



SHEFFIELD CITY COUNCIL

Committee Report

Report of: Chief Licensing Officer, Head of Licensing

Date: 18th July 2013 at 10am

Subject: Commons Act 2006
Application to register land known as 'Kings Croft Playing Field',
Dore, Sheffield as a Town or Village Green

Author of Report: Shimla Finch - 2037751

Summary: To consider an application made under the Commons Act 2006 for land known as 'Kings Croft Playing Field', Dore, Sheffield to be registered as a Town or Village Green.

The Council held a non-statutory public inquiry chaired by an independent Inspector who considered the application and reported to the Council. The Licensing Committee is invited to consider the report of the independent Inspector and determine whether the above land should be granted Town or Village Green status.

Recommendations: Members are strongly recommended to accept the report and recommendations of the Inspector and to determine that the application to register land at 'Kings Croft Playing Field', Dore, Sheffield as a town or village green be rejected and no part of the application Land whether as amended or otherwise be added to the Register of Town and Village Greens because the applicant has failed to establish the necessary criteria contained in section 15(2) of the 2006 Act.

Background Papers: Attached to this report
(Any further background papers relating to this report can be inspected by contacting the report writer).

Category of Report: OPEN

REPORT OF THE CHIEF LICENSING OFFICER, HEAD OF LICENSING TO THE LICENSING COMMITTEE (COMMONS REGISTRATION)

Ref: 42/13

COMMONS ACT 2006

Application to register land known as 'Kings Croft Playing Field', Dore, Sheffield as a Town or Village Green

1.0 Purpose of the report

- 1.1 To consider an application made under the Commons Act 2006 for land known as 'Kings Croft Playing Field', Dore, Sheffield to be registered as a Town or Village Green.
- 1.2 The Council held a non-statutory public inquiry chaired by an independent Inspector who considered the application and reported to the Council. The Licensing Committee is invited to consider the report of the independent Inspector Miss Ruth Stockley, Barrister, Kings Chambers and determine whether the above land should be granted Town or Village Green status and be included in the register.

2.0 The Legislation

- 2.1 Town and village greens developed under customary law. These were areas of open space, more commonly called "greens", which had been used by local people, for lawful sports and other pastimes for many years and which came to be recognised and protected by the courts. These areas of open space might include organised or informal games, picnics, fetes, dog walking and similar activities.
- 2.2 A green can be in private ownership or owned or maintained by town and parish councils.
- 2.3 These areas of open space or greens can now be protected by making an application for registration as a "town or village green" under Section 15 of the Commons Act 2006 (the "Act").
- 2.4 Section 4(1) of the Act provides that applications for registering land as "town or village greens" must be made to Sheffield City Council, who is the Commons Registration Authority (CRA) for any land in their area.
- 2.5 Section 15(1) of the Act states that 'any person may apply to the CRA to register land as a "town or village green" provided they can establish one of the following tests, namely:
 - that Section 15(2) applies if the land has been used 'as of right' for lawful sports and pastimes for 20 years or more before the date the application is made, and this use continues at the date of the application; or
 - that Section 15(3) applies where the land has been used for recreational use 'as of right' for 20 years or more, where the use ended no more than two years before the date of the application, or

- that Section 15(4) applies which makes a special transitional provision where recreational use ‘as of right’ for 20 years or more ended before 6 April 2007. In such a case, the application must be made within five years of the date the use ‘as of right’ ended.
- 2.6 Whether the application is made under Sections 15(2), 15(3) or 15(4) the application must show that a significant number of local people have indulged in lawful sports or pastimes ‘as of right’ (i.e. without permission, force or secrecy) on the land for at least 20 years, rather than ‘by right’ (i.e. in exercise of a legal right to do so). These requirements reflect the ancient law of custom, where long use ‘as of right’ created a presumption that the local inhabitants had established recreational rights over the land in question.
- 2.7 Section 15(6) of the Act makes it clear that in determining the 20 year period, there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.
- 2.8 Furthermore, Section 15(7) of the Act states that –
- (a) where persons indulged as of right in lawful sports and pastimes immediately before access to the land is prohibited (as specified in subsection 6 above), those persons are to be regarded as continuing so to indulge; and
 - (b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.
- 2.9 The current application has been made under Section 15(2).

3.0 Background

- 3.1 The Council received an application to register land known as ‘Kings Croft Playing Field’, Dore, Sheffield. The original application Form 44 and plan is attached at Appendix ‘A’.
- 3.2 On the 29th March 2012, the Licensing Committee (Commons Registration) considered a report concerning the above application and determined that in view of all the circumstances outlined, a non-statutory public inquiry should be held with a view to undertaking a further and more detailed examination of the issues raised and evidence submitted by the applicant and the objectors.
- 3.3 Miss Ruth Stockley, a barrister with experience of village green registration matters, was appointed as Inspector in relation to the non-statutory public inquiry. This was held over four days, namely between 12th November 2012 and 15th November 2012 inclusive.
- 3.4 The applicant and objectors were informed of the non-statutory public inquiry. The following confirmed to be formal objectors in relation to the public inquiry:
- Sheffield City Council (as land owner)
 - Mr Andrew Miller
 - Reverend Dr Michael Hunter

- 3.5 The full report of the Inspector is attached at Appendix 'B'. The report sets out the law; the evidence heard and recommendations.
- 3.6 The Council cannot delegate the decision making process to the independent Inspector as the decision is for the Council and under part 3 of the Council's Constitution the functions of the Licensing Committee (Commons Registration) include determining village green applications. It should be emphasised that the Inspector's report is not binding on the Council, and the Council must consider the Inspectors report and decide whether it agrees with the Inspector's conclusions on the key issues. However if the Council were to disagree with any finding in the report, it would need to explain its reasoning.

4.0 The Inspector's Report

- 4.1 In the report the Inspector makes clear that the burden of proving that the land has become a village green by satisfying each element of the statutory criteria rests with the Applicant and the standard of proof is the balance of probabilities.
- 4.2 The application seeks the registration of the Land by virtue of the operation of section 15(2) of the 2006 Act. Under that provision, land is to be registered as a town or village green where:-
- “(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
- (b) they continue to do so at the time of the application.”

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

- (i) the Application Land comprises “land” within the meaning of the 2006 Act;
- (ii) the Land has been used for lawful sports and pastimes;
- (iii) such use has been for a period of not less than 20 years;
- (iv) such use has been as of right;
- (v) such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality; and
- (vi) such use continued at the time of the Application.
- 4.3 The Inspector has set out her findings in respect of each element of the statutory criteria within her report.

5.0 Statutory Criteria – The Legal Framework

5.1 The Land

- 5.1.1 The applicant at the time of the non-statutory public inquiry requested an amendment of the application land from their initial application.
- 5.1.2 A plan of the amended application land is attached at Appendix 'C' outlined with a thick black line with areas shaded in red and in orange to be excluded from the application land.
- 5.1.3 The Inspector reports that the Land has defined and fixed boundaries, and there was no dispute at the Inquiry nor in any of the evidence adduced that the area of land

comprises 'land' within the meaning of section 15(2) of the 2006 Act and is capable of registration as a town or village green in principle.

5.2 Relevant 20 Year Period

5.2.1 The Inspector confirms in paragraphs 7.5 to 7.9 of the report that the relevant period for the purposes of section 15(2) is 6th March 1988 to 6th March 2008.

5.3 Use of Land for Lawful Sports and Pastimes

5.3.1 Paragraphs 7.10 to 7.14 of the inspectors report discusses what the land had been used for.

5.3.2 References were made in both oral and written evidence to recreational activities such as dog walking, general walking, children's play, cycling, football, blackberry picking, sledging, church barbeques and a performance of the Millennium Play being held on the Land.

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

5.3.4 It was found that some lawful sports and pastimes have been carried out on the Land during the relevant 20 year period.

5.4. Locality or Neighbourhood within a Locality

5.4.1 There were no issues found in relation to this part of the statutory criteria.

5.4.2 The Inspector concludes in paragraph 7.18 of the report that she has no hesitation in finding that Dore Village is a qualifying neighbourhood within the meaning of section 15(2) of the 2006 Act.

5.5 Use "As of Right"

5.5.1 7.19 to 7.25 of the Inspectors report highlights the statutory criteria of the Land being used 'as of right' (i.e. without permission, force or secrecy).

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

5.5.3 The Inspector found on the evidence on the balance of probabilities that the use has been demonstrated to have been 'as of right' throughout the relevant 20 year period, and so that element of the statutory criteria has been established.

5.6 Sufficiency of Use

5.6.1 This part of the statutory criteria was significantly in dispute between the applicant and the objectors, namely whether there has been a sufficiency of use of the Land for lawful sports and pastimes throughout the relevant 20 year period by a significant number of the inhabitants of the neighbourhood to establish village green rights over the Land.

- 5.6.2 In doing so, the inspector excluded the recreational uses of the Land referred to in the evidence prior to March 1988 and post March 2008 and looked at the relevant 20 year period as referred to above in section 5.2.1.
- 5.6.3 The Inspector also discounted the use of land that was more akin to the exercise of a public right of way than to the exercise of recreational rights over a village green. Details of this reason and are set out in paragraphs 5.11 to 5.12 of the report.
- 5.6.4 The Land also has two accepted public rights of way that cross the land, namely SHE/1132 and SHE/1133 which is to be added to the Definitive Map on its next review. In addition, there is an outstanding application to add the Claimed Way to the Definitive Map which runs across the Land. This is attached at Appendix 'D'.
- 5.6.5 The Inspector stated the use of any of those routes to walk along, whether with or without a dog, and to carry out other activities on that are ancillary to the exercise of the rights of way are uses that are more akin to the exercise of a public right of way. Such use including using the land as a shortcut to get from point A to point B is a use that is more akin to the exercise of a right of way rather than the exercise of a recreational right and cannot itself be relied upon in support of the registration of a town or village green and must accordingly be discounted from the qualifying use.
- 5.6.6 The Inspector noted at paragraph 7.31 that it was her impression from the evidence that a considerable element of the use of the Land over the relevant 20 year period has been of such a nature.
- 5.6.7 The inspector looked at the evidence in its entirety and viewed that the Land has been used by both general walkers and dog walkers throughout the relevant 20 year period. The primary use of the Land by walkers without dogs has been a shortcut to gain access to and from the village and also a means of access to and from the school.
- 5.6.8 Taking into account all the evidence and all the elements of the qualifying use over the relevant 20 year period, the Inspector concluded that the use of the Land for lawful sports and pastimes has been sporadic and occasional during the relevant 20 year period, and insufficient on the balance of probabilities to demonstrate to the landowner that recreational rights were being asserted over the Land.
- 5.6.9 The Inspector's conclusion was that this element of the statutory criteria had not been established.

5.7 Use by a Significant Number of the Inhabitants of the Neighbourhood

- 5.7.1 The Inspector's report indicates in her findings that she has discounted the evidence of use where it has not been established that the user was an inhabitant of Dore at the time of his or her use of the Land. The reasoning to this is given at paragraphs 7.28 of report.
- 5.7.2 Accordingly, the Inspector has found that the Land has not been used by a significant number of the inhabitants of Dore Village for lawful sports and pastimes as of right throughout the relevant 20 year period (paragraph 7.47).

5.8 Continuation of Use

5.8.1 The final element of the statutory criteria is whether the qualifying use continued up until the date of the application (6th March 2008).

5.8.2 The Inspector states in paragraph 7.48 that this particular element of the statutory criteria has been satisfied.

6.0 Inspectors Conclusions and Recommendation

6.1 Inspectors Conclusions

6.1.1 The following indicate the Inspectors conclusions (paragraphs 8.1.1 to 8.1.9):

- That it is appropriate to amend the boundaries of the Application Land to those identified on the Applicant's Amended Application Site Boundary Plan;
- That the Application Land comprises land that is capable of registration as a town or village green in principle;
- That the relevant 20 year period is 6 March 1988 until 6 March 2008;
- That Dore Village is a qualifying neighbourhood within the qualifying locality of the administrative area of Sheffield City Council;
- That some lawful sports and pastimes have been carried out on the Application Land during the relevant 20 year period;
- That the use of the Land for lawful sports and pastimes has been as of right throughout the relevant 20 year period;
- That the Application Land has not been used for lawful sports and pastimes throughout the relevant 20 year period to a sufficient extent and continuity to have created a town or village green;
- That the use of the Application Land for lawful sports and pastimes has accordingly not been carried out by a significant number of the inhabitants of any qualifying locality or neighbourhood within a locality throughout the relevant 20 year period; and
- That the use of the Application Land for lawful sports and pastimes continued until the date of the Application.

6.2 Inspectors Recommendation

6.2.1 The Inspector recommends to the Registration Authority to reject the application and should not add the application Land whether as amended or otherwise, to its register of town and village greens on the specific grounds that:

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

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

7.0 Legal Implications

- 7.1 The Council must determine the application in accordance with the statutory criteria. Members are required to carefully consider the report of the Independent Inspector which sets out the law and the evidence pertaining to the application and Members must determine the application in accordance with the requirements of the legislation.
- 7.2 This is a quasi-judicial process and consequently Members must consider whether they have an interest which would prevent them from taking part in the decision making process.
- 7.3 Registration of the village green does not place the Council under any duty to maintain it.

8.0 Risk Management

- 8.1 There is no right of appeal against the Council's decision but interested parties could challenge the decision by applying for Judicial Review on limited grounds. A failure to determine the application in accordance with the law or at all will leave the Council exposed to Judicial Review or a claim of maladministration by the Local Government Ombudsman.

9.0 Financial Implications

- 9.1 Significant costs have been incurred in undertaking the Independent Public Inquiry, approximately £20,000.
- 9.2 Members should note that if an interested party does challenge the decision significant legal costs are likely to be incurred by the Council

10. Recommendation

- 10.1 Following the non-statutory public inquiry, the Inspector has concluded that the relevant statutory criteria have not been satisfied in relation to the application Land and that consequently no part of it should be registered as a town or village green.
- 10.2 Members are strongly recommended to accept the report and recommendations of the Inspector and to determine that the application to register land at 'Kings Croft Playing Field', Dore, Sheffield as a town or village green be rejected and no part of the application Land whether as amended or otherwise be added to the Register of Town and Village Greens because the applicant has failed to establish the necessary criteria contained in section 15(2) of the 2006 Act.

Stephen Lonnia,
Chief Licensing Officer
Head of Licensing
Business Strategy and Regulation
Place Portfolio
Block C, Staniforth Road Depot
Sheffield, S9 3HD.

1st July 2013

Appendix 'A'

Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt

Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

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

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

1. Registration Authority

Note 1
Insert name of registration authority.

To the

SHEFFIELD CITY COUNCIL

Note 2

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

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

Note 3

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

2. Name and address of the applicant

Name:

Full postal address:

Postcode S17 3QP

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4

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

Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under section 15(8):

If the application is made under section 15(1) of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If section 15(3) or (4) applies please indicate the date on which you consider that use as of right ended.

If section 15(6)* applies please indicate the period of statutory closure (if any) which needs to be disregarded.

Note 5

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

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

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street).

If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

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

Name by which usually known:

KINGS CROFT PLAYING FIELD

Location:

land to the rear of Dove Primary School, Kings Croft, houses in Vicarage Lane, Bushey Wood Grove and Furniss Avenue and the former site of King Egbert's Upper School

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

Common land register unit number (if relevant) *

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

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

DORE VILLAGE

Tick here if map attached:

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

Note 7

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

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

Evidence is produced from over 60 persons that inhabit the locality of Dove Village who have indulged as of right, without permission, in lawful sports and pastimes such as walking, walking dogs, children's play, team games such as football, picnicking, community activities etc. on King's Croft Playing Field for over 40 years. Evidence is given that they continue to do so at the time of this application (see attached Open Spaces Society evidence questionnaires in support of claim for registration as a new green).

Note 8
Please use a separate sheet if necessary.

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

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

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

Note 9
List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

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

Please use a separate sheet if necessary.

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

SHEFFIELD CITY COUNCIL
TOWN HALL
SHEFFIELD
S1 2HH

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

10. Supporting documentation

PHOTOGRAPHS

Note 11

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

11. Any other information relating to the application

[Empty box for additional information]

Note 12

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

Date:

4th MARCH 2008

Signatures:

[Handwritten signature]

REMINDER TO APPLICANT

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

Data Protection Act 1998

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

Statutory Declaration In Support

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

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

I, David Edward Crosby,¹ solemnly and sincerely declare as follows:—

² Delete and adapt as necessary.

1.² I am ((the person ~~(one of the persons)~~ who (has) ~~(have)~~ signed the foregoing application)) ~~((the solicitor to (the applicant) (³ one of the applicants))~~ *J*

³ Insert name if applicable

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

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

— Complete only in the case of voluntary registration (strike through if this is not relevant)

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

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

Cont/

⁴ Continued

been received and are exhibited with this declaration, or
~~(iii) where no such consents are required, a declaration to that effect.~~ *Jw*

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said
DAVID EDWARD CROSBY

at SHEFFIELD,
SOUTH YORKSHIRE

this 6th day of MARCH 2008



Signature of Declarant

Before me *

Signature:



Address:

GRAYSONS
SOLICITORS
4-12 PARADISE SQUARE
SHEFFIELD S1 1TB

Qualification:

SOLICITOR

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

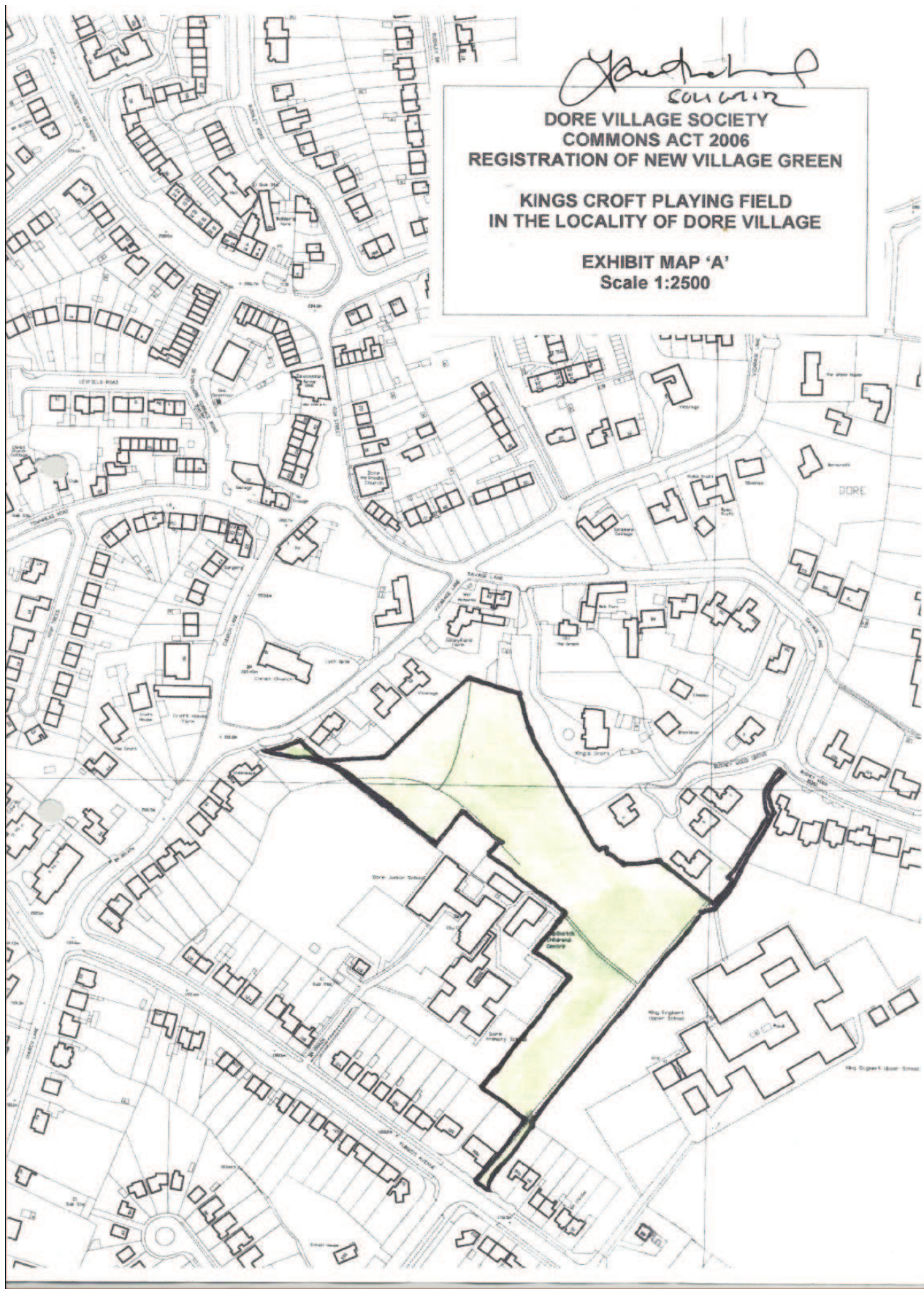
Please initial all alterations and mark any map as an exhibit

Handwritten signature
20/11/12

**DORE VILLAGE SOCIETY
COMMONS ACT 2006
REGISTRATION OF NEW VILLAGE GREEN**

**KINGS CROFT PLAYING FIELD
IN THE LOCALITY OF DORE VILLAGE**

**EXHIBIT MAP 'A'
Scale 1:2500**



Appendix 'B'

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND KNOWN AS KINGS CROFT
PLAYING FIELD, DORE, SHEFFIELD
AS A TOWN OR VILLAGE GREEN**

REPORT

of Miss Ruth Stockley

14 February 2013

Sheffield City Council

Block C

Staniforth Road

Sheffield

S9 3HD

Ref: SR

Application No: 2009/1/5234

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND KNOWN AS KINGS CROFT
PLAYING FIELD, DORE, SHEFFIELD
AS A TOWN OR VILLAGE GREEN**

REPORT

1. INTRODUCTION

1.1 This Report relates to an Application (“the Application”) made under section 15(1) of the Commons Act 2006 (“the 2006 Act”) to register land known as Kings Croft Playing Field, Dore, Sheffield (“the Land”) as a town or village green. Under the 2006 Act, Sheffield City Council, as the Registration Authority, is required to register land as a town or village green where the relevant statutory requirements have been met. The Registration Authority instructed me to hold a non-statutory public inquiry into the Application, to consider all the evidence and then to prepare a Report containing my findings and recommendations for consideration by the Authority.

1.2 I held such an Inquiry over 4 days, namely between 12 November 2012 and 15 November 2012 inclusive. I also undertook an accompanied site visit on 15 November 2012, together with an unaccompanied visit around and within the neighbourhood.

1.3 Prior to the Inquiry, I was invited to make directions as to the exchange of evidence and of other documents. Those documents were duly provided to me by all Parties which significantly assisted my preparation for the Inquiry. The Applicant produced a bundle of documents containing its supporting witness statements, evidence questionnaires and other documentary evidence in support of the Application and upon which it wished to rely, which I shall refer to in this Report as “AB”. The Objector Sheffield City Council in its capacity as Landowner produced a bundle of documents containing its witness statements and other documentary evidence in support of its Objection and upon which it wished to rely, which I shall refer to as “OB”. The Objectors Mr Andrew Miller and Reverend Dr Michael Hunter also each produced their own separate bundle of documents relied upon in support of their respective cases. I have read all the documents contained in the bundles and taken their contents into account in this Report.

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

2. THE APPLICATION

2.1 The Application was made by Dore Village Society, c/o 72 Furniss Avenue, Sheffield S17 3QP (“the Applicant”) and is dated 04 March 2008.¹ The Registration Authority’s validated date of receipt is 25 November 2009. Part 5 of the Application Form states that the Land sought to be registered is usually known as “*Kings Croft Playing Field*”, and its location is described as “*Land to the rear of Dore Primary School, Kings Croft, houses in Vicarage Lane, Bushey Wood Grove and Furniss Avenue and the former site of King Ecgbert’s Upper School*”. A map, marked “Exhibit Map “A””, was submitted with the Application attached to the accompanying Statutory Declaration which showed the Land subject to the Application outlined in black.² In part 6 of the Application Form, the relevant “locality or neighbourhood within a locality” to which the claimed green relates is stated to be “*Dore Village*”, which is shown outlined in black on the attached locality map marked “Exhibit Map “B””.

2.2 The Application is made on the basis that section 15(2) of the 2006 Act applies, which provision contains the relevant qualifying criteria. The justification for the registration of the Land is set out in Part 7 of the Form. The Application is verified by a Statutory Declaration in support made on 6 March 2008. As to supporting documentation, evidence questionnaires were submitted with the Application, all of which are contained in the Applicant’s bundle.³

2.3 The Application was advertised by the Registration Authority as a result of which an Objection dated 28 January 2010 was received on behalf of the Children and Young People Service of Sheffield City Council, which was subsequently supplemented by an e-mail dated 17 October 2012 from Sheffield City Council in its capacity as Owner of the Land.⁴

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

¹ The Application is contained in AB at pages 1 to 10.

² At AB page 7.

³ At AB pages 11-400.

⁴ That Objection is at OB pages A1-A3.

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

2.6 At the Inquiry, the Applicant was represented by Mr Martin Carter of Counsel, and the Objector Sheffield City Council was represented by Mr Philip Petchey of Counsel. The additional Objectors, Mr Miller and Revd. Dr Hunter, represented themselves. Any third parties who were not being called as witnesses by the Applicant or the Objectors and wished to make any representations were invited to speak, but no additional persons did so.

3. THE APPLICATION LAND

3.1 The Application Land is identified on the map marked “Exhibit Map A” submitted with the Application on which it is outlined in black.⁵

3.2 It is an irregular shaped parcel of land located within the centre of the built up area of the Village of Dore. The majority of the Land comprises open grassland, and there is a belt of mature trees alongside the area adjacent to Dore Primary School. There are two public footpaths running through the Land, namely Footpath SHE/1132 running from Furniss Avenue along the edge of the Land through to Bushey Wood Road, and Footpath SHE/1133 running from Footpath SHE/1132 to Savage Lane. They are both to be added to the Definitive Map on its next review. There is another path across the Land, “the Claimed Way”, running from Vicarage Lane alongside the Dore Primary School playing field to Footpath SHE/1132, which is subject to an application by the Applicant to be added to the Definitive Map as a public footpath. That application remains outstanding. There are no signs on the Land.

3.3 The Land is immediately adjacent to the buildings of Dore Primary School (“the School”) and the Nursery. A weld mesh fence has been erected on the Land in the vicinity of the School buildings that was erected by the School and encloses part of the Land. There are residential properties bordering the Land along Vicarage Lane. There are four access points to the Land, namely from Furniss Avenue via Footpath SHE/1132, from Bushey Wood Road via that same Footpath, from Savage Lane along the access road to the property known as Kings Croft, and from Vicarage Lane via the Claimed Way. The fourth access is not currently available for use due to the erected fencing.

4. THE EVIDENCE

⁵ At AB page 7.

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

4.2 The evidence was not taken on oath.

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

CASE FOR THE APPLICANT

Oral Evidence in Support of the Application

4.4 **Mr David Crosby**⁶ has been an elected Trustee of the Dore Village Society, namely the Applicant, since 2001, having been a member of it from shortly after moving to Dore in 1994. The Applicant is a Registered Charity. It has 12 trustees, which comprise the executive committee, and some 1200 members. The majority of its members live in the Village of Dore, but anyone with a particular interest in the Village is entitled to be a member. A formal application is required to be made before anyone can become a member. He was a conservation and village greens registration officer with Durham County Council between around 1970 and 1974 and then for Sedgefield Borough Council between 1974 and 1990. He has been retired since 2001. He has lived at 72 Furniss Avenue since 1994 with his Wife and Son when they moved to the village of Dore,⁷ which property is below the access to the School. He was involved with collating the evidence questionnaires in support of the Application from residents of Dore Village, and he completed the Statutory Declaration in support. The Application was made to the Registration Authority on 6 March 2008. He confirmed that the Applicant wished to have the Application considered and determined with the areas shaded in red and in

⁶ His witness statement is at AB page 409 and his evidence questionnaire is at AB page 403.

⁷ His house is identified as number 10 on Plan 3 at tab 19 of the evidence. **Page 29**

orange on the Plan of the Amended Application Site Boundary that was produced to the Inquiry excluded.⁸ None of his written evidence related to the red or orange areas in any event.

4.5 In 2007, he became aware of information from the Open Spaces Society inviting communities to consider whether areas of open space were adequately protected from future development. Prior to then, the Applicant had taken the view that the Land was not a village green but was public open space owned and maintained by the local authority. As a result of such information, he wrote to Sheffield City Council as the owner of three pieces of land, including the Application Land, requesting that it register them as village greens voluntarily.⁹ As such voluntary registration was not forthcoming, three separate applications for registration were made in relation to each of the three areas. The decision to make the Application was made formally by the Applicant's executive committee, which decision was then reported in the Applicant's quarterly publication, "Dore to Door", around November / December 2007. Although he accepted that the formal evidence in support of the Application was only gathered after the decision to make the Application had been made by the Applicant, he pointed out that the Applicant was fully aware of how the Land was being used by the local community. It was not regarded as necessary to engage directly with Dore Primary School prior to the Application being made as the Application was not impinging on the School nor on land used by the School, which land was excluded from the Application. The Applicant did engage with the community at large, and Governors of the School were aware of the Application, some of whom were in support of it, such as Councillor Ross who completed an evidence questionnaire in support.

4.6 In terms of the evidence questionnaires in support of the Application, he had filled in the responses to questions himself on a material number of the questionnaires, but around 90% were completed whilst he was present at the homes of the individual signatories where he had taken the individuals through the questions one by one, and either filled them in himself in their presence on the basis of the information they provided or they filled them in themselves in his presence. They were all signed by the individuals, and those which he had filled in were signed by the signatories when the forms had been completed. He spent between 20 minutes and 2 hours at each house, with some of the signatories completing forms for all three sites. He then took the forms away with him. He pointed out that a tremendous amount of anecdotal evidence was given to him which could not all be recorded on the individual forms. Indeed, everyone gave him more user evidence than was included on the forms. He merely wrote a summary on the form from the information provided to him in each case.

⁸ I deal with that request at paragraph 6.1 onwards below.

⁹ The letter dated 3 September 2007 is at page 425 of the

Once 60 forms had been completed, it was considered that amounted to a significant number. He could have obtained many more completed questionnaires, but the view was taken to stop at that point. The first questionnaire in time was completed by Miss Hubbard on 30 November 2007 whilst the final questionnaire was completed by Mrs Lorna Baker on 3 March 2008. He acknowledged that that amounted to just over 3 months in relation to the Application Land itself, but forms were also being completed for the two other sites at the same time which amounted to a 6 month process of evidence gathering. All three separate applications with their supporting evidence were then submitted to the Registration Authority in March 2008.

4.7 Dore Village is a coherent neighbourhood comprising approximately 3500 households with an approximate population of 7000. Its local facilities include churches, shops, public houses, community and sports facilities and two local schools, namely Dore Primary School and King Egbert Secondary School. It has an historic basis having been recorded in the Domesday Book and being the site of the agreement in AD 829 by the King of Northumbria and the King of Wessex, namely Egbert, declaring the latter as the “Lord of all England”. It has a spatial basis. It has a community basis. A number of Village activities take place each year, including the Dore Gala on the Recreation Ground and on the registered village green; Festival Fortnight; Well Dressing; Village Show; Bonfire and Firework Display off Parker’s Lane; and Christmas Lantern Parade. There was also the Millennium Play that took place around different parts of the Village as “a rolling pageant”. It also has a planning basis in that it comprises the built up area surrounded by Green Belt.

4.8 He has used the Land since 1994 as part of a recreational walk. He has never owned a dog. He so used it approximately once a week for around 12 years between 1994 and 2006 as part of a longer walk. In doing so, he did not use one particular route, but walked across the Land in several different directions. He would typically enter the Land via Footpath SHE/1132 and walk across the Land coming out at Savage Lane or at Vicarage Lane. Only very occasionally did he walk a circuit of the Land and back, entering and leaving the Land at the same point. Most of the time, his use of the Land was part of a longer circular route. He often took that walk on a Sunday morning and again on a Sunday evening, namely during times when children were not at the School. He stopped using the Land as regularly in 2006 when he stopped attending the Church as that use of the Land was part of his walk to and from the Church. He has also used, and continues to use, the Land at other times, probably around once a month, to admire the extensive views, to stroll round the Land looking at the flowers, the boggy areas and other features on the Land, and on occasions he has collected acorns from the large oak in the centre of the Land and been blackberry picking from the brambles on the Land round its

perimeter and in the copse. There are good blackberries along the route of Footpath SHE/1133, but not along the route of Footpath SHE/1132, and along the northern and eastern edges of the copse. There are also brambles at the back of the properties on Vicarage Lane. He has traversed the entirety of the Land on those occasions. He was often accompanied by his Wife. On most occasions he has used the Land he has seen others using it to exercise their dog or to walk across it, such as Mrs Lingard from 125 Furniss Avenue and a Mr Albert Smith. He could not recall others he had seen by name nor could he recollect them by sight. He has also witnessed many parents taking their children to the School via the Land whilst he was doing his occasional monthly walks on the Land, and he has seen siblings and friends playing on the Land after School has finished. On a daily basis, the use of the Land is greatest by those who are also using the School, namely school children and their parents, rather than the wider general public.

4.9 There were also community activities on the Land. On several occasions between 1994 and 2001, there were church barbeques held in the garden of The Vicarage hosted by the former vicar, The Reverend David Williams, which spilled out onto the Land where people picnicked and enjoyed informal games, including football and treasure hunts. They were held sometimes twice a year during that period, and he and his Wife had attended three of them. That particular community use on the Land had not taken place since 2001. There were also a number of church picnics on the Land which he did not attend. During snowy conditions, the slope on the Land from the Dore Primary School boundary fence to Footpath SHE/1132 was used for sledging.

4.10 He has never been given permission to use the Land nor has he ever been prevented from using it. His use of the Land has never been challenged; even when it was being mown by the local authority, he was not asked to leave. He had never been challenged by the School Caretaker in relation to his use of the Land. There have never been any gates or fences across the Land or anything to prevent him from using it. He has never seen any signs on the Land nor at any of the points of access, including the one shown on the photograph produced by the Objector stating “The exercising of dogs on school grounds is prohibited”.¹⁰ He acknowledged that the Applicant had been involved with the erection of those particular signs given the correspondence from Dore Primary School to the Applicant dated 7 February 2002 thanking the Applicant for its donation towards those “Dogs Prohibited” signs,¹¹ but he had no personal recollection of them. In any event, neither of those two signs were located on the Land itself, but were on the School’s land outside the

¹⁰ The second photograph on page E1 at tab E of OB.

¹¹ At OB tab E page E14.

Application Land as shown on the Objector's Plan.¹² Hence, they had no reference to the Land. Access to the Land had never been prevented until December 2009 when the School erected a two meter high weld mesh fence on the Land, after the submission of the Application in the week following its advertisement, which prevented public access to a large part of the Land, in particular from the access from Vicarage Lane. Access to the remainder of the Land has continued without restriction. As a result of the erection of that fencing, the Applicant made an application to modify the Definitive Map by the addition of a public footpath across the Land between Vicarage Lane and Footpath SHE/1132, namely the Claimed Way. Most people who have used that route would regard it as a public footpath that they have a right to use. It was viewed as a public footpath by the residents of the Village. He has seen people using The Claimed Way occasionally, but most people walk on either side of the copse.

4.11 There remains a part of the Application Land that is fenced off as part of the School's land and within which are School facilities. He has always regarded that area as part of the wider recreational open space available for the general community. He had never seen the School making any use of that part of the Application Land prior to the Application being made, whether by the children during breaks or otherwise. That area was not initially fenced by the School. He had not seen the School using any part of the Application Land prior to the Application being made. The Land was not part of the School's area but was regarded as public open space, as it was defined in the Unitary Development Plan. The School's "wildlife garden" within the part of the Land that has been fenced by the School was constructed on the area of public open space. That was not regarded as strange as supervised school activities take place outside a school's land. The public also enjoyed that wildlife initiative and he had walked through that area himself. The Applicant has itself created a wildlife garden on a registered village green within the Village and so regards such as being entirely compatible with the use of land that is public open space.

4.12 **Mrs Anne Slater**¹³ has lived at 6 Oldhay Close since 1962 when she was 24 years of age.¹⁴ She used the Land from the 1970's until 2005.¹⁵ She started using the Land in the 1970's as she had a friend who lived on Bushey Walk at that time and they walked around that area occasionally. Her use ceased in 2005 when her friend died and as she was then no longer as mobile as she was previously. She used the Land a few times each year. She could not recall using the Land when the School was in use. Her entry onto the Land was always via

¹² At OB tab B page B27.

¹³ Her evidence questionnaire is at AB page 479.

¹⁴ Her house is identified as number 37 on Plan 3 at tab 19 of AB.

¹⁵ She corrected question 8 of her evidence questionnaire in her evidence in chief which incorrectly stated that she had used the Land until 2001.

Vicarage Lane save that she entered via Kings Croft Drive on one occasion. Her and her friend wandered around the Land walking from one end to the other. The route they took varied. She acknowledged in cross examination that she walked across the Land along the route marked as the Claimed Way on the Plan at OB page F5(a) from Vicarage Lane to Footpath SHE/1132. It was her understanding that that route was a public footpath that she was entitled to use and did use. Her friend brought her dog with her, and they would also wander around the Land with the dog. She recalled watching a Play on the Land during July 2002 which was one of a series of plays and was written as part of the Millennium and was organised by the Village. When she used the Land, she saw others occasionally. There were other people walking around on the Land, but not crowds of people, and she could not recall whether she knew them. She could not recollect whether she used the Land during term-time or during school hours. Her use of the Land was not solely within the areas shaded red or orange on the Plan of the Amended Application Site Boundary. She was never given permission to use the Land; she never climbed over gates or fences to gain access to the Land; she never saw any signs on the Land; and she was never prevented from using the Land.

4.13 She is a member of the Applicant and was a member of the executive committee from 1994/1995 until 2010 as the Minutes Secretary. She vaguely recalled that the Applicant contributed to “Dogs Prohibited” signs for the Dore Primary School.

4.14 **Miss Judith Hubbard**¹⁶ has lived at 2 Furniss Avenue since 1933.¹⁷ She completed her evidence questionnaire herself. She confirmed that the Neighbourhood Boundary Plan¹⁸ corresponded with the boundaries of the neighbourhood of Dore as she knew it. She used the Land between 1938 and 2007. During the late 1980’s, she took her nieces and nephews onto the Land in the winter when they went sledging and snowballing on the area of the slope and in the summer when they played on the grassy area. They live in Essex, but when they came to stay, she went with them to play games on the Land, such as football and frisbee. They would visit around two or three weekends during the summer and again during the winter. There are no other open spaces where she lives to walk on and for children to play on.

4.15 She used the Land herself daily at one time, but that was prior to 1988. Post 1988, her own personal use of the Land was approximately 5 times per year for recreational walking. That included walking along the footpath, but she would walk more off the footpath if the conditions were reasonable and closer to the trees.

¹⁶ Her evidence questionnaire is at AB page 467.

¹⁷ Her house is identified as number 22 on Plan 3 at tab 19 of AB.

¹⁸ At AB tab 18 Plan 2.

She would walk on the Land to go to and from Church, to and from the Village and as part of a circular walk for general exercise. Her access onto the Land was via Furniss Avenue, and also via the entrance off Vicarage Lane and via Kings Croft. She did not use the Bushey Wood Road entrance. She would walk across the Land to attend Church on pleasant summer days as it is an attractive route to take. She has seen children playing football on the Land, rounders and tag games. In addition, she has seen people walking on the Land, both with and without dogs. Some walkers used the Land as a means of access from point A to point B whilst others walked across the grass and in the area of the trees. She probably saw others using the Land on around one in three occasions that she used it. She knew quite a lot of them by sight from the local area. Between 1999 and 2001, she attended 4 church barbeques. There were around 60 to 100 people there. Everyone met in the garden of The Vicarage and used the Vicarage Gate to access the Land where they picnicked and played games organised for the children. She went to one performance of the Millennium Play held on the Land for which she assumed the participants had rehearsed on the Land for a period in advance. She was never given permission to use the Land, and post 1988, she never climbed gates or fences to access the Land. She had never seen any signs on the Land, and her use of the Land was never prevented.

4.16 She is a member of the Applicant, but not an officer nor a member of the executive committee. She supports the Applicant, but has never attended any of its meetings. It was her understanding that the Claimed Way as marked on the Plan at OB page F5(a) as a thick black line was a public footpath down the side of the School. She had completed an evidence of use form in support of that Claimed Way being recorded as a public footpath in which she stated that she had used the Claimed Way “*daily in early life then weekly and occasionally*”.¹⁹

4.17 **Mr Michael Humphries**²⁰ has lived at 32 Wyvern Gardens since 1982.²¹ He confirmed that the Neighbourhood Boundary Plan²² corresponded with the boundaries of the neighbourhood of Dore as he knew it. He used the Land between 1983 and 2008 for recreation. Post 1988, he used the Land to gain access to the Village as part of a route from point A to point B, and also as part of a recreational walk. It is a more attractive route than using Bushey Wood Lane, and is a safer means of gaining access to the Village in snowy conditions. He used the footpaths, but more frequently he used other parts of the Land. He also walked on the Land to pick his Son up from School, but that was prior to 1988 by which date his Son was 12 years old. He

¹⁹ At OB page F72.

²⁰ His evidence questionnaire is at AB page 473.

²¹ His house is identified as number 23 on Plan 3 at tab 19 of AB.

²² At AB tab 18 Plan 2.

used the Land weekly when he owned a dog up until 1985. Post 1988, he used the Land 5 or 6 times per year. He has been blackberry picking in the area along the route of Footpath SHE/1133. Approximately 80% of the time that he used the Land he saw others using it. He has seen children playing kick about football and general games in and around the trees. He attended a Church barbeque in 2000 that spilled out onto the Land which was used for children's games. He has never been given permission to be on the Land; has never climbed nor broken fences to access the Land; and has never seen any signs on the Land. His use of the Land was never hindered by the School's activities.

4.18 He is a member of the Applicant, but is not an officer or member of the executive committee and never has been. It was his understanding when he came to Dore in 1982 that the Claimed Way as marked on the Plan at OB page F5(a) as a thick black line was a public footpath

4.19 **Mr David Bearpark**²³ has lived at 60 Blacka Moor Road since 1994 when he moved to the Village with his Wife and two Children who were at University at that time.²⁴ He is currently the vice-chairman of the Applicant, which was set up in 1964 and is registered as a charity. It has an executive committee, and each committee member acts as a trustee. Members of the executive committee are elected by the members of the Society, and meet monthly. Prior to becoming the vice-chairman in May 2011, he was a committee member from around 2004/5, and prior to that, he was a member of the Applicant. The Applicant's aims are to foster the protection and enhancement of the local environment and amenities within Dore, to encourage a spirit of community and to record its historic development. He confirmed that the Neighbourhood Boundary Plan²⁵ corresponded with the boundaries of what he recognised as comprising Dore.

4.20 He has used the Land regularly for walking since 1994 together with his Wife and they both enjoy walking. At that time, he and his Wife used the Land on average two or more times each week for walking; they currently use it on average once every six weeks for walking. They vary their walking route across the Land, often meandering around it, leaving or accessing the Land by any of the four access points, and encompass it in part of their walks. It affords a very pleasant place to walk, including alongside the line of trees close to the School. They did not always take a fixed route across it. Whilst using the Land, he has regularly observed others from the Village whom he recognised by sight walking and walking dogs, and children playing on the Land, such as kicking balls around. His use of the Land has never been challenged, he

²³ His witness statement is at AB page 455 and his evidence questionnaire is at AB page 449.

²⁴ His house is identified as number 4 on Plan 3 at tab 19 of AB.

²⁵ At AB tab 18 Plan 2.

has never been prevented from using it and he has never been given permission to use it. He has never seen any signs on the Land, and has never had to climb or break down any fences or gates to access the Land. His use of part of the Land and one of the accesses was restricted when the Dore Primary School erected a fence in December 2009 blocking access from Vicarage Lane and enclosing part of the Land. He was aware of the school zigzag markings on the road at the Vicarage Lane entrance, but unaware how long they had been in situ. They were painted on the public highway.

4.21 None of his evidence related to the areas shaded red or orange on the Plan of the Amended Application Site Boundary. He produced an extract from a Walking Guide Book entitled “On Your Dorestep” written by himself, David Heslop and Roger Millican which was published in early 2008. It contains some 25 walks in and around Dore. The extract describes a 5 mile walk around Dore which crosses the Land. The route described is off the line of the Claimed Way “*up a green open space with a row of trees on your left*”. It then veers across the Land to the exit at Vicarage Lane. It was his understanding when he moved to the Village in 1994 that the Claimed Way as marked on the Plan at OB page F5(a) as a thick black line between Vicarage Lane and Footpath SHE/1132 was a public footpath that he was entitled to use. In 1994, that route seemed to him to present itself as a recognised public route. The Applicant has made an application to add that route to the Definitive Map as a public footpath. He completed an evidence form in support of that application in which he stated that he used that particular path on a fortnightly basis.²⁶ From Vicarage Lane, he walked along that path on a “*reasonably regular*” basis, which was around fortnightly on average. That was a description of his use of that particular path. Most of the answers in his evidence questionnaire in support of the town or village green Application were completed by Mr David Crosby, but in his presence and he then signed the completed form himself. He specifically completed question 15 himself, though, as did his Wife on her questionnaire,²⁷ in which they both stated that they used the Land once every 6 weeks on average. That was a reference to when they crossed the Land in a less structured way as well as a reference to their use of the path. It is quite possible that he conflated his answer to question 15 on the town or village green evidence questionnaire to include his use of the Land both on and off the path. During the first 6 to 8 years of their residence in the Village, he and his Wife crisscrossed the Land in a more random way than subsequently. He provided a best estimate of an average frequency in each questionnaire. He used the Land less frequently after his retirement in 2003 when he had more time to walk in other parts of the Peak District.

²⁶ At OB page F34.

²⁷ At AB page 43.

4.22 When he came to the Village in 1994, there were no fences on the Land, and it was his understanding that the entire area was open to general public use as public open space. He has only used the Land as a destination in itself in order to go to that perceived public open space when he has had visitors and has taken them to the Land for a short stroll and to look at the views from the Land. From part of the Land, there are views across to the woodlands and to the Peak District. It is not easy to get such views from other parts of the Village. He and his Wife never used the Land as a destination. As to the times of his use, whilst he was still working, he mainly used it at the end of the working day and at weekends. After his retirement, he has used it more often during the afternoon, but does not recollect having walked on the Land at the start or end of the school day. He has seen school children in the area of the main school playing field, and also in the area closer to the original fence after its erection. The children gravitated close to the fence. However, he never saw them playing outside that fence. He did not recall seeing school children on the remainder of the Land. It never crossed his mind that the School owned the Land.

4.23 **Mr Christopher Cave**²⁸ has lived at 96 Abbeydale Park Rise since 1974.²⁹ He completed his evidence questionnaire himself. He used the Land between 1974 and 1984 to take his Children to play there.³⁰ From 1988 onwards, he has used the Land frequently as part of longer recreational walks. Since 1988, he has walked on Footpath SHE/1132 and along the Claimed Way as marked on the Plan at OB page F5(a) as a thick black line between Footpath SHE/1132 and Vicarage Lane. He has also wandered around the Land. Sometimes he took a straight route across the Land, and sometimes he strolled among the trees which is a pleasant area to wander around. He wandered within the tree belt rather than on the paths approximately once a month as an average. His use of the Land has always been part of a circular walk rather than as a destination in its own right, save when he took children to play there prior to 1988. The grass on the Land was not cut short and tended to get wet during the winter months as the Land did not drain well. Post 1988, he has seen children playing ball games and frisbee on the Land at the weekends, but was unaware where they lived, and has seen children sledging on the Land. He has seen dog walkers on the Land, both on and off the footpath, although the majority have been on the footpath. Those who were off the footpath were normally in the area of the trees. He saw dog walkers off the path approximately 20% of the time. He had also seen walkers without dogs on the Land who walked both on and off the footpaths. He saw them walking off the footpaths approximately 5% of

²⁸ His evidence questionnaire is at AB page 497.

²⁹ His house is identified as number 9 on Plan 3 at tab 19 of AB.

³⁰ He stated in his evidence in chief that he only referred to that particular period of use in his evidence questionnaire as he did not include his use of the Land for walking as it was on paths that he understood were public footpaths.

the time. He probably knew some 25% of those he saw walking on the Land, and they were residents of Dore. The main use of the Land that he had seen was for dog walking. He has never been given permission to use the Land; has never climbed over or broken down fences, gates or barriers to access the Land; has never seen any signs on the Land; and his use of the Land has never been challenged or prevented.

4.24 He is a member and officer of the Applicant, having been the Treasurer for approximately 2 years and 9 months and prior to that having been on the executive committee. When he came to Dore in 1974, he regarded the Claimed Way as marked on the Plan at OB page F5(a) as a thick black line as a route which people walked as a matter of course which he also did. He had never directed his mind to its status. He completed a questionnaire in support of the application to add the Claimed Way to the Definitive Map in which he stated that he used that route for leisure purposes fortnightly.³¹ He acknowledged in cross examination that he had not differentiated between walking on and off that path when completing that questionnaire and that it included his use of that route and also his use when he deviated off it. He did not regard it as unusual to have a public path running through an area frequented by school children. He was aware of the zigzag markings and the school signs around the area of the School.

4.25 **Mrs Caroline Veal**³² has lived at 172 Dore Road since 1989.³³ Prior to that, between 1976 and 1984, she lived at 79 Town Head Road in Dore,³⁴ and she then lived out of Dore from 1984 until 1989 when she returned. She is a member of the Applicant, and was previously an officer from approximately 1990 until 1996. She filled in parts of her evidence questionnaire herself and Mr Crosby filled in other parts in her presence. Her use of the Land has changed over time. As of 1989 when she returned to Dore, two of her children, born in 1973 and 1977, attended King Ecgbert's School that has subsequently been demolished. Her use of the Land was then focused around school times, namely usually at the end of a school day. For approximately two years, she went to the Land to meet her two sons from school. They would often use the Land then to play football with their friends, and there were other children around on the Land. She would use the Kings Croft entrance or the Vicarage Lane entrance. She was aware of the zigzag markings on the road near to the Vicarage Lane entrance. Subsequently, when they had gone to university in 1994 and 1996, she used the Land as part of a longer walk approximately once every 3 or 4 weeks. She sometimes used the footpath and sometimes used the grass dependent upon the weather conditions. The Land is not particularly

³¹ At OB page F88.

³² Her evidence questionnaire is at AB page 509.

³³ Her house is identified as number 43 on Plan 3 at tab 19 of AB.

³⁴ At number 30 on Plan 3 at tab 19 of AB.

well drained and becomes quite muddy in wet conditions so she would then use the footpath. When it was dry, she usually walked on the grass. Her preference is always to walk on the grass and she would walk off the footpath approximately 70% of the time. She is a keen walker. There is a very good view from the Land across the City and of ancient woodlands. It is quite difficult in Dore to find a good vantage point for long distance views which are within a very easy walking distance. Until her sons left home, they met their friends on the Land and played there. It is located in a relatively central part of the Village and is an ideal location for children to meet. Children used the Land for sledging when it snowed. Almost invariably she saw others using the Land; it was very rare for her to walk through the Land and not see anyone else using it. She knew some of those she saw who were people who lived in Dore. She has never been given permission to use the Land; has never climbed over or broken down fences, gates or barriers to access the Land; has never seen any signs on the Land; and has never been prevented from using the Land by anything taking place at the School.

4.26 **Mrs Elaine Smith**³⁵ has lived at 251 Totle Brook Road since 1976.³⁶ She is a member of the Applicant, but has never been an officer or member of the committee. Mr Crosby completed the answers in her questionnaire for her in her presence and she then signed it. She used the Land between 1976 and 2008. Post 1988, she used the Land to walk her dog and to walk for exercise. She had a dog in 1988 and continued to have a dog until 2012 save for a three year period. Every evening approximately five evenings each week just before dusk, she walked round the Village for her evening walk which included the Land. She preferred to walk on grass rather than round the streets. When she walked her dogs on the Land, she would generally use the footpaths whilst the dogs were off the lead. It was often very wet. In fine weather, they went off the paths to admire the views and to sit on the grass. She saw children playing on the Land. She saw other dog walkers who were “*mostly*” on the paths. She saw people walking without dogs who were usually cutting through along the path. She has never been given permission to use the Land or been prevented from using it; has never climbed over or broken down fences, gates or barriers to access the Land; and her use of the Land has never been challenged. She only once saw a sign at the entrance to the Land on Furniss Avenue during the 1990’s which said “No Thoroughfare” and had been erected by the Nursery. It was pulled down after a few weeks. She was aware of the zigzag markings on the road at the Vicarage Lane entrance.

³⁵ Her evidence questionnaire is at AB page 515.

³⁶ Her house is identified as number 40 on Plan 3 at [Table 9 of AB](#)

4.27 **Mrs Lorna Baker**³⁷ has lived at 8 Thornsett Gardens since 1982.³⁸ Mr Croft completed her evidence questionnaire in her presence and she signed it. She used the Land between 1982 and 2008. When she moved to Dore in 1982, she had two children who attended Dore Primary School. She dropped them off and collected them each day. They ran around and played on the Land on their way home from School. That was prior to 1988. Post 1988, her children crossed the Land on their way home from King Ecgbert's School. From 1993 onwards, she has owned at least one dog which she walks round the Village and uses the Land as a specific destination for her dogs. There is a lovely area of woodland in the centre. From 1993 onwards, she took her dogs onto the Land regularly at various times of the day, and weekly until approximately 10 years ago. She played ball with them on the Land and she walked all over the grass and was not on the footpaths. She has not used the Land as often with her current dog that she has owned since 2006. Her own use of the Land has only been to exercise her dogs save that she has also used it as part of organised walks with the Applicant. Some of them are around the Village and some involve crossing the Land. The local Brownies have used the Land, but she has not seen other children playing on the Land. She has met other dog walkers on the Land, some of whom have been on the paths and some of whom have been off the paths. She knew some of them. She also saw people walking on the Land without dogs who were on the footpaths. She has never been given permission to use the Land; has never climbed over or broken down fences, gates or barriers to access the Land; has never seen any signs on the Land; and her use of the Land has never been obstructed or challenged. Her use of the Land was not restricted to the areas shaded orange or red on the Plan of the Amended Application Site Boundary.

4.28 She is a member of the Applicant and has been a committee member for approximately 25 years. She has never been an officer. Her husband was an editor of the publication "Dore to Door" for a period of time. She did not recall the Applicant contributing to the "Dogs Prohibited" signs, but they were on land on the School side of the footpath in any event. She regarded the Claimed Way as marked on the Plan at OB page F5(a) as a public route. She had completed an evidence form in support of the application to add that route to the Definitive Map.³⁹ Her reference to using that path on a daily basis related to the period when her Children were still at school. She had taught at Dore Primary School as a supply teacher. She was never concerned about the public using the Land in close proximity to the School and was not aware of that use causing the School any difficulties.

³⁷ Her evidence questionnaire is at AB page 503.

³⁸ Her house is identified as number 2 on Plan 3 at tab 19 of AB.

³⁹ At OB page F42.

4.29 **Mr Richard Farnsworth**⁴⁰ has lived at 11 Rushley Avenue since 1982.⁴¹ He completed his evidence questionnaire himself. He used the Land in the 1940's as a child when it was agricultural land and continues to use it. From the 1980's onwards, his main use of the Land was picking up and dropping off his children, born in 1975 and 1977, when they attended Dore Primary School. Post 1988 when they attended King Egbert's School, he no longer dropped them off and collected them save very occasionally, but his Children still walked across the Land to go to and from that School. Post 1988, he has only used the Land occasionally. He goes onto the Land to listen to the bells ringing as there are peels about once per fortnight. In addition, he goes onto the Land some Sunday afternoons to pick elderflowers, elderberries and blackberries each year when in season. The elderflower picking season is May/June and the elderberry picking season is July/August. The elderberry bushes are in the area shaded blue on the Plan of the Amended Application Site Boundary behind the houses on Vicarage Lane and they were also at the other end near to the now demolished King Egbert's School. He has seen children playing on the Land when they came out of school when he was collecting his children from school. Outdoor painting sessions by art classes have been carried out on the Land during the summer months over the last 8 or 9 years. Such outdoor sessions occur 5 or 6 times a year, but not always on the Land. He has seen dog walking on the Land off the footpaths. Cub scouts have played football on the Land post 1988, but he could not recall how often. He has a friend who goes bird watching on the Land although he has not seen him on the Land himself. Similarly, others have told him that they go picnicking on the Land, but he has not seen that activity on the Land himself. He could not specifically recall seeing any kite flying or bicycle riding on the Land. He has seen people walking both on and off the footpaths. If they were using the Land as a short cut, they used the footpaths; if they were using the Land for recreational purposes, they were off the footpaths. He regards the Land as public open space. He has never been given permission to use the Land post 1988; he has never climbed over or broken down fences, gates or barriers to access the Land; he has never seen any signs on the Land; and his use of the Land has never been challenged or prevented.

4.30 He has always been a member of the Applicant, but has not been an officer or on its executive committee. He could not recall whether there was a footpath across the Land when it was still agricultural land some 40 or 50 years ago. Since the Land has been in its current use, he has always understood the Claimed Way across it to be a public footpath. He has completed a footpath user form in support of the application to

⁴⁰ His evidence questionnaire is at AB page 521.

⁴¹ His house is identified as number 13 on Plan 3 at page 42 of AB

add the Claimed Way to the Definitive Map⁴² on which he stated that he has used the Claimed Way “daily”. That was a reference to when his Children were of primary school age. He acknowledged that his use of the Land was very much one on and around a public footpath. He is aware of the school signage and zigzag markings on the road near to the Vicarage Lane entrance.

4.31 **Dr David Heslop**⁴³ has lived at 41 Church Lane since 1961.⁴⁴ He has been the Chairman of the Applicant since 2009. He has used the Land continually since 1961 when he moved to Dore. His use has been regular, probably on average once a month, for walking, walking his dog which he had from 1970 until 1995, and on occasion playing with his daughter and grandchildren. As to the first, he walked round the Village with his Wife in the late afternoon or the evening, but not during school hours, and they walked across the Land as part of such walks. They did that around once every 6 weeks. Up until December 2009, they walked from the Vicarage Lane entrance, across the grass and out at either the Kings Croft or the Bushey Wood Road entrances. They did not walk along a fixed route and walked to the left of the belt of trees. He recalled a boggy area around and across the centre of the Land as he was walking on the grass. He did not use the Claimed Way. In addition, when he had a dog up until 1995, he walked his dog every morning before 7.30am. It was convenient to use the Land as it was the closest area of open space available. He threw a ball around for his dog and walked on the grass. He did not take a specific route. He used the Land to exercise his dog rather than as part of a longer walk. He used the Land to walk his dog between at least once a month and at most three times a week. He also walked his daughter’s dogs on the Land around 2 or 3 times a year. He had completed a user form in support of the application to add the Claimed Way to the Definitive Map.⁴⁵ He included dog walking as part of his use of that route as he had used that route in order to gain access to the Land via the entrance at Vicarage Lane. He also used that route on occasion when the Land was boggy. He went onto the path if the Land was wet and muddy in one area, but he otherwise walked off the path.

4.32 Post 1988, he has played with his grandchildren on the Land. He has five, the eldest being 24 and the youngest being 13, and one great grandchild. Post 2000, there were swings and slides on the Recreation Ground which made that area particularly attractive for children’s play from then onwards. However, it was further away and sometimes the children wanted to play ball games rather than play on the equipment. Since 2000, he did go more to the Recreation Ground than to the Land with his grandchildren. His visits to the Land

⁴² At OB page F80.

⁴³ His witness statement is at AB page 491 and his evidence questionnaire is at AB page 485.

⁴⁴ His house is identified as number 18 on Plan 3 at tab 19 of AB.

⁴⁵ At OB page F10.

with his grandchildren were around once every six weeks, but less frequently as they became older. They lived in Totley up until 2006, but then in Dore from 2006 onwards.

4.33 He has frequently seen others from the Village using the Land for recreational purposes, including walking, dog walking, and “*occasionally*” children playing. A Millennium Play has also taken place on the Land. The Drama involved 3 separate plays relating to activities in the Village: one was held on the Land; another on the registered village green; and the other in the Dore Old School. There were over 50 people involved in the play on the Land, mostly children, and a large number of rehearsals over around 6 months, many on the Land itself. The performance itself on the Land was around an hour in length after all the players and the audience moved to the Land from the Dore Green as it was progressive. He attended the performance on 6 July 2002. It was a large community event.

4.34 A two metre high fence was erected on and enclosed part of the Land in December 2009 with a locked gate at the Vicarage Lane access. Since then, the enclosed part of the Land has been inaccessible to the public, but the remainder is still open and accessible. He has never been prevented from using the Land nor been given permission to use it. He used the Vicarage Lane entrance mostly and was aware of the zigzag markings on the road in that area.

Written Evidence in Support of the Application

4.35 In addition to the evidence of the witnesses who appeared at the Inquiry, I have also considered and had regard to all the written evidence submitted in support of the Application in the form of additional evidence questionnaires, declarations and other documents which are contained in the Applicant’s Bundle. However, whilst the Registration Authority must take into account all such written evidence, I and the Authority must bear in mind that it has not been tested by cross examination. Hence, particularly where it is in conflict with oral evidence given to the Inquiry, I have attributed such evidence less weight as it was not subject to such cross examination.

CASE FOR THE OBJECTORS

Oral Evidence of Sheffield City Council Objecting to the Application

4.36 **Mrs Olga Cam**⁴⁶ has lived at 76 Furniss Avenue since November 2010. Prior to then, she lived outside Dore. She is a parent of 3 Children, 2 of whom have attended Dore Primary School since they moved to the area, and she is a local resident who has used the Land since 2010. She uses the Claimed Way outside the School as a shortcut to reach local amenities in the Village because it is open to the public. Approximately 50% of the time that she uses that path she sees another person walking on it. She has never used the green space itself, and has avoided allowing her Children to play on the Land “*as dog faeces can be found there regularly*”. When she has used the path, she has never seen anyone using the Land for recreational purposes other than for dog walking. She has seen people walking dogs on the Land “*on a particular regular basis*”. Most of the time there will be dog walkers on the Land. They walk on the edges of the Land, and also in the centre sometimes when it is not muddy. When she picks her Children up from the School, people stay in the area inside the fence for their children to play which is a very clean and safe area with play equipment. She has seen the area of the Land outside the fence used by the School for the running club on Mondays and for cross country on Tuesdays when the fence is opened.

4.37 **Mrs Kate Riley**⁴⁷ lives at 69 Mickley Lane, Sheffield outside Dore, but she lived in the Village from 1980 until 2000 at Totley Brook Road where she grew up. She attended Dore Primary School between 1980 and 1984, and is now a parent of a 9 year old Son at that School. The School canvassed local people about the matter and she indicated that she was prepared to assist. She drops off and collects her Son daily from the School at the Furniss Avenue entrance and at the Vicarage Lane entrance respectively. She does not go onto the Land to do so. She had always understood the Claimed Way crossing the Land to be a thoroughfare or a school access. It previously served King Egbert’s School as well as Dore Primary School, and it is also used as a shortcut from Dore Village to either Bushey Wood Road or Furniss Avenue. She has used the Land herself as a short cut. She has used it as part of a family walk on Sundays when they have passed through the Land as a shortcut. She has never seen the public using it for any other purposes. Walkers with and without dogs walked off the path, but only to cut the corner as she did. She has not seen children playing on it. She was unaware of Church barbeques having being held on the Land. She recalled the Millennium Play which was on the Land for approximately 20 minutes as it was a progressive play. Prior to the fences being erected, Dore Primary School used the entire Land for extra recreational activities, such as nature study and sports events.

⁴⁶ Her witness statement is at OB page B18.

⁴⁷ Her witness statement is at OB page B7.

4.38 **Mr Nigel Owen**⁴⁸ has lived at 18 Vernon Road in Dore since 2005. Prior to then, he lived in Bristol. He is familiar with the Land from doing school drop-offs and pick-ups, from his weekday evening runs and from weekend family walks around the Village. On his school drop-offs and pick-ups, typically once a week, he used to cut across the grass area, but he stopped due to concerns over dog fouling. He runs around the Land approximately once a week, namely past the entrance points and along the bottom path. He does not run on the grass. He has seen the occasional dog walker using the Land, around 6 in total, but they were almost exclusively on the paths. He has also seen a few people walking up the path that leads to the war memorial. His Daughter and her friends used the Land when walking to and from the School. He was amazed how little use is made of the Land given the Application that has been made.

4.39 **Mr Richard France**⁴⁹ lives at 7 Stonecroft Road, Sheffield. His Son has attended Dore Primary School since 2010. He has been a teacher there since 2007 and was formerly a pupil between 1982 and 1989. It was his understanding that the Claimed Way was a public footpath. As a pupil, they had PE lessons on the part of the Land to the left of the path leading from Vicarage Lane that is now enclosed by fencing, and they played on that part of the Land during lunchtimes. They were not allowed to go on the wider part of the Land, namely beyond the tree line. Children continue to use that area as a play space during lunchtimes and it is an additional area that is used for PE lessons. He was only aware of that part of the Land being used as a cut-through, such as by walkers going to use the larger Kings Croft field as a dog walking space and by children from King Egbert School walking through. Whilst he has been working at the School, the larger field has never been fenced off and has been used occasionally by the School as an overflow area during football matches and for cross-country running. The marathon club use it after school on Mondays between September and Easter; he has taken children there a couple of times in the summer for rounders practice; and it is used on sports day. He did not regard that as part of the school grounds which he understood to end at the tree line where the fence is now erected. The public are allowed to use that area to walk their dogs, in the sense that they are able to do so rather than them having been given permission to do so, and so there are quite often faeces on the grass. The School is aware that that area of the Land is used generally by the public for dog walking and not merely the paths. He has never challenged anyone using that unfenced part of the Land. Post 2007, he has challenged people using the part of the Land which is now enclosed by fencing, particularly children from King Egbert's School walking through.

⁴⁸ His witness statement is at OB page B10.

⁴⁹ His witness statement is at OB page B20.

4.40 **Mr Gavin Truelove**⁵⁰ has been the Building Supervisor at Dore Primary School since July 2001, and he took up residence in the accommodation provided at 116 Furniss Avenue in December 2001 which is close to the main entrance of the School and has views across the football pitch, basketball court and toward Kings Croft. His duties include the security of the School site, although he does not patrol the grounds. He always understood there to be a right of way through the School grounds via the entrance from Furniss Avenue and via the entrance from Vicarage Lane. The usage of that right of way was much more regular out of school hours. The School grounds afforded shortcuts through the Village which people took across the Land, both with and without dogs. He acknowledged that children played on the Land out of school hours, and that skateboarding and bicycle riding have taken place on the Land. He did not challenge anyone unless the activities could damage School facilities. It was therefore from the areas of the Land now within the enclosed fencing that he has regularly challenged people and not generally from the unfenced area. He regarded all the Application Land as being part of the School grounds. As to dog walkers, prior to the erection of the fencing, they were challenged if they were within the part of the Land now enclosed by fencing and told to walk their dogs on the part of the Land beyond the tree line instead as that area was “*largely unused*” by the School save for cross country and some football games. He acknowledged that dog walkers were thereby encouraged to use the Land beyond the tree line and to keep away from the areas the children used regularly. That approach was generally accepted by dog walkers with whom an understanding developed. He knew many of the dog walkers personally who were generally from Dore. “Dogs Prohibited” signs were erected in the locations shown on the Plan in the OB at page B27, and he understood them to refer to the areas used on a frequent basis by and nearer to the School.

4.41 Around 2004/2005, fencing was erected due largely to youths hanging around the area and vandalism in order to protect the main buildings. The fence line was subsequently moved in 2009 as areas where outside school activities were carried out were still being accessed by the public. Since 2009, he has seen members of the public cutting through the unfenced part of the Land and he has never challenged such use in that area. He has never challenged dog walkers in that area. He sees dog walkers off the paths in that area, but he does not challenge them. The only people he had challenged in the unfenced part of the Land were a group of youths who played football there. He did not recall seeing anybody picnicking or picking blackberries on any of the Land. He had seen kite flying twice on the bank facing King Ecgbert’s. It is generally dog walkers that he has seen on the unfenced part of the Land.

⁵⁰ His witness statement is at OB page B32.

4.42 **Mrs Linda Addis**⁵¹ has lived at 50 Vernon Road since 1987. She previously lived in Dore between 1965 and 1977. She is a retired teacher at Dore Primary School where she taught full time between 1975 and 2011 and was a member of its governing body for at least 16 years. Currently, she does supply work at the School when required. She believed the public to be entitled to walk through the School grounds via the route from Vicarage Lane down to Footpath SHE/1132. As a local resident, she occasionally used that Footpath to go to the Village. The School used the now unfenced part of the Land for some outdoor activities on an ad hoc basis, such as for football practice during the winter around once a month and for the annual sports day, and as an overflow area for a games lesson around once a fortnight during the summer. It developed a small wildlife garden there. She had seen people walking in that area when she took children there, some walking on the paths and some walking off them, both with and without dogs. School children had always used the fenced areas of the Land during lunchtimes in fine weather, for games lessons and other regular school activities. Some people walked their dogs through the School from Vicarage Lane but were always asked to leave and directed to take their dogs onto the now unfenced part of the Land. No one was challenged if they were not on the School field but on the remainder of the Land. She acknowledged that no steps were taken until 2004/2005 to erect fencing in the interests of the children's safety, but that was not her decision. The Land has never been used for any Village events. She was unaware of the Millennium Play on the Land and the church barbeques that spilled out onto the Land. Instead, the Land has been used as a thoroughfare to and from the Village and by a few dog walkers rather than as a final destination. She has never seen anyone picnicking on the Land.

4.43 **Mrs Joanne Smith**⁵² lived in Dore with her parents from August 1984 when she was 12 years old. She attended King Egbert's School for 6 years between 1984 until 1990. During that period, she never saw the Land being used for picnicking, ball games or sports. She had seen dog walkers there. She always regarded the now fenced part of the Land as part of Dore Primary School. She now has a Son at Dore Primary School, a Daughter in Reception, and two older Children at King Egbert's.

4.44 **Mrs Karen Hewitt**⁵³ has lived in Dore all her life for 47 years, being a former pupil at Dore Primary and King Egbert's and with her two Children now attending Dore Primary. She recalled the Land being used by the School as a sports area. At that time, which was prior to 1988, she did not recollect the general public using the Land other than for occasional walking. Pupils and students from the various schools there also used

⁵¹ Her witness statement is at OB page B11.

⁵² Her witness statement is at OB page B34.

⁵³ Her witness statement is at OB page B2.

it on their way home. She now walks her Children to Dore Primary and collects them, but she does not go onto the Land.

4.45 **Mrs Pilling-Mesnage**⁵⁴ has lived at The Standings, Gilleyfield Farm, Vicarage Lane for 2½ years when she came to live at Dore. The 2009 fence had already been erected when she came to the area and her evidence relates only to the period post that fence being erected. Her garden backs on to the top part of the Land. She uses the Land at least twice a day to reach Dore Primary School at which her two Children are pupils or as a shortcut to the Village. She and her family also use the Land to play family games or to teach the children to ride their bikes around once or twice a month, but they have always been alone on the Land on those occasions. She has regularly seen the unfenced part of the Land being used by the School for rounders and cross country. The Land is used only very occasionally by the general public, mainly single dog walkers, many of whom are parents of children at Dore Primary, whilst others use the path as a shortcut to the Village.

4.46 **Mrs Helen Randall**⁵⁵ has lived at 12 Furniss Avenue since December 1996. Her 2 Children have attended Dore Primary from January 2008 and September 2011 respectively. Prior to 2008, she occasionally used the footpath through the school grounds as a shortcut to and from the Village. She saw others using that path as a shortcut or walking their dogs. She did not recall having seen people on the Land walking off the path. From 2008 onwards, she has mainly used the footpath to get to and from the School. Prior to the 2009 fencing being erected, the school children played in the area up to the trees, but not beyond the tree line.

4.47 **Mrs Debbie Miller**⁵⁶ has lived at 16 Abbeydale Park Crescent in Dore since 1989. She is a parent and has walked along the access paths to Dore Primary School since January 2008 when her Daughter started at that School. Prior to that, she had not used the Land, and had no particular recollection of the Land before the erection of the fence.

4.48 **Mrs Julie Dungworth**⁵⁷ has lived at 70 Old Hay Close for 15 years. She has 2 children at Dore Primary in years 1 and 2. Prior to the erection of the fence in 2009, she had only seen the Land used as a shortcut. She has seen people walking through the Land along the paths from one entrance to another. She expressed particular concern over the public being able to come up to the School's fence if the Land was registered as a village green. She has seen school children playing in the area of the belt of trees after school

⁵⁴ Her witness statement is at OB page B14.

⁵⁵ Her witness statement is at OB page B17.

⁵⁶ Her witness statement is at OB page B19.

⁵⁷ Her witness statement is at OB page B8.

has finished as they appear to feel as though they are still able to be on the Land after school has finished for the day.

4.49 **Mr Ian Wileman**⁵⁸ has lived in Dronfield for 27 years, and was the Head Teacher of Dore Junior School between 1986 and 2000. The Infant and Junior Schools then amalgamated and became Dore Primary School of which he was the Head Teacher until 2008. His personal knowledge of activities on the Land was limited to working hours and to when he was otherwise at the School. Since 1986, the School's main entrance has always been from Furniss Avenue, but there was also an entrance from Vicarage Lane which provided access to a path, that he understood to be a public footpath, which crossed the school grounds and led to Footpath SHE/1132. That path was used occasionally by the public, but very rarely during school hours. He did not challenge people using that path.

4.50 When the Sixth Form Centre at King Egbert's closed in the early eighties, the School was given the option by the Local Education Authority to pay for the grounds maintenance of the playing fields of Kings Croft that had previously been paid for by King Egbert's and which were part of their site. As the School already used them on a regular basis, it agreed to pay for that maintenance thereafter. The Land, including the area beyond the tree line, was all used by the School, such as for football, P.E. lessons, orienteering, lunchtime clubs, school matches and after school activities. He refereed matches on the far field on a regular basis throughout the school year. Occasionally, a member of the public would stray from the footpath leading from Vicarage Lane, and he recalled asking them to return to the footpath on one or two occasions whilst he was at the School when they strayed too close to where the children were playing which was his particular concern.

4.51 He did not recall dog walkers using the Land. He was aware that dog fouling was an occasional problem for the School, but it was not a consistent problem in his view. However, he acknowledged the article in the "Dore to Door" publication in 1995 stating that the Governors were "*alarmed at the apparent increase in the number of dogs being exercised on the school playing fields.*"⁵⁹ He was unaware why the Governors did not take the view that they could preclude dogs from school grounds. Two signs were erected in 2002 in the locations shown on the Plan at OB page B27 prohibiting the exercise of dogs on the school grounds which the Applicant assisted in paying for. He was unaware who decided on the appropriate locations for those signs, neither of which were erected on the Land. They were erected at the two entrances from where most people came onto the school field. Fencing was erected in 2004 and 2005 to improve security along the line of what

⁵⁸ His witness statement is at OB page B22.

⁵⁹ Quoted in paragraph 14 of Mr Wileman's witness statement at OB page B23.

was believed to be the footpath. The School continued to use the area beyond the fencing in the same way as previously. Ofsted inspections commenced during the 1990's, and the School's first regular inspection occurred in 1995/1996.

4.52 **Mrs Linda Hunter**⁶⁰ was the Chair of Governors of Dore Primary School between 2010 and 2012. She lived at The Vicarage, 51 Vicarage Lane between 2002 and 2012, which property abuts the Land and overlooks a significant part of the Land. The garden area which has a raised patio provides a good view of the Land. She used the patio frequently during the spring, summer and autumn as it was a particular sun trap from where she was able to observe the Land and particularly the area to the north of the belt of trees. Its use was a low one. She gained an even better view of the Land from her bedroom window which she often looked out of as she had occasion to use her bedroom several times a day. She acknowledged that she was not looking out over the Land continually, and that she has a busy lifestyle including attending to an allotment, but pointed out that given the location of her Property, she would have seen the Land more frequently than others. She also accepted that there were plenty of opportunities for people to have used the Land when she was not present, but noted that, especially after a 10 year period, a picture builds up of the extent to which people are walking past and using the Land outside your home. She had not seen Mrs Pilling-Mesnager and her family playing games on the Land. Her observations of the Land were both during and outside school hours, including weekends. She saw the Land being used by the School for walks, football matches, rounders games, marathon runs and by Kids Club. During the summer months, many children played in the area underneath the belt of trees before school, during break and lunch times, and after school, both prior to and post the fencing being erected. Although such play also occurred after school had finished, she considered that as still a natural part of the school day.

4.53 She has used Footpath SHE/1133. She occasionally accessed it via the gate in her property and walking across the grass. She saw people using the path from Vicarage Lane across the school grounds, mainly during school hours but occasionally out of school hours. It was not possible to ascertain whether they were using it to visit the School or as a shortcut. She noticed people occasionally using the Land to walk their dogs, including parents bringing their children to the School and collecting them who brought dogs with them. She saw other dog walkers walking both on and off the paths whilst their dogs ran around the Land. On a typical day, she saw a couple of dog walkers in a morning and a few at dusk. There were also occasional

⁶⁰ Her witness statement is at OB page B28.

football matches on the Land during the summer of 2007 by a small group of boys over a two week period. However, once school had finished and people had left for the day, the area was remarkably quiet. She has no recollection of seeing kite flying or picnicking, or blackberry picking from the blackberry bush below her Property. Blackberries were picked from the area close to the junction of Footpaths SHE/1132 and SHE/1133 from the Footpaths themselves.

4.54 **Mrs Sue Hopkinson**⁶¹ has been the Headteacher and Safeguarding/Child Protection Officer of Dore Primary School since 3 September 2008. In that capacity, she has a duty and legal responsibility to safeguard and to protect all children whilst on School premises. Her professional knowledge of the Land commenced shortly before September 2008 when she visited the Village with a view to taking up her post at the School. During the lunch break on her very first day in post, she saw members of the public walking through the playground where children were playing, namely teenagers from the local Secondary School, 2 dog walkers, a mother with a buggy and a toddler, and an elderly person. She immediately reported her concerns over the security of the School premises to her Governing Body. Moreover, in November 2009 when Ofsted Inspectors made a 2 day visit to the School, they were very disturbed by the inadequate site security and the proximity and access of the public to pupils. Their particular concern was over the lack of a perimeter fence to avoid children and the public being in close proximity. It was also important to them that visually and physically there was a buffer of land between the children and the public. Those concerns led to the removal of the fencing to its current position close to the line of trees on 14 December 2009. She pointed out to Governors that the new position of the fence was well within the school grounds, leaving members of the public a substantial area of the school grounds available for unrestricted use with public access from Savage Lane, which she recognised as being appropriate.

4.55 The parts of the Land within the fence perimeter are in constant daily use by the School, including for the wildlife garden. Many families stay daily after school hours to use the School's facilities provided for the school children in the school grounds. The School hours are from 9.00 a.m. until 2.45 p.m., but the gates are opened by 8.00 a.m. and closed at dusk and throughout school holidays. The position of the fence and the line of trees provide a natural buffer to the occasional members of the public who walk their dogs or use the footpath beyond the fence. The public are still able to use the majority of the School's field and the public footpath leading to Savage Lane.

⁶¹ Her witness statement is at OB page B36.

4.56 Prior to the repositioning of the fence, she had occasionally pointed out to members of the public that the Land is part of the School grounds and has approached those who have acted inappropriately in the proximity of children, such as those loitering, skateboarders and cyclists, those dropping litter, and those with dogs fouling in the area. She did not challenge anyone who was a distance away from the children. Most of the challenges she has made have been to people within the part of the Land that is now enclosed by the fence. She has seen dog walkers on the part of the Land beyond the tree belt, but has not challenged them. It was her view that the Land is used as a shortcut and for a minimal use by dog walkers, and not for any other purposes by the public.

4.57 Once she had received notification about the Application and the proposed public inquiry, she informed the School Change Team, which comprises teachers, governors and parents, and they canvassed all parents by sending them all a questionnaire that was produced, and copies were also made available at the School's Autumn Fair. Those that were returned were collated. She accepted in cross examination that the parents were written to on the basis of whether registration of the Land as a town or village green would be a good or bad thing for the School rather than by informing them about the relevant statutory criteria and to consider whether they had been met. A considerable number of the returned questionnaires made references to walking, and particularly dog walking, having taken place on the Land. She pointed out that a number of the parents bring their dogs with them when dropping off and collecting their children from the School. Other questionnaires referred to other activities on the Land, such as blackberry picking, children playing on their way home, throwing a ball for dogs, cycling and sledging.

4.58 **Mr Carl Gray**⁶² has been employed by Sheffield City Council as the Mitigation of Risk Officer (Children's Services) since June 2006. His written witness statement was taken as read and he was not called to give evidence as the Applicant had no questions to put to him. Although he did not give oral evidence, I have nonetheless given the evidence contained in his written witness statement full weight as he was made available for cross examination had it been required.

Oral Evidence of Mr Andrew Miller Objecting to the Application

⁶² His witness statement is at OB page B4.

4.59 **Mr Andrew Miller**⁶³ has lived at 16 Abbeydale Park Crescent in Dore with his Wife since 1989. They have a Child who has attended Dore Primary School since January 2008 and a younger Child who will attend from September 2013. There are a number of “School” signs, safety barriers and yellow School zigzag markings on the roads near to the School. They clearly mark the entrances to the School and its grounds, and give clear notice that the land beyond is not for general public access or use. He provided current and historic photographic evidence dating back to December 1999 of the school markings and signs on roads at the various entrances. He pointed out that the witnesses who had given oral evidence in support of the Application were aware of those signs and markings.

4.60 The population of Dore is around 7000. 60 people are not a significant number of the residents of Dore. Since moving to the Village in 1989, he and his Wife have attended many Village gatherings, including shows, fetes and galas, and he is not aware of any such gatherings having taken place on the Land save a single performance of the Millennium Play. Further, since January 2008, he has visited the School on numerous occasions for assemblies, concerts, fetes, working parties and other reasons, as well as to drop off and collect his eldest Child from between once a week to 4 or 5 times a week. He has never seen anyone using the Land for any organised lawful sports and pastimes. He has only seen occasional walkers and dog walkers, aside from those associated with the school run, and they have been walking solely on the footpaths. He also referred to aerial photographs of the Land and of the Mercia site from various dates between 1999 and 2008 which clearly show footpath tracks over the edges of the Mercia site, but such worn tracks do not continue onto the Land beyond Footpath SHE/1132 to the Vicarage Lane entrance as would be expected if the Land had been so used.

4.61 The Land in its entirety has been used by the School, including for the wildlife garden, outdoor teaching, gardening club, playing in the shade of the trees, running and cross country, and orienteering. In addition, before and after school, school children run and play on the Land as it is part of the School grounds.

Oral Evidence of Reverend Dr Michael Hunter Objecting to the Application

4.62 **Reverend Dr Michael Hunter**⁶⁴ lived at The Vicarage, 51 Vicarage Lane between 2002 and 2012 during which he was the Vicar of Dore. The Vicarage abuts the Land. His perception from when he was

⁶³ He provided his own Objector’s Bundle together with a separate witness statement.

⁶⁴ He provided his own Objector’s Bundle together with a separate witness statement.

resident at The Vicarage over that period was that the Land was being used far more by Dore Primary School than by others. The community of Dore comprises some 7000; representations in support of the Application have been made by only 60. Moreover, all the witnesses in support of the Application and the compliers of the evidence questionnaires in support are around his age or older. They are not representative of the community as a whole. The spirit of the law contained in section 15 of the Commons Act 2006 should require users to be representative of a cross section of the community which they are not in this case. Those responsible for the Application have misjudged the views of the wider community. Such imbalance in the community has made the Application inherently flawed.

Written Evidence Objecting to the Application

4.63 In addition to the evidence of witnesses who appeared at the Inquiry, I have also considered and had regard to all the written evidence submitted in support of the Objection to the Application by Sheffield City Council in the form of additional witness statements and questionnaires in support of the Objection which are contained in that Objector's Bundle. However, in relation to such written evidence, I refer to and repeat my observations in paragraph 4.35 above that whilst such written evidence must be taken into account, I and the Registration Authority must bear in mind that it has not been tested by cross examination. Hence, particularly where it is in conflict with any oral evidence given to the Inquiry, I have attributed such evidence less weight as it was not subject to cross examination.

THIRD PARTY EVIDENCE

4.64 During the Inquiry, I invited any other persons who wished to give evidence to do so. There were no such other persons who gave any additional evidence.

5. THE LEGAL FRAMEWORK

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

Commons Act 2006

5.2 The Application was made pursuant to the Commons Act 2006. That Act requires each registration authority to maintain a register of town and village greens within its area. Section 15

provides for the registration of land as a town or village green where the relevant statutory criteria are established in relation to such land.

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

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

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

- (i) the Application Land comprises “land” within the meaning of the 2006 Act;
- (ii) the Land has been used for lawful sports and pastimes;
- (iii) such use has been for a period of not less than 20 years;
- (iv) such use has been as of right;
- (v) such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality; and
- (vi) such use continued at the time of the Application.

Burden and Standard of Proof

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

5.6 Further, when considering whether or not the Applicant has discharged the evidential burden of proving that the Land has become a town or village green, it is important to have regard to the guidance given by Lord Bingham in *R. v Sunderland City Council ex parte Beresford*⁶⁵ where, at paragraph 2, he noted as follows:-

⁶⁵ [2004] 1 AC 889.

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

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

Statutory Criteria

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

Land

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

5.9 However, it was stated by way of *obiter dictum* by the majority of the House of Lords in ***Oxfordshire County Council v. Oxford City Council***⁶⁶ that there is no requirement that a piece of land must have any particular characteristics consistent with the concept of a village green in order to be registered.

Lawful Sports and Pastimes

5.10 It was made clear in ***R. v. Oxfordshire County Council ex parte Sunningwell Parish Council***⁶⁷ that “*lawful sports and pastimes*” is a composite expression and so it is sufficient for a use to be either a lawful sport or a lawful pastime. Moreover, it includes present day sports and pastimes and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and children’s play.

⁶⁶ [2006] 2 AC 674 per Lord Hoffmann at paragraphs 37 to 39.

⁶⁷ [2000] 1 AC 335 at 356F to 357E.

5.11 However, that element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way. In **R. (Laing Homes Limited) v. Buckinghamshire County Council**⁶⁸, Sullivan J. (as he then was) noted at paragraph 102 that:-

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

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

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

5.12 More recently, Lightman J. stated at first instance in **Oxfordshire County Council v. Oxford City Council**⁶⁹ at paragraph 102:-

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

⁶⁸ [2003] EWHC 1578 (Admin).

⁶⁹ [2004] Ch. 253.

his land. If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green)."

He went on area paragraph 103 to state:-

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

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

Continuity and Sufficiency of Use over 20 Year Period

5.13 The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period: *Hollins v. Verney*.⁷⁰

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

⁷⁰ (1884) 13 QBD 304.

have appeared to the landowner: *R. (on the application of Lewis) v. Redcar and Cleveland Borough Council*.⁷¹

Locality or Neighbourhood within a Locality

5.15 A “locality” must be a division of the County known to the law, such as a borough, parish or manor: *MoD v Wiltshire CC*;⁷² *R. (on the application of Cheltenham Builders Limited) v. South Gloucestershire DC*;⁷³ and *R. (Laing Homes Limited) v. Buckinghamshire CC*.⁷⁴ A locality cannot be created simply by drawing a line on a plan: *Cheltenham Builders* case.⁷⁵

5.16 In contrast, a “neighbourhood” need not be a recognised administrative unit. Lord Hoffmann pointed out in *Oxfordshire County Council v. Oxford City Council*⁷⁶ that the statutory criteria of “any neighbourhood within a locality” is “obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries”. Hence, a housing estate can be a neighbourhood: *R. (McAlpine) v. Staffordshire County Council*.⁷⁷ Nonetheless, a neighbourhood cannot be any area drawn on a map. Instead, it must be an area which has a sufficient degree of cohesiveness: *Cheltenham Builders* case.⁷⁸

5.17 Further clarity was provided on that element recently by HHJ Waksman QC in *R. (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v. Oxfordshire County Council*⁷⁹ who stated:-

“While Lord Hoffmann said that the expression was drafted with “deliberate imprecision”, that was to be contrasted with the locality whose boundaries had to be “legally significant”. See paragraph 27 of his judgment in *Oxfordshire* (*supra*). He was not there saying that a neighbourhood need have no boundaries at all. The factors to be considered when determining whether a purported neighbourhood qualifies are undoubtedly looser and more varied than those relating to locality... but, as Sullivan J stated in *R (Cheltenham Builders) Ltd v South Gloucestershire Council* [2004] JPL 975 at paragraph 85, a neighbourhood must have a sufficient degree of (pre-existing) cohesiveness. To qualify therefore,

⁷¹ [2010] UKSC 11 at paragraph 36.

⁷² [1995] 4 All ER 931 at page 937b-e.

⁷³ [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.

⁷⁴ [2003] EWHC 1578 (Admin) at paragraph 133.

⁷⁵ At paragraphs 41 to 48.

⁷⁶ [2006] 2 AC 674 at paragraph 27.

⁷⁷ [2002] EWHC 76 (Admin).

⁷⁸ At paragraph 85.

⁷⁹ [2010] EWHC 530 (Admin) at paragraph 79.

it must be capable of meaningful description in some way. This is now emphasised by the fact that under the Commons Registration (England) Regulations 2008 the entry on the register of a new TVG will specify the locality or neighbourhood referred to in the application.”

Significant Number

5.18 “*Significant*” does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers: **R. (McAlpine) v. Staffordshire County Council**.⁸⁰

As of Right

5.19 Use of land “*as of right*” is a use without force, without secrecy and without permission, namely *nec vi nec clam nec precario*. It was made clear in **R. v. Oxfordshire County Council ex parte Sunningwell Parish Council**⁸¹ that the issue does not turn on the subjective intention, knowledge or belief of users of the land.

5.20 “Force” does not merely refer to physical force. User is *vi* and so not “*as of right*” if it involves climbing or breaking down fences or gates or if it is under protest from the landowner: **Newnham v. Willison**.⁸² Further, Lord Rodger in **Lewis v. Redcar** stated that “*If the use continues despite the neighbour’s protests and attempts to interrupt it, it is treated as being vi...user is only peaceable (nec vi) if it is neither violent nor contentious*”.⁸³

5.21 “Permission” can be expressly given or be implied from the landowner’s conduct, but it cannot be implied from the mere inaction or acts of encouragement of the landowner: **R. v. Sunderland City Council ex parte Beresford**.⁸⁴

Amendment of Applications

5.22 In **Oxfordshire County Council v. Oxford City Council**,⁸⁵ the House of Lords addressed the extent to which a registration authority could amend an application. All of the Law Lords found that an amendment

⁸⁰ [2002] EWHC 76 (Admin) at paragraph 71.

⁸¹ [2000] 1 AC 335.

⁸² (1988) 56 P. & C.R. 8.

⁸³ At paragraphs 88-90.

⁸⁴ [2004] 1 AC 889.

⁸⁵ [2006] 2 AC 674 at paragraph 61.

could be made at the authority's discretion, provided that such an amendment would not occasion unfairness to an objector or any other person.

6. PRELIMINARY ISSUES

Application to Amend Application Land

6.1 At the outset of the Inquiry, the Applicant indicated that it sought to amend the boundaries of the Application Land by excluding two areas as identified on the Amended Application Site Boundary Plan produced to the Inquiry. The first area sought to be excluded is a rectangular area on the edge of the School buildings shaded red on that Plan. That area was never intended to be included in the Application and comprised a drafting error. The second area is towards the top of the Land which is part of the area currently within the fencing erected by the School and is shaded orange on that Plan. The adjacent area shaded blue on that Plan is to remain within the Application Land and is the remaining area which is within the current fencing.

6.2 Each of the Objectors stated that they had no objection to the Application Land being amended as sought. They indicated that there would be no prejudice to them or their respective cases if such land was excluded from the Application.

6.3 As stated in paragraph 5.22 above, an amendment to an application may be made at the Registration Authority's discretion, provided that any such amendment would not occasion unfairness to any objector. In that regard, each Objector confirmed that it had no objection to the amendment. Further, as the Application Land would be reduced in extent rather than increased, with no additional area of land being added, it does not seem to me that any prejudice or unfairness would be caused to any person in the circumstances.

6.4 Consequently, I recommend that it would be reasonable and appropriate for the Registration Authority to exercise its discretion to allow the amendment as sought by the Applicant so that the Application Land is reduced in extent in accordance with the Amended Application Site Boundary Plan. The remainder of this Report is written on that basis, and all further references to "the Land" are to the Application as sought to be so amended.

The *Newhaven Point*

6.5 At the Inquiry, the Objector Sheffield City Council raised a legal issue over the effect of the *Newhaven Port*⁸⁶ case on the Application. The Applicant disputed the applicability of the principles in that case to the Application and, in addition, contended that the Application was not affected by those principles on its facts in any event.

6.6 That legal issue was expressed by the Objector to be “*a discrete one*”.⁸⁷ I agree. Moreover, in the light of my findings and recommendations below, it does not seem to me to be necessary for that issue to be determined in this case given the particular circumstances. I am also very mindful that the High Court decision of Ouseley J. is currently subject to an appeal to the Court of Appeal, and further, that there is a real likelihood that the Court of Appeal’s decision could ultimately be appealed to the Supreme Court.

6.7 Given those circumstances, it appears to me that the Application can be determined without a decision being reached upon that discrete legal issue which is currently before the Courts, and that such an approach would be the most expeditious means of approaching this Application. I have therefore not expressed a finding on that issue in this Report. However, if any Party, or the Registration Authority, wish me to do so with justifiable reason for that approach, I shall be happy to do so by way of an Addendum to this Report. In such circumstances, though, it would be advisable to await the Court of Appeal’s ruling before doing so given its apparent imminence.

7. APPLICATION OF THE LAW TO THE FACTS

Approach to the Evidence

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

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

⁸⁶ *R. (Newhaven Port & Properties Limited) v. East Sussex County Council* [2012] EWHC 647 (Admin).

⁸⁷ Paragraph 40 of Closing Submissions.

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

The Land

7.4 There is no difficulty in identifying the relevant land sought to be registered. The Amended Application Site Boundary Plan shows the Land outlined with a thick black line with the areas shaded in red and in orange to be excluded from the Application Land. Subject to the amendment being allowed as I have recommended, that is the definitive document on which the Land that is the subject of the Application is marked. The Land has defined and fixed boundaries, and there was no dispute at the Inquiry nor in any of the evidence adduced that that area of land comprises “land” within the meaning of section 15(2) of the 2006 Act and is capable of registration as a town or village green in principle, and I so find.

Relevant 20 Year Period

7.5 Turning next to the identification of the relevant 20 year period for the purposes of section 15(2) of the 2006 Act, the qualifying use must continue up until “*the time of the Application*”: see section 15(2)(b). Hence, the relevant 20 year period is the period of 20 years which ends at the date of the Application.

7.6 The Application Form is dated 4 March 2008, and the accompanying Statutory Declaration is dated 6 March 2008. Mr Crosby stated that the Application was duly submitted to the Registration Authority in March 2008. Moreover, the Applicant produced further documentary evidence to the Inquiry on this issue, which included the covering letter from Mr Crosby to the Registration Authority dated 6 March 2008 enclosing the Application and the receipt for the Application from the Registration Authority dated 6 March 2008 at 12.10pm. Despite the submission of the Application on that date, the Application is stamped by the Registration Authority as having been validly received only on 15 November 2009.

7.7 In my view, “*the time of the application*” within the meaning of section 15(2) is the date when a valid application is made, namely the date when it is submitted to and received by the Registration Authority. The official stamp of the Registration Authority on an application indicating the valid date of receipt therefore serves a useful purpose as it purports to, and is intended to, indicate that very date. However, that stamp is ultimately only *evidence* of the date of submission and receipt of a valid application, albeit very cogent evidence. In the vast majority of instances, it will be the decisive evidence as to that relevant date. In this particular instance, though, there is other cogent evidence of particular relevance to be taken into account. It is clear from the documentary evidence on this issue provided by the Applicant that the Application was in fact submitted to and received by the Registration Authority on 6 March 2008. Not only has the very receipt been submitted from the Registration Authority stating that date, but the subsequent correspondence with the Authority provided indicates a clear acceptance by the Authority that the Application was received on that date. It is further apparent from that correspondence that the Authority acknowledges that the date stamp of 25 November 2009 was not in fact the date when the Application was received as a valid application. Instead, for various reasons, including the mislaying of the Application for a considerable period, it was only so stamped a considerable period after its receipt. I also note that there is no suggestion that the Application as originally submitted was invalid. No further information was required from the Applicant by the Registration Authority to validate the Application after its original submission.

7.8 In those circumstances, it is my view that the relevant evidence taken as a whole establishes that the Application was in fact received by the Registration Authority as a valid application on 6 March 2008, and I so find. It follows that the relevant 20 year period for the purposes of section 15(2) is 6 March 1988 until 6 March 2008.

7.9 As an aside, even had the relevant 20 year period been 25 November 1989 until 25 November 2009, given that the current fence was only erected in December 2009 and that the Objector Sheffield City Council expressly accepted at the Inquiry that the use had continued as it had previously until that latter date, a finding that that alternative period was the relevant one would not have affected my overall findings in any event.

Use of Land for Lawful Sports and Pastimes

7.10 Turning next to whether the Land has been used for lawful sports and pastimes in principle during the relevant 20 year period, it is contended by the Applicant that the Land has been used for various recreational activities during that period. References were made in both the oral and the written evidence to recreational

activities such as dog walking, general walking, children's play, cycling, football, blackberry picking, picnicking, sledging, church barbeques and a performance of the Millennium Play being held on the Land. Moreover, references were made by each of the witnesses who gave evidence in support of the Application of their own and of other people's varying recreational uses of the Land over different times. Such evidence is supported by a considerable volume of written evidence. Although people's recollections may fade over time, particularly in relation to details, I accept the evidence of those witnesses called in support of the Application that they did in fact use the Land for the stated purposes and saw others so using the Land.

7.11 In so finding, I also take into account the following. It was no part of the Objectors' cases that recreational activities have not, at least to some extent, taken place on the Land. On the contrary, a number of witnesses called in support of the Objections gave evidence of such uses having taken place from time to time, particularly in relation to dog walking. Hence, by way of specific examples, Mrs Cam had seen dog walkers on the Land "*on a regular basis*"; Mrs Riley had seen walkers, with and without dogs, walking on the Land off the paths; Mr Owen had seen the "*occasional*" dog walker on the Land, albeit almost always on the paths; Mr France, a teacher and former pupil at Dore Primary School, noted that the School was aware that the Land was used for dog walking by the general public; his evidence was confirmed by Mr Truelove, the School's Building Supervisor, who specifically directed dog walkers to the part of the Land furthest away from the School buildings; Mrs Addis had seen walkers on the Land, both on and off the paths and with and without dogs; Mrs Joanne Smith had seen dog walkers; Mrs Hewitt had seen occasional walkers; Mrs Pilling-Mesnage had used the Land herself with her family for family games, albeit that was outside the relevant 20 year period; Mrs Hunter referred to seeing a few daily dog walkers; and Mrs Hopkinson was aware of walkers and dog walkers using the Land. Further, the questionnaires collated on behalf of the Objector, Sheffield City Council, made references to activities on the Land such as walking and dog walking, blackberry picking, children playing, cycling and sledging. Indeed, the concerns expressed by a number of witnesses in support of the Objections over dog faeces regularly being found on the Land suggests a material degree of use of the Land by dog walkers.

7.12 In addition, from my visit to the Land and the surrounding area, I find that it is unsurprising that the Land has been used for some such activities given its nature and location, particularly for dog walking. It is a pleasant, open, grassed area with unrestricted access to it all throughout the relevant 20 year period and with

two definitive public footpaths running along its edges and a further Claimed Way across it. It is located within a built up residential area and within the Village of Dore.

7.13 Moreover, all such activities referred to in paragraph 7.10 above are lawful, and they are all capable of being recreational pursuits in principle. Although organised events on the Land appear to have been limited to the occasional Church barbeque and picnics and a performance of the Millennium Play, and there was no evidence of any formal games having taken place on the Land other than by the School, informal play, walking and dog walking are all lawful sports or pastimes within the meaning of section 15(2) of the 2006 Act.

7.14 Therefore, I find that some lawful sports and pastimes have been carried out on the Land during the relevant 20 year period. I shall address below the extent and degree to which they have been carried out as of right throughout the entirety of the relevant period by the inhabitants of the claimed neighbourhood.

Locality or Neighbourhood within a Locality

7.15 I turn next to the relevant locality or neighbourhood within a locality for the purposes of section 15(2). The Applicant confirmed at the outset of the Inquiry that the area relied upon for the purposes of the Application was the neighbourhood of Dore Village within the locality of the administrative area of Sheffield City Council. The boundaries of the neighbourhood of Dore Village relied upon are outlined in red on Plan 2 contained in the AB at tab 18.

7.16 Starting with the administrative area of Sheffield City Council as the relevant locality within which Dore Village lies, that is an established administrative area with identifiable boundaries. It is a recognised administrative area that is known to the law, and I accept that it amounts to a locality within the meaning of the statutory criteria and that Dore Village lies within it.

7.17 The issue then arising is whether Dore Village amounts to a qualifying neighbourhood for the purposes of the legislation. As noted above, although it need not be a recognised administrative unit, a neighbourhood must be an area with a sufficient degree of cohesiveness, rather than merely being an area that has had a line drawn round it to reflect the residential location of the users of the Land. In that regard, from the evidence I heard and saw from visiting the area, it is my view that the Village of Dore as identified by the Applicant is such a qualifying area.

7.18 The Village as identified on the Applicant's Plan is a built up area surrounded by open land. It has its own local facilities, including churches, schools, shops, public houses, community and sports facilities, and, indeed, has an historic basis as an entity. It is a known and recognised area. Moreover, it functions as a community with numerous Village activities regularly taking place, such as the Dore Gala, Village Festivals and Bonfire Displays. There is an active Village Society, and the clear impression I gained was that it had a strong community identity. Further, the witnesses in support of the Application confirmed the boundaries of the Village as being those on the Plan. I also note that none of the Objectors disputed the cohesiveness of the Village of Dore nor its identified boundaries. Therefore, I have no hesitation in finding that Dore Village is a qualifying neighbourhood within the meaning of section 15(2) of the 2006 Act.

Use as of Right

7.19 Before turning to the extent of the qualifying user of the Land by the inhabitants of the neighbourhood of Dore throughout the relevant 20 year period, I shall consider next whether the use of the Land has been as of right during that period. There was no suggestion in any of the evidence that any of the use was by stealth. On the contrary, it was carried out openly during daylight hours and without any element of secrecy. The use of the Land has thus been *nec clam*.

7.20 As to whether the use has been carried out with force, it need not involve physical force to be *vi*, such as accessing land by breaking down fences or gates of which there was no evidence. It must also not be contentious. In that regard, two issues are relevant.

7.21 Firstly, evidence was given by some of the witnesses that they had challenged users. Mr France challenged people using the part of the Land now enclosed by fencing. Such challenges were all post 2007 when he became a teacher at the School and he never challenged people using the unfenced area. Mrs Addis as a teacher at that School also noted that people were only challenged by the School if they were within that area. Mr Truelove as the School's Building Supervisor since 2001 has challenged people, but generally only those within the now fenced area save for a group of youths playing football. The effect of challenges is to make the use thereafter by such persons challenged, and by others aware of the challenges, a contentious use. However, there is no evidence of any challenges to users of the part of the Land that is now unfenced save by Mr Truelove in relation to a particular group of youths. Moreover, none of the witnesses who gave oral evidence in support of the Application were challenged, and I accept their undisputed evidence to that effect. Further, the compilers of the evidence questioned in support stated that they were never challenged.

Although I give their written evidence less weight, I note that none of those who had carried out challenges named particular individuals they had challenged and made no suggestion that any of those who had completed the questionnaires had been so challenged. Therefore, taking the evidence as a whole, I find that the challenges made to individuals were relatively limited, both in number and geographical extent. Although such challenges would have made the use by particular individuals of the area of the Land now enclosed by fencing not as of right, and such use would have to be discounted from the qualifying use had it been relied upon by the Applicant, they did not, in my opinion, result in the use of the Land by the majority being not as of right.

7.22 The other issue relates to the two signs erected in 2002. It was undisputed that two signs were then erected by the School, the cost of which was contributed to by the Applicant, which stated “THE EXERCISING OF DOGS ON SCHOOL GROUNDS IS PROHIBITED”. They were located at the two points shown on the Plan at OB Page B27. I accept such evidence. However, I find that the erection of those signs did not prevent the use of the Land being as of right for the particular reason that their location was such that a user would not, in my view, have understood them to relate to any part of the Application Land. Neither of them was located on or immediately adjacent to the Land itself nor at the entrances to the Land. Indeed, Mr Truelove acknowledged that he himself understood them to refer to the areas used on a frequent basis that were nearest the School. It seems to me that the signs would have been interpreted to relate to the specific areas where they were located and so would not affect the nature of the use of the Land so as to make it contentious.

7.23 Consequently, I find that the use of the Land relied upon in support of the Application has been *nec vi*.

7.24 As to whether the Land has been used *nec precario*, none of the witnesses in support of the Application had been given permission to use the Land. That was also stated by the compilers of the evidence questionnaires. Moreover, such evidence was not disputed by the Objectors. Although Mr France referred to the School having “*allowed*” use of the Land beyond the fence, his explanation made it apparent that the School was effectively acquiescing in such use in that area rather than expressly or impliedly permitting it. Indeed, that was also apparent from the evidence of Mr Truelove who developed an “*understanding*” with dog walkers that they would remain on that part of the Land which would be tolerated by the School. I find that there was no evidence of conduct on the part of the City Council as the Landowner or of the School as occupier of the Land that was capable of amounting to the giving of express or implied permission. I therefore find that the use has been *nec precario*.

7.25 For the above reasons, I find on the evidence on the balance of probabilities that the use has been demonstrated to have been “as of right” throughout the relevant 20 year period, and so that element of the statutory criteria has been established.

Sufficiency of Use

7.26 I turn next to the issue which was significantly in dispute between the Applicant and the Objectors, which the majority of the evidence relates to, and which seems to me to be the fundamental issue arising, namely whether there has been a sufficiency of use of the Land for lawful sports and pastimes throughout the relevant 20 year period by a significant number of the inhabitants of the neighbourhood to establish village green rights over the Land. In order to determine that issue, it is necessary to identify the relevant qualifying use and, importantly, to identify the elements of the use of the Land which must be discounted. As indicated above, the question for determination is whether the qualifying use of the Land for lawful sports and pastimes has been of such a nature and frequency throughout the relevant 20 year period to demonstrate to the Landowner that recreational rights were being asserted over the Land by the local community.

7.27 Firstly, it is necessary to discount from the qualifying use any use of the Land carried out outside the relevant 20 year period. Although such use may be relevant as an indicator as to the extent of the use within that period, and I have taken that factor into account, I am unable to regard such use as part of the qualifying use itself. Thus, I have excluded the recreational uses of the Land referred to in the evidence above that were undertaken prior to March 1988 and post March 2008. I have also taken the same approach with the written evidence.

7.28 Secondly, I have discounted the evidence of use where it has not been established that the user was an inhabitant of Dore at the time of his or her use of the Land. There was no suggestion that any of those who gave evidence of their own personal use, whether orally or in writing, were not inhabitants of Dore. However, the position is less clear in relation to the use of the Land by others who were merely seen making use of the Land but who have not themselves provided direct oral or written evidence in support of such use. I note the Applicant’s submission that given the location of the Land, its nature and the lack of other built up areas in close proximity to it, it can be inferred that people on the Land were largely from Dore. I and the Registration Authority must also take into account, though, that the burden of proof is on the Applicant and that each

element of the statutory criteria must be strictly proved on the balance of probabilities. It is unknown, for example, to what extent those others using the Land were merely visitors to the Village, such as visiting family and friends there. Therefore, although I accept that a material number of those seen on the Land by others are likely to have been from Dore, and I have assessed the evidence accordingly, I cannot accept that they all were. In addition, I have discounted the use of those where it is known that they were not inhabitants of Dore at the relevant time, such as that by Miss Hubbard's nieces and nephews who lived in Essex but played on the Land when they visited, and that by Dr Heslop's grandchildren up until 2006 when they lived in the neighbouring but separate village of Totley.

7.29 Thirdly, and of particular significance in this case, it is necessary to discount the use of the Land that was more akin to the exercise of a public right of way than to the exercise of recreational rights over a village green for the detailed reasons set out in paragraphs 5.11 and 5.12 above. That includes walking both with and without dogs, where the walk was of such a nature that it would suggest that the user was exercising a right of way over specific routes rather than exercising a recreational right over the Land generally. In my view, a material amount of the use of the Land for general walking and dog walking must be discounted from the qualifying use for that reason.

7.30 There are two accepted public rights of way that cross the Land, namely Footpaths SHE/1132 and SHE/1133, which the Registration Authority has confirmed are to be added to the Definitive Map on its next review. In addition, there is an outstanding application to add the Claimed Way to the Definitive Map which runs across the Land. The use of any of those routes to walk along, whether with or without a dog, and to carry out other activities on that are ancillary to the exercise of the right of way, such as blackberry picking from the path, are uses that are more akin to the exercise of a right of way and must accordingly be discounted from the qualifying use. In addition, merely using the Land as a shortcut to get from point A to point B, such as to and from the School or to and from the Village, and for no other purpose, is a use that is more akin to the exercise of a right of way rather than the exercise of a recreational right over the Land and such uses must also be discounted from the qualifying use.

7.31 Applying that approach, it is my impression from the evidence that a considerable element of the use of the Land over the relevant 20 year period has been of such a nature. In terms of the oral evidence in support of the Application, I note in particular the following. Mrs Slater varied her walking route across the Land with her friend, but sometimes they walked via the Claimed Way from Vicarage Lane and then on to Footpath

SHE/1132. Similarly, Miss Hubbard indicated that her use of the Land for recreational walking included walking along the footpath, but that she walked off it when the conditions underfoot were reasonable. Again, Mr Humphries walked across the Land both as a means of access to and from the Village but also as part of a recreational walk on other occasions. He used the footpaths, but also, and more frequently, other parts of the Land. Mr Bearpark walked on the Land generally, but acknowledged that he stated in his questionnaire in support of adding the Claimed Way to the Definitive Map that he used that particular path on a fortnightly basis. Mr Cave has also walked on the paths as well as wandering around the Land, as has Mrs Veal who pointed out that the Land is not particularly well drained and becomes quite muddy in wet conditions when she would use the paths. Mrs Elaine Smith generally used the paths whilst her dogs ran around on the Land. Mr Farnsworth has been onto the Land generally, but much of his use was on or around the Claimed Way. It therefore appears to me from such evidence that many of those who used the Land for walking and dog walking were sometimes merely using it as a shortcut and not for recreational purposes, or were merely using the paths, whilst at other times they wandered over the grassy areas.

7.32 That impression is confirmed by the evidence of such witnesses in relation to others they saw using the Land. Hence, Miss Hubbard pointed out that some walkers she saw using the Land were using it as a means of access from point A to point B whereas others walked across the grass and in the area of the trees generally. Mr Cave noted that he had seen walkers both on and off the paths, although the majority had been on the paths. Indeed, he indicated that he saw dog walkers off the paths approximately 20% of the time and general walkers off the paths only approximately 5% of the time. Mrs Elaine Smith similarly stated that she saw other dog walkers on the Land who were “*mostly*” on the paths, and other walkers without dogs who were “*usually*” on the paths cutting through the Land. Mrs Baker referred to seeing some dog walkers on the paths and some off them, and to seeing people walking without dogs who were on the paths. Again, Mr Farnsworth had seen people walking on the Land both on and off the footpaths.

7.33 Such evidence in support of the Application is not necessarily inconsistent with much of the evidence in support of the Objections on that issue. Mrs Cam has regularly seen dog walkers using the Land walking on the edges of the Land and sometimes in the centre when it is not muddy. Mrs Riley had seen walkers with and without dogs walking off the paths, albeit generally merely to cut the corner. Mr Owen has seen dog walkers on the Land, but they were usually on the paths. The nature of the dog walking on the Land was such that Mr Truelove knew many of the dog walkers and had developed an understanding with them that they would walk

in the area beyond the current fencing, and he had seen dog walkers off the paths. Mrs Addis has seen walkers on the Land both with and without dogs and walking both on and off the paths. Mrs Joanne Smith has seen dog walkers on the Land, as has Mrs Pilling-Mesnage, whilst Mrs Hewitt has seen the public using the Land for general walking. Mrs Randall has seen walkers and dog walkers on the Land, but on the paths, which was also Mrs Dungworth's recollection. Further, Mrs Hunter has seen dog walkers on the Land, both on and off the paths.

7.34 Taking the evidence in its entirety, and taking account of the location and nature of the Land as I saw during the site visit, it is my view that the Land has been used by both general walkers and dog walkers throughout the relevant 20 year period. In relation to the former, the clear impression I have gained is that the primary use of the Land by walkers without dogs has been as a shortcut to gain access to and from the Village and also as a means of access to and from the School. There was a distinct lack of evidence of the Land being used regularly as a destination by general walkers, which given its size is not unsurprising. There was also a lack of evidence of inhabitants of the community using it as part of a longer recreational walk off the paths on any regular basis. Instead, its location and nature is such that it presents itself as an obvious and attractive shortcut to use rather than walking on footways alongside roads. The Land has also inevitably and understandably been regularly used as a means of access to and from the School. Such uses are not the exercise of a recreational right over a village green but, rather, are more akin to the exercise of a right of way.

7.35 As to dog walking, the Land has undoubtedly been used by dog walkers during the relevant 20 year period. That is apparent from the evidence on behalf of both the Applicant and the Objectors. Moreover, the Land is an ideal and convenient area to those living in the Village to let their dogs off the lead to give them some exercise. However, people have used the Land for that purpose in different ways. As indicated by the evidence referred to above, some have walked across the Land on the paths or used the Land as a shortcut while their dogs ran around, whilst others specifically used the Land to wander over the grass and around the Land generally whilst exercising their dogs. Only the latter is part of the qualifying use.

7.36 Having discounted those elements of use, it is next necessary to assess whether the qualifying use was carried out to a sufficient extent and frequency throughout the relevant 20 year period to establish town or village green rights over the Land.

7.37 In doing so, I find from the evidence that the primary recreational uses of the Land over that period were dog walking and walking without dogs. Those were the specific activities referred to most frequently in the evidence. For the reasons given above, I find that a material amount of those uses were more akin to the exercise of a right of way than to the exercise of town or village green recreational rights over the Land. As to the remaining qualifying use in relation to those activities, I note the following.

7.38 A number of the witnesses who gave oral evidence in support of the Application used the Land for those activities relatively infrequently over the relevant 20 year period. Mrs Slater used the Land only a few times each year until 2005, and some of that use was solely along the Claimed Way and Footpath SHE/1322 which must be discounted. Miss Hubbard used it approximately 5 times per year post 1988. Such use again included walking on the footpaths on some occasions, as confirmed by her user form in support of the Claimed Way being added to the Definitive Map. Mr Humphries used the Land only 5 or 6 times a year post 1988 when he sometimes walked on the footpaths. Mr Farnsworth only used the Land “*occasionally*” post 1988, and accepted that such use was largely a footpath use. Similarly, although Mrs Elaine Smith walked on the Land on a regular basis, she generally used the footpaths whilst her dogs ran around off the lead. Mr Cave used the Land approximately once a month for walking, sometimes on the paths and sometimes off them. However, the evidence contained in his footpath user form was that he used the Claimed Way once a fortnight which suggests that his use was largely more akin to the exercise of a right of way. Aside from her School based use which I address below, Mrs Veal used the Land every 3 or 4 weeks, but that again varied between the paths and the grass, largely dependent upon the conditions underfoot.

7.39 The remaining witnesses used the Land with a greater degree of frequency for such purposes. Mr Crosby walked on the Land weekly between 1994 and 2006 on his way to and from Church twice each Sunday. However, that involved walking across the Land to gain access to and from a specific destination. He also used the Land monthly from 1994 onwards for more general recreational purposes which is part of the qualifying use. Mr Bearpark used the Land a few times each week from around 1994, but that frequency reduced to once every 6 weeks. I take into account that he stated that he used the Claimed Way on a fortnightly basis in his footpath user form, indicating that a material element of his use of the Land was more akin to the exercise of a right of way. Mrs Baker exercised her dogs on the Land regularly from 1993 until 2006 and I note that her use for that purpose was a recreational one. Dr Heslop has also used the Land regularly and largely for recreational purposes.

7.40 Although a number of those witnesses referred to seeing others using the Land, I take into account that the identity of the vast majority were unknown by name and address and that I cannot assume that they were all inhabitants of Dore. Moreover, my view from the evidence is that many of those were using the Land as a shortcut to walk across, rather than exercising a recreational use, or were otherwise using the paths. Mrs Slater saw others only “*occasionally*”; Miss Hubbard pointed out that some walkers did use the Land merely as a means of access from one point to another whilst others used it on a more recreational basis; and Mr Cave’s evidence was that the vast majority of walkers and dog walkers using the Land used the footpaths, estimating that he saw them off the paths about 5% and 20% of the time respectively. Mrs Elaine Smith similarly saw other walkers and dog walkers who were “*mostly*” on the paths; and Mrs Baker and Mr Farnsworth had seen others both on and off the paths.

7.41 In relation to the written evidence in support of the Application, I necessarily attribute that less weight given that it was not subject to cross examination. Moreover, that factor is of particular relevance to the issue of whether the walking and dog walking activities referred to in the evidence questionnaires were carried out in such a manner that they were more akin to the exercise of a right of way rather than the exercise of a recreational right over the Land. That is simply not apparent from the forms.

7.42 Added to the above, I note the evidence in support of the Objections. The essence of that evidence on this issue is not that the Land has not been used for walking and dog walking, but that it has been so used largely in a manner that does not amount to the exercise of recreational rights, namely along the paths or merely as a shortcut to gain access to and from a particular destination elsewhere.

7.43 Taking into account all the evidence I heard and have read, it is my view that the use of the Land for walking and dog walking during the relevant 20 year period has been largely as a pleasant shortcut, as a means of gaining access to and from another destination, including the School, and as a walk along the paths. Although I accept that some such uses have taken place which have been recreational in nature and not confined to the paths and so are part of the qualifying use, my impression is that they were much more limited in nature and frequency by a few individuals on a more sporadic basis rather than by the general community of Dore asserting recreational rights over the Land. Indeed, I note and accept Mrs Hunter’s evidence that the use of the Land other than by the School and by people accessing and leaving the School was a low use. She was clearly not at her property and looking out over the Land continually and many could have used the Land

when she was not doing so. Nonetheless, I accept her observation that after living at The Vicarage for a ten year period, a picture built up as to the general extent to which the Land was used. She acknowledged that, in particular, dog walkers used the Land, indeed daily, both on and off the paths, but commented that on a typical day there would be a couple in the morning and a few at dusk. It seems to me that that largely reflects my impression of the evidence as a whole. That degree of use would, in my view, be insufficient in itself to demonstrate to the Landowner that recreational rights were being asserted over the Land by the local community.

7.44 Clearly, it is necessary to go on to assess those particular uses of the Land over the relevant 20 year period taken together with all other qualifying recreational uses that have taken place on the Land during that period. As to children's play, the main evidence in relation to that use related to play by children on their way to and from the School. In my opinion, insofar as that involved children running around and playing games on the Land as part of their journey to and from the School, or, for example, whilst waiting for their friends to come out of School or whilst their parents talked with other parents before setting off home, such recreational use of the Land would be ancillary to the primary purpose of using the Land to gain access to and from the School. Moreover, it seems to me that a landowner would not have understood such inevitable play by school children on open school land that they were crossing as part of their means of access to and from school to amount to the assertion of recreational rights over that land. The position would be different if, for example, school children stayed on the Land after school hours specifically to play there, or returned later in the day or at weekends or during holiday periods to play. However, there was very limited evidence that such occurred. There was also a distinct lack of evidence of the Land being used for children's play generally unconnected with the School. Miss Hubbard took her nieces and nephews to play on the Land, but as they were not inhabitants of Dore, such use cannot contribute to the qualifying use. Similarly, the use of the Land by Dr Heslop's grandchildren up until 2006 cannot contribute as they then lived in Totley. Although they lived in Dore from 2006, he pointed out that by then they more frequently played on the equipped Recreation Ground. A number of references were made to children sledging on the Land which I accept took place. However, by its very nature and dependence upon particular weather conditions, that activity would have been very infrequent.

7.45 I accept from the evidence that other recreational uses of the Land have taken place which must also be added to the qualifying use. Blackberry and elderberry picking were referred to. However, those activities

are necessarily seasonal in nature, and insofar as they took place from the route of Footpath SHE/1133, that would be a use that would be regarded as ancillary to a footpath use and not the assertion of a recreational right over the Land. Evidence of other activities on the Land such as kite flying and bicycle riding was extremely limited, and I find that such other recreational activities were only carried out on the Land very infrequently. Similarly, although I accept and find that the Land was used for Church barbeques and picnics on a number of occasions and for a performance of the Millennium Play, those occasions were by their very nature relatively limited.

7.46 Therefore, taking all the elements of the qualifying use together over the relevant 20 year period, it is my finding that the evidence fails to establish on the balance of probabilities that the qualifying use of the Land has taken place to such an extent and with such a degree of frequency throughout the relevant 20 year period to demonstrate to a reasonable landowner that recreational rights were being asserted over the Land.

Use by a Significant Number of the Inhabitants of the Neighbourhood

7.47 Given my above finding, it follows that I consequently also find that the Land has accordingly not been used by a significant number of the inhabitants of Dore Village for lawful sports and pastimes as of right throughout the relevant 20 year period.

Continuation of Use

7.48 The final element of the statutory criteria is whether the qualifying use continued up until the date of the Application which I have found to be 6 March 2008. The evidence on that issue is undisputed. I find that the current fence which prevented access to the part of the Land shaded blue on the Amended Application Site Boundary Plan was erected by the School on 14 December 2009, and that the use of the Land continued as it had previously until that date. Hence, that particular element of the statutory criteria has been satisfied.

8. CONCLUSIONS AND RECOMMENDATION

8.1 My overall conclusions are therefore as follows:-

8.1.1 That it is appropriate to amend the boundaries of the Application Land to those identified on the Applicant's Amended Application Site Boundary Plan;

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

- 8.1.3 That the relevant 20 year period is 6 March 1988 until 6 March 2008;
- 8.1.4 That Dore Village is a qualifying neighbourhood within the qualifying locality of the administrative area of Sheffield City Council;
- 8.1.5 That some lawful sports and pastimes have been carried out on the Application Land during the relevant 20 year period;
- 8.1.6 That the use of the Land for lawful sports and pastimes has been as of right throughout the relevant 20 year period;
- 8.1.7 That the Application Land has not been used for lawful sports and pastimes throughout the relevant 20 year period to a sufficient extent and continuity to have created a town or village green;
- 8.1.8 That the use of the Application Land for lawful sports and pastimes has accordingly not been carried out by a significant number of the inhabitants of any qualifying locality or neighbourhood within a locality throughout the relevant 20 year period; and
- 8.1.9 That the use of the Application Land for lawful sports and pastimes continued until the date of the Application.
- 8.2 In view of those conclusions, it is my recommendation that the Registration Authority should reject the Application and should not add the Application Land, whether as amended or otherwise, to its register of town and village greens on the specific grounds that:-
- 8.2.1 The Applicant has failed to establish that the Application Land has been used for lawful sports and pastimes to a sufficient extent and continuity throughout the relevant 20 year period to have created a town or village green; and
- 8.2.2 The Applicant has accordingly failed to establish that the use of the Application Land has been by a significant number of the inhabitants of any qualifying locality or neighbourhood within a locality throughout the relevant 20 year period.

9. ACKNOWLEDGEMENTS

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

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

RUTH A. STOCKLEY

14 February 2013

Kings Chambers

36 Young Street Manchester M3 3FT

5 Park Square East Leeds LS1 2NE

and

Embassy House, 60 Church Street, Birmingham B3 2DJ

Appendix 'C'



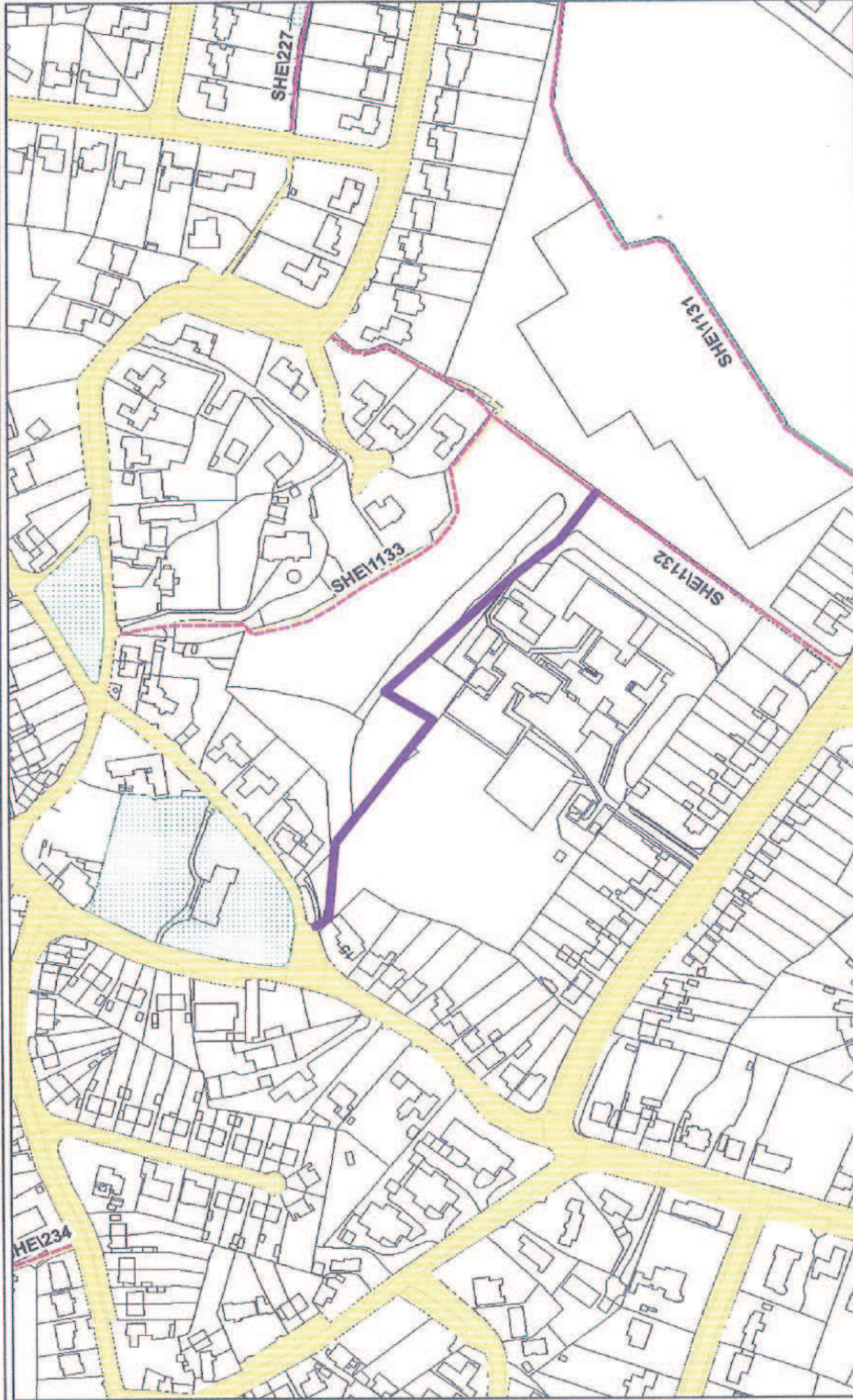
Appendix 'D'



PROW Group
Sheffield City Council
Howden House
Union Street
Sheffield
S1 2SH

Scale: 1:2,500

Dore Primary School / Kings Croft Playing Field



Crown copyright and database rights 2011 Ordnance Survey 100018816.
Additional information: PROW Group tel: 0114 273 6117 email: publicrightsofway@sheffield.gov.uk

A4 Landscape with Title

This page is intentionally left blank