have been involved in the Brackenwood Community Association for many years. She had helped her mother and grandfather with this when she was about 18 or 19 years old, and had become re-involved with it about 18 months ago. The community centre is on the east side of Lidgett Lane next to Moor Allerton Primary School. It has recently been renamed the Lidgett Lane Community Centre, to attract more people, as it had been struggling in recent years. It is run by volunteers, and self-funded with money raised from hiring out the community centre. It is used by many people living in Gledhow, from both sides of Lidgett Lane. They have also recently tried to attract people living further afield, in Chapel Allerton and other areas. It is used by various organisations and clubs. It is also used for parties.

10.206. The community association was involved during the late 1990s in the campaign for Gledhow playground and park to be opened on the corner of Lidgett Lane and Chandos Gardens. There had been concerns about the development of the land there. Since the community playground and park were opened in 1999, that had become a central part of the community's facilities, and is used regularly by many families in the area.

10.207. She was aware that the Applicant had suggested that polling district ROB, which incorporates the Brackenwood Estate and a number of streets to the west of Lidgett Lane, should be regarded as the relevant neighbourhood. She believes this is just a polling district, and does not define the boundaries of the local neighbourhood community. Lidgett Lane has never been defined as a boundary, and there are community facilities on both sides of the street. As a child and adult she had never thought, when she had been crossing either Lidgett Lane or Gledhow Valley Road, that she had been leaving her neighbourhood. She had never heard anyone say they lived in ROB.

10.208. Her own view was that the application field had been largely forgotten and neglected, after it was fenced off from the rest of the school. It had been used opportunistically by a small number of local people living in adjacent street, including herself as a convenient cut through. Unfortunately it had also been misused by a minority of the community for unlawful purposes. She believed that would continue it if were registered as a town or village green.

10.209. *In cross-examination* Mrs [redacted] acknowledged that she herself is a trustee of the Brackenwood Community Association, based at the Lidgett Lane Community Centre. It used once to meet at Gledhow Primary School. She believed that had been the case from its foundation, which she first thought was in about 1985 or so, and that the association moved in the early 1990s to the present community centre building. On reflection however, she thought that the association might have moved

to the building it now uses in about 1985, and might have met at the school in the period before that.

10.210. The association is called the Brackenwood Community Association. She has no idea why the association is called that. There was an original constitution for the association.

10.211. Her oldest son is now aged 12, so her view was that she would have seen the field regularly, in order to cross with one or more of her children, between about 2008 and 2015.

10.212. *To me* Mrs [redacted] confirmed that the association is indeed still called the Brackenwood Community Association. She did not herself know what the boundaries of *"*Brackenwood*"* are.

10.213. ***Mr*** [redacted] is the head teacher of Gledhow Primary School, and has been since September 2016. He has worked full time in teaching since September 1985.

10.214. He explained where Gledhow Primary School is, and that it is a large group four primary school, which also includes a nursery school. He explained how Leeds City Council had asked the school to accept a bulge reception cohort in September 2015 because of a shortage of school places in the area. The decision was also made to change the school status to a full three form entry from September 2016 onwards. As a result the annual intake of the school is now 90.

10.215. It will take until 2021 for the school to reach its full capacity as a three form entry school. Mr [redacted] explained the school's approach to education. The safety of the learning environment both indoors and outdoors is crucial. He explained the layout of the school buildings. The school's expansion building project had been a substantial and exciting one. The new building was handed over in December 2016 and the freshly landscaped grounds by early March 2017.

10.216. The expansion of the school to three form entry will result in an increase in pupil numbers in the main school by 50%, compared with what it was. This increases needs of various kinds, including requirements for external space for physical education and break times etc. The new facilities at the school have had a great positive effect on it. Children are now easily able to access and use the playing field which is the subject of the village green application, from the newly tarmacked areas for recreational purposes at break and lunch times, and for sport and athletic activities, and for a range of lessons.

10.217. The school's outdoor space is important for learning and teaching, promoting healthy lifestyles, facilitating positive behaviours, etc. Timetabling their present outdoor provision without the application site land would become impossible. Part of the

school's adopted outdoor action plan, as well as all the use of the playing field directly by the school, would include promoting the use of the playing field by after school clubs, and also offering the field to amateur sports clubs.

10.218. It is an important part of the school's duty to keep children in education safe at all times, and in Mr [redacted]'s view that would be incompatible with village green status for the playing field. There would be numerous risks which cannot be countenanced, if unrestricted public access to the field had to be allowed. Exposing children to such risks in a shared use situation is incompatible with the school's statutory duty to safeguard and protect children, in Mr [redacted]'s opinion. Trying to manage a shared use scenario would have staffing implications massively beyond the school's budgetary restrictions. Retaining the application site land is essential if a three form entry Gledhow Primary School is to function safely and efficiently in accordance with its legal duties. Unrestricted access to the playing field would make it unusable by the school, because of the health and safety, supervision, child protection and safeguarding issues that it would raise.

10.219. *In cross-examination* Mr [redacted] acknowledged that having been the head teacher since only 2016 he had no knowledge of the field prior to his arrival at the school in that year.

10.220. *To me* Mr [redacted] acknowledged that when he said that exposing children to the risks of a shared use situation on the land was incompatible with the school's statutory duty to safeguard and protect children, that was in effect a judgment or opinion of his own, rather than him being able to point to specific statutory duties which actually forbid a shared use scenario.

10.221. ***Ms*** [redacted] is a teacher at Gledhow Primary School. When she began working at Gledhow Primary in January 1986, there was open access to the whole school field, and no fencing around or across it. The field was always in use at lunchtimes and play times, and was used for PE, games and sports days. She recalled that different parts of the field were segregated informally for different classes or year groups. At that stage the school had four forms of entry, but after a reorganisation of schools in 1992 the four forms of entry were gradually reduced to two. In her early years at the school, the school site was generally a larger and more open one than it is today. She recalled that he field was leased to the Rugby Club, and that they would use it outside school hours. She remembered there being rugby posts on the field. She believed that the community would have known that this was the school's field, and it was actively used by the school and the Rugby Club. She did recall seeing the occasional broken bottle on the field, but could not recall people or dogs on the field during or after school hours. She remembered the school being broken into on occasions, after they acquired overhead projectors and other expensive equipment, which led to concerns about security. She understood that the field had been fenced across the middle in the 1990s, primarily for financial reasons due to the cost of its upkeep. The whole field had to be maintained regularly and cut every few weeks, as the grass had to be kept very short. After the fence was erected

it was not necessary to maintain the land outside the fence (the application site) as often as the rest of the field and the grass would be allowed to grow longer there.

10.222. After that fence was erected she could still regularly observe the land on the other side of the fence, during playtimes and PE lessons. She would see occasional dog walkers, and sometimes heard and saw motor bikes. She also heard about alcohol being consumed and drugs used. The head teacher of the school had created some trim trails in bushes and trees along the fence, to improve the outside space and she thought that may have inadvertently encouraged drinking and drug taking. Because of that some of the undergrowth was then taken out by the Council, to discourage such activities and to ensure that the staff could see children playing near the fence and ensure their safety and well- being. There had been a concern about people cutting through the field near the fence and communicating with pupils. School staff were encouraged by the head teacher not to approach anyone on the field, and to speak either to him or the caretaker about that. This was the approach of two head teachers, Mr [redacted] and Mr [redacted]

10.223. As for the possibility of joint use between the public and the school, Ms [redacted] thought this would be satisfactory outside of school hours and in the school holidays, if the public behaved responsibly and used it responsibly. However she did not see how it could possibly work with the land being used by the public in school hours, due to the safeguarding risk to children. There was plenty of other green space in the area.

10.224. The position now is that the application site field is used every lunch time and at play times by children at the school. If the school cannot have secure use of the application land, this will restrict the opportunities for outdoor learning due to insufficient space. There is a danger that the school would become like many other schools in urban areas, with insufficient outdoor space, and overcrowding.

10.225. Ms [redacted] does not live in the local area, but from her experience of working in the school for over 30 years she does not agree with the suggestion that the area identified as polling district ROB could be regarded as a separate neighbourhood from the rest of Gledhow.

10.226. *In cross-examination* Ms [redacted] said that her recollection was that the school grounds had been entirely fenced when she first knew the school in 1986, although she was not completely sure. Her impression was that there was a continuous fence at that stage.

10.227. She acknowledged that she does not see the premises much outside school hours, because she does not live in the area. However when one is at the school one has quite a good view of the application site from the school playground. It is quite raised up. There is a better view in the autumn and winter than there is in the summer.

10.228. *To me* Ms [redacted] said that from memory she thought there had been a fence all the way round the school grounds back in 1986, with no gate into the Brackenwood Drive end of the site at that time.

10.229. ***Mr*** [redacted] lives at [redacted]. He has lived there since October 2011. His house backs onto the application site. He can see the field from his house, and from the bottom of his garden. He occasionally works from home and is around in the evenings and at weekends.

10.230. From his experience the field is rarely used by groups of people. Its main use is as a cut through, and by a small number of dog walkers, some of whom were cutting through themselves. The field is hardly ever used for communal activity, and he has no knowledge of any community event being hosted on it.

10.231. He had spent 5 days in the summer of 2015 taking down hedges and replacing a fence that led to open access to the field. During that time there were two informal sports uses made of the field, both of which were for football. One of those was his own children, who would not have otherwise accessed the field if his fence had not been temporarily down. One dog walker used it as a place to sit and read, and one group of 3 or 4 teenagers used it to sit together. The remaining users were either using it as a cut through or to walk dogs.

10.232. He had reviewed the letters submitted in support of the application, and noted what they said about use of the field. That did not reflect his own experience. The uses he had seen had been limited to what he had said. He had not seen families playing on the field. He had seen no more than a few unaccompanied older children lying on the field. He had never seen a pushbike on the field, but there had been several incidents of small motorbikes there. The use of the field for ball games had been extremely limited.

10.233. He himself had used the field for football with his own children only on the one occasion while he was replacing his garden fence. Other than that he has only used it to cut through. He uses the little park on Chandos Gardens for play activities with his children, as well as Roundhay Park and Gledhow Woods.

10.234. He has witnessed illegal activity on the field, namely the use of motorised vehicles, and he was also aware of the presence of the 'No Trespassing' sign at one edge of the land.

10.235. In his view the field is enclosed and could pose a crime risk to users. Indeed it was security concerns which led to his erecting a new fence at the boundary of his property and the field.

10.236. He further explained that the reason for erecting his new garden fence was for the protection of his property from litter, including beer cans and vodka bottles, which were often at the end of his garden. He had considered his property to be vulnerable. The original proposed fencing changes to the field, as part of the school expansion proposals, had included a path behind his house, which led to a heightened perception that this might be the case. That pathway was however subsequently closed to public use.

10.237. Mr [redacted] confirmed the view which he had expressed in a written representation submitted earlier that polling district ROB should not be appropriately regarded as a neighbourhood for the purpose of this application.

10.238. He had lately seen evidence that the field had been broken into at the far end. However he had not heard any complaints about the field being closed to local people. He had heard the school using the field on a couple of occasions for play when he had been working at home.

10.239. *In cross-examination* Mr [redacted] confirmed that he had only heard the school using the application site field on a couple of occasions. His hearing such use would be dependent upon his being at home regularly during school hours. He only works at home occasionally, so had only heard school activity on the land occasionally. He also sees the field from his bedroom at evenings and weekends.

10.240. *To me* Mr [redacted] said that he was not sure whether he had heard of the Brackenwood Community Association.

10.241. ***Ms*** [redacted] has lived in Gledhow, not far from the application site, for a large part of her life.

10.242. When she was born she lived with her family in Gledhow Wood Close, just off Gledhow Wood Road at the top of Gledhow Lane. She went to the nursery at Gledhow Primary School and then started in reception there. When they lived in Gledhow Wood Close her father was on the residents' committee and was involved in the Right to Buy scheme. In late 1983 they moved to Moortown. She left Gledhow Primary in 1984 and moved to Moortown Primary as it was nearer to their new home.

10.243. She still has early memories of her time at Gledhow nursery and reception. There was a large playground. She cannot recall any gates or enclosures such as there are now for safety or security. The whole of the playing field was in use, and she remembered a running track. There was a slope in the middle of the field, and they were not allowed to go beyond that. There was a feeling of a very large open space, in contrast to now.

10.244. After she moved house and school, she still regularly visited friends in Gledhow. They never went onto the school field as they had no reason to go there, and she cannot remember it being mentioned. She returned to live in the area in 2006, when her partner bought a house at the bottom of Chandos Gardens, very near the application field. That became her permanent address in 2008.

10.245. In 2006 she began using the application field as a regular shortcut between Chandos Fold and the bus terminus on Brackenwood Drive. She sometimes also cut through the field between Chandos Fold and the playground and shops, as an alternative to walking along the streets. When her own daughter started attending the nursery next to the school site, she used the shortcut more often, as the entrances to the nursery were not far from the bus terminus. She used the land daily as a shortcut, and sometimes several times a day, both morning and evening. Since the field has been fenced off in 2015, she has continued to use the shortcut between Chandos Fold and Brackenwood Drive if she needs to get to that side of the area, as it is quicker.

10.246. When using the field as a cut through, she would sometimes see dog walkers, usually in the daytime rather than in the evening. That is the main activity she ever witnessed on the field. She occasionally saw a dog walker talking to another dog walker, but not very often. There would be dog poo on the field, both fresh and old. One would have to be careful on cutting through to avoid that. When her daughter was a baby, she went to the field to have a picnic there, but there was nowhere to put a blanket down that was not covered in dog poo or litter. They abandoned the proposed picnic.

10.247. When cutting through the field she would see all sorts of litter such as cans, glass bottles and sweet or crisp wrappers. There was also a continual problem of fly tipping in or around the edge of the field. There was also a fire pit in the field for over a year around 2015. There were times when she saw local youths sitting on the field drinking from cans or bottles, and smoking weed. She personally did not feel intimidated by them, but she could imagine that others would. She also saw quad biking on the field, usually in the summer months. There was a spate of that a few years ago, but she could not remember exactly when. It churned up the field. She had also seen a teenage couple engaged in sexual activity under blanket on the field.

10.248. She never saw any kind of sporting or organised activity on the field. She occasionally saw a few local children kicking a ball about, but that was not very often. The state of the field generally would have discouraged that sort of thing. She once took her daughter to ride there on her first scooter, as they were cutting through the field, but there was nowhere clean or flat for her to ride it. As her children got older they would run around on the field as they were cutting through, dodging the dog poo, but they would not go there for leisure.

10.249. They have regularly been to other green areas in the vicinity for recreation. There is no shortage of green spaces in the area.

10.250. When the school's expansion plans were published it was first of all not entirely clear what would happen. She became aware that there was a lot of exaggeration and misinformation, and there was a campaign along the lines of 'save our field', or the Friends of Gledhow Field.

10.251. She did not believe it was feasible for there to be shared use of the field between the school use and a village green use by the public.

10.252. The suggestion that polling district ROB could be regarded as a separate neighbourhood is ludicrous in her view. People on both sides of Lidgett Lane regularly use the same facilities, children's activity groups and so forth.

10.253. She herself is a trustee on the management committee of the Brackenwood Community Association. She is the membership officer and newly appointed vice-chair of that Association. They run different events and groups at the Lidgett Lane Community Centre, and fund-raise for the community association. There is a community café held there. Based on the membership of the community association, she would say that currently approximately 60% of the members live to the west of Lidgett Lane. Some members are from other areas, and they run groups at the centre.

10.254. Her parents-in-law live on the other side of Lidgett Lane, opposite the main entrance to Gledhow School, which is a few minutes' walk from her house on Chandos Gardens. They most certainly do not live in a different neighbourhood from herself and her family. She believed that it was only in recent years that ROB had become a separate polling district. as she used to vote somewhere different from where she votes now. She also does not believe that ROB should be regarded as a separate neighbourhood on the basis of the nature of its housing stock. The housing in ROB is completely mixed, with a variety of older local authority housing, some of which is privately owned, old terraced houses, semi-detached houses, and a new housing estate where the Rugby ground used to be. There is a similar mix of housing on the other side of Lidgett Lane, although there is no social housing as far as she was aware. It is not true that people living in polling district ROB are too poor and socially disadvantaged to get to Roundhay Park. Roundhay Park is not too far away to visit.

10.255. *In cross-examination* Ms [redacted] said that she would cross the field for the purposes of cutting through in the period from 2006 onwards on quite a frequent basis, sometimes as often as 2 or 3 times daily. However in terms of using the field for any kind of activity she would tend to avoid it because of all the dog poo; she did need to avoid dog poo whenever she was on there.

10.256. As for the Brackenwood Community Association, that does not have hard boundaries. She supposed that unofficially its area of activity would extend down to somewhere around Moortown, with members down as far away as Allerton, for example. The Association had expanded its area of interest a couple of years ago.

Until then it was more confined to the local area. However it involved the other side of Lidgett Lane, as well as the west side of it.

10.257. *In re-examination* Ms [redacted] said that in order to be a member of the Brackenwood Community Association, a person did not have to live in a particular area. But the Association would approve a potential member, or not, based on where they live. They would assess this when an application for membership was made, but there are no harsh boundaries.

10.258. *To me* [redacted] said she did not know why the association was called the Brackenwood Community Association.

10.259. ***Mrs*** [redacted] said that she had been employed as a teacher at Gledhow Primary School from 1993 until she retired in August 2017. She had lived in the area since 1986, and her eldest child attended Gledhow Primary School.

10.260. When that child attended Gledhow School from 1986 to 1991, there was no secure fence as there is now, just a chain-link fence around the perimeter of the whole field, which was used for play times and also for PE lessons, nature studies and sports days. There was always a big problem with dog dirt on the football pitches, broken bottles, and several incidents involving needles and other drug users' materials.

10.261. The playing field had been used by Gledhow School for a long time, and was only separated by the secure fence in 1994. The part of the playing field which became separated by the school fence was known after that as the triangle.

10.262. Her younger children attended football training with North Leeds Juniors, on Gledhow School pitches, for several years from 1995. As the playing field had been securely fenced off from the triangle there were no such health and safety issues there.

10.263. After the field became split in two she recalled that sadly the school did not use the triangle, due to health and safety concerns. The problems with dog dirt and broken bottles on the triangle, and reports of drug paraphernalia, discouraged any such use.

10.264. There was also a problem for a couple of years with motorised trail bikes sometimes being ridden on the field, which she believed was reported to the police community service officer. There were also sometimes groups of lads on the field drinking, and teenagers from the High School, especially during study periods, being on there in the late spring and summer months. There was a lot of rowdiness at that time of year, when alcohol was being consumed by those groups. She would sometimes see the occasional dog walker on the field, but was aware of reports from other staff and parents that there was a continuing problem of dog mess.

10.265. After the fence was erected in 1994, some trees and bushes were planted and play equipment was installed, to create a trim trail for pupils along the boundary of the fence. After that she recalled that there were some concerns about people walking their dogs on the field very close to the steel fence, and the risk that they would try to speak to pupils. There was also a concern that pupils would try to speak to the strangers or reach through the fence to touch their dogs. That meant that when pupils were playing along the trim trail staff would have to keep an extra eye on them, and ask them to move away from the fence if there were people on the other side of the fence.

10.266. She would not describe the triangle field (the application site) as being somewhere people went for lawful sports and recreation. It was not an inviting place where she could imagine families gathering and having picnics. It particularly appeared to attract rowdy groups of lads, and teenagers drinking alcohol.

10.267. In 2008, when she and her husband first got a dog, she took it to the triangle field near her home on a few occasions for exercise, but quickly realised it was not somewhere they should return to. It was full of dog mess, and there were some nasty looking dogs on the field without their owners. It was apparent that the dogs had been let out to wander and use the field as a toilet. Since then she had never returned to the field with her dog.

10.268. It would be incompatible with use of the field for the school for it to be open for general public use. The recent expansion of the school should not have taken place unless there was sufficient outdoor space for that to happen. This requires use of the triangle field. If members of the public had unrestricted access to the field at all times when pupils were on the field, staff would not be able to fully safeguard pupils and ensure their health and safety.

10.269. She believed that polling district ROB could not sensibly be described as a completely separate neighbourhood. She has lived in a residential street just to the east of Lidgett Lane for well over 30 years, and had worked at Gledhow Primary School for about 24 years. She had never thought of the area within polling district ROB, including Brackenwood and the Chandos streets, as a separate area from the rest of the neighbourhood.

10.270. *In cross-examination* Mrs [redacted] said that she had visited the application site outside school hours on several occasions, but had certainly thought that there were more pleasant places to visit. For example there had been a couple of aggressive dogs on there without their owners. She probably visited the site outside school hours about 3 or 4 times. Before the period when she had a dog she had possibly wandered across there on a couple of occasions.

10.271. Her children are in their late 20s now, so it was probably 20 years ago that she would have gone there.

10.272. Before the palisade fence was erected in 1994, the school did at times have activities on the part of the school grounds that is the application site. She acknowledged that a document headed *"Brackenwoods Master Plan",* covering an area which looked fairly similar to that of polling district ROB, appeared to have been produced in April 2009 by an organisation named as Groundwork Leeds (which itself appeared to be associated with Leeds City Council). That document had described itself as an environmental improvements plan. She also accepted that there was some historic documentary material which seemed to suggest that polling area ROB was sometimes also referred to as Brackenwood, or the Brackenwoods area.

10.273. *To me* Mrs [redacted] said that she had never seen more than a few lads kicking a ball around on the application site, and had never seen any family activity there. She thought she had probably seen buses with 'Brackenwood' displayed as their destination.

10.274. ***Mrs*** [redacted] was a member of staff at Gledhow Primary School between 1989 and April 2017, and was Deputy Head Teacher from 2010 to 2017.

10.275. She began working as a teacher at the school in September 1989, and was initially employed as a Year 2 class teacher. At that time there were 4 classes in each year group, and the children moved at age 9 to middle school. She progressed to various different posts at the school over the years. There had been a number of temporary classrooms at the school at various times. The original temporary classrooms had been removed after the reorganisation in 1992. Gledhow School then reduced in size from a four form entry to three form entry, and then 2½ form entry, and then eventually to 2 form entry in about 1996.

10.276. When she joined the school there was no secure fence. The field was used by the children throughout the school year for playtimes, and lunch times, as well as for part of their PE lessons, and she had memories of rounders matches held on the field in the summer term. It was also used as an outside classroom, with children sketching wild flowers, counting mini-beasts, setting up experiments as to habitats, and for staff reading stories or poetry to the children.

10.277. All the children and staff were made fully aware of the hidden threats of dog dirt, litter and broken glass, especially following a weekend or holiday. The caretaker would be called and would cone off an area and clear it to the best of his ability. The school requested that dogs were not allowed to enter the site. She herself was unaware of the field being used outside school hours or in the holidays for organised community use.

10.278. There were a lot of problems with vandalism due to ball games being played in the school grounds at the weekend, and windows being broken. Due to those concerns about dog fowling and breakages a security fence was erected. She remembered discussing with the children, after the Dunblane tragedy, how pre-emptive Gledhow School had been in securing the safety of the children.

10.279. At the time of the fence being erected in 1994 there was a clear recognition of potential dangers to children inside the classroom. However following incidents of groups of older children and teenagers having to be asked to move off the field, in order for Gledhow children to play, which was often followed by them shouting abuse, it was becoming clearer that there were security arrangements that were required for the outdoors as well. At that time there was little if any published guidance relevant to this.

10.280. The palisade fencing was established across the playing field to provide the security required. Two gates were inserted in the fencing, to allow continued access into the field, and for the grass cutters. However any use of the field by the school became less frequent because of dog fouling and the security of the children. The only time she could remember using the field after the security fence was erected was to plant some trees that had been donated to the school.

10.281. Over the years groups of teenagers from local schools have congregated and used the field for underage drinking and smoking. There were occasions when they had to be asked to leave the area, because they were initiating conversations with the children of Gledhow School. On one occasions she remembered one of them offering the children some sweets. Litter, including broken glass, was often to be found around the perimeter fence and in the bushes. She also recalled a time when a fire had been lit on the land, and there was a period when motor bikes or quad bikes were being used there during the school day or after hours.

10.282. In June 2015 a group of children reported to lunchtime staff that they had seen two teenagers having sex on the field. The couple were asked to leave, but returned later, only to be asked to leave again.

10.283. Passers-by often talked to the children, and called them over to the fence. Although those conversations are usually innocent, it is inappropriate to engage the children, and this presents a risk to them. The only other people she has seen using the field are occasional dog walkers, or people cutting across the field to get from one side to the other. She has never witnessed a significant number of people using the field extensively for any kind of lawful sports or pastimes. She was not aware of any community events or activities being held there.

10.284. In 1999 her class was involved with the project for designing the community playground on the corner of Lidgett Lane and Chandos Gardens. That area was originally part of the school's site, before the security fencing, but agreement was reached with the school that it was no longer required by the school, and could be used for the benefit of the community.

10.285. Because of the increase in demand for school places in the area, it was in 2014 proposed that Gledhow School should be expanded to a three form entry school.

This would require new building, and the loss of outdoor space would be dealt with by the re-use of the field, which had been used by the school historically. This was duly progressed, and the school and its governors agreed to the expansion. Everyone however took the view that the expansion could only happen if the plans included the field. It would be quite unsatisfactory for there to be a joint use between the school and the general public of this field. The safety and well-being of the children simply could not be guaranteed in those circumstances. That would inevitably prevent the school from being able to use the field as part of its secure environment.

10.286. *In cross-examination* Mrs [redacted] said that the school and its children do sometimes go on visits to other places where the public go, but risk assessments had to be made before that was done. An example of that would be a visit to Roundhay Park. Staff would have to go there before and carry out a risk assessment. She agreed that there are other schools without so much green space.

10.287. *In re-examination* Mrs [redacted] said that there would need to be a risk assessment for children to use the field, if the field were also in use as a town or village green. It would not be impossible, but frankly parks like Roundhay are more usable in that sort of circumstance. There are staff ratios in the guidance for outside, as opposed to in-school activities.

10.288. *To me*, Mrs [redacted] confirmed that there was no secure fencing around the school site until the fencing across the field in 1994. By that she meant that there was no completely secure fenced site at that stage.

10.289. She accepted that it would still be possible for the school to visit a town green area, with appropriate staffing, risk assessment and so forth, for every day such a visit was to be made, just as if it were a visit to somewhere like Roundhay Park.

11. The Submissions for the Objectors

11.1. As I have generally noted earlier, there were over 430 objections to the original application in this case. Two of them were from the Principal Objectors, Leeds City Council as landowner, and the Governors of Gledhow Primary School. The two Principal Objectors involved themselves fully at all stages of these proceedings, and this section is almost entirely devoted to a summary of the submissions which were made at various stages on behalf of those two Objectors. The 430 or so other original Objectors were largely individuals or couples living in Gledhow, many of them clearly (from what they said) parents with children at the school. There is of course no reason why the views of people with children at the school should not in principle be given equivalent weight to those of anybody else. However there was a good deal of repetition of points among those objections, and the general position was that they

did not make new or additional points, relevant to the ***Commons Act***, above those being taken in any event on the behalf of the two Principal Objectors.

11.2. It was also the case that when the Applicant, in his response to the original objections, proposed an amendment by way of clarifying his originally suggested *"neighbourhood"*, by reference to the area of a local electoral polling district, there was another substantial volume of individual objections, as well as comments and objections lodged on behalf of the two Principal Objectors. In this instance as well the approach I generally adopt in this Report is to give most consideration to the points taken on behalf of the two Principal Objectors. In general the points taken by all the other objectors were incorporated within those points. There was a notable element of complaint from objectors on the basis that the Applicant's narrowing of the area of his proposed neighbourhood had excluded a considerable number of residents from the eastern parts of Gledhow from being any longer within the claimed neighbourhood. It was clearly felt that somehow the Applicant was thereby excluding those individuals from the possibility of being objectors. This view was erroneous, as I explained more than once when the opportunity arose, including at the Pre-Inquiry Meeting. There is no reason why objections from persons living outside an Applicant's claimed neighbourhood should not be treated with the same seriousness as objections from persons living within it. The view that the Applicant should have defined his proposed neighbourhood in a different way from the one he eventually adopted was a point in any event pursued by the two Principal Objectors, and is a matter which I shall be considering further, later in this Report.

11.3. The general upshot of my above remarks is that what follows in this section of my Report is in effect a summary of the points which remain relevant which were made on behalf of the two Principal Objectors. I use the words *"which remain relevant"* in recognition of the point that the law in relation to the topic of *"*statutory incompatibility*"* moved on significantly during the period taken up with the preparations for the Inquiry, and in the months thereafter. The principal parties were given full opportunity to comment on these developments of the law. However it follows that I shall not need to set out at any length a summary of arguments which, although sincerely and firmly made at earlier stages of the proceedings, were effectively modified later on by the relevant party, in the light of the developments of the law that I have just referred to.

11.4. In its original objection, Leeds City Council had made it clear that its objection was in its capacity as both as Landowner and as Local Education Authority. It was pointed out that the LEA has various statutory functions relating to the education of children in Leeds, including a duty to provide sufficient school places to educate children. ***Section 13(1)*** of the ***Education Act 1996*** requires LEAs to secure that efficient primary education is available to meet the needs of the population of their area. They are also required to secure high standards. ***Section 14*** of the ***Act*** requires that the LEA shall secure sufficient schools for providing primary education in their area. ***Section 175*** of the ***Education Act 2002*** imposes duties on LEAs and Governing Bodies to safeguard and promote the welfare of children.

11.5. The key point taken in the City Council's initial Objection was the view that the application in this case was legally impossible because registration as a town or

village green would be incompatible with the statutory functions of the Council as local Education Authority. This was because the land to which the application relates had been originally acquired for use for education, and had never been appropriated to any other purpose. It was at that stage argued that the application should be rejected summarily on the basis of statutory incompatibility.

11.6. The land here was acquired for education purposes, and appropriation from one purpose to another cannot be inferred from an authority's conduct in managing or dealing with the land over the years. It requires an express decision to be taken. The case of ***R (Goodman) v Secretary of State for the Environment*** [2015] EWHC 2576 (Admin) supports this proposition.

11.7. It was acknowledged that in May 2005 the Chief Executive of Education Leeds had produced a report recommending that part of the school's formerly larger playing field (effectively the application site) should be declared surplus to requirements, and transferred to another department of the Council for disposal. A delegated Decision Notice had been signed by the Chief Education Officer in May 2005, to declare the land surplus. However the land was not appropriated to any other statutory purpose, and was not disposed of. In any event later events show beyond doubt, it was argued, that the land is no longer surplus to requirements, but is in fact required for education purposes.

11.8. The application site is now required to accommodate an enlarged Gledhow Primary School, in order to allow the Council as Local Education Authority to fulfil its statutory duty. Various reports leading to this view were cited (these have been mentioned already in summarising the evidence). In July 2015 the Council, as Local Education Authority, had submitted a planning application for the erection of a portacabin building on the school site, to be used as temporary classrooms. That proposal was duly approved. Planning permission for a permanent enlargement of the school was granted by the Council in December 2015. The Building Bulletins as to open space provision around schools indicated that additional open space provision would be required for the enlarged school. This meant that the area of the present application site, although it had not been actively used by the school for the previous two decades or so, was now required to form part of the school grounds.

11.9. As the second main ground of objection, it was argued that the burden of proof to show that the criteria in ***Section 15*** of the ***Commons Act*** are met is firmly on the Applicant. It was accepted that the standard of proof is the civil standard based on the balance of probabilities. The use has to have been continuous throughout the relevant 20 year period. The use has to show the landowner that a right is being asserted, and must be more than just sporadic intrusion on the land. It must give the landowner the appearance that rights of a continuous nature were being asserted.

11.10. Whether use has been by a significant number of the inhabitants has been held to be a matter of impression for the decision maker, and any inspector holding an inquiry on behalf of the decision maker. The use has to be sufficient to indicate that the land

is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.

11.11. The legal tests for a *"locality"* were discussed. It was accepted that a neighbourhood is a looser concept than a locality, and that a neighbourhood can be in more than one locality. However a neighbourhood has to have a sufficient degree of cohesiveness: ***R(Cheltenham Builders Limited) v South Gloucestershire DC*** [2003] EWHC 2803.

11.12. It was accepted that use by inhabitants of a neighbourhood might legitimately include by inhabitants of more than one neighbourhood. Nevertheless the Objector put the Applicant to strict proof as to the identity, extent and legal validity of the then claimed neighbourhood of Gledhow. It was argued that it is of fundamental importance that the neighbourhood/locality is certain, because the landowner needs to know who can and who cannot lawfully exercise the registered rights of recreation.

11.13. It was accepted that the law of village greens nowadays embodies no principle of deference, so if local residents have been using land 'as of right', it does not matter that the landowner might also have been using the land for some purpose or purposes. If the land in such a circumstance were registered then both the local inhabitants and the landowner would be able to carry on with their previous manner of using the land: ***R (Lewis) v Redcar and Cleveland Borough Council*** [2010] 2 AC 70 was referred to.

11.14. It was accepted that the law regards lawful sports and pastimes as a composite class, which includes modern activities such as dog walking and playing with children, provided that those activities are not so trivial or intermittent as not to carry the outward appearance of use as of right.

11.15. The use of paths or ways across the land, or passage across land to gain access from one place to another, is *not* the use of the land for lawful sports and pastimes, as the law has clearly established.

11.16. In this case the Applicant's initial evidence had related to too few users to demonstrate that the land was in regular use by the local community for lawful sports and pastimes, as opposed to being an occasional use by trespassers. There had been only 13 people who had provided evidence, and their evidence lacked detail. 13 people cannot be described as a significant number of the claimed locality or neighbourhood of Gledhow, given its size. Furthermore it was not clear that there had been continued use through the relevant 20 year period. It also seemed that a large proportion of users had referred to the land being used as a means of getting from one place to another. Reference was also made to the land having been fenced at some point in the relevant 20 year period, and the existence of a 'No Trespassing' sign on the land. That sign had been visible to users of the land for at least some part of the relevant 20 year period. That showed that use of the land was in defiance of the landowner's expressed wishes. Therefore the use was not as of right.

11.17. The Governors of Gledhow Primary School also objected on two main bases, being 'statutory incompatibility', and failure in any event to meet the statutory criteria under the ***Commons Act***.

11.18. On the statutory incompatibility point, this objector also made reference to the land having been originally purchased by Leeds City Council in 1945 for education purposes, and having been held for educational purposes ever since. More recently it was suggested that as a result of clear decisions taken by the Council, from at least 2010 the land had been held for the specific statutory purpose of the expansion of the provision of primary education at the school. That had subsequently been the subject of informal and formal statutory consultations, and further decisions of the Council in 2014. At all material times it had been perfectly clear to consultees, including the present Applicant, that the land would form part of the expansion of the school.

11.19. The land has therefore been held and used in performance of the statutory duties of Leeds City Council as Local Education Authority since 1945. The source of the principle of statutory incompatibility was discussed. It was argued that town or village green ('TVG') rights cannot coexist with the proper operation of the school, given the statutory duties relating to the provision of efficient primary education, sufficient school places, and the safeguarding and promotion of the welfare of the children. The educational purpose for which the land is held is therefore incompatible with the acquisition of TVG rights over the land.

11.20. It was accepted that there is nothing in the ***2006 Commons Act*** which expressly prevents the operation of ***Section 15*** in respect of land held by a statutory undertaker for statutory purposes. Therefore any restriction on the scope of ***Section 15*** has to be implicit. That was made clear by the Supreme Court in the ***Newhaven*** case. The question of incompatibility is one of statutory construction. The question is whether ***Section 15*** of the ***2006 Act*** applies to land which has been acquired by a statutory undertaker, and which is held for statutory purposes that are inconsistent with its registration as a TVG. The Supreme Court held that it did not so apply in that case. Where Parliament has conferred on a statutory undertaker powers to acquire land compulsorily, and to hold and use that land, for defined statutory purposes, the ***2006 Act*** does not enable the public to acquire by user rights which are incompatible with continuing use of the land for those statutory purposes.

11.21. That principle had been established in the ***Newhaven*** case in respect of a beach in a working harbour, to which specific legislation applied. It was clear from the ***Newhaven*** case that the principle of statutory incompatibility is not confined to statutory undertakers such as a harbour undertaking. The principle can apply to any public body, such as a local authority, which has acquired and holds land for a specific statutory purpose which is incompatible with the registration of the land as a TVG. Whether that is the case or not will depend on the particular facts of the

case, and an examination of the specific statutory powers pursuant to which the land is held.

11.22. Reference was made to the legislation applying to local education authorities and imposing various duties upon them in respect of the provision of education facilities. These included ***sections 7, 8*** and ***9*** of the ***Education Act 1944, sections 13*** and ***14*** of the ***Education Act 1996***, and ***section 175*** of the ***Education Act 2002***. There is also statutory guidance relevant to ***section 175*** of the ***2002 Act***.

11.23. Reference was made to another village green inspector's finding in a case in Cheshire that land held for education purposes could not be registered as a town or village green, because of the principle of statutory incompatibility.

11.24. As for the history of the land here, the wider school playing field, including the present application site, appeared to have been included within one unified area of land up to the mid-1990s; then a steel palisade fence was constructed between the present application site and the then firmly enclosed grounds of the school to its east. The aim of that fence had been to protect the children and school property. The application site area to the west was leased for a significant period to Roundhay Rugby Union Football Club, under a lease beginning in 1981 and running until May 2006. The land was used by the Rugby Club until at least autumn 2002.

11.25. Consideration of the need to expand primary school education in Leeds began in 2010, and involved consideration of the possible use of this land at Gledhow Primary School from an early stage. In the middle of 2014 there was a specific consultation about the proposal to increase the size of Gledhow Primary School from September 2016. Part of the reason for promoting this at Gledhow Primary School was the fact that land was available as part of the school site.

11.26. The point that the land proposed to be used for the school expansion had been used and accessed by some local inhabitants was drawn to the Council's attention by one of the responses to the consultation exercise about the expansion. However it was concluded that the land was in fact already land held for education purposes, which would need to be more firmly fenced off, precisely to keep the local public out, if it was to meet the requirements of safety and security for the children using the land.

11.27. A planning application was made for the permanent expansion of Gledhow Primary School to increase its size long term, in September 2015; the red line for that planning application included the land of the application site, and showed the land as part of the school's outdoor space in connection with the expansion works. The relevant planning permission was granted in December 2015.

11.28. The land in question here had always been held by the Council for the specific statutory purpose of the provision of primary education at the school, initially under the ***Education Act 1944*** and subsequently under the ***Education Acts 1996 and 2002***.

The consultation undertaken in 2014 would have left the Applicant himself under no illusion that expansion of the school, using the application site as part of its grounds, was the purpose to which the land was proposed to be put at that stage. The school's need for the land was restated several times in 2014, at meetings progressing the proposals.

11.29. In July 2015 the Applicant himself had submitted a request to the Council's Scrutiny Board to reconsider the decision to expand the school onto the application site. In that same month the Council's Chief Executive wrote to the Applicant explaining in detail why the land was required for the expansion of the school, and the reasons why in those circumstances the land had to be secured.

11.30. Thus the position by the time of the TVG application in August 2015 was that the land had been acquired for educational purposes in 1945; thereafter the land was always held and used as part of the school. It had later been fenced off in 1994, specifically due to security and child safety concerns. However the school in conjunction with the Rugby Club had continued to maintain the land at all material times after that 1994 fencing. It was acknowledged that the school could not safely use the land on a regular basis after that fencing, due to health and safety and security concerns. However it was still used very occasionally. The land was not declared surplus in 2005, even though a recommendation had been put forward to that effect. The land had never been appropriated to any other purpose, but continued to be held for educational purposes. The Council had in 2014 consulted on a proposal to expand primary education provision at the school, which proposal explicitly included the incorporation of the application land as part of the expanded school. The reasons for needing to securely fence the land as part of the school site were explained to the Applicant himself in July 2015.

11.31. There had clearly been a chain of decision making from 2010 onwards which meant that the specific purpose for which the land was held could not have been clearer. The importance of properly securing any land which forms part of a school site, in order to comply with statutory duties, is clear. Unrestricted public access to the land at all times through TVG status is therefore wholly incompatible with use of the land by the school. It is incompatible with the Council's statutory duties to provide efficient and sufficient school places, and with the Council's and the Governing Body's duties to safeguard and promote the welfare of the children at the school.

11.32. The Applicant had argued that there is nothing in law which states how much land the school must have, and that therefore the school's expansion proposal is not legally affected by the TVG application. However ***Section 13A*** of the ***Education Act 1996*** requires that local authority's functions relating to the provision of education must be exercised with a view to promoting high standards. There is a requirement in statutory regulations that suitable outdoor space must be provided, in order to enable physical education to be provided in accordance with the school curriculum, and pupils to play outside. There are Government space standards for schools. Those could not be met if the school did not have the application land available for use as part of the expanded school's grounds.

11.33. Both of the Principal Objectors made further submissions in writing in respect of the Applicant's clarification (in his initial response document) that he sought to amend the description of the 'neighbourhood' relevant to the application, from the reference in the original application simply to Gledhow, to an area defined as that of polling district ROB.

11.34. The City Council as Objector pointed to the fact that the original application had referred to Gledhow, but had not sought to define the boundaries of that area. The Commons Registration Authority had apparently sent a map to the Applicant asking him to define the boundaries of Gledhow. Now, nearly 14 months after the original application had been made, a completely different neighbourhood was being put forward, which had the effect of excluding a significant number of the objectors.

11.35. This change was not a simple redefinition or tweaking of the boundary of the original neighbourhood. It completely moves the goalposts in relation to the definition of the claimed locality or neighbourhood. The effect of this was to exclude most of the objectors' properties. The Applicant and his group, the Friends of Gledhow Field, are effectively now excluding most of Gledhow to suit their own ends. This is tantamount to a new application, and a further round of consultation would accordingly be necessary. It was requested that the amendment to the definition of the neighbourhood should be disallowed by the Commons Registration Authority.

11.36. The Governors of Gledhow Primary School also objected to the Applicant's change/clarification of his suggested neighbourhood. Both of the original objections, by the school and the City Council as landowner and LEA, had highlighted the Applicant's failure properly to define the identity, extent and legal validity of the locality or neighbourhood of Gledhow. That matter had been raised by the Commons Registration Authority with the Applicant. The Applicant had been afforded a reasonable opportunity to prove the boundaries of Gledhow, and had failed to do so in some 14 months after the application itself had been submitted. All of the original objections had been made on the basis that Gledhow was being put forward as the named locality or neighbourhood, against which the other elements of the substantive tests under ***Section 15*** of the ***Commons Act*** should be considered. The change now proposed by the Applicant materially and significantly altered the substance of the TVG application, nearly 14 months after it was originally submitted.

11.37. Nearly all of the evidence and letters submitted on behalf of the Applicant, both the original 13 supporting letters and the 30 or so further letters in support which the Applicant had submitted later, had identified the land by reference to Gledhow as the name of the area. None of the evidence produced by the Applicant referred to polling district ROB as being relevant as the neighbourhood.

11.38. It was accepted that the principle to be applied as to whether or not to accept amendments is that of being fair to the parties. It is pointless to insist upon a new application if no prejudice is caused by an amendment, or if any prejudice can be

prevented by an adjournment, to allow the objectors to deal with points for which they had not prepared. In this case however the Applicant is not merely seeking more particularly to define Gledhow by reference to a plan. He is seeking unilaterally to replace Gledhow with a new neighbourhood which he calls polling district ROB. This change is material and significant and results in an application which is completely different in substance from that which the Commons Registration Authority initially considered and decided to publicise in March 2016.

11.39. It is also notable that the Applicant's proposed amendment had enabled him to state now that most Objectors do not live in the neighbourhood of the TVG application. The amendment is therefore transparently self-serving. This is clearly prejudicial to the Objectors, of whom there are 400 or so.

11.40. This is not prejudice that could be resolved or alleviated by adjournment. Indeed a further adjournment would exacerbate the prejudice even further, largely by reason of the further delay it would cause to the school expansion proposal. The amendment to the neighbourhood area is so substantial that it could only ever be considered fairly and appropriately by requiring a fresh application to be lodged. The school considers itself to be at the heart of the local community of Gledhow. The Applicant chose to name his organisation by reference to Gledhow, and accepts that the land is named or otherwise identified by reference to Gledhow. He had purported to represent the Gledhow community, and asserted that the TVG use of the land came from the inhabitants of Gledhow. The application was clearly prepared and submitted on that basis. The Applicant's new approach seeks retrospectively to divide up the community by reference to socio-economic factors such as house price and size. This is divisive and harmful to the very local community which the Friends of Gledhow Field had claimed to serve.

11.41. The Commons Registration Authority has an obligation to act impartially and fairly at all stages of the process. That applies when considering whether or not to accept amendments to a TVG application. The amendment proposed here causes huge prejudice to Objectors, and is so substantial that it simply cannot be entertained as part of this application. Therefore the Applicant's retrospective attempt to change his named locality or neighbourhood from Gledhow to polling district ROB should be rejected by the Commons Registration Authority. The Applicant had been given a reasonable and sufficient opportunity to prove the boundaries of Gledhow, and had failed to do so after some 14 months. The whole TVG application should therefore be rejected by the Commons Registration Authority for that reason in itself.

11.42. By the time of the Inquiry, the two Principal Objectors had come to be jointly represented, and accordingly submissions were made on behalf of both of them jointly. In submissions put forward for the start of the Inquiry, it was stated on behalf of these Objectors that the application raised a number of main issues. The first was the general one as to whether the Applicant is able to demonstrate that the land meets the statutory criteria for registration under ***Section 15*** of the ***Commons Act***. In particular, there is the question whether the Applicant has proven that users came from a neighbourhood within a locality. It was noted that the Applicant at the start of the Inquiry had acknowledged that an electoral polling area does not *per se*

automatically constitute an area which is a neighbourhood. If that is so, then the Applicant must point to other evidence as to why the area he had eventually chosen is a 'neighbourhood'. It was accepted that an Applicant is not obliged to submit a map or plan showing his suggested locality or neighbourhood at the time of making an application. However that is subject to the proviso that one should be able to go to some other location and find a plan which would enable the locality or neighbourhood to be clearly identified.

11.43. The second point in relation to the statutory criteria was the question whether there has been sufficiently extensive use of the application site to show to a reasonable landowner that the land has been in use by the local inhabitants, as of right, for the lawful sports and pastimes, over the relevant 20 year period, rather than occasional use by trespassers, or for use as a thoroughfare.

11.44. The final main point to be argued on behalf of the Principal Objectors was whether the application should be rejected on the grounds of statutory incompatibility.

11.45. On the tests under ***Section 15*** of the ***Commons Act***, the Applicant must show that use meeting the statutory criteria had begun no later than 3rd August 1995, and had continued throughout the period of 20 years to the date of the application in August 2015.

11.46. Use must be more than sporadic intrusion. It must give the landowner the appearance that rights of a continuous nature were being asserted. Whether the use had been by a significant number of the inhabitants of the relevant area is a matter of impression. It is clear that the Applicant's case is now put on the basis that the users came from a neighbourhood within a locality. The Objectors take issue with the claimed neighbourhood based on a polling district. It was accepted that a neighbourhood is a looser concept than a locality, but it must still be an area which has a sufficient degree of cohesiveness.

11.47. Polling district ROB, which is relied on by the Applicant, is not a neighbourhood for the purposes of the ***Commons Act***. There is nothing about an area whose sole function is to provide for registered voters to use a particular Polling Station that means its boundaries are sufficiently cohesive to enable it to be described as a neighbourhood. The polling district has no significance at all for those not registered to vote. It creates no kind of cohesiveness which means that a community, sharing characteristics that do not exist outside the polling district, exists for the purposes of the ***Commons Act***. The Objectors' evidence would show that the area, both within and outside the polling district, is physically and socially diverse, making the identification of a precise neighbourhood, corresponding to polling district ROB, impossible.

11.48. To meet the statutory requirements, use has to be made openly, without force or permission, but it was accepted that the intention of the users of the land is irrelevant. It was acknowledged again that there is no principle of deference to use by a

landowner. An important point is that the use of paths or ways across land, or passage across the land to gain access from one place to another, is not use of the land for lawful sports and pastimes, and the two types of use need to be distinguished.

11.49. In this case there has not been use of the application site by a significant number of local inhabitants. There were too few users during the 20 year period to demonstrate that the land was in regular use by the local community for lawful sports and pastimes. The use also was not continuous throughout the relevant 20 year period, given the absence of detail in the application. There appeared to have been insufficient use for lawful sports and pastimes. A large proportion of users refer to the land being used as a means of getting from one place to another. Much of the other use was for unlawful, anti-social behaviour. Such evidence cannot establish that land is liable to be registered as a town or village green.

11.50. User has not been 'as of right'. The application site has plainly been fenced at some point in the 20 year period, and there had been a sign which included the words 'No Trespassing'. The presence of that sign, which had been visible to users of the land for some part of the relevant 20 year period, demonstrates that use was in defiance of the landowner's expressed wishes, and was therefore not use as of right. Use in defiance of a sign is not peaceable user, as case-law has clearly established.

11.51. On the point of statutory incompatibility, it was again argued that ***Section 15*** of the ***Commons Act 2006*** does not apply to land which has been acquired by a statutory undertaker or body and which is held for statutory purposes which are inconsistent with its registration as a town or village green. The well-known Supreme Court decision in ***R (Newhaven Port & Properties Limited) v East Sussex County Council*** was referred to.

11.52. Various statutory duties on the City Council as Education Authority were again referred to. These were in particular ***Section 13(1)*** of the ***Education Act 1996***, ***Section 13A(1)*** of that Act, and ***Section 14(1)*** of that Act. It was also pointed out that ***Section 542*** of the same Act required the Secretary of State to make regulations prescribing the standards to which maintained schools should conform, and requires adherence to those standards. They were regulations requiring suitable outdoor space to be provided at schools. ***Section 175*** of the ***Education Act 2002*** imposes duties on the LEA and School Governors to safeguard and promote the welfare of children.

11.53. The Statement of Common Ground in this case had recorded the City Council's decision-making process relating to the use of the application site to accommodate the expansion of Gledhow Primary School, from two form entry to three form entry. The Objectors' evidence explained that more fully. The application site formed part of the expansion proposals for the school, in that it was required in order to provide sufficient open space in accordance with Department for Education guidance, and also the duty to safeguard pupil welfare.

11.54. When the proposal to enlarge the school was promoted, the statutory procedures in ***Schedule 3*** to the ***School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013*** had to be followed. They required that the proposals be published, and that objections can be made. The LEA then considers the proposals and objections, and determines whether the proposals should go ahead. If the decision is to implement the proposals, then ***paragraph 13*** of ***Schedule 3*** applies, which says that proposals must be implemented in the form in which they were approved or determined. There are in fact provisions for such proposals once determined to be revoked, but only if the proposer of them publishes revocation proposals. There are also provisions for proposals once determined to be modified, but again only if the proposer of them so requests.

11.55. In the case of the proposals to enlarge Gledhow School, which required the use of the application land as open space, as an integral part of the enlarged school, the decision to agree to the proposals was made by the Council as LEA on 17th December 2014. No request for revocation or modification of them was ever made. As a result there has been a statutory obligation to implement the proposals as approved since that date.

11.56. It is also the case that the application site may be required for further provision, to accommodate further growing numbers of pupils in the future. That reinforces the case that registration of the application site as a town or village green would be incompatible with the Council's statutory duties as LEA.

11.57. Registration of the land would make it impossible for the Governors to use the application site in the way envisaged in the published proposals, and in the way that they were and are obliged to implement them. The Council and Governors could not properly ensure the safety of the pupils at the school if the land were to be registered. That is because the application site could not be fenced or secured so as to prevent entry by the local inhabitants. The openness of the site would create an unacceptable risk to the physical safety of the pupils, through anti-social behaviour, littering, the presence of dog faeces etc.

11.58. It was suggested in these opening submissions that the case of ***Lancashire County Council v Secretary of State*** had been wrongly decided at first instance. In view of what has happened subsequently in relation to that case, it is not appropriate to record any further the submissions made on that point. Support was also drawn from the subsequently overruled High Court decision in ***R (NHS Property Services Limited) v Surrey County Council***.

11.59. The *Closing Submissions* for the two Principal Objectors largely followed the themes of the Opening Submissions. It was pointed out that the Applicant had been put on ample notice that he bore the burden of proof in this case, and had properly and strictly to prove the elements of his case. It is not the Objectors' task to fill the gaps in an Applicant's case. Nor is it the Objectors' task to bring in through cross-examination material which is not otherwise present in the Applicant's case. It is

perfectly legitimate for the Objectors to leave an issue well alone, and then submit that the Applicant has not proved it. That would be a recurrent theme of the submissions for the Objectors.

11.60. The Applicant had now put his case firmly on the basis of a neighbourhood based on the boundaries of polling district ROB, in respect of which he had produced a plan. He had not put his case on the basis of Gledhow as an area being either a locality or a neighbourhood. He had not cross-examined any of the Objectors' witnesses who refer to Gledhow, in any way designed to support a revived contention that Gledhow is a neighbourhood, or indeed a locality.

11.61. There is no evidence of the extent of Gledhow, or of its boundaries, or whether and how it could qualify as a neighbourhood or locality. It would be unfair to the Objectors for the application to be determined by reference to Gledhow as a claimed locality or neighbourhood. The Objectors had prepared and run their cases at the Inquiry on the basis that they had to meet the contention that the boundaries of polling district ROB mark the claimed neighbourhood. The Objectors might have wanted to produce evidence on the question whether Gledhow was a locality or neighbourhood, if that was the Applicant's case.

11.62. There had been no evidence which would allow somewhere called *"Brackenwood"* to be found to be a neighbourhood, or which would allow its extent and boundaries to be identified. Neither the Applicant nor his witnesses had given evidence of the existence of such a neighbourhood, or where its boundaries might be. None of them had claimed to live in such a neighbourhood. The neighbourhood cannot be defined by reference to the Brackenwood Community Association. That Association does not have set boundaries, from within which its membership is drawn. The witnesses involved with the Brackenwood Community Association did not say that they considered their neighbourhoods to be defined by somewhere called Brackenwood, or indeed polling district ROB. A plan called the Brackenwoods Masterplan, which the Applicant had referred to in cross-examination of one of the Objectors' witnesses, had not been relied on for that purpose by the Applicant at any stage in his own evidence. If polling district ROB's boundaries coincided with those of Brackenwood, one can infer that the Applicant would have said so sooner, and the Objectors would certainly have wanted to produce evidence on that matter. Any belated attempt by the Applicant to seek to rely on the neighbourhood of Brackenwood should fail. Anything else would be procedurally unfair.

11.63. Only Mr [redacted] himself on the Applicant's side had sought to deal with the question of neighbourhood in any detail. None of his other witnesses had set out any material in their written evidence which shows why the claimed neighbourhood should be considered to be a neighbourhood for the purposes of the Act. The questionnaires prepared for the Inquiry by the Applicant's witnesses simply required them to confirm that they lived within the claimed neighbourhood as shown on a map attached to the form. There was no question in the form which asked for information designed to show that the area actually performs the role of a neighbourhood for the purposes of the ***2006 Act***.

11.64. It was acknowledged that Ms [redacted], one of the Objectors' witnesses, had given brief oral evidence to the effect that when she lived to the east of Lidgett Lane she did not know of or use the application site. Any suggestion that this reinforced the contention that there is a difference between the two sides of Lidgett Lane is refuted. The question of whether there is a proven neighbourhood turns on the evidence produced by Mr [redacted] himself.

11.65. Mr [redacted] now accepts that the boundaries of a polling district do not *per se* demark a neighbourhood. That is a sound concession. The boundaries of a polling district may follow those of a neighbourhood, but may not do so, and are not designed for that purpose. Instead Mr [redacted] seeks to take the starting point of the boundaries of the polling district, and then show why they demark a neighbourhood. However the fact that the polling district boundaries form his starting point shows clearly that he is trying to force those boundaries to perform the role of demarking a neighbourhood, a role for which they were not designed. The Applicant in his evidence had seemed frustrated that the task of showing boundaries had been difficult.

11.66. The boundaries of polling district ROB do not delimit a neighbourhood. The area has no sufficient degree of cohesiveness. It was accepted that cohesiveness is a nebulous concept, for which there is little guidance in case-law. However there is nothing about the architecture, land use or any geographic, social, economic or any other aspects of the claimed neighbourhood which allows it to be identified as a separate neighbourhood from the land around it. A tour of its boundaries would show, especially as regards the northern part of the boundary, and the boundary along Lidgett Lane, that there is no physical feature which serves to provide something identifiably different about the land either side of the boundaries. There is a mixture of housing styles and ages within and outside the claimed neighbourhood. There is simply nothing about the physical characteristics of the claimed neighbourhood which provides a basis for concluding that the area forms a neighbourhood.

11.67. Mr [redacted] had drawn attention to the historic development of the area. It is true that the east side of Lidgett Lane had been developed to a greater degree than the west by 1908 and in the years immediately following, but the test must be whether the area had the status of a neighbourhood during the 20 years prior to and including the date of the application. The fact that there are some older properties east of Lidgett Lane compared to the west is of minor relevance. In any event the development of some of the streets which include Chandos within their names was shown on the 1908 Ordnance Survey Map.

11.68. The same conclusion flows from consideration of the services and facilities in the claimed neighbourhood. None of them serve only or even predominantly the claimed neighbourhood, or provide any reason to think that the polling district boundaries also mark the limits of a neighbourhood. All of them are used both by people within and outside the claimed neighbourhood. Mr [redacted] was wrong to claim that the Objectors' argument was aimed at destroying the claim that there was

a neighbourhood at all. The Objectors do not put their case in such an extreme and erroneous way. The point is that if the Applicant draws attention to services as pointing to the existence of a cohesive neighbourhood, then it is fair to consider the role that they play in that neighbourhood.

11.69. The same point applies in reverse for the many facilities and services around the outside of the neighbourhood. Mr [redacted] accepted that all of them are either used or open to use from people within his claimed neighbourhood, as well as people from outside it. That further undermines the idea that polling district ROB's boundaries contain a neighbourhood.

11.70. The picture painted by the evidence on this topic is one of a suburban area which has services and facilities which draw different people from different areas to different degrees, and with different-sized catchments. That undermines rather than supports the Applicant's case on his claimed neighbourhood. A large number of witnesses had disputed the claim that polling district ROB could be properly regarded as a neighbourhood. The Objectors therefore invite the conclusion that the boundaries of polling district ROB do not delimit a neighbourhood for the purposes of the ***Commons Act 2006***, and that there is no proper evidential or procedural basis for accepting that there might be an alternative neighbourhood based on Gledhow, Brackenwood or anywhere else.

11.71. As for the other statutory criteria in ***Section 15(2)*** of the ***Commons Act***, they provide a composite set of criteria which the land has to meet if it is to be capable of registration. The user evidence produced by the Applicant in this case did not demonstrate that the application site is land on which a significant number of the inhabitants of the neighbourhood here had indulged in lawful sports and pastimes, as of right, for the requisite continuous period of 20 years.

11.72. While the written evidence from witnesses who had not given oral evidence does need to be taken into account, the weight to be attached to such evidence is limited. There are clear examples where the apparent evidence set out in user forms had not proven to be correct, or the full picture. Such differences are perhaps inevitable in cases of this kind.

11.73. There are also some unusual aspects to the user evidence here. People claim to be precise about the use they had made in terms of type, frequency and duration, but those of them whose use would have coincided with the period when the Rugby Club used the site could not remember aspects of it. Some of them could not remember the Club's presence at all. Some could remember the posts being present. Only one mentioned seeing the club playing or training on the site. If people cannot remember the obvious presence of rugby posts, pitch and players, it casts doubt on the accuracy of the rest of their evidence.

11.74. The Friends of Gledhow Field, albeit a small group, had put information into the public domain which is misleading. In particular, support was drummed up by

making untrue claims about the intentions for the field, and then only putting a clarification of the matter on a link on their website which had to be clicked, but without changing the primary statement. There were other examples, and the evidence of those connected with the Friends of Gledhow Field needed to be approached with some caution.

11.75. This point particularly applied to Ms [redacted]'s evidence. She had said in a letter that she usually sees all sorts of people doing all sorts of things on the land. But her own user form had said that she usually visits the site at some time between 7.00am and 8.00am, and again in the early evening. Plainly she would not see all those people performing all those activities in the morning period. In oral evidence it became clear that when she had used the word 'usually' the truth was nearer to *"sometimes"*.

11.76. It is also odd that there is no photographic evidence of the use being made of the site by people from the claimed neighbourhood. The Applicant had produced a photograph of the school using the site on the school building's side of the 1994 fence. The absence of photographic evidence to support the application is odd, given the number of witnesses who had ticked photography as an activity that had been carried out on the site. Ms [redacted] had even said she took a photograph of the site every day for the first 4 or 5 years after moving into her flat. It can be inferred that if they were helpful photographs that provided objective support for the claimed user, they would have been produced.

11.77. There is a complete clash of evidence about the amount of use which was made of the site between the respective parties' witnesses.

11.78. There is a shortage of evidence which covers the 20 year period. While it is possible for there to be mosaic of evidence, covering different parts of the period through different witnesses, the emphasis of the evidence here is that a large proportion of the witnesses who had appeared at the Inquiry do not claim use covering the full 20 year period, and the evidence of the witnesses who claimed to have used the land for shorter periods is very much focused towards the latter years of the period.

11.79. The Applicant's own claimed use of the land for walking his dogs or playing with his grandchildren was only for the last 5 years of the 20 year period. [redacted]'s use of the site only covered the period from 2003 to the application date. At least that was what her user form had said. Her oral evidence showed that was not the complete picture. Use of the land with her children had ended about 10 or 11 years ago, having stopped by 2006 or 2007. She then acquired a dog 7 years ago and said she had used the site. Her use was therefore not continuous throughout the period 2003 to 2015. She had also given no evidence on the frequency with which she would play on the site with her children. She also readily accepted that she had seen the 'No Trespassing' sign on the western part of the site, and that it had been there for some time prior to 2015, and that she could easily read it as she entered the site, and knew what it said. Her use of the site would therefore be forcible user.

11.80. Ms [redacted]'s oral evidence was a good example of how the impression given by a user form can be misleading. She has only used the application site for dog walking since 2009. Prior to that her use had been on limited occasions for blackberry-picking, presumably in late summer. She too had accepted that she had seen the sign and read it and walked past it.

11.81. Mr [redacted]'s evidence only covers the period from 2004, and his use of the land for playing with his children ended in about 2008. His use of the site with his grandchildren commenced about 5 years ago (2012). [redacted] had only visited the application site since 2010, and obtained a dog in 2011. [redacted] gave no relevant evidence. She used the site before 1979 and then moved away. While she did mention visiting the site with her sister, she gave no details of such usage. At the time of those later visits she was not an inhabitant of the claimed neighbourhood.

11.82. [redacted] has used the site since 1998, but had clearly made much use of the site as a cut through. She had had a dog since 2011 and says she has used the site for dog walking since then.

11.83. Mr [redacted] said he had used the site to play with his step-daughter from 1995 until she was about 6 or 7. As she was born in 1991 that use would have ended in 1998 at the latest. He also said he visited the site with his son who was born in 1997, from when he was about 3 until he was about 11 or 12, in other words approximately from 2000 to 2012. He had used the site for dog walking since 2005. He had also used the site as a cut through.

11.84. Ms [redacted] had claimed to have used the site for 20 years or more, for a variety of purposes. [redacted] lived in a flat in the claimed neighbourhood until 1996, and her child was born in 1996. She said she played with him on the application site until about 2007 or 2008. The use she had made of the site since then was vaguely expressed and unclear. Ms [redacted]'s evidence was focussed on her use when she was much younger, prior to 1995. She mentioned picnicking on the land with her husband, but that plainly could not have been a very frequent activity. Her evidence was not clear. Ms [redacted]'s only use during the relevant period was from 2010. when she began to walk a friend's dog.

11.85. Ms [redacted]'s evidence only related to the period from 2007. Her evidence had also exaggerated the use that she had seen made of the land. She is one of the small number of active participants in the Friends of Gledhow Field.

11.86. Ms [redacted]'s evidence does not advance the application at all. Her playing on the land with her children pre-dated the relevant 20 year period by about a decade, and her use since 1995 has been as a cut through as part of walks with her husband. She did however remember the Rugby Club using the land. Although she had seen other

people using the land for recreational purposes, she did not claim they were inhabitants of the alleged neighbourhood.

11.87. Ms [redacted]'s evidence was of limited use. She had only observed the site since about 2005, when purchasing her flat. Her questionnaire acknowledged that she was not able to say whether users were inhabitants of the neighbourhood. Ms [redacted] is the Applicant's wife. She had not made that clear in her original oral evidence before cross-examination. However she did give evidence of using the land prior to the use by her husband, and the period of her use did cover the 20 year period.

11.88. The Applicant can be assumed to have put his best case to the Inquiry. On that basis the user evidence called was plainly insufficient to establish that the statutory criteria had been met. Of those who had given evidence, only 4 gave evidence which covered the earlier years of the 20 year period. The paucity of evidence covering those early years is of vital importance. The requirement is for a significant number of users from the neighbourhood for the whole period. It is not enough to point to a significant number of users who made some use in some part of the period.

11.89. The way in which the Applicant's live evidence emerged at the Inquiry fits with the Objector's evidence on the point that while the Rugby Club used the site, local people respected the land and did not tend to use it. Mr [redacted], who had visited the land regularly when it was in use by the Rugby Club from 1981 until about 2002, did not recall seeing local people using the land. Nor did he have to cope with the unpleasant consequences of dog walkers not picking up their dogs' mess. That either means that dog walking was not happening, or that it was happening but everyone was considerately removing the mess, or that dog walking was not happening to any significant degree. Given what the Inquiry has heard about the presence of dog mess in later years, it can be inferred that the latter of these is the more likely position.

11.90. The question of significant number cannot be divorced from the context of the relevant claimed neighbourhood. The Applicants did not have a figure for the population who live within polling district ROB, and nor did the Council. However the Objectors do not dispute the Applicant's evidence that there are 1,382 dwellings within the boundaries of the polling district. The Applicant had not dissented from the proposition that there must be about 2,500 people living within the polling district's boundary. The size of the claimed neighbourhood must be relevant to evaluating the question whether there is a significant number of users.

11.91. It is inappropriate to consider using Gledhow as the claimed neighbourhood, as there is no evidence about how far Gledhow extends, or how many households or people it contains. The same point applies to basing the neighbourhood on *"Brackenwood"*.

11.92. The Applicant's evidence has to show use of the whole claimed site. It is accepted that this has to be approached in a common-sense way, and there is no need to show use of every single square foot of a site. However there needs to be an evidential basis for concluding that the whole site can be registered. This is another issue where

the Applicant's evidence did not provide sufficient detail. This is particularly important when so many of the Objectors' witnesses say that walking across the land had been the predominant use made of the land. The Applicant's evidence is not sufficiently detailed to demonstrate how the use of the land would have appeared to a reasonable landowner observing that use as representing use of the whole land for lawful sports and pastimes.

11.93. It was accepted that there is some evidence of the land being used for lawful sports and pastimes. However there is evidence of other use which used to be discounted. Walking across the site to get from one entrance or exit to another has to be discounted. So does any unlawful activity.

11.94. It was accepted that some of the Applicant's witnesses had talked of the amount of user they saw on site, and the number of people they saw on the site when they visited, although there was little evidence to identify those other people as inhabitants of the claimed neighbourhood. On the other hand, many of the Objectors' witnesses gave evidence about the relative lack of use that they had seen.

11.95. The evidence of Mr [redacted], the School Superintendent, was particularly important. He did not seek to hide the fact that he had seen people walking their dogs on the land, and had spoken to some of them. Nor did he ask such people to leave in the period before the school expanded, because he was not under instructions to do so in that period, before the school made regular use of the land. He did challenge intruders into the school grounds.

11.96. On the *"as of right"* aspect of the statutory criteria, it is clear that the site was once fenced around the perimeter. That fencing was broken down over time, but there is no clear evidence of when that deterioration began, or how long it took. There was evidence which pulled both ways. Mr [redacted] had spoken of the site being fenced, and players having to open or leap over locked gates to get onto the site. However the decision in 1994 to provide the metal fence across the centre of the whole school site was partly motivated by episodes of vandalism, which suggested that people could get onto the field. For that reason the Objectors do not contend that any use of the site in the period after 1995 was forcible, in the sense of being the result of climbing in or breaking fences to get in. However there is a point to be made about the sign on the site. Two of the Applicant's witnesses had readily accepted seeing the sign, reading it and noting its content and walking past it. It was clear from the wording on the sign that it had to pre-date 2001. Use in defiance of such a sign is forcible and not as of right, as demonstrated by case-law.

11.97. The Applicant's written evidence cannot make good the flaws in the oral evidence, not having been tested in cross-examination. Also the written evidence is unspecific about precise dates, activities, frequency etc. The vast majority of the written statements do not mention the Rugby Club use of the land, which clearly had taken place. Much of the evidence was vague and unspecific.

11.98. Reverting to the topic of statutory incompatibility, it had been agreed in the Statement of Common Ground that the acquisition of the land here had been for education purposes. It could only be appropriated away from those purposes by a formal decision, again as established by case-law, in circumstances where a conclusion had been reached that it was no longer required for the purpose for which it was currently held. No such process of appropriation had taken place here. Mr Farrington's evidence on that point was clear, and the Applicant did not dispute it.

11.99. The Applicant's Statement of Case had implied that the erection of the fence in 1994 marked the beginning of a process which led to the land losing its status of being held for education purposes. That was a wrong analysis. The erection of the fence had no legal effect on the purpose for which the land outside the fence was held. The appropriate conclusion on the evidence is that the site was held for education purposes throughout the relevant 20 year period.

11.100. That made relevant the various statutory duties applying to the Council as local education authority, which had been mentioned previously. Regulations also provide that school premises and facilities must be maintained to a standard which ensures the health, safety and welfare of pupils.

11.101. It was worthy or note that as long ago as 2010 the Council's Asset Management Board had considered a report and determined to reserve the land next to Gledhow School for future expansion of education provision. Mr [redacted]'s evidence was clear that the Governors' agreement to the expansion of the school to three form entry was conditional upon the school being able to make use of the whole of the application site. Mrs [redacted]'s evidence was to the same effect. The School Visioning Document produced by Mr [redacted] was also to the same effect. A concept plan produced in 2014 for the expansion clearly showed the field being used as part of that proposed expansion. The formal consultations on the proposals referred to the use of the field as part of those proposals.

11.102. Although the Statutory Notice of the school alteration proposals was not drafted in a detailed way, so as to refer to the use of the field, it is clear that that is how they were understood. That is how the matter was reported to the Council's Executive Board when it was making the final decision.

11.103. The evidence showed that if the school was to provide sufficient outdoor space for pupils, in accordance with the Government guidance, then use of the field was essential. It is clear that the proposals to expand the school included the proposal to use the whole of the application site as school land. The Applicant, Mr [redacted] had accepted that in cross-examination.

11.104. It was accepted that the relevant premises regulations do not prescribe numerical space standards for open space. However without the field there would clearly be a significant shortfall against the relevant guidance.

11.105. The decision by the Council's Executive Board to approve the expansion of the school in December 2014 had important consequences. Because of the statutory regulations which had been referred to, a statutory duty was imposed to implement the proposals in the form in which they had been approved or determined. As the form of the proposals clearly required and envisaged the use of the field as part of the school premises, the statutory duty applied to the school expansion proposal, including the use of the field, from December 2014.

11.106. Therefore as at the date of the application in this case, in August 2015, the Council was under a statutory duty to implement the proposals as agreed by its Executive Board. Thus there was a clear incompatibility between the duty to use the specific land of the application site, for the specific purpose of accommodating the school's expansion, and allowing unrestricted and unpreventable recreational user of the land by local inhabitants.

11.107. Reference was made to the High Court Judgment in the ***Lancashire*** litigation, but in view of what happened subsequently I shall not here summarise everything that was said at the Inquiry in this regard. Nevertheless it was suggested that, even on the basis of the judgment of Ouseley J in the ***Lancashire*** case (a judgment which was criticised on behalf of the objectors in the present proceedings), there would in the circumstances of this case be specific statutory duties or functions in relation to the specific land of the application site, which would be prevented or hindered by its use for public recreation after registration as a town or village green. The evidence was clear that use of the land as part of the school would be incompatible with open use by members of the local community, if town or village green status were to be confirmed. It was unrealistic of the Applicant to counter concerns along those lines with the proposal that the use of the application site could be treated as though it were an external school trip. The evidence of the Objectors' witnesses was clear that it would be impossible to use the field for the school if it were open to recreational use by local people. Treating use of the field as a school trip would be wholly impracticable, as it would be too resource intensive.

11.108. As for matters of safeguarding the health and welfare of the children, it was accepted that how to comply with the statutory duties in that respect was itself a matter of judgment. Nevertheless the evidence called on behalf of the school and the Objectors was clear on the point. The situation at Meanwood Primary School is not a precedent for concluding that shared use of Gledhow would be feasible. Meanwood's use of the area of open parkland near to it is not part of its daily routine, as Gledhow's use of the application site would need to be. In the Gledhow case, without the application land the shortfall of pitch space at the school would be so severe as to mean that one can properly conclude that the school would be in breach of its statutory duty to provide suitable outdoor space for PE and playing outside. The view was repeated that the judgment of Ouseley J in the ***Lancashire*** case had been wrong. It was acknowledged however that, at the time these submissions were delivered, all parties were awaiting the outcome of the Court of Appeal's deliberations on the appeal in that case.

11.109. It was suggested that it would be possible to resolve this application by rejecting the application without waiting for the judgment of the Court of Appeal in the ***Lancashire*** and ***Surrey*** cases. For reasons I have mentioned earlier in this Report, I did not share that view.

11.110. In a very short further intervention after the end of the Applicant's closing speech, concern was expressed on behalf of the Principal Objectors as to how the Applicant had in those submissions put his case in relation to the neighbourhood. The Applicant had referred quite frequently to the neighbourhood as 'Brackenwood'. However Mr [redacted] had not originally put his case on the basis of Brackenwood. In his Statement of Case the Applicant had made reference to the Brackenwood housing estate, and had said that most of the town or village green neighbourhood was in that estate. He had made a further reference to a significant number of the properties on the Brackenwood estate being social housing. However he had not in that statement referred to Brackenwood as being the alleged neighbourhood. The Objectors did not and do not know where Brackenwood begins and ends. It could well be, for example, that the Applicant himself did not live in the neighbourhood of Brackenwood. It would not be fair for the matter to be approached on the basis of the name Brackenwood being synonymous with the claimed neighbourhood.

11.111. It was acknowledged that in the case of ***R (Laing Homes Limited) v Buckinghamshire County Council*** [2003] EWHC 1578 (Admin), the High Court had accepted that the determination of the correct neighbourhood or locality in relation to an application was a matter of fact, which could be determined by the Registration Authority in the light of the evidence and submissions made at an inquiry into the matter. Nevertheless Brackenwood as such had not been put forward by the Applicant as the name of the proposed neighbourhood until the Applicant's Closing Submissions. It was therefore potentially unfair for that to be considered in the context of making a decision on this case. However the Objectors did not seek an adjournment so as to be able to address more fully the question of the appropriateness of regarding the claimed neighbourhood as being an area called 'Brackenwood'.

11.112. As had been envisaged in discussion with the parties at the close of the Inquiry in December 2017, the Principal Objectors were given the opportunity to make further submissions once the Court of Appeal's decision in the ***Lancashire*** and ***Surrey*** litigation had emerged. As it happened, another High Court decision addressing in part the question of statutory incompatibility, emerged at more or less the same time in the case of ***R (Cotham School) v Bristol City Council*** [2018] EWHC 1022 (Admin). Both the Applicant and the Principal Objectors were given the opportunity also to include any references they wished to make to that High Court judgment in any post-inquiry submissions they wished to make.

11.113. In their *post-inquiry submissions*, the Principal Objectors noted that the Court of Appeal judgment in the ***Lancashire*** case had reaffirmed the approach in the Supreme Court ***Newhaven*** judgment, that in order to argue that registration of land as a TVG can be resisted by reason of 'statutory incompatibility', the person claiming such incompatibility must be able to point to some statutory function which exists in

relation to the specific piece of land with which the application is concerned, rather than to general powers and duties. It is however the Objector's case that the result in the ***Lancashire*** case is readily distinguishable from the present case.

11.114. In ***Lancashire*** the objecting council landowner, which was also the local education authority, had relied only on general duties as regards matters relating to the provision of education. No reference was made in that case to the ***School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013***. It cannot be assumed that the Court of Appeal's attention was drawn to those regulations. The Court certainly did not deal with them. There is no suggestion in the judgments that Lancashire CC had argued that any specific duty applied to the specific land in that case. It had put its case on appeal on the basis that registration would prevent any future expansion of the school, and the fact that the land may be required in the future was enough to prevent registration.

11.115. The Court of Appeal did not agree with that. The Court noted that the conflict between statutory regimes should be resolved with care, and only when the need to do so truly arises. It held that the statutory powers and duties relied on by ***Lancashire CC*** were materially different from those considered in the ***Newhaven*** case. The Court of Appeal contrasted the position in ***Newhaven*** with the position in ***Lancashire***, holding that the duties of the kind relied on by the County Council in that case were general in character and content, and that there was no statutory obligations to maintain or use the land in question in a particular way, or to carry out any particular activities upon it. Crucially, it was noted by the Court of Appeal that in respect of the land in the ***Lancashire*** case there was no statutory duty to provide a school on the land, or to carry out any particular activity on it. There were no proposals to develop it for a new school.

11.116. The situation in the Gledhow case is wholly different. While the Principal Objectors accept that the Court of Appeal has held that general duties cannot found a finding of statutory incompatibility, they do not put their case on the basis of those general duties alone. In this case there is the important matter of the statutory duty which arose once the City Council adopted the proposal to expand Gledhow School in a way which necessitated the use of the application site. That duty is to be found in ***paragraph 13*** of ***Schedule 3*** to the ***2013 Regulations***.

11.117. The proposal to expand the school clearly did require the field to be part of the expanded school, for the reasons which had been set out in the original Closing Submissions. In summary, decisions from 2010 onwards clearly earmarked the field for the expansion of the school. While the published proposals for that expansion did not contain explicit reference to the field, it is clear that they were prepared on the basis that the field was part of the school accommodation, and that the use of the field would be required. The proposals were consulted upon on that basis. The 2014 consultation had referred to the use of the field as expansion land.

11.118. The public on consultation had clearly understood that this was the proposal. One representation, following the relevant Statutory Notice, had raised a concern that the land to the rear of the school would be lost to the public, causing more dog fouling on the streets surrounding the school.

11.119. The Statutory Notice for the expansion had made it clear that the proposal would require additional building, and the remodelling of school accommodation, which was clearly going to mean the school including the field.

11.120. The School Organisation Advisory Board meeting of 13th November 2014 was triggered by the one objection which had been addressed in the Executive Board Report of December 2014. That objection had referred to the potential implications of the closure of the field to the public, and the Board recommended that the proposals be approved on the basis that they would include additional green space for the school's use. That can only have been a reference to the application site. People clearly had been able to, and did in fact, make comments and objections to the proposal for school expansion, on the basis that it involved the fencing of the application site and its use as part of the expanded school.

11.121. The Applicant in his post-Inquiry Submissions was missing the point when he argued that there was not a statutory duty to provide a specific amount of play space which included the application site. That is not the point; it is the inclusion of the application site in the expansion proposals which triggered the application of the duty in ***paragraph 13*** of ***Schedule 3*** to the ***2013 Regulations***. That duty has applied since the approval by the Executive Board of the City Council of the expansion proposals in December 2014. The Report to that Board had itself noted that any significant change to the proposals at that stage would require the proposal to be rejected, and fresh consultation to begin, which would preclude the delivery of places for 2016.

11.122. Therefore the position here is that there were firm proposals to expand the school; the proposals required the use of the application site for educational purposes; the proposals had been adopted, triggering a statutory duty to implement them; a specific statutory duty therefore applied to the specific application site. This case is therefore distinguishable from ***Lancashire***, and falls within the scope of the principle of statutory incompatibility, in accordance with the ***Newhaven*** case as applied in ***Lancashire***.

11.123. As for the ***Cotham School*** case, that is readily distinguishable from the situation at Gledhow. There was no reliance on the ***2013 Regulations***. The decision in that case does not in any way defeat the Principal Objectors' argument for statutory incompatibility, as made in this present Gledhow case.

12. **DISCUSSION AND RECOMMENDATION**

12.1. The application in this case was made under ***Subsection (2)*** of ***Section 15*** of the ***Commons Act 2006***. That section applies 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."*

The application in this case was stamped as received by the Council as Registration Authority on 4th August 2015, so that date represents the 'time of the application', from which the relevant 20 year period needs to be measured (backwards).

12.2. Resolution of a case of this kind also needs to take proper account (at least where, as here, the issue has been raised) of the question whether there exists any "*statutory incompatibility*" which might prevent the particular land concerned from being registered under ***Section 15*** of the ***Commons Act***, even if the various criteria under that section might otherwise appear to have been entirely met. Analysis of how this principle might apply in a particular case will require careful consideration of what the Supreme Court said on the topic in ***R (Newhaven Port & Properties Ltd) v East Sussex County Council*** [2015] UKSC 7, as now clarified by the Court of Appeal's recent judgment in ***R (Lancashire County Council) v Secretary of State; R (NHS Property Services Ltd) v Surrey County Council*** [2018] EWCA Civ 721

Assessing the Facts

12.3. In this case there was a significant level of dispute in relation to some aspects of the underlying factual background, as to the history and extent of the use of this site over the relevant years. The law in this field puts the onus on an applicant properly to prove and therefore justify his/its case that all of the various aspects of the statutory criteria set out in ***Section 15(2)*** have in reality been met on the piece of land concerned. Where a 'defence', or more accurately an objection, is raised by an objector on the basis of 'statutory incompatibility', the logic of the situation indicates to me that there must be an onus on that objector to establish any facts necessary to justify that specific objection. However I should say that in this particular case the underlying facts in relation to the 'statutory incompatibility' arguments did not appear to be materially in dispute between the parties; the dispute was rather as to the correct legal approach to those facts and circumstances.

12.4. To the extent that any of the facts in the case were in dispute, it is necessary to reach a judgment as to the disputed aspects of the evidence given, insofar as that evidence

was relevant to the determination whether the statutory criteria for registration have been met or not.

12.5. Where there were any material differences, or questions over points of fact, the legal position is quite clear that they must be resolved by myself and the Registration Authority on the balance of probabilities from the totality of the evidence available. In doing this one must also bear in mind the point canvassed briefly at the Inquiry itself (and mentioned by me earlier in this Report) that more weight will (in principle) generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements, completed 'evidence questionnaire' forms and the like, which have not been subjected to any such opportunity for challenge.

12.6. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of 'findings of fact'. Rather, what I propose to do, before expressing my overall conclusions, is to consider in turn the various aspects of the statutory test under ***Section 15(2)*** of the ***2006 Act***, and to comment on how my conclusions (on the balance of probabilities) on the facts of this case relate to those aspects. It should not however be assumed that any facts I mention under one heading are only relevant to that heading. I have taken into account the totality of the underlying facts in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.

12.7. I shall then consider the keenly debated question of whether the principle or doctrine of 'statutory incompatibility' has application to this present case, and if so whether it affects my overall conclusions and recommendations in respect of how the matter should be determined.

"Locality" or "neighbourhood within a locality"

12.8. This aspect of the case generated an unusually large amount of dispute, both at the Inquiry, and through the submission in writing of a large number of representations or comments on the topic, many of them from objectors who did not approve of the Applicant's eventual choice or clarification of his suggested *"neighbourhood"*.

12.9. There was no material dispute or argument in this case over the term 'locality', and certainly none at the Inquiry before me. This is unsurprising, as the position eventually clarified through judgments of the higher courts is that a 'neighbourhood within a locality' can acceptably lie within more than one 'locality' (a legally recognised sub-division of the country). It seems to follow that more or less any area claimed as a 'neighbourhood' must by definition lie within one or more localities – and in any event, as I say, the question of 'locality' was not in dispute before me. It had been clear throughout (whatever else might or might not always have been clear) that the Applicant was basing his case on use by the inhabitants of a 'neighbourhood', not a 'locality'.

12.10. As for the term *"neighbourhood"* in ***Section 15***, it is clear from judicial authority at the very highest level that it is a deliberately imprecise term – deliberately introduced by Parliament to get round the difficulties being caused by the rather particular interpretation which the courts had applied to the word 'locality'. It seems clear also that applications can be made in respect of use of a piece of land by inhabitants of more than one neighbourhood, although that was not in issue in the present case.

12.11. Observations made by Sullivan J (as he then was) in ***R (Cheltenham Builders Ltd) v South Gloucestershire DC*** [2003] EWHC 2803 (Admin) suggested that a 'neighbourhood' must have a *"sufficient degree of cohesiveness"*, and not just be *"any area of land that an applicant ... chooses to delineate upon a plan"*. The extent to which these remarks remain authoritative, in the light of subsequent judgments in higher courts, is not entirely clear, but it is clear that 'neighbourhood' is an ordinary English word, to be given an ordinary, not a technical, meaning, and that 'cohesiveness' in this context is essentially a matter of impression for the decision maker.

12.12. It has also been clear, since the judgment of the High Court (again Sullivan J) in ***R (Laing Homes Ltd) v Buckinghamshire CC*** [2003] 3 PLR 60, that determination of the correct 'locality' in respect of an application was essentially a matter for the Registration Authority to resolve, in the light of all the available evidence, as long as there is no prejudice to any party. Village green applications are not pleadings in private litigation, so this might be the case regardless of what the Applicant had said in this regard in his/her original application form. ***Laing*** was a pre-'neighbourhood' case, but there is no logical reason at all why this same approach should not also apply to 'neighbourhood within a locality' in the ***2006 Commons Act***.

12.13. Lay applicants for town or village green registration are given no guidance in the prescribed standard application form [Form 44] as to what the courts have said about the terms 'locality' or 'neighbourhood within a locality', either in the form itself (at Question 6) or in the associated guidance note.

12.14. The background to the dispute about this topic in the present case is that, in answer to Question 6 of his Application Form: 'Locality or neighbourhood within a locality in respect of which the application is made', the Applicant had put simply *"Gledhow"*. He did not provide a map showing the boundaries of Gledhow, but in that he was compliant with the Form's guidance note, which envisages that an area might be a geographical area 'sufficiently defined by name', and only where that is not possible asks for a map to be provided.

12.15. Nevertheless it is reasonable that (as argued by the Objectors here) those affected by an application, and in particular landowners, should know for whose benefit a right to use the land concerned is sought to be registered. With that in mind, as I understand from what was explained to me, even before objections were received the Registration Authority sought to persuade the Applicant to produce a plan showing the geographical limits of his suggested neighbourhood of 'Gledhow'.

12.16. Perhaps somewhat surprisingly, given that Gledhow seems to be quite a well-known and well-regarded area of northern Leeds, containing not least Gledhow Primary School, the name Gledhow appears to relate to no officially recognised or defined area, even on a historical basis. For example, there is not (as far as I was able to glean) a historic or ecclesiastical parish of Gledhow, as such.

12.17. Plainly the Applicant could in theory have produced his own map or plan, showing what he believed the geographical limits of 'Gledhow' to be. Indeed he was sharply criticised by Objectors, including the Principal Objectors, in the initial round of objections, for not having done that, and also in respect of the relatively small amount of user evidence he had initially lodged, as compared with the number of residents who might be perceived as living in 'Gledhow'.

12.18. In response to all of that, the Applicant did not in fact produce a plan showing some suggested boundaries for 'Gledhow'. Instead, in his response to the original objections, in September 2016, he indicated that his reference to 'Gledhow' as the relevant area had been 'a mistake', and that he now wished to define the relevant 'neighbourhood' for the purpose of the application by reference to a Polling District known as "ROB", for which he was able to (and did) provide definitive boundaries on a map.

12.19. He also stated in that response document (para. 21) that a *"large part of the neighbourhood is the Brackenwood housing estate"*. However he did not at that stage, or indeed at any time before the last stages of the Inquiry, give his suggested neighbourhood a name, merely identifying it as the area delineated by the boundaries of Polling district ROB, as shown on the plans he circulated – this being a part of Gledhow lying entirely to the west of the locally significant road called Lidgett Lane

12.20. This proposed change/clarification by the Applicant drew a very large amount of criticism and objection in writing from numerous objectors, and that criticism was continued in evidence and comment at the Inquiry by several of the witnesses and counsel for the Principal Objectors. A significant part of this criticism was based on the premise that there was something unfair and underhand about cutting down the size of the originally suggested 'Gledhow' neighbourhood, so as now to exclude the sizeable parts of Gledhow lying to the east of Lidgett Lane. A significant proportion of the more than four hundred original objectors had come from the parts of Gledhow east of that road. It seemed clearly to be felt by and on behalf of those people that the narrowed and clearer, map-based definition of the claimed relevant neighbourhood somehow deprived their objections of status and weight, and did so in an unfair and opportunistic way.

12.21. There were also numerous comments from objectors making the superficially sensible-sounding point that no normal person ever thinks or says that they live in a neighbourhood called something like "ROB". The suggestion was that this was an artificial construct being put forward by the Applicant just to bolster his case, with

no relationship to the reality on the ground. Hence numerous representations made points about the existence in Gledhow of various facilities of service to the community, on either side of Lidgett Lane. There are some shops on the west, and others on the east side of that lane, for example. Gledhow Primary School itself is on the west side, yet clearly serves children from both sides. Many other examples were put forward.

12.22. In my judgment, the objections and criticism along these lines were for the most part misconceived. To the extent that objectors were putting forward points of evidence, which were actually relevant to the statutory criteria under ***Section 15*** of the ***Commons Act*** (e.g. what use they had or had not seen happening on the claimed land during the relevant 20 year period, and by whom), it makes no difference at all what side of Lidgett Lane the objector lives on.

12.23. It is also, in my view (but based on the approach the courts have adopted on this matter), no part of any sensible definition or understanding of 'neighbourhood' as a term in ***Section 15*** to claim that all of the facilities which local residents might use must be located within that same 'neighbourhood', or that facilities which happen to be within the area concerned must ***only*** be used by residents of that one area.

12.24. As courts at all levels, up to the very highest, have repeatedly made clear, 'neighbourhood' is an ordinary English word, to be interpreted in a common-sense way. It is a term which was introduced into the legislation with *"deliberate imprecision"*, to get round some of the difficulties caused by the older law's insistence on reference to a narrowly defined 'locality'.

12.25. The judicial authorities in this field do, I think, support the view that a 'neighbourhood' should have an element of cohesiveness about it, sufficient at least to make it apparent that it is not just a set of wholly arbitrary lines drawn on a map, for the sole purpose of making a claim under the ***Commons Act.***

12.26. However there is no requirement for some common architectural style, or that some particular set of publicly useful facilities must be found within a neighbourhood. Nor indeed is there any formal requirement that a neighbourhood must have a single, commonly used name. It is simply a matter of the common-sense, reasonable interpretation of an ordinary English word.

12.27. What of the claimed neighbourhood here? I will take matters slightly out of the order in which they occurred in the context of the Inquiry. As mentioned earlier, on the last day of the Inquiry, after all the oral evidence, but before closing submissions, I carried out an accompanied site inspection of the application site and the surrounding area, including also and in particular a 'beating of the bounds' on foot of the Applicant's claimed neighbourhood area, based on Polling District ROB.

12.28. What struck me, for a very high proportion of its length, was how 'natural' and sensible the boundaries of the suggested area seemed to be, as the limits of what

might ordinarily be regarded as a 'neighbourhood'. Gledhow Lane, the southern boundary between Lidgett Lane and Gledhow Valley Road, goes steeply down (or up) hill, and has very few properties along its length, and few if any opportunities for natural crossing directly from one residential area to another.

12.29. The long south-western boundary along Gledhow Valley Road is one of the most natural boundaries imaginable (in a suburban/urban context), along a relatively main local road in the bottom of a valley, with the residential properties in the claimed area some distance away, to the east, at a higher level, and behind woodland. The nearest properties on the other side of that road were also generally some distance away, to the west.

12.30. A long length of the NW boundary of the claimed area, along Allerton Grange Way, shares the same features that the actual housing in the suggested neighbourhood begins some distance away, at a generally higher level, behind an area of open land. As this road (and the boundary) continues north-eastwards, there is a shorter stretch where housing of somewhat similar character faces each other across the road. However Allerton Grange Way is a relatively more important-seeming local road (as compared to quiet residential back streets, for example) which everyday experience suggests people very commonly regard as some sort of demarcation between one neighbourhood and another.

12.31. The same is very much true of Lidgett Lane, which forms the long eastern boundary of the claimed area. It is clearly one of the more important roads in the local Gledhow context. On the length of Lidgett Lane relevant here, there are some stretches with housing facing each other across that road, but for a very significant proportion of that length there is either open ground, or sometimes very open school grounds, on one side, and of course the frontage of Gledhow Primary School itself takes up a significant element of the boundary.

12.32. As a matter of impression, as well as having regard to all that had been said or written about this in evidence, I have to say that there did seem to me to be for the most part quite a noticeable distinction and natural boundary between the parts of Gledhow east and west of Lidgett Lane. The remainder of the boundary of Polling District ROB also seemed to me to follow for the most part very obvious natural boundaries.

12.33. This view was reinforced, to my mind, by the quite apparent distinction between much of the housing in the claimed neighbourhood to the west of Lidgett Lane, and the remainder of Gledhow to the east. A high proportion (in terms of visual impression) of the housing in the claimed neighbourhood, especially towards the western side of it, appeared to consist of what had been a municipal housing estate (of houses and flats), apparently erected in the late 1950s and early 1960s, together with some more recent infilled developments.

12.34. In contrast, most of Gledhow to the east of Lidgett Lane, gives overall a much more long-settled appearance, with a lot of housing seeming to date from before the 1st

world war, interspersed with inter-war housing etc. It is true, as was pointed out at the Inquiry, that there are some streets within poling district ROB, to the west of Lidgett Lane, which also have that longer-settled appearance, notably (but not only) the streets with names beginning with 'Chandos' – in one of which as it happened the Applicant himself lived.

12.35. However, as a matter of general impression, it appeared to me that it was an entirely normal and sensible understanding of the word 'neighbourhood' to envisage that there is a distinct neighbourhood or part of Gledhow to the west of Lidgett Lane, which the boundaries of Polling District ROB do as a matter of fact sensibly represent.

12.36. Another point which I need to mention in this context is that I myself happened to observe, on my visits to the Gledhow area, that public buses on at least two of the routes serving this part of Leeds from the city centre routinely display as their destination place the name 'Brackenwood', and that these are buses whose routes terminate in Brakenwood Drive, within the claimed neighbourhood, immediately to the south of the present application site. I myself caught such buses on more than one account during my sojourn in Leeds. In contradistinction, some other buses whose destination point in Gledhow was further to the north-east, and which travelled through streets east of Lidgett Lane, routinely bore 'Gledhow' as their destination place.

12.37. Therefore, during the second half of the Inquiry's sitting (by which time the Objectors' witnesses were giving evidence) I began (when it seemed appropriate) to ask witnesses (unless someone else had raised the point already) what they understood the name 'Brackenwood' to mean, or to refer to, as a destination place or area in this part of northern Leeds. Indeed I had noticed that one or two witnesses, for the Objectors' side as well as the Applicant's, had earlier in the Inquiry used the name 'Brackenwood' in passing, as some sort of descriptor for the area in which they lived, or had lived.

12.38. Another factor which made it appropriate to ask questions about the local understanding of 'Brackenwood', in a geographical sense, was that at least two of the Principal Objectors' later witnesses, Mrs [redacted] and Miss [redacted], made reference in their own evidence to the existence, both now and over several decades into the past, of something called the 'Brackenwood Community Association'. Both Mrs [redacted] and Miss [redacted] had had personal involvement with that Association; indeed Miss [redacted], at the time of the Inquiry was, a trustee on the management committee, and the membership officer and Vice-Chair of the organisation.

12.39. The Association has premises known as the Lidgett Lane Community Centre, on the east side of Lidgett Lane, next to Moor Allerton Primary School, close to the junction of Brackenwood Drive with Lidgett Lane. The Community Centre is therefore itself just outside the Applicant's claimed neighbourhood based on Polling District ROB, which lies entirely to the west of Lidgett Lane.

12.40. Miss [redacted] said that currently some 60% of the Association's membership are from west of Lidgett Lane, and in her evidence sough to emphasis that there are no harsh geographical boundaries for membership. However she also said that the Association had expanded its area of interest a couple of years ago – in circumstances where it was clear that 'area of interest' was being used by her in a geographical sense, albeit she added that the Association had involved people from the east of Lidgett Lane even before that.

12.41. I tried through my own questions to obtain from Mrs [redacted] and Miss [redacted] their views on the questions why the association is called the ***Brackenwood*** Community Association, and what the area is that the term 'Brackenwood' is locally understood to refer to. They both claimed to have no idea, or at least not to know, why the Association was so called. I have to say, without intending any discourtesy, that I found their answers on this point slightly on the evasive side, or at least not as helpful as they might have been. Clearly the bus company believes there is a part of this area of northern Leeds which will be understood by displaying on its buses the destination of 'Brackenwood'. Equally clearly, the founders of the Association (which Mrs Bowers believed went back at least to the mid-1980s or earlier) also thought that there was an area which would be understood by the name Brackenwood.

12.42. Multiple witnesses had in fact made passing reference to the former municipal housing estate, occupying a large part of Polling District ROB, having been known as the Brackenwood or Brackenwoods Estate. Perhaps unsurprisingly, in view of what I have explained, the Applicant, in his cross-examination of some of the late witnesses for the Objectors, began to pursue the point that 'Brackenwood' is a normal and sensible local name which people use to refer to the area which he had identified by reference to the Polling District boundaries.

12.43. In this context he brought up, in some of those later cross-examinations, the existence of two documents which had been included form the start in his 'Bundle' of evidential material produced (and provided to me, and the other parties) before the Inquiry. The first was a document produced in Aril 2009 by or for an arm of the City Council under the reference of 'Groundworks Leeds', and called a 'Brackenwoods Masterplan', with a sub-title 'Environmental Improvements Plan'. This plan appeared to show, with a map, a variety of environmental improvements, including planting of trees and other vegetation, over an area corresponding very closely to Polling District ROB, extending right up the west side of Lidgett Lane (albeit perhaps excluding the small number of short streets between Brackenwood Drive and Gledhow Lane). It also incidentally proposed some tree-planting work on the application site itself.

12.44. The second of these documents was an email chain dating from February 2013, in which two Leeds City Councillors for Roundhay Ward were complaining about the poor polling station provision for voters from "ROB", which they quite clearly and

expressly regarded and referred to as being the *"Brackenwoods area"*, or simply *"Brackenwood"*.

12.45. Again unsurprisingly, the Applicant in his closing submissions, made the connection that the area he had been putting forward as the 'neighbourhood' (with boundaries based on Polling District ROB) is indeed the area known locally as Brackenwood. After those closing submissions (and unusually), counsel for the Principal Objectors raised the suggestion that it had produced unfairness for the Objectors that the Applicant was now calling his suggested neighbourhood 'Brackenwood', whereas previously, and in the documents and submissions circulated before the Inquiry, he had identified it only by reference to the boundaries of the Polling District.

12.46. I am not persuaded that this suggestion of unfairness is justified. First, as I have observed many paragraphs ago, there is no requirement anyway for a proposed 'neighbourhood' to have a name; not all neighbourhoods do have accepted, standard names. Second, I have already indicated that I could readily see that this proposed neighbourhood, whether it is called 'Brackenwood' or merely identified by its boundaries, has sensibly drawn boundaries and features which give it both a sufficient cohesiveness, and which make it sufficiently distinct from the other areas surrounding it. It seems to me, as a matter of impression, to be an area which can be entirely reasonably described as a neighbourhood.

12.47. I regard it as entirely feasible (having regard to the 2013 evidence of what Ward Councillors said) that, unclouded by the emotions stirred up by this case, normal local people might well have said *"I live in the Brackenwood neighbourhood of Gledhow"*, or *"I live in the part of Gledhow west of Lidgett Lane"*, meaning effectively the area identified by the Applicant. There is no logical or evidential reason, in my view, for thinking that residents cannot or would not see themselves as being residents both of the area of Leeds known as Gledhow, and of a smaller neighbourhood within that wider area of Gledhow.

12.48. It is conceivable (though I do not know this from any specific evidence) that if the name 'Brackenwood' was previously associated quite strongly with an estate of Council housing which bore that name, there might be some people living in the neighbourhood who would prefer to think of themselves, in the main, as being part of the wider area called 'Gledhow'. But that does not alter my view that the Applicant has in reality proposed an entirely sensible and reasonable 'neighbourhood' in relation to this application, whether defined merely by its boundaries, or by calling it 'Brackenwood', and that there is nothing unfair to the Objectors about this.

12.49. Indeed I would go further and say that in my judgment the Applicant responded very sensibly and justifiably to the pressure which was placed upon him to provide a plan showing neighbourhood boundaries, in circumstances where (as mentioned earlier) there is no guidance (particularly to lay applicants) in the statutorily prescribed application form which suggests that such a thing is in fact required of an applicant,

particularly in cases where the suggested neighbourhood is a geographical area with a name to identify it.

12.50. Thus my overall conclusion on this point is that the Applicant's 'narrowing' of his originally suggested 'neighbourhood', from 'Gledhow' to an area with the boundaries of Polling District ROB, was entirely reasonable and sensible in the circumstances, and caused no unfairness to any party, especially as he proposed this change well over 1 year before the Inquiry. The evidence suggests to me that the area defined by the polling district boundaries is quite plainly one that can be reasonably seen as a neighbourhood, as that term would normally be understood, regardless of whether one gives the neighbourhood area a name or not. However the evidence also suggests to me that it would be quite reasonable to see this neighbourhood as one bearing the name 'Brackenwood', and that name has plainly been used for it in the past, in normal circumstances having no relation to this present dispute. Taking this view does not in my opinion cause any material unfairness to anyone, even if there might be people in the Brackenwood neighbourhood who prefer to think of themselves as living in the wider area of 'Gledhow'.

"A significant number of the inhabitants ..."
"lawful sports and pastimes"
"for a period of at least 20 years"

12.51. In the circumstances of this particular case, I think it is appropriate to take these three elements of the statutory criteria together. They are clearly some of the most significant aspects of those criteria, in terms of the establishing, or refuting, of a claim for town or village green registration under the ***Commons Act***. Yet it would not be entirely unfair I think to observe, as a matter of impression, that in this case somewhat more effort and attention seemed to have been devoted by parties and evidence-givers on both sides to other aspects of the case, such as *"neighbourhood"* or *"statutory incompatibility"*, or people's views as to what ought (or ought not) to happen on the piece of land in the future, rather than to establishing in the clearest possible manner what really had taken place on this land during the relevant period in the past.

12.52. It is plainly vital, for a ***Section 15*** application to succeed, for an applicant to establish clearly (albeit on the 'balance of probabilities') that a significant number of the inhabitants of the relevant neighbourhood really have been using the claimed land, as of right, for 'lawful sports and pastimes', for not less than the applicable period of 20 years.

12.53. It is important to keep emphasising this basic point, because it seems to me that there is always a risk, in cases of this kind, of people assuming, or convincing themselves, that what they perceive to have been the case for the last few years before an application was made must have been, or was, likewise the case right back to the beginning of a long period of time like 20 years (or more).

12.54. In this case I found convincing on balance the evidence of the Applicant and his witnesses that over the last several years up to the time of the application in summer 2015, and back into the middle years of the previous decade, there had come to be a level and type of use of the application site by local people from 'Brackenwood', for things which would count as 'lawful sports and pastimes', so as to justify a conclusion of use by a 'significant number' of those inhabitants.

12.55. I have very much in mind the established legal position that a 'significant number' does not have to be a large number, or a particular proportion or 'spread' of inhabitants. It just has to be a number which, as a matter of impression from the evidence, should have been enough to suggest to an observant landowner that a ***right*** to use his or its land was being asserted, rather than just being occasional and sporadic trespass.

12.56. I also bear in mind, on the other side of the matter, that I must discount the considerable element of use which the evidence from both sides suggested there had been, for a route or routes across this site, effectively as a short-cut on foot, to get from A to B or C to D. Such evidence is inherently more relevant to public right of way claims than to ***Section 15*** of the ***Commons Act***. Similarly, there was some evidence of ***unlawful*** activities having taken place on the land, such as drug-taking and (possibly) use of quad-bikes, scrambler motorcycles, or the like. Nevertheless the evidence was sufficient to convince me that, on the balance of probabilities, there probably had been a sufficient level of use in those latter years of the 20 year period for 'lawful sports and pastimes', so as to represent a reasonably regular use by a significant number of the local inhabitants.

12.57. I have in mind the evidence of use by local people to walk their dogs around the field (in the sense of using the surface area generally), and perhaps to socialise with other dog walkers; use by local youths and children to relax and perhaps play games; use from time to time by family groups for similar purposes, and perhaps the occasional picnic. I have fully in mind that the evidence also suggested that some users of the field in these years had indulged in anti-social behaviour, such as allowing their dogs to leave mess in the field which was not cleared up, drinking alcohol, leaving litter and 'empties', which might occasionally include broken glass, etc.

12.58. However it does not seem to me that matters such as that, unpleasant and anti-social though they may be, have the effect (where they are specifically 'unlawful') of cancelling out the 'lawful sports and pastimes' aspects of people's use of a piece of land. Town or village greens are not (even if this might seem unfortunate to some) confined to use by 'tidy people', or considerate members of the community.

12.59. So, on balance, the impression I formed from the evidence is that there was a reasonably long period, prior to August 2015, when a significant enough level of use of this field was being made by local people for lawful sports and pastimes to meet the requirement of ***Section 15***.

12.60. However I found the Applicant's evidence – and in particular his case as called through witnesses coming to the Inquiry to give evidence, and be cross-examined on it – very much 'thinner' and less convincing when it came to the earlier years of the relevant period.

12.61. The Applicant needed to prove, so as to make it seem more likely than not, that 'lawful sports and pastimes' use by a significant number of the relevant local inhabitants, had taken place all the way through from the middle of the 1990s (specifically early August 1995), or before. In this regard I am inclined to accept to a significant degree the argument put on behalf of the Principal Objectors, that the evidence from the Applicant's side about the early years of the relevant period had been very 'thin', and that taken with all the other evidence, it did not persuasively suggest that anything more than occasional, sporadic, trespassory use (some of it of an anti-social nature, had really been occurring at that time, combined perhaps with an element of 'short-cut' or 'cut-through' use along an A to B type route or routes..

12.62. It seems clear from the evidence that the application site was separated off from the remaining school curtilage by a metal 'palisade' fence in about 1994. (Interestingly, the school had in those years had got smaller compared with previous times, as opposed to its subsequent substantial enlargement). It seems credible from evidence given that before that some of the schoolchildren themselves might not infrequently have made their way home from school (or to school from home) through gaps which had developed in the original outer boundary of the school's grounds, which then included the application site.

12.63. It also seems reasonably credible, from a variety of sources of evidence, that a small amount of sporadic trespass, by other people than current pupils, took place on the land constituting the application site, both before and after the new fencing in 1994. However the evidence suggested to me that, to the extent that this took place, it was in reality little more than sporadic use as a route to get across the field from A to B, and some occasional, sporadic trespass by older youths, some of whom may of course have been former pupils of the primary school itself..

12.64. I found telling and helpful the evidence of several witnesses for the Objectors' side, that for the whole relevant period up until late 2002 there had in fact been regular, active use of the application site field by the Roundhay Rugby Union Football Club (to whom the field was indeed leased, from the 1980s through until 2006), with rugby posts erected on the land, etc, etc. There did not appear (and I accept this evidence) to have arisen any material concerns over non-rugby related local people coming onto the land for 'lawful sports and pastimes' during the period of the Club's occupation. Yet of the relatively small number of the Applicant's witnesses who claimed to have been involved in use of the land right back to the mid-1990s, it was surprising how few acknowledged any recollection of the rugby club, its activities, rugby posts etc.

12.65. What I have concluded, on the balance of probabilities, and having heard the evidence called, is that there was not in reality any significant level of use of this land by local people for 'lawful sports and pastimes' until some time after the rugby club '*de facto*' left the land in late 2002. It was thereafter quite natural that this field, outside the school's palisade fence, and with no other active use any longer taking place on it, and with some history of already being used from time to time as a trespassory 'cut through', should have begun gradually to seem like a piece of land which was on the face of things available for local people to use for other lawful activities, such as dog walking around the land generally, relaxing and occasional informal games.

12.66. I am persuaded, taking an overall view of the evidence I received, that at some point during the first decade of this century, after 2002, use of that kind might have increased to an extent sufficient to be 'use by a significant number of the inhabitants' of the neighbourhood. Thus, looking back from the time of the application in 2015, or of the Inquiry in late 2017, I can well understand that it will have seemed to some local people that they had been using this land 'as of right' for many years.

12.67. However the Applicant's case, through the evidence he calls, has to convince to the extent that it seems more probable than not, for the whole period. The view which I formed, on balance – and I accept that it is a balance – is that he did not succeed in doing that. It seems more probable to me, and I so conclude on the balance of the evidence, that 'lawful sports and pastimes' use on this land by local people only began to any material extent at some point ***after*** the rugby club departed in late 2002.

12.68. I should perhaps mention that I do not believe that the evidence suggested that some sort of mixed, 'give and take' combined use (along the lines of that considered by the Supreme Court in ***Lewis v Redcar***) took place here, as between the rugby club and local residents, in the period before the club's use ceased.

"As of right"

12.69. This often contentious issue did not, as it happens, arise as a major point in this case. There was in fact one sign, facing out towards the boundary of the site, near its north-west corner, and reasonably close to one of the possible entrances to the site from the 'outside world' – through what looks to have been originally a hole or gap cut through the fence. That sign bore the legend *"Leeds City Council – No Trespassing & No Unauthorised Ball Games – By Order, Director of Education"*. It was not established precisely how long that sign had been there, but the evidence suggested it had been there for at least a large part of the 20 year period.

12.70. Some of the Applicant's witnesses acknowledged that they had in fact seen this sign, but had ignored it and gone ahead to use the application site anyway. The point was perfectly well made for the Principal Objectors that any use by those particular

witnesses at least cannot count as being *"as of right"*. It is 'by force' in the sense of being in defiance of a clear prohibitory notice placed by the landowner.

12.71. This does not appear to be one of those cases where signs were repeatedly defaced or removed by anyone. This sign remained in place, but the evidence suggested (and I accept) that it was, for much of the period at least, in such a heavily overgrown and shaded part of the site that it was in practical terms invisible.

12.72. In these particular circumstances, apart from the instances of those witnesses who acknowledged having seen it, but ignored it, I do not believe that the presence of this one sign, amid untended undergrowth, had any effect on the 'as of right' status of most of the evidence from the Applicant's witnesses, and the submissions for the Principal Objectors fairly and sensibly did not push that point.

12.73. However, as I have already concluded above, the Applicant's evidence does not convince, to the relevant standard of proof, that 'as of right' lawful sports and pastimes use took place to a sufficient extent, for a period anywhere near to the requisite 20 years.

Statutory Incompatibility

12.74. A good deal of time and effort was devoted to this topic, on evidence and submissions to the Registration Authority and at the Inquiry, and (by agreement reached at the Inquiry) on further submissions well after the Inquiry had ended, in the light of new case-law.

12.75. The context of course was the decision of the Supreme Court in ***R (Newhaven Port and Properties Ltd) v East Sussex County Council*** [2015] UKSC7, in which the Supreme Court held (among other things) that land (a beach) within a working harbour, to which specific statutory duties and powers applied, including in that case powers and duties under local legislation relating to Newhaven Harbour in particular, could not as a matter of principle be registered as 'town or village green'. The principle involved is 'statutory incompatibility', a fundamental incompatibility between the 'general' provisions of ***Section 15*** of the ***Commons Act 2006*** and the specific will of parliament to be found in the special provisions applying to the particular piece of land concerned. In other words the statutory position under ***Section 15*** of the ***2006 Act*** is effectively 'trumped' by the particular powers and duties specifically applying to the claimed land, even if the various criteria under ***Section 15*** appear otherwise to have been completely met on the land concerned.

12.76. Their Lordships in the ***Newhaven*** decision made it clear that they did not intend their judgment to mean that ownership of land by a public body (including local authorities), possessing powers that could be applied to develop that land, did ***not*** of itself create 'statutory incompatibility'. Nevertheless the emergence of that judgment in 2015 has led to it becoming common for claims of 'statutory

incompatibility' to be made in ***Commons Act*** cases by local authority or public body landowners, who of course very frequently own land for some designated statutory purpose (or at least for some category of purpose to which statutory provisions apply), regardless of whether or not the land is actually in use for that purpose at the time.

12.77. It may be justly observed that for some time after 2015 it was not entirely clear how far the principle approved in the ***Newhaven*** case, which seemed so obviously applicable (not least to the Supreme Court itself) to the circumstance of land within a statutory, functioning harbour, would apply to land in more 'ordinary' circumstances which belonged to authorities and bodies with statutory powers. Uncertainty about this (in terms of the practical working of the ***Commons Act)*** was then not assisted by apparently rather inconsistent approaches adopted by the High Court in different cases dealing with this topic.

12.78. As already noted, by the time of the Inquiry into this present (Gledhow) case, the Court of Appeal had already held a conjoined hearing into appeals in respect of the two cases most notably seeming to embody the apparent inconsistency at High Court level. However no judgment had yet emerged. That judgment was in due course handed down in April 2018 as ***R (Lancashire County Council) v Secretary of State for Environment, Food and Rural Affairs***; ***R (NHS Property Services Ltd), Surrey County Council v Jones*** [2018] EWCA Civ 721.

12.79. Although I heard full argument at the Inquiry based on the state of the law as it was then perceived by the parties to be, it was sensibly agreed by all the parties participating in the Inquiry, and myself, that I would not complete my Report, conclusions or recommendation in this present case until after the awaited Court of Appeal decision had emerged, and a period allowed for the parties to put forward submissions in writing as to the significance of the judgment to their arguments, and to the resolution of the Gledhow case.

12.80. Those exchanges of written submissions duly took place in May and June 2018, in accordance with arrangements agreed in advance, with the Applicant being given the right of final reply. As I write this part of this Report, I should perhaps mention that it is my understanding (purely through informal sources – I have no professional involvement at all with either matter) that the losing parties in both of the conjoined cases are seeking leave to appeal further to the Supreme Court. This possibility was already briefly discussed in the Gledhow Inquiry back in December 2017. As was tentatively agreed then (and as very much accords with my own view of the correct approach), I shall proceed on the basis that the Court of Appeal's unanimous judgment on the conjoined cases represents the current state of the law on this topic. Should any future determination by the Supreme Court, at some point off into the future, come to disturb this position, the parties here will no doubt consider the situation accordingly. It is not appropriate that determination of this present application should be delayed any further.

12.81. I intend therefore largely to ignore arguments made earlier in the Gledhow proceedings, based on what one or other of the High Court judges said in the first instance judgments in the ***Lancashire*** and ***NHS v Surrey*** cases – although I do of course note that what the Court of Appeal has now held is largely supportive of what Ouseley J had concluded in the ***Lancashire*** case.

12.82. In paragraph 36 of the Court of Appeal's judgment, *"three general points"* (but important ones) are made. They are first that the court's role of involving itself in resolving perceived conflict between different statutory regimes must be *"exercised with care and only when the need to do so truly arises"*. Second, the principles concerned are potentially applicable to all cases where a 'statutory incompatibility' is claimed to arise, not just to issues as between a private Act of Parliament and ***Section 15*** of the ***Commons Act***, or just to the activities of 'statutory undertakers'. The principles are potentially applicable to other public bodies as well. Thirdly, however, there is no general or 'blanket' exemption for public bodies from ***Section 15*** of the ***2006 Act***.

12.83. As the Court of Appeal considered the issues further, in the context of the ***Lancashire*** and ***Surrey*** cases, in paragraph 37ff, it made it clear that the important distinction is between land held for general functions which might be performed elsewhere, and situations where there is a statutory obligation to use the particular land in question in a particular way, or carry out particular activities upon it.

12.84. Appropriately therefore, the parties in their post-Inquiry submissions in this (Gledhow) case did concentrate on this particular and most relevant distinction. I have considered carefully all of what has been put forward on behalf of the Applicant and Principal Objectors on this point. It seems to me that the line taken by the Court of Appeal, in its very clear judgment, could be paraphrased as being that it is no trivial matter for the will of Parliament in general legislation such as ***Section 15*** of the ***Commons Act*** to be treated by registration authorities or the courts as not applying to particular landowners or pieces of land, in genuine cases where the relevant statutory criteria are otherwise met. It is only when there is a particular obligation to use the particular land in a way that is inconsistent with Section 15 registration, and which can be attributed to a statute-based requirement, that the question of overriding the generally applicable legislation can arise.

12.85. Seeking to apply the principles embodied in the Court of Appeal's judgment to the present case, it can be seen therefore that (by way of example) the answer turns not on whether there might be good objective reasons, in terms of official guidance, etc., as to why it would be desirable to be able to incorporate the application site into the enclosed school grounds at Gledhow, in conjunction with expansion of the school's intake. Likewise (it seems to me) the answer cannot turn on whether (say) various officials within an education authority, or a school's governing body, might be on record as having taken the view that it is desirable, or even important, that the area concerned should be incorporated in the school grounds, as part of an expansion proposal. The answer to the question 'statutory incompatibility or not?' seems to me to turn on whether there is some statutory provision (or equivalent) which

specifically requires this specific land to be used for a statutory purpose which is incompatible with use as a 'town or village green'.

12.86. It seems reasonably clear from the evidence that the land here has been 'held for education purposes' right through from its acquisition by the present City Council's predecessor in 1945 to the present, albeit it came close, in 2005, when it was regarded as 'surplus' by education officials, to being appropriated to some other purpose, or disposed of. What is very plain however, is that being held 'for education purposes' does not per se exempt a piece of land from ***Section 15*** of the ***Commons Act***.

12.87. It is also reasonably clear from the evidence that from about 2010 onwards thought began to be given to the possibility of expanding Gledhow Primary School, so that it would take a significantly larger regular intake of pupils. Initially this was in just one of a number of expansion possibilities in northern Leeds, and it is clear that the apparent availability of the appeal site land for expansion of the school's enclosed grounds was a significant factor in making Gledhow a good choice for that expansion.

12.88. In that manner plans for the expansion of Gledhow Primary School in particular began to crystallise. But this only take matters into a position where the courts have now made it clear that 'statutory incompatibility' as a bar to ***Commons Act*** registration will not arise – a situation where the relevant owning authority might come in future to carry out some development on the land which would be inconsistent with registration.

12.89. For statutory incompatibility to arise, what was needed (it appears to me) was some decision, before the [Commons Act] application date, that this particular piece of land was specifically to be incorporated in a school expansion project which would be incompatible with registration under ***Section 15***. What was put forward as providing this was the procedure which was followed by the City Council as education authority by virtue of the ***Education and Inspections Act 2006***, and in particular the ***School Organisation (Prescribed Alterations to Maintained Schools) (England) Regulations 2013*** SI No. 3110.

12.90. Those regulations require certain types of alteration to maintained schools (including such an expansion as envisaged here) to be consulted upon before a firm decision is taken. And most importantly in the present context, once a decision has been made to implement the relevant proposals, ***Paragraph 13*** of ***Schedule 3*** to the ***2013 Regulations*** requires that *"proposals must be implemented in the form in which they were approved or determined"*.

12.91. Proposals were indeed approved by the City Council as Education Authority in this case, through its relevant Executive Board, in December 2014, and it is this approval which is argued by the Principal Objectors to have created a duty upon the City Council and School Governors to implement the school expansion proposal at

Gledhow, including the incorporation into the school's grounds of the present application site.

12.92. The problem with the Principal Objectors' argument in this respect has been put succinctly but well in the Applicant's final response on this issue. While there may have been guidance as to how much open recreational land it is desirable to have with a primary school of any particular size, it is in the end (as was not disputed) only guidance, and there is no actual duty to provide that amount. Likewise education officials and the school governors might have taken the view that it was desirable to incorporate the application site within the enclosed school grounds.

12.93. But when it came to the formal statutory consultation on the expansion proposals in this particular (Gledhow) case, in September/October 2014, there was nothing at all in the description of what was proposed to say that it required inclusion of the present application site within the school's enclosed grounds.

12.94. More importantly (it seems to me) there was nothing in the description of the expansion proposal resolved upon by the Council's Executive Board in December 2014 which said that the proposal involved incorporation and fencing off of the present application site. The Objectors' view is that it can be assumed, from examination and consideration of all the background to this matter, that the proposal involved incorporation and closing off of the application site. I am inclined to agree with the Applicant's view of this aspect of the argument, which is that the Objectors are effectively arguing that the application of a general statute (the ***Commons Act 2006***) should yield, by reason of 'statutory incompatibility', to a mere assumption about what would be involved in implementing the decision under the ***2013 Regulations*** and the relevant education legislation, when that decision itself said nothing about the application site.

12.95. It seems to me that this is the sort of situation where the recent (***LancashireSurrey***) Court of Appeal decision suggests that the ***Commons Act*** should ***not*** be treated as overruled by a more specific statutory obligation in relation to the particular land concerned. There was not in fact (in my judgment) any such specific statutory obligation here. The school could perfectly lawfully expand, in accordance with the expansion proposals statutorily approved in December 2014, ***without*** taking in and closing off the application site.

12.96. I reach this conclusion even though it might have been possible for someone outside the Council and the School Governors who was carefully monitoring what was going on to have worked out that it was highly likely that the expansion proposals could, if carried out, include the application site land. Clearly at least one responder to consultation had expressed concern about a potential increase in dog-fouling in neighbouring streets if the proposal went ahead. I agree that this responder must have picked up the point that the expansion was likely to lead to enclosure of the application site. However it does not seem to me that an assumption-based situation

of that kind is sufficient to overcome the clear will of Parliament, as expressed in a general piece of legislation such as ***Section 15*** of the ***Commons Act***.

12.97. I therefore conclude, on the law as it now stands, since the recent Court of Appeal judgment, that there is no sound 'statutory incompatibility' objection in this case. This is not in my view one of those special cases where the need for the decision-maker to take the view that one statutorily based 'situation' overcomes another clearly worded general statute truly and properly arises.

Final conclusions and recommendations

12.98. It will be appreciated that my fairly lengthy discussion, just concluded, of 'statutory incompatibility', was in a sense unnecessary, because I had already formed the conclusion, based on the balance of the evidence as it came forward in this case, that the Applicant had ***not*** discharged the burden of proving, on the balance of probability, that the statutory criteria under ***Section 15(2)*** of the ***Commons Act*** had been met here, over the whole relevant 20 year period. However, I have nevertheless expressed my conclusions on 'statutory incompatibility', partly because of the amount of time and 'persuasive effort' devoted by the parties to this topic, and partly because of the observable phenomenon that a not inconsiderable number of 'town or village green' disputes end up proceeding further through the legal system than their 'initial' determination by the Registration Authority. I do not however make this last observation because of any view of mine that the present case either should be, or is likely to be, one of those.

12.99. In the light of all the considerations which I have discussed above, my conclusion is that the Applicant has ***not*** succeeded in making out the case that the application site, or any part of it, should be registered pursuant to ***Section 15*** of the ***Commons Act 2006***., because I was not satisfied on the evidence that a significant number of the local inhabitants had made the requisite use of this land over the whole relevant period of 20 years.

12.100. Accordingly, my recommendation to the Council as Registration Authority is that ***no part*** of the land of the application site should be added to the statutory Register of Town or Village Greens maintained under the ***Commons Act 2006***, pursuant to the Applicant's application, for the reasons given in my Report.

ALUN ALESBURY
27th June 2018

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

APPENDIX I

APPEARANCES AT THE INQUIRY

FOR THE APPLICANT – Mr [redacted], of [redacted]

He gave evidence himself, and called:

Miss [redacted], of [redacted]
Miss [redacted], of [redacted]
Mr [redacted], of [redacted]
Mrs [redacted], of [redacted]
Mrs [redacted], of [redacted]
Mrs [redacted], of [redacted]
Mr [redacted], of [redacted]
Mrs [redacted], of [redacted]
Miss [redacted], of [redacted]
Mrs [redacted], of [redacted]
Miss [redacted] of [redacted]
Miss [redacted], of [redacted]
Mrs [redacted], of [redacted]
Ms [redacted], of [redacted]
Ms [redacted], of 38 [redacted]

FOR THE PRINCIPAL OBJECTORS – Leeds City Council in its capacity as landowner and local education authority; and the Governors of Gledhow Primary School

Mr Martin Carter, of Counsel
Instructed by: Messrs Eversheds Sutherland, Bridgewater Place, Water Lane, Leeds, LS11 5DR

He called:

Mr [redacted]	(Governor of Gledhow Primary School), of [redacted]
Mr Christopher Gosling	Senior Project Officer, Leeds City Council
Mr Martin Farrington FRICS	Director of City Development, Leeds City Council
Mr Richard Amos	Sufficiency & Participation Lead, Leeds City Council
Mr [redacted]	(Parent Governor, Gledhow Primary School) of [redacted]
Mrs [redacted]	Business Support Manager, Gledhow Primary School
Mr [redacted]	Superintendent, Gledhow Primary School
Miss [redacted]	Former Teacher, Gledhow Primary School
Mr [redacted]	[redacted]s
Mr [redacted]	[redacted]
Mrs [redacted]	[redacted]
[redacted]	Head Teacher, Gledhow Primary School

Mrs [redacted]	Teacher, Gledhow Primary School
Mr [redacted]	[redacted]
Miss [redacted]	
Mrs [redacted]	Former Teacher, Gledhow Primary School
Mrs [redacted]	Former Deputy Head Teacher, Gledhow Primary School

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED AT AND AFTER INQUIRY

NB: This (intentionally brief) list does ***not*** include the original application and supporting documentation, the original objections, or any of the further material submitted by the parties or others prior to the issue of Directions for the Inquiry. It also excludes the material contained in the prepared, paginated bundles of documents produced for the purpose of the Inquiry on behalf of the Applicants and the Principal Objectors, which were provided to the Registration Authority (and me) as complete bundles; and the bundle associated with the Statement of Common Ground.

FOR THE APPLICANT:

Set of colour photographs of application site

Email correspondence Oct/Nov 2017, accompanied by:

Notice of Proposal to Expand Gledhow Primary School, 16th September 2014, and

Description of Statutory Proposals for a prescribed alteration, September 2014.

Handwritten notes (copy) for Closing Submissions

(Post-Inquiry) Applicant's response re ***Lancashire, Surrey*** cases

(Post-Inquiry) Applicant's final response to Objectors' Supplementary Submissions

FOR THE OBJECTORS:

Letter (20/11/17) from Ms [redacted]

'Keeping children safe in education' – Statutory guidance, September 2017 (extract)

Second statement of [redacted] (signed)

Written note of Opening Statement

Written note of Closing Submissions

(Post-Inquiry) Supplementary Submissions