AGENDA ITEM: 8 **Pages. 25 - 108**

Meeting	Planning and Environment Committee
Date	20 October 2010
Subject	**Application to Register Land, Quinta Public Open Space, Mays Lane as Town or Village Green**
Report of	Assistant Director of Planning and Development Management
Summary	This report contains the results of the independent public inquiry held into the relevant facts and legal issues in relation to the current application to register the subject land as a Town or Village Green under the Commons Registration Act 2006.
Officer Contributors	Martin Cowie, Assistant Director of Planning and Development Management
Status (public or exempt)	Public
Wards affected	Underhill
Enclosures	• Appendix 1 – Planning and Environment Committee report – 26 November 2008 • Appendix 2 – Inspector's report and recommendation to the Registration Authority – London Borough of Barnet - 5 January 2010 • Appendix 3 – Inspector's supplemental report and recommendation to the Registration Authority – London Borough of Barnet – 7 March 2010
For decision by	Planning and Environment Committee
Function of	Council
Reason for urgency / exemption from call-in (if appropriate)	N/A

Contact for further information: Martin Cowie, Assistant Director of Planning and Development Management, 020 8359 4514

1. RECOMMENDATIONS

1.1 That the application for registration as a Town or Village Green under Section 15 of the Commons Act 2006 be approved in respect of the land at Quinta Public Open Space, on the basis of twenty years use for lawful sports and pastimes, as of right, by a significant number of local inhabitants.

1.2 **That the applicant and landowner be informed of this decision in writing.**

2. RELEVANT PREVIOUS DECISIONS

2.1 There are no previous decisions relevant to this application however there has been one planning application (N00217) made in the past for use of the Quinta Club as a playgroup. The Quinta Club is not situated within the land to which the village green application refers to however it is within close proximity and there is no fencing dividing the two areas.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

3.1 N/A

4. RISK MANAGEMENT ISSUES

4.1 Rejection of the application might be challenged in the courts. A public inquiry held into the case concluded that the land meets the requirements under Section 15 of the Commons Act 2006 and that there is no legal bar to the registration of the land as a town or village green. The Council would therefore be likely to have to bear the full costs.

5. EQUALITIES AND DIVERSITY ISSUES

5.1 N/A

6. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

6.1 N/A

7. LEGAL ISSUES

7.1 This application is to be considered under the Commons Act 2006. The application was deemed to be received in whole by the Registration Authority on 08 August 2007

7.2. S.15(1) of the 2006 Act provides that any person may apply to a commons registration authority to register land as a town or village green, where one of subsections (2), (3) or (4) applies. These subsections are all variations on a theme. The same essential definition of a green applies. That is as follows:

“ 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”

7.3 This application was made under s.15 (2), i.e. the use as a village green has continued up until the time of the application.

7.4 Section 15(7) of the Commons Act 2006 provides that for the purpose of 15(2) of the Act:

> *(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".*

7.5 To be "as of right" the use must have been without force, without secrecy and without permission.

8. CONSTITUTIONAL POWERS

8.1 Council constitution Part 3, paragraph 2, Planning and Environment Committee Function 3, Commons registration and town and village greens.

9. BACKGROUND INFORMATION

9.1 On the 28 November 2008 Planning and Environment Committee approved that the application for registration as a Town or Village Green under Section 15 of the Commons Act 2006 be referred to an independent inspector to conduct a non-statutory public inquiry.

9.2 The evidence submitted with the application indicated that the land had been used for lawful sports and pastimes for more than twenty years as of right by a significant number of local inhabitants. However, having regard to national guidance it was considered given the complexity of the issues raised and the objections received by the Council as landowner that the matter should be dealt by an independent non-statutory public inquiry

9.3 A copy of the report to committee report is attached as Appendix 1.

9.4 The public inquiry took place between the 18 and 20 November 2009 with associated site visits by the Inspector. Evidence was heard from the applicants and the Council, acting in its capacity of landowner objecting to the application.

9.5 A copy of the Inspectors full report is attached as Appendix 2.

9.6 In concluding on the matter the Inspector made the following observations:

> *'In light of the above discussion, I find that the qualifying criteria laid down in Section 15(2) of the Commons Act 2006 for a new green in the case of the application site, which is referred to as Quinta Public Open Space in Form 44 and which is shown edged red on the plan at AB/12B(i), are satisfied.*

Although, in the circumstances, I would normally recommend that the application to register such land in the register of town or village greens should be allowed, at this stage I would advise the registration authority to take no further step in the matter until after the decision of the Supreme Court in the Redcar case. I understand that the appeal is to be heard over 2 days later on this month and a decision can no doubt be expected within say 2/3 months, if not sooner. If the decision of the Supreme Court reverses the decision of the Court of Appeal or otherwise requires me to re-visit my findings then it would be sensible to defer any decision on the application to register until I have had an opportunity of looking at the decision in Redcar and, if necessary, I will be inviting further submissions from the parties. It seemed to me that this was the appropriate course to take rather than to suspend all work on the report until well into next year when, it should be emphasised, my personal recollections of both the site and general area and, of course, the witnesses may not be as clear in my mind as they are at the moment.'

9.7 Following the Redcar case, the Inspector re-visited his recommendations and provided the following concluding remarks in his supplemental report:

'The ratio of Redcar in the Court of Appeal had been that if there was a conflict between the owner's use and the recreational use by local residents, and the use of the local people materially defers to the use by the landowner, the recreational use would not have the appearance to the owner of use as of right.

The Supreme Court have now determined that there is no overarching requirement concerning the outward appearance of the manner in which the local residents use the land. All that matters is that the use must be peaceable, open and not based on any licence from the owner of the land. There are no other vitiating circumstances and it is unnecessary to inquire further as to whether the locals' use would have appeared to the owner to be deferring to his right to use the land for his own purposes.

As I have found that the use on the part of local residents was, in all respects, qualifying use within the meaning of section 15(2) of 2006 Act, I would advise the

registration authority that there is no legal bar to their registering the application site (which is referred to as Quinta Public Open Space in Form 44 and which is shown edged in red on the plan at AB/12B(i)) as a new town or village green.'

9.8 A copy of the Inspectors supplemental report is attached as Appendix 3.

9.9 Officers are satisfied with the approach taken and conclusions reached by the Inspector and recommend that the application for registration as a Town or Village Green under Section 15 of the Commons Act 2006 be approved in respect of the land at Quinta Public Open Space accordingly.

10. LIST OF BACKGROUND PAPERS

10.1 The application and correspondence in support of the application.

10.2 Anyone wishing to inspect the background papers listed above should telephone 020 8359 5569.

Appendix 1

Planning and Environment Committee Report
28 November 2008

AGENDA ITEM: 10 Pages. 15 – 22

Meeting	Planning & Environment Committee
Date	26 November 2008
Subject	**Application to Register Land, Quinta Public open Space as Town or Village Green**
Report of	Head of Planning and Development Management
Summary	This report contains the result of officers' investigations into the relevant facts and legal issues in deciding whether or not to register the subject land as a Town or Village Green under the Commons Registration Act 2006.

Officer Contributors	Michelle Mungwengwe, Acting Principal Land Charges Officer
Status (public or exempt)	Public
Wards affected	Underhill
Enclosures	• Appendix 1 - Plan showing the subject land
For decision by	Planning & Environment Committee
Function of	Council
Reason for urgency / exemption from call-in (if appropriate)	N/A

Contact for further information: Michelle Mungwengwe, Acting Principal Land Charges Officer, 020 8359 5569

1. RECOMMENDATIONS

1.1 That the application for registration as a Town or Village Green under Section 15 of the Commons Act 2006 be referred to an independent inspector to conduct a non-statutory public inquiry.

1.2 That the applicant and landowner be informed of this decision in writing.

2. RELEVANT PREVIOUS DECISIONS

2.1 There are no previous decisions relevant to this application however there has been one planning application (N00217) made in the past for use of the Quinta Club as a playgroup. The Quinta Club is not situated within the land to which the village green application refers to however it is within direct proximity and there is no fencing dividing the two areas.

3. CORPORATE PRIORITIES AND POLICY CONSIDERATIONS

3.1 Establishing village green status would be in line with our ‘successful suburb’ priority and the ‘clean, green and safe’ priority. As a Village Green, the land will be protected under section 12 of the ‘Enclosure Act 1857’ against injury or damage and interruption to its use or enjoyment as a place for exercise and recreation.

4. RISK MANAGEMENT ISSUES

4.1 Rejection of the application might be challenged in the courts. Evidence has been provided indicating that the land meets the requirements under Section 15 of the Commons Act 2006. The Council would therefore be likely to have to bear the full costs.

5. EQUALITIES AND DIVERSITY ISSUES

5.1 Registration of the land as a Village Green would sustain an area to enjoy which is within close proximity of local inhabitants who may have difficulty travelling to the nearest park.

5.2 There is a Public Right of Way running down south-west boundary side.

5.3 Registration of this land will not compromise the council’s compliance of its public equalities duties.

6. FINANCIAL, STAFFING, ICT AND PROPERTY IMPLICATIONS

6.1 The land is already maintained by London Borough of Barnet, therefore the registration of the land as a Village Green would not have any maintenance or budget implications other than the potential expense of resisting challenge in the courts if the application were to be rejected.

If Committee agree for the determination of this matter to be at Public Inquiry, the estimated legal costs could amount to £10,000.

6.2. The Council is now minded to grant a 125 year lease of the land to AC Finchley, a local amateur youth football team. The disposition has once again been advertised under the Local Government Act 1972 and the Council's Cabinet Resources Committee has approved on 09 February 2007 such a grant. However since that approach, Ms Theodorou has made her application for registration of the land as a town or village green and the letting will not be completed until the result of the application is known.

6.3 If the application is accepted and granted, the Qunita Public Open Space will be registered as a village green. This will prevent any further development of the land. However, in respect of the use of the land and in particular whether the land can be subject to a lease to be used as a football club is less clear. The law is still subject to the development before the Courts. The Committee needs to be aware that the registration of a village green does not categorically prevent the Council from granting the lease to the football club. However, the Council will need to bear in mind the potential practical interference of those wishing to exercise their rights to use this land as a village green.

7. LEGAL ISSUES

7.1 This application is to be considered under the Commons Act 2006. The application was deemed to be received in whole by the Registration Authority on 08 August 2007

7.2 S.15(1) of the 2006 Act provides that any person may apply to a commons registration authority to register land as a town or village green, where one of subsections (2), (3) or (4) applies. These subsections are all variations on a theme. The same essential definition of a green applies. That is as follows:
" 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"

7.3 This application is made under s.15 (2), i.e. the use as a village green has continued up until the time of the application.

7.4 Section 15(7) of the Commons Act 2006 provides that for the purpose of 15(2) of the Act:

> *(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".*

7.5 As noted at paragraph 9.3 below the applicant has defined the neighbourhood area and all the supporting statements have come from people living within it.

7.6 From the evidence submitted it appears that over time children have played on it, playing football, cricket, riding their bicycles, etc, and people have walked their dogs, and so on. All these activities are "lawful sports and pastimes" for this purpose according to case law. Such use continues. It is not relevant that such use is more intensive in the summer months and better weather and reduces or even ceases during the winter.

7.7 There has never been within the statutory period any indication of any restrictive use, or signs and notices that indicated some restrictive use.

7.8 To be "as of right" the use must have been without force, without secrecy and without permission. There is open access to the land and the use has not taken place secretly. Acquiescence is not the same as giving permission and on current case law it cannot be said that permission has been given. The conclusion must be that the use has been as of right.

7.9 There is no statutory definition of a "significant number" of local inhabitants but the evidence gives the clear impression of regular use, particularly by successive generations of children. 66 evidence questionnaires plus 15 letters support from members of households in the area have said that they, or their children, have used the land at some time during the past twenty years or so.

7.10 Before the land was leased to the trustees of the Quinta Club, it was held as playing fields or a recreation ground under section 4 of the Physical Training and Recreation Act 1937, this allowed the land to be used or managed by the authority to be used amongst other uses as playing fields, clubs or societies with an athletic, social or educational object.

7.11 On 28 August 1969 the lease was surrendered and the running of the club was handed back to The London Borough of Barnet. After the termination of the Quinta lease in 1969 there is no evidence of the appropriation of the land to any purpose other than under the aforementioned Section 4 of the 1937 Act.

7.12 Section 4 of the Physical Training and Recreation Act 1937 was repealed by virtue of section 81 and the Schedule to the Local Government (Miscellaneous Provisions) Act 1976 and it was replaced by Section 19 of the 1976 Act. This in essence further widened the powers of the local authorities to use the area as it thinks fit for a wide range of various recreational facilities.

7.13 Between 1993 and 1996, it would seem that there was no resolution of London Borough of Barnet altering the status of the land. After 1996 the land was let to the Lyonsdown Football Club.

7.14 The relevant 20 years to begin to consider is the 20 years to the date of the application i.e from 8 August 1987 to 8 August 2007.

7.15 The status of land which has been made freely available for recreational use for local people under section 4 of the Physical Training and Recreation Act 1937 and section 19 of the Local Government (Miscellaneous Provisions) Act 1976. The use of the land up until 1965 is not *as of right* because it has been made

available under express statutory powers given to local authorities for that purpose.

7.16 In 1965 when the land was leased to the Qunita Club there is a change and on the face of it the Qunita Club was granted exclusive use of the land. Any use of the land by the local people would have been of right. There is no evidence that the Club ever objected. Therefore when the lease of the Qunita Club came to an end in 1969, any use between 1965 to 1969 would have been as of right.

7.17 In 1969 when the lease came to an end, the Council continued to run the land as a Youth Club, which would have been permitted without a formal appropriation due to the broad powers under s.19 Local Government (Miscellaneous Provisions) Act 1976 as described above. The Council at this point did not appear to direct its mind to whether local people should be allowed to use the land, thus the status quo remaining essentially unchanged. In view of this the use by local people would have continued as of right up until 1996 when a lease was granted in 1996 to the Lyonsdown Football Club.

7.18 Turning to 1996, on the face of it, use by local people would have been permissive. The fact that permission was not communicated would not appear to be material: In the present case there was nothing in the conduct of the landowner that told users that their use was permissive, so to that extent, the case of users were entitled to believe that their use continued was as of right. Moreover, although the resolution to grant the lease would have been a public document, the lease itself would not have been. On the face of it, the entitlement of local people to use the land derives, not from the lease itself, but from a pre-existing entitlement.

7.19 The extent of that permission is further explained in paragraph 9.7

7.20 It is usually the case that if users have 20 years recreational use which is *as of right* "under their belt", that consent is to be disregarded in determining whether use thereafter continues to be *as of right*. The Council's view is that use was *as of right* between 1965 and 1996 and thereafter was by permission. However by 1996, users appear to have got 20 years use under their belt. Permission thereafter was not communicated and users of the land continued to use the land as of right.

8. CONSTITUTIONAL POWERS

8.1 Council constitution Part 3, paragraph 2, Planning and Environment Committee Function 3, Commons registration and town and village greens.

9. BACKGROUND INFORMATION

9.1 The application land, Quinta Public Open Space (also known as the Quinta Field and previously known as part of Duck's Island) is located at Mays Lane, Barnet and is shown on the plan with this application. It is approximately 225 metres at its longest point reducing to 113 metres by 111 metres wide narrowing to 32 metres. The land is

grassed. There are no buildings on the land but there is a former club house directly adjacent, a footpath also runs across from Mays Lane and the Horseshoe Lane.

9.2 The land is owned by London Borough of Barnet and, in its capacity as landowner, L.B.Barnet has objected to the application. The objection asserts that the use of the land has not been (as required by statute):

(1) as of right;
(2) continuous throughout the relevant 20 year period;
(3) by a significant number of the inhabitants of a locality

9.3 The land was bought in 1936 as part of a larger area of 63 acres by Barnet UDC. From the minutes of the Barnet UDC referred to in the objection one minute refers to the acquisition of the land under section 69 of the Public Health Act 1925; the another minute refers to the acquisition of the land *for the purposes of public walks and pleasure grounds, under the Public Health Acts 1875 to 1925.*

9.4 It is not known how the land was managed by Barnet UDC between 1936 and 1965. However on 8 March 1965 the Council let the land to trustees of the Quinta Club for a term of 28 years.

9.5 By 1967, approximately 400 members, and the Trustees decided to hand over its running to LB Barnet. That authority continued to run it as a youth club until 30 March 1993, when it was closed.

9.6 At the end of 1993 the Recreation Leisure and Amenity Committee approved the grant of a lease of the land to the Lyonsdown Football Club. The view was taken that the land was land consisting or forming part of an open space and accordingly its proposed disposition was advertised under section 123 of the Local Government Act 1972. Following that advertisement, the grant of a lease was approved by the Land and Buildings Executive on 10 November 1994. The Executive was told that the provisionally agreed lease terms provide for public rights of access over the land for informal recreational purposes.

9.7 The lease was granted on 24 May 1996. It was to the Trustees of the Lyonsdown Football Club and for a term of 20 years. As regards the use of the land, the Trustees covenanted as follows:

3.12.3 To use the Demised Premises in the case of the playing fields only as sports grounds for training purposes and for the playing of Association football ruby cricket or athletics_or for hiring out to local Schools for sports day activities or for such other recreational purposes approved from time to time by the Council. To use the Grange Pavilion as changing facilities only in connection with the use of the playing fields and to use the Quinta Club Building as changing shower and kitchen facilities and for social educational charitable and other community uses subject to the Council's approval thereof first been obtained and the obtaining of all necessary planning permissions or other permissions as may be required for such use by the Trustees at their own expense.

The lease was stated to be:

SUBJECT TO the exception and reservations set out in the Third Schedule hereto.

The Third Schedule included the following:

(e) to permit the public to have unrestricted access to the land other than the buildings erected thereon at all times except between sunset and sunrise for use as a public open space PROVIDED that such use may be controlled by the Trustees in any manner previously approved by the Council to prevent it having an adverse effect on the Demised Premises and in particular no organised games shall be permitted without the consent of the Trustees. The term "games" shall mean games played by persons over the age of seven years either in any organised manner or involving the use of stumps hard balls footballs ruby footballs or any apparatus which would or might adversely affect the Demised Premises in its use for playing Associated Football. Any dispute arising as to the meaning application and interpretation of this clause shall be decided by the Council and be binding on all parties.

The lease was surrendered on 12 April 2000.

LB Barnet is now minded to grant a 125 year lease of the land to AC Finchley, a local amateur youth football team. The Council's Cabinet Resources Committee has approved on 09 February 2007 such a grant. However since that approach, Ms Theodorou has made her application for registration of the land as a town or village green and the letting will not be completed until the result of the application is known

9.8 An application was made on 19 July 2007 by Ms Georgia Theodorou containing 66 evidence questionnaires in support from residents of over 20 years, as well as 16 photographs and plans showing the location of the land and defining the "neighbourhood" boundary respectively.

9.9 The statutory consultation process was undertaken and letters dated 24 August 2007 went to 162 properties within the neighbourhood boundary defined by the applicant. These evoked fifteen representations, all of which fully supported the application for village green.

9.10 In summary it would appear from the evidence submitted with the application that the land has been used for lawful sports and pastimes for more than twenty years as of right by a significant number of local inhabitants. However, having regard to national guidance it is considered given the complexity of the issues raised and the objections received by the Council as landowner that the matter should be dealt by an independent non-statutory public inquiry.

9.11 If the Committee is minded to reject the recommendation for the matter to be determined at a non-statutory public inquiry, the alternative options are to reject the application in it's entirety or grant the application for a village green.

10. LIST OF BACKGROUND PAPERS

10.1 The application and correspondence in support of the application.

10.2 Anyone wishing to inspect the background papers listed above should telephone 020 8359 5569.

Legal - PAR:
CFO - MG

Exhibit 'A'

Quinta Public Open Space

Village Green Registration application

Locality Map

Legend:

Locality (about ½ mile radius around Quinta Public Open Space)

RECEIVED
-9 AUG 2007

Quinta Public Open Space boundaries (not including building & car park)

Appendix 2

Inspector's report and recommendation to the Registration Authority

London Borough of Barnet

5 January 2010

COMMONS ACT 2006, SECTION 15(2)
APPLICATION FOR THE REGISTRATION OF LAND KNOWN AS QUINTA PUBLIC OPEN SPACE SITUATED AT MAYS LANE, BARNET, EN5 AS A TOWN OR VILLAGE GREEN

INSPECTOR'S REPORT AND RECOMMENDATION TO THE REGISTRATION AUTHORITY – LONDON BOROUGH OF BARNET

The Application Site

1. The application site (which will be referred to hereafter as either *'the application site'* or *'the field'*) is shown edged red on the plan in the applicant's bundle (AB) at p.12B(i). It is located in what appeared to me to be a fairly heavily populated area on the western outskirts of Barnet, lying between Bishops Close and Partridge Close with a frontage onto Mays Lane. It is a rectangular-shaped field of approximately 7 acres and is owned by the London Borough of Barnet (*'the Council'*). The field is unregistered. I shall deal with the conveyancing history later as it is important to the objector's case.

2. The Council has two roles: (a) as landowner it objects to the application to register the field as a town or village green (*'TVG'*), which it does through its Property Services Department, and (b) it is also the relevant registration authority and for these purposes is acting through its Local Land Charges Department.

3. I have visited the application site on two occasions. My first visit was unaccompanied and took place in the afternoon of 17/11/09, the day before the public inquiry (*'the inquiry'*), and the second was on 20/11/09, which was the last day of the inquiry when I was accompanied by representatives of the applicant and the objector. On both occasions I observed dog walkers on the field. On my first visit I observed a number of people using the field for informal recreation.

4. The field itself is flat and well-managed and is well suited to use by locals as recreational land. On the road frontage there is access into the field at a number of points. At the western end there is a broken stile (in front of which there is a pile of logs), next to which there is an opening fit for pedestrian traffic. Moving east, there is then a well-trimmed

hedgerow which stops at an opening wide enough for vehicles when the two metal posts in situ are unlocked and are lowered beneath the surface of the ground (Mrs Faccini said that these metal posts were installed in around 1997/98 – apparently they replaced a gate which had been damaged by travellers). Moving further west the height of the hedgerow rises to some 10-15' behind which there is a run of mesh fencing running to the corner of Bishops Close (possibly a distance of as much as 100 yards) which was almost certainly intended to keep balls from being kicked into the road. Along this run of fencing there are two gaps for pedestrians to enter the field, one larger than the other. In the larger opening someone has placed corrugated sheeting on the ground to make walking through the gap easier.

5. At the main entry point on the road frontage there is a post on which (one beneath the other) there are the following signs (both of which would be more conspicuous were it not for the accumulation of undergrowth in front of the post):

QUINTA Y/C

CENTRE

LEADER: MR A TILLY

NO HORSE RIDING

POOP

SCOOP

AREA

CLEAN IT UP

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6. A short distance away from the same entry there is a traditional style dog waste bin which has been placed there by the Council (there is another similar waste bin at the bottom end of the field on the western boundary). A short distance back from the waste bin there is a pole which must be around 10' high on which there is the following sign:

BARNET

NO HORSE RIDING

NO GOLFING

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7. Behind the main entry point into the field there is a derelict 2-storey building which once housed the former Quinta Club which has, to all intents, been abandoned since 2000. (As a footnote, it was interesting to observe that the building contained a foundation stone which stated that it has been laid by Billy Wright on 26/06/65.) The building is now an eyesore and is covered in graffiti and all the openings are shuttered with metal sheeting and the like to prevent entry by vandals. At the front and on the west side of the building there is a tarmac apron. To the east of the building there are paving slabs which are now heavily overgrown. The building itself is at a slightly higher level to the field behind it and covers an area of approximately 2,140 square feet.

8. The field itself slopes away from the road until it reaches what is known as Dollis Brook which is a small stream shallow enough to walk across in wellington boots from one side to the other. Abutting the field on its eastern side there are two developments. The first is Bishops Close where those houses at Nos.14-24 back onto the field, most of which have ready access through gates into the field. Not all these properties have unobstructed access into the field as there is, running along this boundary, a good deal of undergrowth and there was evidence that this aided security. The second development is the end of a cul de sac called Southfield where Nos.26-30 also abut the field. I think most, if not all, of

these properties also have ready access into the field. Beyond the end of Southfield there is a gap with open access into fields which also back onto the stream.

9. At the south east corner of the field, next to the stream, there is an old oak tree. As you move west along the bank there is a good deal of undergrowth although it is not long before you come to a well-established clearing which runs gently down to the stream (which can be covered in no more than around three or four strides) and up another clearing on the bank on the opposite side where there is also a gap in the hedgerow leading directly into another field. The clearing on the side of the field is noteworthy for the fact that there is another large oak tree with a rope swing hanging from a large bough on which I also noticed the remnant of an old cord which was no doubt the remnant of earlier swing. A little way back from the clearing there is the site of a bonfire which looks as though it may have been there for some time. This clearing is a prominent feature and is bound to be a place where people habitually congregate in the drier weather.

10. Moving further westwards, there is more undergrowth although it is not as impenetrable as some of the undergrowth behind Bishops Close and would be perfectly capable of being a play area for children at the side of the stream. At the corner of the field on its south west side there is a pedestrian footbridge across the stream which takes you into another field. At the entry point of the field there is a signpost pointing in three directions. To the south, which will take you across three fields to Totteridge, the signpost says

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RED CIRCULAR

WALK

YELLOW CIRCULAR WALK

Pointing north (ie back towards Mays Lane) the sign says:

YELLOW

CIRCULAR WALK

LOOP

DOLLIS VALLEY GREEN WALKS

Pointing west the sign says:

LONDON LOOP

DOLLIS VALLEY GREEN WALK

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11. There is in fact a public footpath running the length of the field to the metal footbridge. Before the stile fell into disuse, this would have been the point of entry from Mays Lane. The registration authority bundle at tab 1 contains an extract from the definitive map and statement for the area and the footpath (bearing the number 18) is shown to run down the western side of the field on what is an old plan. It is probable that a number of people using the field are there primarily because they use the footpath with its links to the footpaths indicated on the above-mentioned signpost. The area is attractive countryside and these are likely to be popular walks for locals and visitors to the area.

12. Turning back towards Mays Lane, the field adjoins open land to the west for around half its distance until one comes to another residential development called Partridge Close where the rear of the houses at Nos.4-12 back onto the field. Although I did not check this in every case, most of these houses enjoy access into the field (I counted at least 5 gates) although there was a good deal of undergrowth behind most of these houses. As I recall, the undergrowth was not nearly as impenetrable as it was in some parts on the other side of the field behind the dwellings in Bishops Close / Southfield, although it was, as I recall, quite overgrown in the vicinity of the old Quinta Club.

13. Before leaving my description of the application site, I should mention four other matters. First, the field is well maintained and has always been cut by the Council. There is no suggestion that the grass has ever been left to grow. Second, drainage is poor in the bottom 50-100 yards of the field. Third, there is no record of any signage on the field which would operate to render use in the relevant period not as of right. Fourth and last, the application site does not include the old Quinta clubhouse and an area of land surrounding it, including the main entrance (see plan at AB/12B(i)).

The Wider Area

14. As already indicated, the application site is located on the western outskirts of Barnet. To the west, it is partly bounded by Partridge Close which I was told was developed in 1993/94. To the east, it is bounded by Bishops Close, which I was also told was developed in 1976/77, and by Southfield which looks like a development of the 1950s/60s (indeed one witness, a Mr J H Stevens, has lived at Southfield since 1953). The north of the field is bounded by Mays Lane which is a minor road running west from the centre of Barnet, to the north of which, in the vicinity of the field, there is substantial development. To the west of Partridge Close there is farmland and the area is largely undeveloped until Barnet Gate in the area of the A411. To the south of Dollis Brook, there is open space until Totteridge and the A5109. To the south east, there are playing fields, notably the Grange Playing Fields, and, further east, the Old Grammarians Playing Field. Both these fields have pavilions.

15. After my accompanied visit to the field on 20/11/09, I walked and / or drove around virtually the whole of the claimed neighbourhood (which the applicant has identified within the area edged black on the plan at AB/12A(i)) which includes the following streets:

Mays Lane (part only)

Partridge Close

Bishops Close

Southfield

Adrian Close

Ridgeview Close

Connaught Road

Windsor Road

Alan Drive (west side only)

Chesterfield Road

Eleanor Gardens

Palmer Gardens

The parade of shops at Nos. 171-181 Bells Hill

Whitings Road

Mineral Close

Greenland Road

Shelford Road

Nupton Drive

Stanhope Road

Edwyn Close

Dormer Close

Dexter Road

Niton Close

Golda Close

Nos 1-11 Darlands Drive

16. In the course of the hearing I expressed an interest in learning more about the ages of the developments within the foregoing streets. In the case of Bishops Close and Partridge Close this was not a problem. However, it was common ground that, with the exception of Partridge Close, the claimed neighbourhood has been developed as we see it today for at least the whole of the period of 20 years before the application to register was made in

July 2007. I was helpfully provided by the objector with ordnance survey extracts for this part of Underhill Ward showing its state of development in 1935 and 1966 when, with the exception of Partridge Close and Bishops Close, the claimed neighbourhood was (at least as far as I can tell, as the plans in question do not include the whole of the claimed neighbourhood) fully developed. The plans in question will be found at OB/120A and 120B. I should perhaps add for the sake of completeness that in the case of Eleanor Gardens (which may well be sheltered housing for the elderly) there is a notice indicating that the development (which presumably includes Palmer Gardens) was completed in 1984.

17. It seemed to me that the bulk of the development comprising Mays Lane (part only), Greenland Road, Shelford Road, Nupton Drive, Stanhope Road, Edwyn Close, Dormer Close, Dexter Road and Niton Close is likely to have been a post war development. Much, if not all, of this housing is similar in design and is likely to have been built (no doubt in phases) during the 1940s/1950s at a time when substantial provision was being made by local authorities for low cost housing. In my view, these streets are the core of the claimed neighbourhood and make it a coherent area even if, at the margins, it is reasonably arguable that it could have included streets which were excluded or excluded streets (or parts of streets) which might have been included.

18. There was, for instance, debate over the inclusion in the claimed neighbourhood of (a) only the west side of Alan Drive, and (b) the parade of shops in Bells Hill.

19. In the case of Alan Drive, I can understand the logic of a neighbourhood boundary ending on the west side of this street. For one thing, the design of the houses on the other side differ to those on the west side which are all even numbers. There is the further fact that the footbridge at the bottom of the street represents, in my view, and as the applicant herself explained, a coherent divide between one community and another such that it would not be irrational to exclude from the claimed neighbourhood those houses on the east side of Alan Drive. One really has to observe this on the ground to be able to understand the logic in this.

20. The parade of shops at Nos.171-181 Bells Hill also plainly serve the claimed neighbourhood. The shops include the following: a chemist, a fish and chip shop, a cafe / burger / sandwich shop, a supermarket, a barbers' shop, a ladies' hairdressers, dry cleaners and, just round the corner on the roundabout at 4A Chesterfield Road, a Martins'

convenience store in which there is a sub-post office. It seemed to me that this parade of shops logically falls within the claimed neighbourhood. In fact they make it more cohesive than might otherwise have been the case if, for instance, the whole of Bells Hill had been excluded.

21. I should add that although I observed another parade of shops (and a community hall) further along Mays Lane (between Hammond Close and Leeside) they seemed to me to fall within another district. Three things struck me as important here. First, these shops are a good walking distance away from the bulk of the streets comprised within the claimed neighbourhood. Second, one sees that at this end of Mays Lane there are other infants and junior schools which, in all probability, serve a different catchment. Thirdly, attention should be paid to the fact that Whitings Hill School on Whitings Road (which is a combined infants and junior school) lies within the claimed neighbourhood and it struck me when I saw it as being the logical geographical extent of the claimed neighbourhood on its north west side.

Conveyancing and recent history

22. The application land was purchased with other land (comprising a parcel of approximately 62 acres) by the Council's predecessor (the Urban District Council of Barnet) under a conveyance dated 29/05/1936. The deed (which will be found in OB/tab 2) is silent as to the purpose of the acquisition of such land and the application site is that marked 53 on the conveyance plan in OB/tab 3.

23. On the face of it, the land was almost certainly purchased by the then council under its general powers under the Local Government Act 1933, now replaced, of course, by section 120 of the Local Government Act 1972. The relevance of the purpose underlying the acquisition of such land will be explained later but, for the present, I should deal with the documents which are before the inquiry.

24. The starting point is the clip of documents comprised within the objector's supplemental bundle (*'OSB'*) which is in date order from back to front. These documents disclose the following:

- Council minute dated 5/11/35, para 16 (OSB/24), notes under the heading *'Open Spaces. Totteridge'* that the council approved the payment of a deposit in

relation to the *'proposed acquisition of 63 acres of land as open space at Totteridge'*.

- Council minute dated 31/03/1936, para 17 (OSB/21), notes under the heading *'Totteridge Park Estate'* that the council approved the application to the Ministry of Health of a loan of £19,300 *'in connection with the purchase of about 63 acres of land at Totteridge Park Estate, for purposes of an open space under section 69 of the Public Health Act 1925'.*

- Parks & Open Spaces Committee minute dated 26/03/1936, para 8 (OSB/17) notes under the heading *'Totteridge Park Estate'* that the town clerk *'reported receipt of Ministry of Health sanction to a loan of £19,300 repayable within 60 years, for the purchase of 63 acres of land at Totteridge Park Estate for the purposes of public walks and pleasure grounds, under the Public Health Acts 1875 to 1925'.*

- Housing & Town Planning Committee minute dated 2/07/1936, para 2 (OSB/14), notes under the heading *'Totteridge Park Estate'* that the county council's planning committee (ie Hertfordshire) had decided to make a recommendation that the county council *'make a grant of 20% of the net purchase price of this Estate .. Various points were mentioned by the County Council concerning Town Planning Proposals affecting the land and in noting with approval the action of the County Authority, your committee recommend the Council to refer these further points to the Surveyor for attention in due course'*.

- Council minute dated 7/07/1936, para 27 (OSB/10), contained a reference (under the heading *'King George Memorial Fund. Open Spaces'*) to *'the land recently purchased by the Council as an open space in the Totteridge Park Estate'.*

- Housing & Town Planning Committee minute dated 31/12/1936, para 3 (OSB/8), notes under the heading *'Totteridge Park Estate'* that a draft agreement had been received from the county council concerning their *'proposed contributions towards the cost of the 63 acres at Totteridge Park purchased by the Urban Council ... and has been referred to the Clerk and Surveyor for report to the Council in Committee on Tuesday next, it being recommended, however:- "That*

in returning the draft to the County Council they be asked to apply to this land their recent resolution to make a grant of 25% of the gross cost in lieu of their earlier decision in this case of a grant of 20% of the net costs inasmuch as the land is a definitive part of the Urban Council's comprehensive scheme for Open Spaces'.

- Town Planning Committee minute dated 1/07/1937, para 5 (OSB/4), notes under the heading *'Totteridge Park Estate'* that a letter had been *'received from the County Council stating that they were unable to recommend re-opening the question of the grant towards the cost of land purchased by the Council at this estate being extended to the full amount of the grants later decided to be made for Regional Open Spaces, namely 25% of the total cost'.*

- Parks & Open Spaces Committee minute dated 31/08/1937, para 8 (OSB/2) notes under the heading *'Totteridge Park Estate'* that *'£1,500 had been received from Herts C.C. on account of their grant towards the purchase price of this land'.*

25. In the result, there is no evidence that an express resolution was ever passed by the Council's predecessor authorising the acquisition of land, which included the application site, for the statutory purposes under section 164 of the Public Health Act 1875 or, for that matter, under section 9 of the Open Spaces Act 1906. Under section 164 any urban authority may purchase or take on lease, lay out, improve and maintain lands for the purposes of being used as public walks and pleasure grounds. There is authority that the effect of this section is to confer on the public the right to use such land for recreation: *Hall v Beckenham Corporation [1949] 1 KB 716*. Under section 9 of the Open Spaces Act 1906 a local authority may acquire and manage land which is *"open space"* as defined by section 20. Under section 10 of the Open Spaces Act 1906, such open space is to be held and administered in trust to allow, and with a view to, the enjoyment thereof by the public as an open space and for no other purpose.

26. In the minute dated 31/03/1936 the council authorised an application for a loan for an acquisition of open space under section 69 of the Public Health Act 1925. This section authorised a local authority to *'acquire by purchase, gift or lease, and may lay out, equip and maintain lands, not being lands forming part of any common, for the purpose of cricket, football or other games and recreations, and may either manage those lands*

themselves and charge persons for the use thereof or for admission thereto, or may let such lands, or any portion thereof, to any club or person for use for any purposes aforesaid'. Sub-section (2) authorised a county council, local authority or parish council to contribute towards the expenses incurred under the section by any other council or authority which, it appears, is probably what happened here.

27. Section 69 was repealed by the Physical Training & Recreation Act 1937 under which (by section 4(1)) local authorities were authorised to *'acquire, lay out, provide with suitable buildings and otherwise equip, and maintain lands ... for the purpose of ... playing fields ... or for the purpose of centres for the use of clubs ... or organisations having athletic, social or educational objects, and may manage those lands and buildings themselves, either with or without a charge for the use thereof or admission thereto, or may let them, or any portion thereof, at a nominal or other rent to any person, club, society or organisation for use for any of the purposes aforesaid.'*

28. Section 4 of the 1937 Act was repealed by the Local Government Act 1976 and was replaced by section 19 of the Local Government (Miscellaneous Provisions) Act 1976 which continues in force. Section 19, which deals with the provision of recreational facilities by local authorities, is notable for the fact that it omits any reference to leasing land for such purposes to third parties. This is a matter which is now governed by section 123 of the Local Government Act 1972 under which local authorities are given power to dispose of land in any manner they wish, including sale of their freehold interest or granting a lease or assigning any unexpired term on a lease and the granting of easements. The only constraint is that a disposal must be for the best consideration reasonably obtainable except, that is, in the case of short tenancies, which is a tenancy for less than 7 years.

29 In order to complete the picture, the Public Health Act 1875 and the Open Spaces Act 1906 also contained powers to make byelaws in order to regulate the use of such land although there is no evidence that byelaws have ever been made in relation to the application site. I specifically asked Mr Booth for confirmation of this fact.

30. At the start of the inquiry I enquired as to whether all the relevant in-house records germane to the acquisition of the application site were before me, and as a result further researches in the Council's archives I was handed the further documentation contained in

the OSB (that is, with the exception of the minute in OSB/17 dated 26/05/36 in the case of a meeting of the Parks & Open Spaces Committee, which was already in evidence).

31. The next development was the grant of a lease in 1965 by the Council's predecessor to the Trustees of the Quinta Club. The term was 28 years at a nominal rent. The holding is shown on the plan at OB/18 which shows that only a portion of the application site (admittedly a substantial slice of it) would have been let. It was in the context of the letting that the now derelict building on the field was constructed. The lease contained a user covenant at clause 2(f) which required the land to be used as *'the Youth Club and sports ground of the Quinta Youth Club or of any other sports club whose ground is temporarily unfit or for representative games or for use by youth organisations'.* On the face of it, this was a letting with exclusive possession (the statement of the objector's main witness, George Church, their Principal Valuer, at para 7 (OB/107), confirms this) for a limited recreational purpose and would no doubt have satisfied the provisions of either section 69 of the Public Health Act 1925 or its replacement, namely section 4(1) of the Physical Training and Recreation Act 1937.

32. The lease was surrendered in 1969. The former Quinta Club premises were thereafter run by the Council as a youth centre until its closure in 1993. In 1996 a much larger holding was let to the trustees of the Lyonsdown Football Club (no doubt pursuant to their powers under section 123 of the Local Government Act 1972). The holding included the whole of the application site as well as the Grange playing fields. The lease will be found in OB/tab 6 with the plans at OB/33&34 (the holding in the case of the application site ended short of the edge of the stream at the bottom of the field). The term of the lease was 20 years at what was presumably a commercial rent. The lease contained a reservation in the third schedule at (e) (OB/61) which allowed the public unrestricted access to the field (but not the buildings) *'at all times except between sunset and sunrise for use as public open space'* subject to control by the tenant *'in any manner previously approved by the Council to prevent it having an adverse effect on the Demised Premises and in particular no organised games shall be permitted without the consent of the trustees'.* The lease also contained a user covenant which limited user *'in the case of the playing fields as sports grounds for training purposes and for the playing of Association Football rugby cricket or athletics or for hiring out to local schools for sports day activities or for such other recreational purposes approved from time to time by the Council'* (OB/45 at 3.12.3).

33. The lease to Lyonsdown Football Club was surrendered on 12/04/2000. Michael Pouncett, who was Honorary Secretary of the club between May 1994 until May 2000, gave evidence at the inquiry about the extent of the club's usage of the application site. He said that the loss of a sub-tenant meant that they could no longer afford the letting. At this point the building fell into disuse although the Council have continued to maintain the area and cut the grass.

34. The future of the application site is now dependent upon the outcome of the application to register. In his statement at OB/107, Mr Church says that he became involved with a proposal to let the field *'to secure sports use of the property as the Council was, and still is, keen to see the property brought back into use as a sports facility'* (see para 10). It also seems to be the case that public notices pursuant to section 123(2A) of the Local Government Act 1972 (which are required in the case of disposals of land by local authorities where the land is open space) were put up on site as well as being made in the local press as is required by the section (see OB/73&74 – the press notices are dated 16/11/06). In his statement, Mr Church says that the Council received 8 letters in response to these notices with 5 being in support of a proposed letting with 3 against. There is a photograph at OB/120C showing one of the two section 123(2A) notices put up on site by Mr Church. However, before the proposed letting could be taken any further the applicant made her application to register on 19/07/2007.

The Application to Register

35. On 19/07/07 Ms Georgia Theodorou applied under section 15(2) of the Commons Act 2006 to register the site as a new green. Pausing there, the applicant has not in fact ticked the box in her application form to show that her application is made under section 15(2) although plainly it must have been in light of the evidence given at the inquiry of user continuing to the date of application.

36. The application was in the prescribed form 44. The application form contained the following entries:

- Question 1: the form was addressed to the Council as the registration authority.
- Question 2: Ms Georgia Theodorou gave her name and address as applicant.
- Question 3: was left blank as she was not acting through solicitors.

- Question 4: this part was left blank but the application was presumably based on CA 2006 s.15(2) (as explained).

- Question 5: the application land was stated to be usually known as *'Quinta Public Open Space'* and a map was attached – AB/12, whereon the application land was shown edged red – which was later revised as shown on AB/12B(i).

- Question 6: the relevant locality or neighbourhood within a locality is not stated in the form although a locality radius was shown edged black on the plan at AB/12 which described the relevant locality as being within *'about ½ mile radius around Quinta Public Open Space'.* Before the inquiry the registration authority was presented with another plan at AB/12A in which the locality was described as being *'Underhill Ward'* (which was shown edged red on the plan) and a case based on a qualifying neighbourhood was advanced by reference to the area edged in black on the same plan. At the beginning of the public inquiry the applicant introduced the further plan at AB/12A(i) on which a slightly modified neighbourhood edged in black was shown.

- the Question 7: the justification for the application was said, in summary, to be recreational use by local inhabitants as of right for at least 20 years.

- Question 8: identified the Council as the landowner.

- Question 9: was not relevant (dealing with voluntary registration).

- Question 10: the application was accompanied by the locality map at AB/12; a lease which will be found in OB/tab 6; a number of evidence questionnaires and some photographs.

37. The application was publicised by the registration authority in accordance with the regulations (*The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007*). The publicity notice invited objections and the only objection received was from the Council, as owner of the site.

38. The main points taken by the objector in its undated notice of objection (OB/1-7) were as follows:

    - There had been no sufficient user by local inhabitants as a matter of fact to justify registration.

- The usage of part of the field under a lease made with the trustees of the Lyonsdown Football Club in the period 1996-2001 *'was clearly inconsistent with the use of the site for village green purposes'* – it is presumably being alleged that in the period of the letting such user as there had been by local inhabitants would not have brought the existence of the claimed right to the attention of the landowner.
- Such user had been permissive or was *'by right'* and was therefore not *'as of right'* within the meaning of the CA 2006.
- There was no evidence of any qualifying *'locality'* .

39. To complete the picture, in his summary of issues at OB/125, the following is also alleged by counsel for the objector:

- hat the locality relied on by the applicant is not an area recognisable in law: *Ministry of Defence v Wiltshire County Council [1995] 4 All ER 931*).
- That the area relied on by the applicant as a locality does not constitute a neighbourhood within a locality: *R (on the application of Cheltenham Builders Ltd) v South Gloucestershire District Council [2003] EWHC 2803 (Admin).*
- There had been no sufficient user by local inhabitants within the meaning of the CA 2006: *R (on the application of Alfred McAlpine Homes Ltd v Staffordshire County Council [2002] EWHC 76 (Admin).*
- The use of the application land for lawful sports and pastimes *'is incapable of contributing towards justification for registration of land as a town or village green, given the basis on which the land was originally purchased': R (Beresford) v Sunderland City Council [2004] 1 AC 889.*

40. I was instructed by the registration authority on 7/07/09 after which I gave directions on 5/08/09 dealing with procedure at the inquiry which was held over 3 days at Hendon Town Hall on 18, 19 and 20 November 2009.

41. Representation at the public inquiry was as follows:

- The applicant was represented by Christopher Maile who is not a lawyer but who has experience of non-statutory inquiries in this particular branch of the law.

- Mr Alexander Booth, of counsel, appeared for the objector.

42 I would like to thank the parties' representatives for their very careful and helpful presentations of their respective cases. I would also particularly like to thank Ms Poonam Rajput of the registration authority who made all the administrative arrangements for the inquiry with exemplary efficiency.

New Greens: Law and procedure

43. Section 15(1) of the Commons Act 2006 enables any person to apply to the commons registration authority to register land as a TVG in a case where subsection (2), (3) or (4) applies.

44. Section 15(2) applies where:

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

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

45. ***a significant number***

This term has never been defined but in *R v Staffordshire County Council, ex parte Alfred McAlpine Homes Ltd [2002] EWHC 76 (Admin)* Sullivan J (as he then was) said (under the heading *'My Conclusions'*) that *'significant'* did not mean a considerable or a substantial number. He said that the correct answer is that 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'*. It is, therefore, very much a matter of impression from the evidence whether the usage relied on is by a *significant number of the inhabitants of any locality or of any neighbourhood within a locality*.

46. In the *McAlpine Homes* case Sullivan J also said this:

'84. It is difficult to obtain first-hand evidence of events over a period as long as 20 years. In the present case there was an unusual number of witnesses who were able to speak as to the whole of the period. More often an inspector at such inquiries is left with a patchwork of evidence, trying to piece together evidence from individuals who can deal

with various parts of the 20 years period. In the present case, however, the evidence of the 6 witnesses who were able to cover the whole 20 year period was amply supported by many other witnesses who dealt not simply with the last few years but with a very considerable part of the 20 year period, some of them going back almost 20 years, some going back to times before the 20 year period began ...

In addition to the oral evidence, the inspector had the written evidence. Clearly, he had to treat that evidence with caution because it was not subject to cross-examination but, having looked at the totality of that evidence, he was entitled to conclude that it was largely consistent with and supportive of the oral evidence given by the applicant's witnesses to the effect that many local people from Leek had been using the meadow for informal recreation for more than 20 years without permission or objection ...

In addition, the inspector was entitled to have regard to the matters set out in paragraphs 7.3 to 7.8 of his report: that is to say, the meadow is within easy walking distance from the centre of Leek. There are footpaths leading to it. It is beside the Ladydale Well, which is a well-known local attraction. It is very easy to get into the Meadow from Ladydale Well over the stile. There is also the Carriage Drive Gate, which the inspector concluded was rarely locked and sometimes open. There were no signs forbidding entry and generally the surrounding circumstances were entirely consistent with the contentions of the applicant's witnesses that people were using it for informal recreation: there was an absentee landowner: the land had little agricultural value; the agricultural licensee had little interest; and so forth ...

In short, all of the pieces of evidence referred to above pointed in the same direction. That is to say that there had indeed been use for 20 years or more by a significant number of the inhabitants of Leek and of the adjoining estate.'

47. In the *McAlpine Homes* case the Inspector had concluded that substantial use had been made of the land for informal recreation for more than 20 years before the application. He referred specifically to 6 of the witnesses who could give evidence covering the whole of the 20-year period. The objector had argued that 6 out of a population of 20,000 was not a significant number. The judge accepted that if all of the 6 had said that they had not seen others on the land over the 20 year period, then it would be difficult to see how 6 out of 20,000 or one out of 200 could be said to be significant. But the judge said that the fact of the matter was that the 6 did not give such evidence: they were able to give evidence,

not merely about what they did themselves, but what they saw others doing on the land over the 20-year period.

48. The claimed locality in the *McAlpine Homes* case was the town of Leek in Staffordshire which at that time had a population of 20,000 and the Inspector had concluded that the claimed green had been used for recreational use by a significant number of the inhabitants of the town. The judge also concluded that the Inspector had approached the matter correctly in saying that *'significant'*, although imprecise, is an ordinary word in the English language and little help was to be gained by trying to define it in other language. In addition, the judge found that the Inspector had correctly concluded that, whether the evidence showed that a significant number of the inhabitants of any locality or of any neighbourhood within a locality had used the land for informal recreation was very much a matter of impression. What matters, as the judge determined, was whether the number of people using the land was sufficient to indicate that the use of the land was (as already explained) *'in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers'*. In short, where the locals' user is insignificant, in the sense that it is merely trivial or sporadic, then it is unlikely to be qualifying use.

49. In dealing with the issue of *'significant number'* I intend to approach the matter from the standpoint of whether the evidence as a whole indicates, on the balance of probabilities, that a *significant number* of local inhabitants from the claimed neighbourhood are using the application site for informal recreation. I shall judge this issue as best I can on the basis of the evidence which was before the inquiry and from my own observations of the area.

50. ***the inhabitants of any locality, or of any neighbourhood within a locality,***

The origins of this lay in the fact that that it has long been the common law of England, before the law changed in 1965, that a customary right to indulge in *sports and pastimes* could only exist for the benefit of some legally recognised administrative division of the county otherwise it would be termed a *right in gross* which would be a right without limit on the number of people using it which could not support a claim to a TVG. Indeed, in *Ministry of Defence v Wiltshire County Council [1995] 4 All ER 931* at 937b-d, per Harman J, it was held (following *Edwards v Jenkins (1896) 1 Ch 308*) that a *locality* had to be an administrative area known to the law such as a civil or ecclesiastical parish. A locality is

not simply an area which is in the vicinity of the claimed green. That this is so has been especially clear since the decision of the House of Lords in *Oxfordshire County Council v Oxford City Council [2006] 2 AC 674* where it was affirmed that rights to use the land for recreation are consequential on its registration as a green. Plainly if that is so, a certain means must exist to identify those who do (or, as the case may be, do not) have such rights. Administrative areas known to the law provide the necessary means.

51. Parliament amended the definition of town or village green in 2000 because it accepted that this was so and, because it wanted to make it easier to secure registration of land as a town or village green, Parliament introduced the concept of *'neighbourhood within a locality'*, a concept which made no sense except if the boundaries of the relevant locality were themselves clear and ascertainable with precision.

52. There is no case law to suggest that an electoral ward can be a locality within the meaning of section 15, although this may be implicit in the margin notes to paragraph 6 on Form 44. I must though caution myself against relying on these notes as an aid to construing whether an electoral ward can in fact constitute a locality in law. On any footing, however, an electoral ward is an administrative area known to the law. In my view, section 15 does operate in practice to distinguish between, on the one hand, *localities* which are known to the law and, on the other, *neighbourhoods* which need not be a recognised administrative unit, and which may very well straddle more than one *locality*. Having said that, in *R (on the application of Laing Homes Ltd) v Buckinghamshire County Council [2003] EWHC 1578,* at para 138, Sullivan J was not inclined to accept that an electoral ward was a locality although the outcome in that case did not turn on this issue. My own view is that I am not bound by what was said about this in the *Laing Homes'* case and that the concept of locality, embracing as it does current local government boundaries, would include electoral wards.

53. In this case Mr Booth, for the objector, raises no challenge to the claimed locality, namely the electoral ward of Underhill, and I think that he was right to make this concession. Having considered the judgment of Harman J in *Ministry of Defence v Wiltshire County Council* it is clear to me that an electoral ward is perfectly capable of qualifying as an administrative entity known to the law. I do not suggest that every ward must be a locality in law, merely that it should be capable of being one, and in this case I consider that Underhill ward would fall into this category.

54. ***neighbourhood within a locality***

In *Cheltenham Builders Ltd v South Gloucestershire District Council [2003] EWHC 2803 (Admin)* Sullivan J (as he then was) rejected the notion that a neighbourhood is any area of land that an applicant chooses to delineate on a plan. He said this at para 85:

'The registration authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness, otherwise the word 'neighbourhood' would be stripped of any real meaning. If parliament had wished to enable the inhabitants of any area (as defined on a plan accompanying the application) to apply to register land as a village green, it would have said so'.

55. In the *Oxfordshire* case Lord Hoffmann at 27 speaks of a neighbourhood as not being an area of legal or technical significance (*'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'*), although he did not comment on Sullivan J's view that a neighbourhood had to be *a sufficiently cohesive entity which is capable of definition.*

56. It follows from all this that a plan showing an area within which people use the green will simply not be good enough unless it embraces what can be identified either as an administrative unit (ie a locality) or what might sensibly be regarded as a sufficiently cohesive community (ie a neighbourhood) within that locality. The answer to this question is plainly a question of fact. In this case the applicant is, of course, relying on the neighbourhood shown in the plan at AB/12A(i), as already explained.

57. ***as of right***

The term as of right involves statutory prescription which is the legal process by which long use of another's land is converted into a legal right to use the land. In the context in which it arises (ie in the case of private law easements, inferring dedication as a highway and TVGs) 20 years uninterrupted user as of right will usually suffice to lay claim to the right in question.

58. The as of right issue is at the heart of this branch of the law. The applicant must show that he has used the right as if he were entitled to it. What it traditionally comprehends is user which is not by force, stealth or with the express or implied licence of the landowner. The

essence of the rule is that for at least 20 years the landowner has acquiesced in the claimed use as in an established right and the landowner cannot be regarded as acquiescing unless the user would appear to the reasonable landowner to be an assertion of the right claimed.

59. Since the recent decision in *R (Lewis) v Redcar and Cleveland Borough Council & Persimmon Homes (Teesside) Ltd [2009] EWCA Civ 3*, one now has to add to the list without also *deferring* to the landowner's superior user. The ratio of *Redcar* is that if there is a conflict between the landowner's use and recreational use by local people, and the use of the local people materially *defers* to the use by the landowner, the recreational use will not have the appearance to the landowner of use as of right.

60. *Redcar* is an issue in this case as the objector contends that any local user would have deferred to or otherwise been subordinate to the use which had taken place on the application site under the Lyonsdown Football Club lease between 1996-2000. If this is right then user as of right will have been precluded as by voluntarily desisting from interfering with the owner's activities (ie by walking around the pitch, rather than across it, when a game or training was taking place) it would not have appeared to the landowner (or his lessees or licensees) that the local inhabitants were asserting a right to use the field for the sports and pastimes in which they were indulging. It should though be noted that in paragraph 47 of his judgment in *Redcar* Dyson L.J said this:

' ... that it is a question of fact and degree for the fact-finder to resolve whether in practice there is inconsistency between the activities on his land of the owner and the recreational activities of the local inhabitants. In some cases the activities of the owner may "in practice" make no difference to the activities of the local inhabitants in the sense that they will not need to adjust their activities to allow for those of the owner. In such cases, provided that the use has been nec vi, nec clam, nec precario, it is likely that it will be held that the activities of the local inhabitants have the necessary appearance of asserting a right against the owner. But in a case where there is a conflict between the activities of the owner by the local inhabitants, and the activities of the local inhabitants can only be accommodated with those of the owner by the local inhabitants deferring to the owner's use, then the activities of the local inhabitants may not have the appearance of asserting a right against the owner. On the contrary, those activities may have the appearance of an acknowledgment by the local inhabitants that they have no right at all. Those who

always defer to the owner whenever his competing use of the land threatens to interfere with their use of the land are not likely to convey to the reasonable owner the impression that they are claiming the right to use the land'.

61. The *Redcar* case involves two inter-linked issues and arises from the use of the application land by the landowner (or his lessees or licensees). These are (a) whether the character of the locals' usage changes so that it defers to the landowner's own use, such that the reasonable landowner is entitled to conclude that the locals are not acting as of right; and (b) whether the landowner's use constitutes a material interruption without necessarily precluding user as of right. It is a moot point whether the legal effect of deferring to the landowner on part of his land is referable to the whole of the land just as the legal effect of user of part of the land can, in a proper case, be treated as referable to the whole.

62. The issue of whether a temporary interruption of the use of part of the land by those engaged in organised sports precludes registration of a town or village green is not one that is the subject of any judicial authority. My own view on this is that the answer is one of fact and degree such that it would not be appropriate to exclude the land just because it was unavailable for lawful sports and pastimes for only limited periods (ie where the interruption was insignificant, in the sense that it did not substantially interrupt or interfere with the use by local people) whereas, for instance, if part of the land had been taken over by a substantial civil engineering project and the works site excluded part of the application land for a substantial period or periods then the length of the works, coupled with the size of the works' site, may well make it appropriate, as a matter of fact and degree, to preclude registration of that part or even the entirety of the land if it meant that the character of the user had changed. These are difficult questions and may well be resolved quite soon now that *Redcar* case is going on appeal to the Supreme Court and which I understand will be heard on 18/19 January 2010.

The Recreational trust and Beresford

63. This brings us to the so-called recreational trust and user *by right* rather than *as of right*. In *Beresford v Sunderland City Council [2004] 1 AC 889*, Lord Bingham said at para 3 that, in the context of TVG law, user as of right does not mean that the inhabitants should have a legal right since the question is whether a party who lacks a legal right has acquired one by user for a stipulated period. At para 9 Lord Bingham also said that user

as of right would also be inconsistent with user pursuant to a statutory right to do so. It follows from this that user which is pursuant to a legal right (ie pursuant to a permission or a right contained in some statute) which may confer on local residents and on others a right to use the claimed green will take the land out of section 15 of the Commons Act 2006.

64. It is argued in this case that the circumstances surrounding the acquisition of the application site and other land in 1936 was such as to engage the public right of access arising under section 164 of the Public Health Act 1875 (or by parity of reasoning section 10 of the Open Spaces Act 1906). Accordingly, the use of these parcels by the public was not a use *as of right* but *by right* and the land would not be eligible for registration.

65. At para 30 in Beresford Lord Scott also said that it is unnecessary, in order for open space land to have been acquired under the 1906 Act for it to be expressly stated in the deed of transfer or in some other council minute. However, in my view, there must still be some evidence from which a registration authority is able to conclude that the land has been acquired or appropriated to use as open space and held under the relevant sections of the Acts of 1875 or 1906 (or indeed under any other statute which gave rise to an implied statutory licence which conferred on the public a right to use the relevant land for recreation).

66. Lord Scott seems to be saying at the end of para 30 that it is arguable that all local authority open space is impliedly exempted from registration as a town or village green. In my view, this does not represent the present state of the law and there is nothing in the Commons Act 2006 to suggest that Parliament could not have intended publicly owned parks and recreation fields to be registered. It should be emphasised that the views of Lord Scott on this were obiter and the question will one day have to be resolved in the Supreme Court. However, his views should nonetheless be accorded serious weight and it seems to me that in any case where land has plainly been acquired or appropriated for the purposes of the Acts of 1875 or 1906, registration as a town or village green will normally be precluded.

67. ***in lawful sports and pastimes***

This term was considered in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council [2001] 1 AC 335* at 356/7, where Lord Hoffmann said that it was '*not two classes*

of activities but a single composite class ... As long as the activity can properly be called a sport or a pastime, it falls within the composite class'. He also said at p.357 that he agreed with Carnwath J. in *R v Suffolk County Council, ex parte Steed [1995] 70 P & CR, 487, 503,* when he said that dog walking and playing with children were, in modern life, the kind of informal recreation which may be the main function of a village green. In practice, therefore, use of the application land for dog walking, children's play and general informal recreation will normally suffice as qualifying user under section 15.

The effect of registration

68. There are 3 main consequences: (a) land becomes a new green only when it is registered as such; (b) registration as a new green confers general recreational rights over the green on local people; and (c) registration as a new green subjects the land to the protective provisions of section 12 of the *Inclosure Act 1857* and section 29 of the *Commons Act 1876*, which in practice preclude development of greens.

Determination of the application

69. The regulations provide no procedure for an oral hearing to resolve disputed evidence. The regulations seem to assume that the registration authority can determine disputed applications to register new greens on paper. A practice has grown up, repeatedly approved by the courts, whereby the registration authority appoints an independent Inspector to conduct a non-statutory public inquiry into the application and to report whether it should be accepted or not. In some cases, procedural fairness will make an oral hearing not merely an option but a necessity. In *R (Whitmey) v Commons Commissioners [2005] 1 QB 282*, it was held that the procedure by non-statutory public inquiry did not infringe art.6 of the ECHR because any decision of the registration authority is subject to review by the courts.

Procedural issues

70. The onus lies on the applicant for registration.

71. It is no trivial matter for a landowner to have land registered as a green and all the elements required to establish a new green must be *'properly and strictly proved'* (*R v Suffolk CC ex p Steed (1996) 75 P&CR 102 at p.111 per Pill LJ, approved by Lord Bingham in R (Beresford) v Sunderland City Council [2004] 1 AC 889, at para 2*).

72. There is no obvious reason why the standard of proof should not be the usual civil standard of proof on the balance of probabilities.

73. It was held in the *Oxfordshire* case that an application is not to be defeated by drafting defects in the application form. The issue for the commons registration authority is whether or not the application land has become a new green.

74. It was also held in the *Oxfordshire* case that the registration authority can register part only of the application land if it is established that part but not all of the application land has become a new green. Indeed, it was thought that a larger or different area could be registered if there was no procedural unfairness.

75. In the *Oxfordshire* case it was said by Lord Hoffmann at para 61 that *'the registration authority has no investigative duty which requires it to find evidence or reformulate the applicant's case. It is to deal with the application and the evidence as presented by the parties'*. In my experience this is a common dilemma facing Inspectors at non-statutory inquiries in what is a complex branch of the law where, more often than not, the applicant's case is being advanced by individuals without proper legal training.

Evidence for the applicant

76. I deal firstly with the oral and written evidence of those who attended the inquiry. I shall then turn to the written evidence of those who did not attend the inquiry.

Georgia Theodorou – the applicant

77. Ms Theodorou read her statement (AB/96) in which she states that she has lived at 288 Mays Lane (which is just across the road from the field) since September 2002. She says she uses the field almost daily in the summer and at other times of the year when it is dry. She takes her two young children there after school and they cycle on the field. She says her family spend time there at weekends and her children will run around chasing each other or play imaginary games. She says they also kick a ball around, throw frisbees, fly kites, ride their bikes around or investigating the hedgerows. They also look out for birds, trees, fungi and wild flowers as well as play in and around the stream with other children whom they see in the field. They also pick sloe and blackberries. She also says that in winter when there is snow, locals build snowmen and have snowball fights. She says that she often sees her neighbours in the field doing much the same. In her statement she is

at pains to point out that the field is a haven for she and her neighbours. She also speaks about the wildlife, birds and insects which can be found in the field and in the vicinity of the stream. She has never sought permission to use the field or otherwise been impeded in her access onto the field.

78. She also produced photographs showing informal recreation taking place on the field. These will be found at AB/104-08. At my request she also produced a short schedule at AB/102A in which she described what was taking place in these photographs. The photos numbered 6/7 were taken by her neighbour at No.286. The rest were taken by her. Accompanying her written statement Ms Theodorou also produces her own evidence questionnaire at AB/109. There are a number of these in the evidence and it is noteworthy that the plan on the third page of this document ('Map A') is supposed to identify both the application land and the claimed locality which it does not do in any specific sense. In her oral evidence Ms Theodorou explained that the map was taken from the A-Z directory and was what she thought represented the relevant locality in 2007. She said that she understands more about what this expression means now than when she drew up these questionnaires in 2007.

79. Ms Theodorou also produced a letter of support from the Head teacher of Grasvenor Infants School (AB/111A) which lies well outside the claimed neighbourhood who says that many of the children from his school come from the *'neighbourhood that makes use of the Quinta Public Open Space and I know that they use this field regularly to play in'*.

80. Ms Theodorou also explained how the questionnaires were obtained. It seems that she followed the format used by the Open Spaces Society. The questionnaires were put through the letter boxes of houses on four estates (where usage of the field was considered likely) along with a note asking that they be completed and returned to one of the addresses of seven people who were helping her. The note indicated that the questionnaires would be used to support an application to register the field as a town or village in order to protect the land from development.

81. Ms Theodorou explained that her interest in this matter began after the section 123(2A) notices were posted by the Council in the local press in November 2006 (OB/73&74). The press notices notified the public that the Council were proposing to let the former Quinta Club premises *'to bring the property back into use as a sports facility with a club house'*. Representations were invited from the public no later than 14/12/06.

82. It appears that Ms Theodorou and her supporters wrote to the Council after 14/12/06. In her case it was just before Christmas. She complained that the notices on site were not placed where they could be seen. At any rate, she cannot recall whether she received any written response from the Council. She did however attend the meeting of the Special Chipping Barnet Area Environment Sub-Committee on 01/02/07 where a petition (which will be found in AB/tab B) was presented to the members. She said that she had undertaken this exercise to discover more about the level of local support for preventing development on the land.

83. The petition is headed: *'Petition to save Quinta & Grange open space'*. Beneath this heading the following is stated: *'We, the undersigned, do not want the Council to lease out the Quinta and Grange playing fields. We demand that the Council keep these fields as* ***Public Open Space*** *so that all the local community can use them and benefit from them.'* The petition is completed merely by the signatories adding their name and address and is thus not well-suited to the more detailed inquiry which has to take place when one comes to examine the evidence advanced in support of qualifying user for TVG purposes. However what I did was to ask Ms Theodorou to provide me with a breakdown of the responders' addresses in order that it might be determined how many of them lived within the claimed neighbourhood or within or outside the claimed locality.

84. The results were interesting in that of the 437 people who signed: (a) 167 lived within the claimed neighbourhood; (b) 98 lived elsewhere but still within the claimed locality; and (c) 172 lived outside the claimed locality. In other words, of those who signed 38% lived within the claimed neighbourhood. The breakdown will be found at AB/120H. Various adjustments were made at the inquiry which I hope have been noted on everyone's copy of sheet AB/120H where, incidentally, on checking I found the overall total to be 437 and not 436. Ms Theodorou seems to have been the principal mover when it came to the petition (it was a task which I think she shared with 3 others). She said that she spoke to people on the field, knocked on doors and also went looking for signatures at a local shopping centre, at local schools and at playgroups where she spoke to local mothers. The impression she gained from the petition (*'my perspective'* as she put it) was that a majority of those to whom she spoke knew the field and that *'a lot'* of people had used it, whereas only a small minority had to have the position explained to them. Ms Theodorou explained that the petition enabled her to discover more about local support for the fields

and it encouraged her to believe that it would be worthwhile taking the matter further by applying to register the field as a town or village green later on that same year .

85. Despite local opposition to the proposal to let the former Quinta Club premises and the Grange playing fields, the relevant committee nonetheless resolved that the Executive Director of Resources be instructed to advise the Cabinet Resources Committee that the sub-committee supported the proposal to bring back the former Quinta Club premises and the Grange Playing Fields *'into a sports and community use facility'* (see OB/76). Later, on 19/02/07, the Cabinet Resources Committee duly resolved to affirm its earlier decision made on 6/12/06 that *'125 year leases of each of the Former Quinta Club, Mays Lane, Barnet and the Grange Playing Fields, Ridgeview Close, Barnet be granted to A.C. Finchley Limited .'* (see OB/94).

86. It was against this background that Ms Theodorou says that she and others formed the action group known as the Quinta Green Residents' Association (QGRA) which was set up purely for the purposes of the application to register the field as a town or village green. The group had a committee of 5 members plus Ms Theodorou which met from time to time and from those meetings a decision was made to apply to register the field as a town or village green, an application which was made in her name. She also said that she tried to get help from two organisations and from solicitors but none of them wanted to assist without payment.

87. It seems that the original locality map at AB/12 (Exhibit 'A' to the application to register dated 19/07/07) was a collaborative effort and, as already indicated, when the questionnaires were being completed (which occurred in the period June/July 07) Ms Theodorou conceded that although she had read about the terms *neighbourhood* and *locality* she did not really comprehend in any detail what they meant, at least at that time, and I cannot see that she can be criticised for this.

88. The final locality / neighbourhood plan, namely that at AB/12A(i), seems to have been completed only a few days before the inquiry. Ms Theodorou says that this plan took several days to prepare and was arrived at as a result of discussions amongst the QGRA committee members and other local residents. She says it represented a *'tightening up of the boundaries'* of the (second) locality / neighbourhood plan which she had forwarded to me sometime after I had given directions for the inquiry on 5/08/09. This plan will be found at AB/12A and the final plan at AB/12A(i). The difference between the last two

plans is that the final neighbourhood plan (a) draws in the boundary on the western side, which is mainly farmland anyway and I do not consider that anything turns on this; (b) omits Jarvis Close, most of Sellwood Drive, part of Sampson Avenue and Juniper Close; and (c) includes the parade of shops at Nos.171-181 Bells Hill. As already explained, I see no objection to the inclusion of the shops in Bells Hill, nor do I see any objection either to the exclusion of the small estate behind Chesterfield Road. There was evidence about this which I shall come to later.

89. Ms Theodorou was questioned closely about the boundaries of her final neighbourhood plan. She identified various blocks of housing which she said comprised the bulk of the housing within the neighbourhood. I have already mentioned these streets but what she does, in substance, is to divide up the area between the post war estates of the late 1940s/50s and those estates which came later. In my view, the differences between the various developments and their likely ages are readily apparent when one looks closely at the design and appearance of the dwellings within the claimed neighbourhood. For instance, the houses in front of the field in Mays Lane, in Shelford Road, Greenland Road, Stanhope Road, Nupton Drive, Edwyn Close, Dormer Close, Palmer Gardens, Dexter Road and Niton Close are similar in appearance and may very well have been built as separate phases of the same development, whereas other developments came later on; in the case of Partridge Close much later on.

90. Ms Theodorou was also very clear in her own mind that the parade of shops belonged within what she regarded as her community whose inhabitants are (as she put it) *'the people who use the field regularly'*. For instance, she said that she knew around half the inhabitants of Partridge Close because of their use of the field. When questioned about the shops she said that she included them after discussions with other people. One of the reasons why Sellwood Avenue was excluded was because it was, I think, a problem area and as a result she did not associate it with her own community. Mr Mackenzie gave evidence about this.

91. Ms Theodorou said that she and her supporters had been looking to find an *"average"* boundary for her claimed neighbourhood and that this explained why only one side of the road in Alan Drive fell within it. She also considered (as I have already mentioned previously) that the footbridge at the bottom of this road lent itself to such a divide, a conclusion with which I would agree having inspected the area myself. She went on to

say that the shops in Bells Hill are also used by locals within the claimed neighbourhood whereas the shops in Aitken Road and Quinta Drive are not.

Mr J.H Stevens

92. Mr Stevens (whose statement is at AB/90) has lived at 35 Southfield since 1953. He was actually born in Barnet in 1919.He says that since around 1924 the field has been open to ramblers and walkers. His children grew up playing in the fields and would often use the stream and field as their camp. He also deals with the establishment of the Quinta Club in the 1960s when local tradesmen gave of their time to build the club for the benefit of local youngsters who used the area as a playground. He says that he regularly walked in the field until 2 years ago (he is now in his 90s) and he has seen others (some of whom he recognised as locals) using the field for informal recreation and he mentions dog-walkers and people flying kites. He also mentions groups playing rounder's, football and golf and teenagers having bonfire parties. He says that during the autumn *'these fields'* are used for blackberry picking. He also says that although he no longer walks in the fields he sees may people walking past his house in the direction of the application site with their dogs. He ends his statement saying that he has never been denied access to the field, nor has he ever seen any sign or notice discouraging local usage.

93. His oral evidence covered much the same ground. He said that in Southview all the children played in the field and his children played there in the 1950s. He also said that all the local people walked their dogs there. He also said that Shelford Road, Greenland Road and part of Upton Drive had already been built when he went to live at Southfield in 1953. This is the western end of the estates to the north of Mays Lane and reinforces my view that most of the streets comprising the core of the claimed neighbourhood were built as long ago as the 1940s/ 50s.

94. Mr Stevens also put in his evidence questionnaire at AB/93 in which he notes that he has used the field *'on and off'* for 77 years and that although in the early years he had played there with his own children he then used it for walking *'all the time'*, weather permitting.

Troy Potter

95. Mr Potter has lived at 24 Bishop's Close since 1987 (this house is on the junction of Bishops Close and Mays Lane). He is now aged 28 which means that his parents moved into this address when he was a small boy. He says that he has always used the field. His

statement is at AB/69 and the questionnaire responses of his mother, Mrs Nahid Potter, will be found at AB/73. She too uses the field for walks on *'most days'* and has also seen others there.

96. In his statement Mr Potter says that he uses the field at least 4 times a week. He has seen other locals there and because his house backs on to the field he can see dog-walkers, runners and youngsters playing in the field. He himself now regularly practices pitching a baseball into a net in the field. He says the field is regularly used by locals for recreation and is popular with families at weekends. It is a place where local people meet. He also cites pastimes such as kite flying, mountain biking (he and his friends use the field for this activity), blackberry picking and people with radio-controlled model aeroplanes. He also mentions that primary school children use the field for nature walks (in his oral evidence he said that occurred twice a year when he attended Whitings Hill Primary School although he last observed this activity taking place in the field about 6 years ago) and when he was at secondary school he and other older local children would pass through the field on their cross-country running circuits.

97. Mr Potter covered much the same ground in his oral evidence. He was at pains to point out that he has a good view of the field and he actually works from home. He also marked on a copy of the plan at OB/123A where there was a football pitch at one time. This was a smallish pitch occupying the middle portion of the upper half of the field. He also played football on the field himself until he was 10/11 years old and was also a spectator when Lyonsdown Football Club played matches there and he says he stayed off the pitch during games. He recalls doing this on around 5 occasions. He said that his baseball pitching (either alone or with a friend) used to occur about twice a week and occupied some 3 or 4 hours of his time (he is actually a member of a baseball team). This took place near his house but he no longer does this. My understanding of his evidence was that there had been rope swings on the tree next to the stream for some time. He also said that he walked a dog on the field in 2003/04.

98. He agreed with the applicant's claimed neighbourhood. He has or had friends on both sides of the divide. He also mentioned that he was once a member of cub and scout groups which played on the field once or twice a year in the period 1988-1991. In cross-examination he said that because he did not know anyone on the north east side of Alan Drive he did not consider it part of his neighbourhood.

99. Mr Potter also knew that people from outside the area used the field and he mentioned training runs by members of the boxing club in New Barnet and individuals from Boreham Wood but without going into detail. Finally, he made the point that people tended to walk around the edge of the field when the weather was wet as it tended to be drier.

Mrs Nancy Alvarez-Trabanco

100. Mrs Alvarez-Trabanco's statement is at AB/20. She has lived at 11 Partridge Close since 2005. Her questionnaire responses will be found at AB/24. The rear of her property backs onto the field and she can access it directly from her garden and she takes advantage of this as she and her children are regular users of the field and she does so without restriction or permission. She also sees others in the field and she mentions dog walkers and groups of people playing ball games and families having picnics and fathers teaching their children how to ride their bikes. She also sees groups of teenagers gathering in the early evenings to socialise but is not aware of any trouble arising from this. Any litter or rubbish is usually cleared up. Her own child is autistic and she attaches great importance to living in such close proximity to what she considers to be a safe environment for children to play in.

101. Her oral evidence was just as compelling. She mentions seeing people using the green who she knows live either at Sellwod Drive which is outside the claimed neighbourhood and at Chesterfield Road which is inside it. There is, for instance, a lady who she has seen walking her dog in the field on 5/6 occasions since 2005 who she knows lives in Chesterfield Road. She also has friends in Partridge Close who have been using the field for some 2 years. She also mentioned bonfires on Guy Fawkes night. These are not organised events and are just youngsters playing around (as she put it).

102. When asked about what she understood by the concept of neighbourhood she said that to her a neighbourhood is where she would be able to push her children in their double buggy without going too much up a hill. She said that it would be a place which would be accessible to her where she would meet people, and where if something happened in the area they would all talk about it (*'where I would feel connected to the people'*). When asked about the extent of her neighbourhood by reference to the neighbourhood plan at AB/12A(i) she said that she did not consider anywhere outside the black line to fall within her neighbourhood. She also mentioned people riding in the field who came from local stables along Mays Lane.

Jill Demetriou

103. Mrs Demetriou's statement is at AB/37 and her questionnaire responses will be found at AB/40. Mrs Demetriou put in a further statement dated 19/11/2009 at AB/42B in which she sought to make additional points which she felt she had not covered in her evidence of the previous day.

104. Mrs Demetriou has lived at 286 Mays Lane (which she said was built in the late 1940s and is located directly opposite the field) for most of her life (in fact she was born there). She is now aged 49 and her own unhindered usage of the field goes back to the 1960s. She walks her dog there daily.

105. Mrs Demetriou speaks of a good deal of recreational activity taking place on the field on the part of those from the local community. She says she still sees many people whom she went to school with on the field with their children walking, playing games and flying kites. She was also a spectator when Lyonsdown Football Club played matches there. She says they did not play there very often. She also mentions the stream and its attraction to children. She says in para 9 of her statement that having the field available to everyone *'has created a very friendly community here, where we all know each other by name'*.

106. In her oral evidence she recalls that in the early days there were fetes on the field and people also used to ride horses on it. She still uses the field regularly without restriction or permission. She said that all the local people use the field with their children and that even when football was being played you could still use the rest of the field – her own sketch of where the pitch was on the plan at 123A places it in the middle part of the upper half of the field. When asked about what she considered to be her neighbourhood, she agreed with the area shown on the applicant's neighbourhood plan. She would not make it any smaller and she did not take issue with the fact that the eastern side of Alan Drive was excluded (*'you have to draw the line somewhere'* – in fact she has friends on the west side but not on the east).

107. In her supplemental letter Mrs Demetriou deals with the formation of the old Quinta Club. It was very much a community venture. She also deals with Lyonsdown Football Club saying that the club did not play on the field very often. The pitch was also small and located at the front of the field and there were not many spectators. She says that locals

were still able to use the rest of the field when matches were being played. She says there were no pitch markings, only flags and cones and the goal posts were removed after matches. She says that the lower part of the field was never used as it is always *'boggy'*.

Neil Richardson

108. Mr Richardson is the husband of Christina Richardson whose statement at AB/84 he adopts. There is also a *'To whom it may concern'* letter from the Richardson's at AB/89. Mrs Richardson did not give evidence herself. She has though lived at 292 Mays Lane continuously since 1990 although in her questionnaire responses (AB/86) she states that she has in fact been using the field since 1980. She has always lived in the area. In Mr Richardson's case the period of continuity was briefly broken in the early 1990s. They have 3 adult children all of whom played on the field when they were younger. Mrs Richardson mentions cricket, rounder's, flying kites and other family games. They also used the field when Lyonsdown Football Club were playing matches there, including with their dog. Mrs Richardson says that the field *'gives access to a network of fields that allow us to walk safely for miles'*. She also mentions others from around the area using the field and that people they encounter are always very friendly. In her statement Mrs Richardson also says that she has always believed that she has had the right to use the field and that she has never been prevented from using it.

109. Mr Richardson said that he had seen 6 to 8 football matches being played on the field although he could not recall the pitches being marked out as such although there were corner flags and he says the goal posts were removed after matches. He thinks it was *'a half sized pitch'*. He said that they had the full run of the field other than when a match was being played. In relation to what he considered was his neighbourhood, he would include Quinta Drive beyond the school and Sellwood Drive and would go further up Mays Lane as far as its junction with Leeside.

Donnie Mackenzie

110. Mr Mackenzie's statement will be found at AB/64. The questionnaire responses of he and his wife are at AB/66. Mr Mackenzie and his wife have lived at 24 Nupton Drive since August 1987 (which is virtually a full 20 years before the application was made on 19/07/2007). Their home is close to the junction with Whitings Road.

111. Mr Mackenzie regularly walks in the field, either on his own or with his wife and friends. He says that he has met and seen members of the public making god use of the field, some with their children, or on their own or with dogs. He says that *'People make good use of this area'*. He has never been restricted in his use of the field.

112. He also said that he had seen children playing football on the field although he cannot recall matches taking place. He also agreed with the applicant's neighbourhood plan. He says that he stays clear of Sellwood Drive. As he put it: *'It's that sort of area'*, although he *'wouldn't have a problem with both sides of Alan Drive'*.

Mr Rajesh Jani

113. Mr Jani's statement is at AB/58 and the questionnaire responses of he and his wife will be found at AB /61.

114. Mr Jani has lived at 19 Bishops Close since 1993. This property backs onto the field. In his statement Mr Jani cites a large range of what would undoubtedly be qualifying usage which has taken place in the field which he, his family and other locals have enjoyed over the years. He himself has never been impeded in his usage of the field. In fact the fields behind his home were an important factor in his decision to buy his property. There is another short statement from Mr Jani dated 17/07/2007 at AB/63. Put shortly, he says that he often watched football matches taking place in the field and sometimes he would use other parts of the field *'for family leisure pursuits'*. At no time was he ever asked not to enter the field or told that he was on private property.

115. His oral evidence was much the same. He said that the fields come into their own in the case of large groups of people, especially in the summer. He also mentions spontaneous firework displays at Diwali or on Guy Fawkes night. He said that having the fields would enable local Hindus to hold events. In relation to the football, he recalls that there was a period about 10 years ago when for around 2/3 years the field was being used (he thinks) once a week for football matches or practice and he says that there were many times when they would go into the field and either watch the football or do other things. He would not walk onto the pitch if a match was taking place. On the sketch he drew of the pitch on the plan at AB/123A the pitch is quite close to the road and takes up a substantial portion of the upper half of the field. He cannot recall whether the pitch was marked out,

nor can he remember seeing any training sessions in the evenings. He does though remember games being played on a Sunday.

116. In terms of the neighbourhood, he agrees with the applicant's plan. He said it represented *'our immediate neighbourhood'.* He said that *'we hardly ever venture beyond Alan Drive'*, and they do not know anyone who lives on the eastern side of this road. He said that the black line on the applicant's plan was *'a happy compromise'*. He said that *'neighbourhood'* was a relative term. It is something that will change and he cited the fact that when his own children attended Underhill Junior School (which lies outside the claimed neighbourhood) he would have considered that area as part of his neighbourhood. It would though have made no difference to him whether St Stephens Road and Sellwod Drive were included within his neighbourhood or not (these streets fall just outside the applicant's neighbourhood). He did though say that he would not have included them as he does not go there.

117. In re-examination he said that he did not have to go somewhere for it to be part of his neighbourhood which he said *'is something which you consider to be part of your local community which will vary over time ... Neighbourhood is related to the way you live your life and what you consider to be local to you'*. Mr Jani said that he considered his neighbourhood to be represented by the black line on the applicant's plan although a *'community is what it is all about'.* He suggested that you should *'look at the community which is served by the field'*. I thought that Mr Jani was making a useful point.

Susan Faccini

118. Mrs Faccini's statement is at AB/43 and her questionnaire responses are at 45. She has also produced photos (taken in 2006) of her grandson playing on the field when it was covered in snow (AB/48) and her letter to the objector dated 15/09/2007 (AB/51).

119. Mrs Faccini and her family have lived at 10 Partridge Close since 1994 (she was the first to move into this street). She and her 9 year old grandson (whom she looks after whilst his parents are at work) is a very active user of the field which is at the rear of her property. She and members of her family go for walks and play a variety of games in the field, also with other children. Her grandson also loves splashing around in the brook. She says she uses it as often as possible *'meeting other neighbours on our way'*. She says

she has seen joggers and walkers and also an elderly neighbour in her 80s who walks around the field as part of her daily exercise.

120. She recalls the football club playing there for a couple of years in the late 1990s although she says that they played *'very infrequently and irregularly, usually on a Sunday'*. It never prevented her from being able to use the rest of the field. Indeed, she says that she has never been discouraged or hindered in her use of the field.

121. Her oral evidence covered the same ground. In the case of the footballing use, she said that they played once a week during the week on a Tuesday after school, on Saturday mornings and on occasional Sundays. She said that it continued for some 18 months to 2 years. She also said that they played across the field, meaning a pitch that ran parallel to the road. She says that they only played on a small part of the entire field but she does not remember seeing goal posts. She also marked out a pitch on the plan at AB/123A but it was unlike any of the others and I think she must be mistaken in her recollection about this.

122. On the neighbourhood issue, she mentioned a number of streets within the claimed neighbourhood which she considered comprised her neighbourhood. Finally, she says that there has been a rope swing near the stream for as long as she can remember.

Angela Russell-Thompson

123. Her statement is at AB/120A and the evidence questionnaire of she and her husband will be found at AB/120D. Her letter to the objector dated 11/07/2007 is at AB/120G. She and her husband have lived at 22 Bishop's Close since 1994. Her garden backs onto the field. On the accompanied site visit we visited this property and were able to view the field from the ground, first and second floors where there is, to all intents, a clear view of most of the field.

124. She says that the field is used all the year round by a variety of people. For instance, she says that every day she watches an elderly lady and her carer walk around the perimeter of the field. This may very well be the same person mentioned by Mrs Faccini at paragraph 119 above. She says that she and a neighbour go for walks down to the stream. They also pick blackberries when in season and meet up with other locals. In the summer families have picnics (in her oral evidence she said that *'quite a lot of families have their lunch on the field'*) and play ball games. She says that youngsters play football,

rounder's, cricket and tennis and there is also kite flying. Whenever it snows she says that there are snowball fights and snowmen. She says the field is very popular with dog walkers. Access onto the field has never been hindered or discouraged by signage and she believes that it had *'traditionally been used by locals as a community area'*.

125. In her oral evidence Mrs Russell-Thompson said that the football pitch was laid out at an angle to the road after 1999. Whether this was so or not (and the reason she gave was on account of water-logging), the pitch still occupied the middle section of the upper half of the field. She had little interest in the football although her brother and his friends would watch it. She never did. At the time she was working and she only knows that they played on Sundays. She does though have a clear view of most of the field from her home.

126. Mrs Russell-Thompson also produced statistics in relation to the Underhill ward from the Office of National Statistics. This was of assistance to some extent in that it broke down the London Borough of Barnet into separate neighbourhoods. This can be seen on the plan at AB/12A(i) where individual areas are given different colours and have their own separate reference numbers. What Mrs Russell-Thompson has tried to do (assisted by the applicant) is to analyse the available material in order to arrive at a total of the number of dwellings within the claimed neighbourhood. It seems to me that the statistical material generated was otherwise of limited value for present purposes and I have not looked at it in any detail. However at AB/347 a very helpful schedule was produced (and again I think this was very probably a joint effort by Mrs Russell-Thompson and the applicant) showing that the number of dwellings in the claimed neighbourhood stood at 876, and if this is correct (as it probably is) I should have thought that there could well be at least 2-2,500 people living inside the claimed neighbourhood.

127. Mrs Russell-Thompson was, I think, also part of the applicant's team which came up with the claimed neighbourhood (although the final revision on AB/12A(i) was in fact drawn by the applicant) which she said was supposed to be an average of *'what people were perceived to be saying was the neighbourhood ... If we asked everyone they would be adding and taking away different streets or would have a different idea of what streets should be included'*. When asked about Alan Drive and she said that it was logical to draw the line so that only the west side of this street was included in the claimed neighbourhood. As already explained, I am in agreement with her about this.

Adele Warren

128. Mrs Warren was not called by the applicant as such but she nonetheless gave oral and written evidence in support of the application to register. Her statement is at AB/112 and her questionnaire responses will be found at 114.

129. Mrs Warren has lived at 18 Bishop's Close since 1986. Her house backs onto the field through which she has access through a gate in her fence. Mrs Warren deals with her own usage of the field. She has (or had) a dog and also used to sit in the field when she was a mature student where she would study. She mentions dog walkers and children playing by the stream. She says she and her neighbour walk along the brook and in season pick blackberries along with other locals. She also mentions picnics and rounder's taking place on the field in the summer and play in the snow in winter. She has never been hindered in her use of the field and access has always been open except in the case of horse riders, those on motor bikes and golfers. She concludes her statement by saying that in all the time she has known the field the pattern of usage has not changed. In her questionnaire responses she says she uses the field *'3-5 times a week more when children were younger'*.

130. Mrs Warren also added another statement which will be found at AB/116A. This statement does not take the matter any further.

131. In her statement Mrs Warren recalled football being played on the field on Sunday mornings in the periods between 1996-2000 but it never prevented her from being able to use the rest of the field. She says that she had visitors who *'used to love watching these football games'*. When she was cross- examined about this she said that she never watched matches. She also said that she agreed with the applicant's neighbourhood plan which I observed her study before she gave this evidence.

Robert Husband

132. Mr Husband was not called by the applicant either but he attended to give evidence on wildlife issues as a life member of the London Wildlife Trust and (as he put it) other conservation bodies. Mr Husband, who lives at an address in Cockfosters, produced a signed statement dated 20/11/2009 which will be found at AB/120G(i). Mr Husband says

that the field lies within a larger area of open space which is of some importance when it comes to nature conservation. He says that he is personally aware that the field has been open to public use for a very considerable time dating back to his own childhood in Mill Hill. His evidence is of limited value seeing as he has never even resided in the locality, let alone within the claimed neighbourhood. He is though anxious that the field should continue to be available to the public.

133. One turns next to the statements of other witnesses who support the application to register the field as a TVG but who did not attend the public inquiry. I will deal with this evidence fairly shortly.

Victor Benson

134. Mr Benson's statement is at AB/30 and the questionnaire responses of he and his wife will be found at AB/32. Mr Benson has lived at 1 Bishop's Close since 1976. The Benson family appear to have used the field a good deal for informal recreation, notably their 2 children. He says that he and his wife and now pensioners and they walk across the field once or twice a week where they meet others, some with dogs and children, doing much the same.

David Goldenstein

135. Mr Goldenstein's statement is at AB/52 and the questionnaire responses of he and his wife are at AB/55. Mr Goldenstein has lived at 15 Bishop's Close since 1986. The Goldenstein family have also made good use of the field over the years. He mentions that he has observed how locals use the field *'for their everyday leisure activities, including but not limited to walking, walking their dogs, flying kites, riding bicycles, having birthday parties, playing football, cricket and golf'*. He says that use of the field has always been open.

Linda Ray

136. Mrs Ray's statement is at AB/37 and her questionnaire responses are at 80. She has lived at 16 Shelford Road since 1986. She has been a regular dog walker in the field for most of this period. She has also observed others using the field for *'all kinds of leisure activities / pleasure'*.

137. There are also letters / emails supporting registration from the following:

- Mr and Mrs J.E.J. Cooper who live at 21 Partridge Close
- Yusuf Gulamhusein who lives at 20 Bishop's Close
- Diana Lucas who lives at Nupton Drive – she says she has lived in Nupton Drive for 18 years and uses the field *'for regular exercise for myself and my family as well as our dog'*
- Mr and Mrs Papandrea who live at 9 Bishop's Close

138. Finally there are the questionnaires (and in places accompanying statements). What I propose to do here is (i) to identify the responders and their addresses ('N' being a reference to an address within the claimed neighbourhood and 'L' to an address which is within the claimed locality); (ii) indicate the number of years which they say they have used the field, for what purpose and frequency; (iii) state whether they have seen others using the land and, if so, for what purpose or purposes. I accept that the questionnaires contain more information than this but it seems to me that the information under these heads will be useful to the inquiry.

139. Margaret Barratt

36 Southfield (N)

46 years

Walking

Occasional user

Sees children playing

140. Barry Bass

284 Mays Lane (N)

36 years

Playing with children and dog walking

Used to use field quite often but now only rarely

Sees others playing and walking dogs

141. Gladys Beck

22 Southfield (N)

54 years

Used to use field frequently but not often now

Walking

Sees others walking dogs

142. Mrs Elvie Bishop

49 Stanhope Road (N)

9 years until 1975

Walking most days

Seen others walking and playing on field

143. Mr Bishop

49 Stanhope Road (N)

6 years until 1975 with 3 year gap

Walking often, also football and golf

Seen others walking and playing football

144. Mr and Mrs J.M.Briskey

38 Southfield (N)

38 years until 2000

Playing with children, football and walking

Seen others walking dogs and exercising

145. Bernard Cheong

Orchard House, Mays Lane (N)

2 years until March 07

Used field 3 times a week (walking, picking flowers, meeting other people)

Seen others on field walking and meeting other residents

146. Milto Christotorou

3 Bishop's Close (N)

31 years

Exercise 3-4 times a week

Seen others exercising, dog walking and picnics

147. SP & SM Coulson

10 Shelford Road (N)

18 years

Regular play with children

Seen others walking dogs and playing with children

148. Mrs D.Curzon

294 Mays Lane (N)

57 years

Walks on field most days

Has seen others walking and playing on field

149. Mrs P.Foskett

286 Mays Lane (N)

Years of user unknown

Dog walking 2-3 times a week

Has seen others recreating in various ways on the field

150. G. Georgiou

 3 Nupton Drive

 17 years

 Relaxes on field *'quite a lot in the summer'*

 Has seen others playing golf, tennis and various sports on the field

151. Mrs G Grusgy

 47 Stanhope Road (N)

 42 years

 Dog walking daily, playing with children and blackberry picking

 Has seen others walking and playing on field

152. Stacey Grundy

 47 Stanhope Road (N)

 12 years

 Walking daily

 Has seen others walking and playing on the field

153. Mr and Mrs P.Gusterson

 21 Southfield (N)

 43 years

 Daily recreation with grandchildren and dogs

 Has seen others walking and playing with children and pets

154. B.Gwoyemi

2 Partridge Close (N)

9 years

Usage daily for *'leisure'*

Has seen others engaging in a variety of recreational activities

155. Doris Hewitt

8 Shelford Road (N)

61 years

Her children used to play regularly on field – her own user is now limited

Sees dog walkers and children playing on the field and flying kites

156. P.Hiew

85 Well Road (L)

7 years

Uses field 2/3 times a week

Sees others engaging in a variety of recreational activities

157. Anne Hoffman

6 Partridge Close (N)

5 years

Daily dog walking

Has seen other dog walkers

158. Margaret Houston

13 Dexter Road (N)

34 years (1963-65/1975-2007)

Daily dog walker and play with grandchildren

Has seen other dog walkers and ramblers

159. M.J.Hewson

 66 Stanhope Road (N)

 45 years

 Weekly user for walks

 Has seen others walking and children playing

160. Mr and Mrs Karir

 17 Bishop's Close (N)

 31 years

 Regular users for walks and play with children

 Has seen others engaged in all sorts of activities

161. C Kennedy

 258 Mays Lane (N)

 42 years

 Daily dog walking

 Has seen others walking dogs and playing sports

162. Matthew King

 9 Partridge Close (N)

 Claims to have used field for 21 years

 Daily walker

 Has seen others playing sports and walking on the field

163. Mrs Neerja Kolhatkar

1 Darlands Drive (N) (formerly living at 13 Bishop's Close (N) and 130 Mays Lane (L))

25 years

Frequent use: children playing in field, picnics, bird watching and dog walking

Has seen other people in the field doing similar

164. Mrs D.Lines

8 Nupton Drive (N)

45 years

Regular dog walking

Other recreational activities seen on the part of others

165. Amir and Dilshad Meghani

2 Bishop's Close (N)

23 years

Walks and running in field, more often in summer

Has seen children playing in field

166. Mrs June Merchant

14 Southfield (N)

50 years

Walks on field *'quite often'*

Sees others on field *'all the time' playing games, walking and 'gatherings'*

167. Athgna and Pani Mesaritis

19 Partridge Close (N)

5 years

Daily dog walking and play area for child and her friends

Sees others on land playing ball games, cycling and walking dogs

168. Mr and Mrs A.A.Mir

16 Partridge Close (N)

Claims 15 years user

Daily jogging and walks

Has seen others walking and playing golf on field

169. Mr and Mrs Moggridge

12 Shelford Road (N)

22 years until 1996

Daily dog walking

Has seen other recreational activities taking place on field

170. Simon Myers

14 Partridge Close (N)

10 years

Regular user for running, bike rides and walks

Has seen others engaged in *'loads of activities'*

171. Mr and Mrs L.Neighbour

15 Greenland Road (N)

37 years

Uses the field most days for dog walking or sports

Has seen others engaged in recreational activity on the field

172. Mrs Teresa Oakley

5 Nupton Drive (N)

55 years

Uses the field *'all the time'* with dogs and grandchildren

Has seen others walking with or without dogs and playing golf

173. Joan O'Connor

272 Mays Lane (N)

59 years

Goes for walks on field

Has seen dog walkers on the field

174. Mr and Mrs Parrish

262 Mays Lane (N)

34 years until 2000

Used to be a regular user for walks with dog

Saw others using the field with dogs and for sports

175. Gary Pearce

23 Bishop's Close (N)

9 years

Daily dog walker

Has seen others playing with children and walking dogs

176. E Peggs

3 Greenland Road (N)

58 years

Walks to Totteridge – does not use field now (aged 88)

Has seen others using the field for recreation, including dog walking

177. Arthur Phipps

55 Stanhope Road (N)

36 years until 1988

Used to use field frequently with children

Has seen others using the field for recreation, including dog walking

178. Timothy Price

298 Mays Lane (N) (formerly of Orchard House, Mays Lane (N))

21 years

Uses field most days for walks and to play with children

Has seen others using the field for recreation, including dog walking

179. Melanie Pullen

2 Nupton Drive (N)

2 years

Daily jogging

Has seen others using the field for recreation, including dog walking

180. Bina Rani

13 Partridge Close (N)

7 years

Uses field very often for walks, jogging and football

Has seen others using then land for sports and dog walking

181. Paula Rennock-Smith

1 Nupton Drive (N)

2 years

Regular user for walks, picnics and games

Sees others using the field for similar along with dog walking

182. K.P.Shinnick

 6 Nupton Drive (N)

 13 years

 Uses the field 5-6 times a year for picnics and walks

 Has seen others walking dogs and children playing on field

183. Mark Slater

 12 Partridge Close (N)

 11 years

 Uses field once a month in the summer for football and walks

 Has seen others in the field playing sports, walking dogs and riding

184. Samantha Stone

 250 Mays Lane (N) but also living outside N when using field

 User *'on and off'* since 1987 for walks, games and playing at the brook

 Has seen others using the field for recreation, including dog walking

185. W.H.Sugito

 1 Partridge Close (N)

 13 years

 Daily user for walks, recreation and runs

 Has seen others using the field for sports and walks

186. D Theodorou

 278 Mays Lane (N)

1 year

4-5 times weekly for exercise and children's play

Has seen others using the field for dog walking, play and exercise

187. H.Warren and A.Warren

14 Nupton Drive (N)

52 years

Regular walks

Have seen others walking with or without dogs and playing football

188. Mrs Dorothy Weightman

5 Southfield (N)

50 years

Daily dog walker

Has seen others walking, having picnics, kite flying and picking blackberries

189. Mr and Mrs G.White

5 Bishop's Close (N)

31 years

Twice weekly walkers on the field

Others seen walking dogs, playing football, golf and *'general play'* on field

190. What it all boils down to is this:

(a) Live witnesses: 11, of whom 5 were 20 year users and 4 were in excess of 10 years.

(b) Those who provided statements: 3, all of whom were 20 year users.

(c) There were 4 letters / emails of support 1 of whom is identified as an 18 year user.

(d) 50 people responded to the applicant's questionnaire where the years of usage claimed ranged between 1 and 61 years. 29 claimed usage in excess of 20 years. Although the questionnaire approach is a fairly rough and ready exercise when it comes to evidence gathering in these circumstances, a consistent pattern of usage is nonetheless shown in this instance.

General impression of the witnesses who gave oral evidence in support of the application

191. I found them to be honest and genuine witnesses doing their best to assist the inquiry. I accept their evidence about their own recreational use of the land and about the recreational usage which they observed on the part of others whom they also saw in the field.

Written evidence in support of the application

192. I obviously have to treat this evidence with caution as I have not had the opportunity to see and assess these witnesses, nor has the objector had the opportunity to test it by cross-examination. However, I have read and taken account of all this evidence.

Evidence for the objector

193. Evidence from the objector was limited. Firstly evidence was given by a Mr George Church, Principal Valuer in the Property Services Team (Commercial Directorate), which was confined to the history of the application site. His own involvement appears to have begun in 2005 following what he describes as a *'marketing campaign'* with a view to letting the field. He was unaware of the claimed TVG usage until the application to register was made and a letter was also produced from a Mr S.Huggins dated 22/10/2009 (now living in Australia who, when employed by the objector, was responsible for the day to day management of the field between 1990-2003) who says that he was not aware that the field *'was being used as a Village green'*. It was also Mr Church who wrote the report for the Cabinet Resources Committee meeting held on 19/10/2006 which recommended the letting of the field to a local amateur football club on a 125 year lease. However as another football club had made a higher offer the matter was referred back to the same committee on 6/12/2006 with a recommendation that the field be let to the higher bidder. However, as previously indicated, before the proposed letting could be taken any further the application to register was made on 19/07/2007.

194. The objector's second witness was a Mr John Pouncett who between 1994 and May 2000 was the Honorary Secretary of the Lyonsdown Youth Football Club to whom the application site (where there was only one pitch) and the Grange Playing Fields (where there were 3 pitches) had been let in the period between 24/05/1996 and April 2000 when the lease (which had been for a 20 year term (OB/36)) was surrendered. Mr Pouncett's statement is at OB/121. At OB/123A Mr Pouncett produced a layout plan of the football pitch which had been marked out on the ground. This plan was revised by the plan at OB/123B.

195. Mr Pouncett told the inquiry that the application site had only been used by the Lyonsdown Club for football matches in the two seasons 1998-99 and 1999-2000 (all matches were played in the Boreham Wood and District Youth Football League). He speculated that between 20-30 matches had been played there throughout the day on Sundays in each of these two seasons although he considered that it would probably have been nearer 20 games. He said that the size of the pitch would have been 100 yards by 60 yards and would have been located in the driest part of the field. He also said that the goal posts would have been in place the whole time and would not have been removed during the season although they would have been during the close season. Netting and corner flags would have been put up on match days and the pitch would have been periodically marked out by a local firm. He said that sometimes the pitch could not be marked out as it was too wet although there was never any problem seeing the lines.

196. When asked about training he said that it mainly took place inside the club house and on the hard standing area which surrounded it. I understood this to be because of the availability of lighting outdoors which was limited seeing as training took place on Tuesday, Wednesday and Thursday nights although he did say that at the start and end of the seasons, when it was lighter, the children would have used the outside area to run around on, otherwise they stayed mainly indoors. He said that there would have been roughly 20 boys training outside whenever this had happened.

197. Mr Pouncett said that he never saw members of the public walking on the pitch whilst a game was being played although he said he often saw people walking their dogs elsewhere on the field at such times. He said that there was no conflict with locals and the area being used was never cordoned off to the public.

198. I accept Mr Pouncett's evidence, notably in relation to the location of the football pitch where there was conflicting evidence. Mr Pouncett is bound to have had a clear recollection of how the club made use of the field. What it all boils down to is that during the 2 football seasons in 1998/99 and 1999/00 in the region of 40-60 matches would have been played on the field. It was not clear how many matches would have been played on a Sunday but in light of Mr Pouncett's evidence that the club would have played nearer 20 games a season it seems probable that it would usually only have been a single game and only very occasionally (if at all) more than this. If one supposes that no more than 25 games a season were in fact all that were played, it would have meant that the pitch area would have been, in effect, out of bounds to local inhabitants for TVG usage for something like 50 hours a season over the two seasons whenever the field was being used by the football club. Beyond this, use by the club of other parts of the field nearer the club house would have been limited and, for the most part, would have been confined to the hard standing apron surrounding the building which is excluded from the application site (see AB/12A(i)). What is also material is the fact that despite the letting there was never any conflict between the football club and locals, some of whom appear to have watched matches. It is also material that although the use of the field as a public open space was reserved in the Lyonsdown lease at schedule 3, para (e) (OB/61), the club never sought the permission of the objector to limit or otherwise control usage by locals none of whom appear to have been hindered in their use of the field for informal recreation whenever football matches (or training) were taking place.

Closing Submissions

For the Applicant

199. I received from Mr Maile a 52 page closing statement dated 4/12/2009 in which he identifies the qualifying criteria for the registration of a TVG and argues that they have all been satisfied on the evidence in this instance. He rightly points out that if the relevant criteria are made out the registration authority must proceed to register as they have no discretion in the matter. It is because the legislation in this field enables an applicant for registration to bypass normal development controls that there is a *'need for care on the part of decision-makers, whose conclusions as to the existence of a town or village green may have very important practical consequences'* (See Lord Walker in *Beresford* at para 92).

200. I do not intend to cover in detail the arguments contained in Mr Maile's written submissions. There are though some observations which I ought to mention and I will do so shortly.

- Use of the field by the Lyonsdown Football Club *'was at best spasmodic, but in any event of a very limited nature'*. Mr Maile cites the fact that in the *Redcar* case the land was in constant use by the golf club with very little land available that was not used by the golf club. He argues that the facts of this case are not compatible with the facts of *Redcar*. Alternatively, if they are then the registration authority should consider severance and should register land which did not form part of the football pitch and / or training areas.

- Any interruption in TVG usage (ie because of football matches) was *'of such a low-level nature'* (p.25) and would not have been inconsistent with the use of the whole of the field by locals as of right for the purposes of section 15.

- One might expect to find organised sporting activity (such as cricket or football), as distinct from agricultural or commercial activity, taking place on a traditional grassed village green.

- Mr Maile argues that neither the objector nor the football club took any step to notify users of the field that their usage was permissive and not as of right: *'no by-laws were made, no sign or notice erected, and no oral warnings were ever given'*. He goes on to say that the *'mere provision of the football pitch ... was not a bar to entering the land, nor was it a signal of a grant of consent / licence to use the land'*.

- The leases of 1965 and 1996 and the more recent marketing of the land are inconsistent with any statutory right on the part of the public to go onto the field.

- There is no clear evidence in the form of a resolution of the council (or otherwise) that the field was acquired or appropriated for the purposes of public recreation under s.164 of the Public Health Act 1875 or other similar statutory provision and even if it was, the 1965 lease *'effectively ended any such connection with that original reason for its purchase'* (p.16).

201. Mr Booth sent me an email on 9/12/2009 in which he flagged up 2 points in relation to Mr Maile's closing submissions: (a) that he may not have accurately represented some of the evidence given by various witnesses at the public inquiry; and (b) that he gives new

evidence in places in that part of his submissions under the heading *'A Tour of The Neighbourhood'*. An example of this is the allegation on p.33 that the claimed neighbourhood *'is generally known by its inhabitants as Duck's Island'*, whereas I have no note of such evidence, nor do I recall this assertion being advanced by any of the applicant's witnesses. Mr Maile responded to Mr Booth's comments in his email to me also dated 9/12/2009. I should point out to both advocates that I proceed on the basis of the evidence as presented to me at the inquiry and upon my own observations of the application site and the claimed neighbourhood on my two visits to the area.

For the Objector

202. I received from Mr Booth 21 pages of closing submissions dated 27/11/2009. His principal submissions are these:

- The application site formed part of a larger holding which was acquired as open space for use by the public which it is alleged would preclude user *as of right* and thereby takes the application site out of the Commons Act 2006. Reference is made to the minutes going back to the 1930s (which are said to be *'conclusive'*), to section 164 of the Public Health Act 1875 and to the stand alone judgment of Lord Scott in *Beresford* (where reference was made to the acquisition of land under the Open Spaces Act 1906 and to user under the trust imposed by section 10 of that Act and not *as of right*) which is said to be *'engaged'* on the facts of this case.

- User must have been predominantly by the inhabitants of a particular neighbourhood or locality – it is alleged that the claimed neighbourhood does not in the circumstances of this case constitute a qualifying neighbourhood either because it does not constitute a neighbourhood within the meaning of section 15 or because user has not been *'predominantly'* by the inhabitants of the neighbourhood (see Lord Hoffmann at p.358B in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 AC 335*), but by the public at large.

- It is alleged that the evidence on neighbourhood was *'confused'* and lacked substance (para 40) and was *'in fact an artificial construct'* (para 41). It is argued that there must be certainty as to the extent of the claimed neighbourhood and that it is not open to the applicant *'to take a 'broad brush' approach and rely on a neighbourhood whose boundaries are in fact an approximation of a number of different assessments of what*

comprises that neighbourhood' (para 48). It is also said (para 49) that *'such an area cannot possibly have the 'cohesiveness' required of a neighbourhood by Sullivan J'* in the *Cheltenham Builders* case.

- Mr Booth also argues that the applicant *'cannot gain any support from those many persons who provided evidence questionnaires'* as the accompanying Map A was supposed to show not only the claimed land but also the claimed locality which use the land, yet it failed to do this when it came to the claimed neighbourhood. Mr Booth also relies on the fact that the final neighbourhood plan at AB/12A(i) was in any case only compiled on the eve of the public inquiry and thus came well after the questionnaires had been received. (The plan used was plainly of limited value to the applicant when it came to the neighbourhood issue but the contents of these questionnaires were, as I find, of considerable importance when it came to other aspects of qualifying usage by local inhabitants.)

- The application site was in fact enjoyed by the inhabitants of a far wider area. (I am not sure where this takes us if in fact the application is supported by a *'significant number'* of local inhabitants living within the claimed neighbourhood since, in my view, qualifying usage no longer has to be *'predominantly'* by the inhabitants of the claimed locality (or indeed of any neighbourhood within a locality) as was determined in *Sunningwell* in the case of a *'town or village green'* within the meaning of section 22(1) of the Commons Registration Act 1965 before this section was amended by the introduction of section 22(1A) with effect from 30/01/2001.

- *As of right* – Mr Booth argues that the usage relied upon would not have appeared to the reasonable landowner to be an assertion of the right claimed – in other words, it could not have been *as of right*. He cites *Redcar* and argues that locals were, at times when footballing activity was taking place on the field, deferring to the rights of the tenant *'so that their own use was interrupted'.* Mr Booth also argues that if deference is established on part of the field then it can be attributed to the whole of the application site.

Discussion and Findings of Fact

203. I find that the application is supported by *'a significant number of the inhabitants'* of the claimed neighbourhood within the meaning of section 15. The geographic extent of the claimed neighbourhood is fairly limited and, as I find, is likely to have had a relatively

stable population of around 2-2,500 people during the relevant 20 year window (I have not overlooked the fact that Partridge Close was a development of the early 1990s). It seems to me that the number of households within this area (876) are well represented by the number of people who supported the application to register. I summarise the position in para 190 where it will be seen that there were 11 live witnesses and a total of 57 others who provided written evidence in support of the application to register, of whom 37 were 20 year users. In my view, this is ample support for the term *'significant number'* to have been made out in these circumstances.

204. It is, in my view, relevant that the written evidence is entirely consistent with the contentions of the applicant's live witnesses that people have been using the field for informal recreation on a regular basis for a great many years. I consider that the evidence as a whole is sufficient to raise the inference that the application site is in general use by the local community in the ward for informal recreation. It seems to me that the surrounding circumstances are also consistent with the contentions of the applicant's witnesses that local people have been using the field for informal recreation in that:

- it lies within easy walking distance of a sizable local community
- it is very easy to get into and is also crossed by a public footpath
- it is safe for children and dogs to play and run around in
- it is, for the most part, well away from any traffic
- it has never had signs forbidding entry
- where the landowner has had little use for it

205. I also find that usage has been by the local inhabitants of a qualifying *'neighbourhood within a locality'* within the meaning of section 15. As I indicated in para 51, parliament amended the definition of town or village green in 2000 because it wanted to make it easier to secure registration of land as a town or village green. Indeed, in the *Oxfordshire* case Lord Hoffmann at 27 speaks of a neighbourhood as not being an area of legal or technical significance, although I accept that he did not comment on Sullivan J's view in the *Cheltenham Builders* case that a neighbourhood had to be *a **sufficiently** cohesive entity which is capable of definition.*

206. As I indicated in para 56, my approach to the neighbourhood issue has been to determine whether, in this instance, the claimed neighbourhood represented what might sensibly be regarded as a discrete area or community within the locality of Underhill ward and it seems to me that it probably does. This issue is plainly one of fact and I have been greatly assisted by my own observations on my two visits to the area in question in addition to the evidence of the applicant's witnesses.

207. In my view, the neighbourhood plan at AB/12A(i) has been carefully considered by the applicant and its boundaries are by no means arbitrary. As I indicated in para 17, the core of the claimed neighbourhood is a coherent area even if, at the margins, it is reasonably arguable that it could have included streets which were excluded or excluded streets (or parts of streets) which might have been included. It is also relevant that apart from some trivial differences of opinion about this (see, for instance, what Mr Richardson is noted to have said about this in para 109 and, likewise, in the case of Mr Mackenzie in para 112) the applicant's live witnesses were, I think, confident that the claimed neighbourhood represented the local community which (as Mr Jani put it in para 117) is *'served by the field'.* In the result, I accept the applicant's evidence about this and would reject the submissions advanced under this head by Mr Booth.

208. I also find that the claimed usage has been *as of right* within the meaning of section 15 and would again reject the submissions advanced under this head by Mr Booth.

209. I accept that it is for the applicant to show that for at least 20 years the landowner has acquiesced in the claimed use as in an established right and the landowner cannot be regarded as acquiescing unless the user would appear to the reasonable landowner to be an assertion of the right claimed. In my view, the applicant has discharged this burden.

210. I find that locals have enjoyed unhindered user of the application site for informal recreation for at least as long as there has been residential development in the immediate area. There has never been any signage on the field discouraging entry and it has always been mown by the Council thus encouraging public use of what is a valuable local amenity (the same might be said of the two bins for dog waste which have obviously been placed on the field to serve the needs of dog-walkers). All of those who support the application to register say that they have enjoyed unhindered use of the field and have never been obliged to seek permission. Indeed, such signage as we have at the moment

is limited to deterring only use by golfers and horses which might arguably imply that other recreational usage on the part of locals would be tolerated.

211. Mr Booth's attack under this head is essentially directed to two issues:

(a) that (at least as I understand his case under this head) an implied statutory licence arose in consequence of the express or implied purpose underlying the acquisition, in 1936, of land as public open space which included the application site (I have dealt with the submission on this in the first bullet point in para 201 – see also what I have to say in relation to the law at paras 25-29 and 63-66);

(b) that the deference on the part of locals in the case of the footballing activity which took place in the two seasons 1998-99 and 1999-2000 was sufficient to preclude user as of right over the whole field; alternatively, that it gave rise to a material interruption in the locals' recreational user.

In my view, neither of these submissions are well-founded on the evidence.

212. I have examined the 1936 conveyance and the minutes identified in para 24 which date back to 1935/37. In the first place, the 1936 deed is silent as to the acquisition of such land. Secondly, there is as such no express resolution of the council declaring the basis on which such land was being acquired although in the light of the available minutes it had been intended that such land would be available as open space. Without more, however, this would be insufficient to preclude user as of right on the basis that the acquisition (and I might add that there is no evidence of any later appropriation by the council) engaged the statutory purposes under either section 164 of the Public Health Act 1875 or under sections 9/10 of the Open Spaces Act 1906 or, for that matter, under any other statutory provision which conferred on the public a right to use the field.

213. The minute dated 5/11/1936 refers merely to the proposed acquisition of *'open space'*. The minute dated 31/03/1936 recites the fact that the council had applied to the Ministry of Health for a loan for the purposes of an acquisition of *'open space under section 69 of the Public Health Act 1925'*. The minute of 26/03/1936 notes that the town clerk had received official ministry sanction for a loan to facilitate the acquisition of land (which included the field) *'for the purposes of walks and pleasure grounds, under the Public Health Acts 1875 to 1925'.* This minute is probably the high point of the objector's case under this head as the later minutes are, I think, of limited value for present purposes.

The evidence goes no further than showing that the council had resolved to apply for a loan to acquire open space under section 60 of the 1925 Act, and that the town clerk had later reported to the council that that ministry sanction had in fact been obtained for a land acquisition which engaged the purposes of the Public Health Acts 1875 to 1925. There is no other evidence to prove that this is what in fact occurred.

214. Although it may be possible to infer a decision by the council to acquire land for the purposes of the Public Health Acts 1875 to 1925, it seems to me that this can only be implicit in another decision made by the council (as, for instance, in a case like the present where the relevant deed is silent and where there is no express resolution to acquire land for such purposes). An authority may make decisions by resolution, or where powers are delegated, by decisions made under those delegated powers. The implication of a decision to acquire land for purposes which would engage the relevant provisions of the Acts of 1875 and 1906 must, as it seems to me, involve looking at the decisions expressly made and finding that it is implicit in those decisions that a decision to acquire land for such purposes has been taken. It is not enough, in my view, to look at the factual circumstances, such as the use to which the land was put or other minutes of the council, and to infer a decision from those factual circumstances or other minutes which may not be particularly specific.

215. The best evidence we have of a decision made by the council is that they resolved to apply to the ministry for *'sanction to a loan'* in connection with an acquisition of land *'for the purposes of open space under section 69 of the Public Health Act 1925'*. It seems to me that what the town clerk is noted to have reported to the council under the minute of 26/03/1936 is not decisive of the matter. In the first instance, what he is noted to have said does not constitute a decision of the council, nor in my view does it obviously engage the statutory purposes of section 164 of the 1875 Act to the exclusion of section 69 of the Act of 1925, as I think it must if the consequences advanced by Mr Booth in his submissions of user as of right being precluded are to be made out.

216. It seems to me that the later dealings in the case of the relevant parcel of land were in fact consistent with an acquisition of land under section 69 of the Public Health Act 1925, rather than an acquisition made under section 164 of the Public Health Act 1875.

217. As previously indicated in paras 26-29, section 69 of the Public Health Act 1925 authorised a local authority to *'acquire by purchase, gift or lease, and may lay out, equip*

and maintain lands, not being lands forming part of any common, for the purpose of cricket, football or other games and recreations, and may either manage those lands themselves and charge persons for the use thereof or for admission thereto, or may let such lands, or any portion thereof, to any club or person for use for any purposes aforesaid'.

218. Again as previously indicated, section 69 was repealed by the Physical Training & Recreation Act 1937 under which (by section 4(1)) local authorities were again authorised to *'acquire, lay out, provide with suitable buildings and otherwise equip, and maintain lands ... for the purpose of ... playing fields ... or for the purpose of centres for the use of clubs ... or organisations having athletic, social or educational objects, and may manage those lands and buildings themselves, either with or without a charge for the use thereof or admission thereto, or may let them, or any portion thereof, at a nominal or other rent to any person, club, society or organisation for use for any of the purposes aforesaid.'*

219. Section 4 of the 1937 Act was repealed by the Local Government Act 1976 and was replaced by section 19 of the Local Government (Miscellaneous Provisions) Act 1976 which continues in force. Section 19, which deals with the provision of recreational facilities by local authorities, omits any reference to leasing land for such purposes to third parties which is now governed by section 123 of the Local Government Act 1972 under which local authorities are given power to dispose of land in any manner they wish, including sale of their freehold interest or granting a lease. The only constraint is that a disposal must be for the best consideration reasonably obtainable except in the case of tenancies for less than 7 years.

220. It follows that the council would have had the necessary powers of purchase and leasing land (re the leases of 1965 and 1996 – see paras 31/32) under the foregoing Acts.

221. Two other factors, in my view, also point towards an acquisition of land under section 29 of the Public Health Act 1925. First, the Act of 1875 (and the Open Spaces Act 1906) contained powers to make byelaws in order to regulate the use of such land. There is no evidence that byelaws have ever been made in relation to the application site which I consider unusual if in truth the council had intended to acquire land for the purposes of recreation and had the intention that the land should continue to be used for these purposes. Secondly, if, as section 164 of the Public Health Act 1875 provides, land was intended to be acquired for the purpose of being used as *'public walks or pleasure*

grounds' then it seems unlikely that it would have been let to third parties. On the face of it, the 1965 lease was a demise with exclusive possession for a limited recreational purpose and would no doubt have satisfied the provisions of section 69 of the Public Health Act 1925 or its replacement, namely section 4(1) of the Physical Training and Recreation Act 1937. Mr Maile argues that even if the acquisition of land in 1936 engaged the 1875 Act, the 1965 lease *'effectively ended any such connection'*. It is unclear whether he is in fact saying that the effect of the 1965 lease was to impliedly appropriate the land for some other purpose. However, I do not choose to deal with the matter on this basis as I take the view that, on the evidence, the application site was neither acquired nor appropriated for the purposes of public recreation, whether under the Acts of 1875 or 1906 or, for that matter, under any other provision which would have conferred on the public a right of access onto such land.

222. Mr Booth also argues that this is a deference case; alternatively that the activities of the football club gave rise to a material interruption, without necessarily precluding user as of right.

223. I have considered the evidence in relation to the way in which the club used the field and I find that as a matter of fact and degree (and following, as I must, what was said about this by Dyson L.J at para 47 in *Redcar*) there was no inconsistency between the activities on the field of the club and the recreational activities of the local inhabitants. In practice, it made no difference and the extent to which locals may have needed to adjust their own activities to allow for those of the club would have been minimal. In the result, since the recreational user was in other respects qualifying user, it seems to me that I am entitled to find that the activities of the local inhabitants had the necessary appearance of asserting a right against the owner despite the footballing activities which took place on the field which, as I find, were more than likely to have been confined to the two seasons in which the matches took place. If club football took place outside this period then it would have been, as I find, limited and of no consequence for present purposes.

224. The following points are, I think, material for these purposes:

(a) the amount of match time relied upon in the 2 seasons was, in practice, very limited (say 2 hours at most on a Sunday approximately 25 times a season – it is perhaps worth mentioning that qualifying recreational user does not have to take place on the land every hour of every day);

(b) the area used by the club would have been no more than around a quarter of the field, if that;

(c) local inhabitants would have been able to use the rest of the field and did so in whatever way they wanted without hindrance or complaint – in other words, the character of the local inhabitants' use of the field as a whole did not substantially change so that it deferred to the use of the landowner's lessee;

(d) there was never any conflict between local inhabitants and the club – for instance, it was never suggested that dogs were getting in the way of the footballers or that locals were being forced to adjust their own activities to accommodate those of the footballers – on the contrary, there was evidence that some of the locals enjoyed watching the games;

(e) the very limited use of the field for football matches (and even more limited use of the grassed areas near the club house for training) was at a very low-level and compares with the type of sporting activity which one would commonly associate with town or village greens (ie such as games of football or cricket on a Sunday – it would, for instance, be something of a paradox if weekend football or cricket matches on the village green was the very same activity which prevented the land from being registered as a town or village green), yet is to be contrasted with, for instance, more intensively used (and usually publicly-owned) recreation grounds where there are a number of football and rugby pitches (or cricket squares) in regular use throughout the year (day or night if floodlights are installed around the perimeter) or, say, an area of open land which is taken over with temporary parking for up to 28 days a year.

225. I therefore find against the objector on the two inter-linked issues of whether (a) the character of the locals' usage had changed such that it deferred to the landowner's own use; and (b) the landowner's use constituted a material interruption without necessarily precluding user as of right.

226. To complete matters, I am also required to find that local inhabitants had indulged *'in lawful sports and pastimes on the land for a period of at least 20 years'* and that they continued to do so at the date of the application. I am certainly able to make these findings in favour of the applicant. As I indicated in para 67, the use of the field for dog walking, children's play and general informal recreation will normally suffice as qualifying user under section 15. In this case there is, of course, the added attraction of the stream

and even though the field is crossed by a footpath there is no track on the ground to suggest that user of the right of way may be the predominant use of the field.

227. In terms of the duration of the claimed user, there was ample evidence to suggest that this field has been used from the time when the core of the claimed neighbourhood came to be developed which was as long ago as the late 1940s or early 1950s. It will be recalled, for instance, that Mr J.H Stevens has lived at 35 Southfield since 1953 and he said that by that time Shelford Road, Greenland Road and part of Upton Drive had already been built. Indeed, Jill Demetriou said that 286 Mays Lane had been built in the late 1940s. If one turns to the questionnaire evidence it will be seen that there are 9 individuals who claim usage in excess of 50 years of whom one, namely Doris Hewitt of 8 Shelford Road (see para 155 above and AB/198), has lived at this address since 1948 although her own user is now limited and she only goes out into the field whenever her son takes her out.

228. I am also able to find on the evidence that qualifying user continued to the time of the application on 19/07/07.

Summary and Recommendation

229. In light of the above discussion, I find that the qualifying criteria laid down in Section 15(2) of the Commons Act 2006 for a new green in the case of the application site, which is referred to as Quinta Public Open Space in Form 44 and which is shown edged red on the plan at AB/12B(i), are satisfied.

230. Although, in the circumstances, I would normally recommend that the application to register such land in the register of town or village greens should be allowed, at this stage I would advise the registration authority to take no further step in the matter until after the decision of the Supreme Court in the *Redcar* case. I understand that the apppeal is to be heard over 2 days later on this month and a decision can no doubt be expected within say 2/3 months, if not sooner. If the decision of the Supreme Court reverses the decision of the Court of Appeal or otherwise requires me to re-visit my findings then it would be sensible to defer any decision on the application to register until I have had an opportunity of looking at the decision in *Redcar* and, if necessary, I will be inviting further submissions from the parties. It seemed to me that this was the appropriate course to take rather than to suspend all work on the report until well into next year when, it should be emphasised,

my personal recollections of both the site and general area and, of course, the witnesses may not be as clear in my mind as they are at the moment.

William Webster

12 College Place

SOUTHAMPTON

SO15 2FE

Inspector

5 January 2010

Appendix 3

Inspector's supplemental report and recommendation to the Registration Authority

London Borough of Barnet

7 March 2010

COMMONS ACT 2006, SECTION 15(2)
APPLICATION FOR THE REGISTRATION OF LAND KNOWN AS QUINTA PUBLIC OPEN SPACE SITUATED AT MAYS LANE, BARNET, EN5 AS A TOWN OR VILLAGE GREEN

INSPECTOR'S *SUPPLEMENTAL* REPORT AND RECOMMENDATION TO THE REGISTRATION AUTHORITY – LONDON BOROUGH OF BARNET

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1. In my report of 5th January 2010 I advised the registration authority to take no further step in dealing with the application to register until after the decision of the Supreme Court in *R (on the application of Lewis) v Redcar and Cleveland Borough Council and another ('Redcar')* had been handed down. This occurred on 3rd March 2010. In these circumstances, it falls to me to consider whether the decision of the Supreme Court in *Redcar* requires me to re-visit my findings. In my view, it does not.

2. Although the objector had argued that this was a *deference* case it seemed to me that there were a number of compelling reasons why this was not so and I set out my reasons for this in paras 222-225 of my report. Put shortly, I found that the character of the local residents' usage had not changed such that it had *deferred* to the objector's use. I also found that the objector's use had not constituted a material interruption without necessarily precluding user *as of right.*

3. It will be recalled that the disputed land in *Redcar* had formerly been used as part of a golf course and when local residents using the land for recreation encountered members of the golf club playing golf, the former deferred to the latter (they would wait until the play had passed or until they had been waived on by the golfers) which meant that they were not indulging in recreation *as of right* within the meaning of the *Commons Act 2006* ('the 2006 Act').

4. The ratio of *Redcar* in the Court of Appeal had been that if there was a conflict between the owner's use and the recreational use by local residents, and the use of the local people materially *defers* to the use by the landowner, the recreational use would not have the appearance to the owner of use *as of right.*

5. The Supreme Court have now determined that there is no overarching requirement concerning the outward appearance of the manner in which the local residents use the land. All that matters is that the use must be peaceable, open and not based on any licence from the owner of the land. There are no other vitiating circumstances and it is unnecessary to inquire further as to whether the locals' use would have appeared to the owner to be *deferring* to his right to use the land for his own purposes.

6. As I have found that the use on the part of local residents was, in all respects, qualifying use within the meaning of section 15(2) of 2006 Act, I would advise the registration authority that there is no legal bar to their registering the application site (which is referred to as Quinta Public Open Space in Form 44 and which is shown edged in red on the plan at AB/12B(i)) as a new town or village green.

William Webster

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7th March 2010