

Appendix 'D'

Inspectors response to Applicant

Smith Wood Village Green Report

**ADDENDUM COVERING APPLICANT'S FURTHER
SUBMISSIONS DATED 31 JULY 2015**

- 1.1 The Cowley Residents Action Group wrote in reply to the circulated Report on 31 July 2015. They made three observations:
- i) The land does not have to be used in its entirety;
 - ii) A “significant number” does not have to be entirely from the estate;
 - iii) We believe that there has been a misinterpretation of the definition of a public right of way and the use of footpaths as part of recreation, and that its application to our use is incorrect.
- 1.2 It is helpful of CRAG to raise these matters at this stage however for reasons set out briefly below, which should be read together with the Report, they do not alter the findings of the report or cause me to make any amendments to the report.
- 1.3 Firstly the Report does not proceed on the basis that the land has to be used in its entirety. This point, in respect of the extent of the use, was previously made at paragraph 17 of the Outline Legal Submissions on behalf of the Applicant. It was no part of the Report to suggest

otherwise. These observations therefore do not alter the overall conclusions in the Report.

- 1.4 Secondly, on the issue of a “significant number”, section 7 of the report sets out the conclusions on this issue. The Report quoted at paragraph 7.1 the very passage in *McAlpine* cited by CRAG in their observations. The conclusions were reached based upon it. It should be noted that CRAG put their case on the basis of “a significant number the inhabitants of any neighbourhood within a locality”¹. The neighbourhood being The Cowley Estate – a matter which at 5.23 I found in their favour. I also expressed the view that the Locality is the Civil Parish of Ecclesfield – again finding in their favour.
- 1.5 Whether the significant number is looked at on the basis of the neighbourhood (The Cowley Estate) or the wider locality (The Civil Parish of Ecclesfield) my conclusion would remain the same. As stated at 7.8(ii) where the evidence concerned unnamed and unrecognised individuals it is of less weight as those individuals may well not have been qualifying users – i.e. they may well have come from outside the neighbourhood or locality. The burden of proof is on the applicant (see 4.5 of the Report). The evidence heard was insufficient to show the land was in general use by the local community for informal recreation.
- 1.6 Thirdly, the Report addresses in detail the distinction between footpath type use and LSP at section 6. It acknowledges that certain use which involves footpaths may be classed as LSP as opposed to footpath use. The observations made by CRAG do not alter the overall conclusions in section 6.

¹ See paragraphs 11 – 14 of the ‘Outline Legal Submissions on behalf of the Applicant’ and paragraphs 12-16 of their closing submissions.

1.7 Thus neither individually nor in their totality do the observations made by CRAG alter the findings in the Report nor the reasoning upon which those findings are based.

Richard Ground

28 August 2015

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