

FAO the Group Solicitor (Environment)  
Legal and Democratic  
Commercial Services  
Level 4, Civic Centre  
West Street  
Oldham  
OL1 1UL

14<sup>th</sup> September 2018

Dear Sir/Madam,

**Application to Register Land as a Village Green – Hodge Clough Road (reference AE/RTG/6)**

Please find enclosed an objection on behalf of First Choice Homes Oldham in relation to the Village Green application for the land at Hodge Clough Road, Shoiver, Oldham.

Should you have any queries or require any further information regarding this matter, please do not hesitate to contact me.

Yours sincerely



Natalie Blackston

Email: [natalie.blackston@fcho.co.uk](mailto:natalie.blackston@fcho.co.uk)

---

## THE COMMONS ACT 2006

### VILLAGE GREEN APPLICATION – LAND AT HODGE CLOUGH ROAD, OLDHAM, GREATER MANCHESTER

#### OBJECTIONS OF FIRST CHOICE HOMES OLDHAM LIMITED

##### 1. Introduction

- 1.1 The Objections are made on behalf of First Choice Homes Oldham Limited (FCHO) of First Place, 22 Union Street, Oldham OL1 1BE, the interested party in relation to the land which constitutes the land the subject of the Application (the Claimed Land). FCHO is a provider of social housing.
  - 1.2 Oldham Metropolitan Borough Council's (the Owner) title to part of the Claimed Land is registered at HM Land Registry under two Titles: First Title LA88157 Freehold - purchased by the Owner on 26th June 1966. Second Title LA43936 Freehold. Land was purchased by the Council on 19th May 1964. Evidence of these titles is annexed to the Statutory Declaration of Julie Florence Hall as exhibit 'JFH1'.
  - 1.3 The Claimed Land was in the ownership of County Borough of Oldham up to local government re- organisation in 1974 and thereafter came onto the ownership of the Oldham Metropolitan Borough Council the successor authority to County Borough of Oldham under the Local Government Act 1972 (the 1972 Act).
  - 1.4 There have been various sales out of the original parcel of LA88157 including Stock transfer land to FCHO. FCHO does not know the powers utilised to purchase the Claimed Land in title LA88157. The second part of the Claimed Land is in title LA43936 which was purchased by the Owner pursuant to Part V of the Housing Act 1957. The Owner has disposed of some of its land including land under stock transfer to FCHO but remains the Owner of the Claimed Land.
  - 1.5 It is for the Applicant to prove his case.
  - 1.6 The Applicant asserts, but provides no evidence to support, that £30,000 was given as a direct contribution to maintain the Claimed Land.
  - 1.7 It is usual for a Claim to be supported by Witness Statements or forms of evidence such as the evidence questionnaire provided by the Open Spaces Society. Since those conventions have not been observed, it is, by and large, difficult to assess the evidence of the Applicant and his witnesses. The majority of the supporters of the Applicant provide household statements made jointly with other persons or have otherwise signed a pre-prepared notice compiled by the Applicant. The individual statements of witnesses are not open to be tested by FCHO or any other objector. In
-

which case unless there is an open inquiry into this matter and each person is questioned and then cross examined with their evidence being tested, the 'evidence' should be disregarded.

## **2. Description of the Claimed Land**

2.1 The Claimed Land is slightly irregular in shape although discernably rectangular. The Claimed Land has a boundary to the East that is fronted by a public highway named Hodge Clough Road. To the Northern boundary is a line of fir trees and fencing. To the West is untended open land. The boundary to the South end is encompassed by large logs and untended open land. The Claimed Land has been maintained at the public expense and in a manner that is distinct to the surrounding land. Distinguishing aspects of the Claimed Land are:

- (a) a gritting bin;
- (b) regular mowing and maintenance by the Owner;
- (c) a street light sited on the Claimed Land;
- (d) clear boundaries to all sides;
- (e) a lack of pathways, gates or obstructions to entry
- (f) a lack of shrubbery on the Claimed Land

2.2 The Claimed Land is an area of maintained open grassland.

## **3. Dwelling houses Hodge Clough Road**

3.1 The residential properties that front Hodge Clough Road are majority owner occupied. The largest tenure on the adjacent housing estate is owned by FCHO.

3.2 Annexed as Exhibit 'JFH2' to the Statutory Declaration of Julie Florence Hall are photographs of the Claimed Land. In addition the Claimed Land can be viewed as of an antecedent date in Google Streetview. The Google Streetview clearly corroborates the observations of Mrs Hall made during a site visit on 22<sup>nd</sup> August 2018.

3.4 FCHO is not aware of any written agreements or written permission granted either by the County Borough of Oldham or the Owner to any persons to use the Claimed Land.

## **4. Maintenance of the Claimed Land**

4.1 The Owner maintains the whole of the Claimed Land and to its knowledge so did the County Borough of Oldham.

---

4.2 Visual inspection of the Claimed Land on 22nd August 2018 revealed a well maintained, regularly mowed, almost rectangular, piece of land that has all of the hall marks of public open space.

4.3 The Open Spaces Act 1906 s.20 defines open space "The expression "open space" means any land, whether inclosed or not, on which there are no buildings or of which not more than one twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden or is used for purposes of recreation, or lies waste and unoccupied."

## 5. Signage

5.1 There is no signage in situ on the Claimed Land. The gritting bin that is sited on the Claimed Land has a sign clearly labelling it as such.

## 6. Playing/Wildlife/Picnic

6.1 On inspection, 22<sup>nd</sup> August 2018, there was no playing, or picnics taking place. There was dog walking, football, rugby, cricket, kite flying, drone flying, cycling, evidence of bonfires, snowman building, carol singing, paddling pools, trampolining, water balloon fights, camping, fireworks, pretend teddy bears picnics, hide and seek, bouncy castles, slides, swings, pushing prams, hand stands, roly polys. ub

## 7. The Commons Registration Act 1965 (The CRA)

7.1 Section 22 of the CRA, defined Village Greens into three types. The decided Cases when referring to Section 22, added letters by which they are now usually referred to as (a), (b), and (c) Greens.

Section 22, defined "Town or Village Green" as land -

- (a) which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality, or
- (b) on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes, or
- (c) on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years."

7.2 In the immediate locality of the Claimed Land is sited a large Class (a) Green with a village pub. Sholver Green is registered as a village green under Section 15 of the Commons Act 2006, meaning it is protected against development. There are no conservation areas, scheduled ancient monuments or other heritage designations within or in proximity to the area.

7.3 There are no other statutory designations in the locality apart from one listed building within the Sholver area, the Grade II Church of St Thomason Northgate Lane, built to the design of the architect Henry Cockbain of

Middleton and opened in 1872. The old village of Sholver was cleared, the only evidence of its existence being the survival of The Old Pullet Inn (now the Northgate) cited on the old village green, now formally designated the Village Green of the locality.

- 7.4 The Application is made by Fred Williamson (the Applicant) to register the Claimed Land as a Class (c) Green in the same locality as the actual Village Green which is both the historic Village Green and a statutorily designated Village Green.

## **8. The Countryside and Rights of Way Act 2000 ("CROW")**

- 8.1 The definition of Class (c) Greens was amended by Section 98 CROW by substituting a new third limb of the definition:

"(1A) land falls within this sub section if It is land on which, for not less than 20 years a significant number of the inhabitants of any locality, or any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either

- (a) continue to do so, or
- (b) have ceased to do so for not more than such period as may be prescribed, or determined, in accordance with prescribed provisions".

- 8.2 No period, for the purposes of paragraph (b) of subsection (1A) was ever prescribed.

## **9. The Commons Act 2006 (CA)**

### **9.1 Qualifying Criteria**

- (a) The relevant sub-section is Section 15(2) which enables registration of land as a TVG and the common requirements for registration in the sub-section can be listed as follows:-
  - (i) a significant number of;
  - (ii) the inhabitants of any locality, or any neighbourhood within a locality
  - (iii) ... have indulged
  - (iv) ... in lawful sports and pastimes;
  - (v) ... as of right;
  - (vi) ... on the land;
  - (vii) ... for a period of at least twenty years (the Qualifying Period)

- (b) and they continue to do so at the time of the Application.

9.2 The Application is made under the provisions of Section 15 (2).

## 10. The elements to be proved by the Applicant.

### 10.1 Significant Number

- (a) The use of the Claimed Land has to be by a significant number of the inhabitants of a locality or a neighbourhood within a locality.

- (b) In Part 7 of the Application Form the justification for the Application to register the Claimed Land is stated as being;-

"For the following reasons: The land has been used for more than 20 years by the residents of Lower Sholver and Moorside for recreational activities: dog walking, football, rugby, cricket, kite flying, drone flying, cycling, bonfires, snowman building, carol singing. The green is a focal point for our community and a safe place where children can play close to their homes and away from traffic. In January 1996 Barratt Homes paid Oldham Borough Council the sum of £30000 as a contribution towards the cost of providing an area of public open space "Hodge Clough Road 2. The land is used by wildlife: Deer, Fox, Bats.

- (c) The right being claimed on the understanding of FCHO is a right for the inhabitants of St James Ward, Lower Sholver, Moorside, Oldham. According to the Profile of St James Ward 2016, the population was 11,862, seeing no movement since 2001.
  - (d) The evidence presented by the Applicant as set out in the various letters in support is of use of the Claimed Land by residents of Hodge Clough Road and one person of Leywell Drive, over the Qualifying Period. As stated above, it is submitted that the letters are of little evidential value and should properly be disregarded.
  - (e) The Petition, is of no evidential value. The signatories simply state that they agree with the view of the Applicant rather than provide their own evidence to be tested in this claim.
  - (f) It is noted that one person who has written a letter in support appears to no longer reside in the locality and that there is no clear evidence of the length of residence of any of the persons who support the Application. The number of letters in support totals 11.
  - (e) In so far as the Application defines a local area, those who have written letters in support of the Application largely come from one street in St James Ward.
-



- (f) The location and number of residents living in St James Ward supporting the Application with letters or joint letters of support, is as follows:

Hodge Clough Road – 15

Leywell Drive – 2

- (g) The Applicant resides in St James Ward on Hodge Clough Road. The Applicant does not claim to have used the Claimed Land at all. In his letter of support written jointly with his household he simply attests to its use by other un-named persons. The Applicant provides no evidence of the use of the Claimed Land by himself or his co-signatory Mrs Marlene Williamson. There is no evidence to support the length of time he claims to have resided in the locality.
- (h) The documents provided by the Applicant, do not necessarily demonstrate that the Claimed Land is used by a significant number of local residents spread over the Applicant's Qualifying Area, namely St James Ward. The letters and joint letters in support indicate 0.14% of residents may support the claim. That percentage is not a significant number.
- (i) A general use of land by the local community, according to Sullivan J In (R (on the Application of McAlpine Homes) -v-Staffordshire County Council [2002] EWHC 76 (Admin), has to be demonstrated. A single street is does not represent a local community.

## 10.2 Inhabitants of a Locality and a neighbourhood within a Locality.

- (a) The Applicant has to demonstrate that the use of the Claimed Land is by a significant number of the inhabitants of any locality or any neighbourhood within a locality and not just a general use by the public at large.
- (b) The "locality" from which a significant number of the users live, must be an entity known to the law: Ministry of Defence -v- Wiltshire County Council Ch D (Harman J) 03/05/1995.
- (c) The locality does not have to be defined in the Application. However if not, the Registration Authority must, from the evidence provided by the Applicant, be capable of identifying it. R (on the Application of Laing Homes Limited) -v- Buckinghamshire County Council (2004) JPL 313.
- (d) The Application Form at Part 6 requests the Applicant to identify the "Locality" or "Neighbourhood". The Applicant has entered "St James Ward" but has also entered "Lower Sholver" and "Moorside" and "Oldham" and given a postcode "OL1 4PW" and stated "Hodge Clough Road".
-

- (e) All bar one of those providing letters in support reside on Hodge Clough Road which is not a locality or a neighbourhood, or an entity known to law.
  - (f) It is not known whether the persons who have given letters in support regard themselves as residents of St James Ward or residents of Lower Sholver. There is no evidence that clarifies the position.
  - (g) The Applicant has not submitted a plan identifying either the locality or of the neighbourhood.
  - (h) Prior to local government reorganisation in 1974, a predecessor Authority to the Oldham Metropolitan Borough Council was the County Borough of Oldham, which ceased to exist as of 1st April 1974, by virtue of the 1972 Act. The County Borough of Oldham's functions and powers became vested in the Oldham Metropolitan Borough Council.
  - (i) St James Ward is an electoral ward in the Oldham Metropolitan Borough.
  - (j) There has not to FCHO's knowledge been an entity known to the law as Lower Sholver or Moorside, or Hodge Clough Road within the Qualifying Period.
  - (k) In *Cheltenham Builders Ltd v South Gloucestershire District Council* [2003] EWHC 2803 (Admin). stated that whereas the term locality in the context of TVGs meant a legally recognised administrative unit, a neighbourhood need not be an administrative unit and might include a housing estate. He also rejected the notion that a neighbourhood is any area of land that an Applicant chooses to delineate on a plan. He said at [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."
  - (l) The pronouncement of Sullivan J. was subsequently confirmed in *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 where Lord Hoffmann spoke at [27] of a neighbourhood as not being an area of legal or technical significance.
  - (m) In *Paddico Ltd v Kirklees Metropolitan Council & Others* [2012] EWCA Civ 262 at first instance Vos J. confirmed at [97] the prior jurisprudence and said "in section 22(1A), the term "neighbourhood" is to be understood as being a cohesive area and must be capable of meaningful description in some way":
-



- (n) The Applicant has not demonstrated that "Lower Sholver and Moorside" is a "neighbourhood" as opposed to another area.

### 10.3 Lawful Sports and Pastimes

- (a) It was recognised in R -v- Oxfordshire County Council ex parte Sunningwell Parish Council (2000) 1AC335, that dog walking and playing with children fall within what, in the present time, constitutes lawful pastimes.

- (b) FCHO does not contest that those uses may have occurred on the Claimed Land.

- (i) The following activities and community events have been identified from the Application and letters in support. Below is listed the numbers of letters where it is stated the activities have, or are being undertaken and have been witnessed:

- (A) dog walking, 1
- (B) football, 4
- (C) rugby, 1
- (D) cricket, 2
- (E) kite flying, 1
- (F) drone flying, 1
- (G) cycling, 4
- (H) bonfires, 1
- (I) snowman building,
- (J) carol singing
- (K) paddling pools 1
- (L) trampolining 1
- (M) water balloon fights 1
- (N) Camping, 3
- (O) fireworks 3
- (P) pretend teddy bears picnics, 1
- (Q) hide and seek, 1
- (R) bouncy castles, 3
- (S) slides, 1
- (T) swings, 1
- (U) pushing prams, 1
- (V) hand stands, 1
- (W) roly polys, 1

- (ii) The following are the numbers of letters wherein it is stated activities and community events have been participated in:

- (A) dog walking, 4
  - (B) football, 0
  - (C) rugby, 0
  - (D) cricket, 0
  - (E) kite flying, 0
-

- (F) drone flying, 0
- (G) cycling, 0
- (H) bonfires, 0
- (I) snowman building, 0
- (J) carol singing, 0
- (K) paddling pools, 0
- (L) trampolining, 01
- (M) water balloon fights, 0
- (N) Camping, 0
- (O) fireworks, 0
- (P) pretend teddy bears picnics, 0
- (Q) hide and seek, 0
- (R) bouncy castles, 0
- (S) slides, 0
- (T) swings, 0
- (U) pushing prams, 0
- (V) hand stands, 0
- (W) roly polys, 0
- (X) blackberry picking, 1

- (ii) The following are not activities and community events, that can be asserted, amount to use of the Claimed Land: Use by a bee, badger, duck, deer a bat or a Fox is not within the ambit of the legislative provisions.
- (v) The Applicant has submitted a photograph of a person in a body of water – there is no body of water on the Claimed Land. Other pictures that are not of the Claimed Land have also been submitted.

#### 10.4 As of Right

- (a) The Applicant has to demonstrate that those using the Claimed Land have done "as of right" and not "by right". As of Right means "nec vi, nec clem, nec precario" - without force, without stealth and without licence" All three elements have to be demonstrated by the Applicant.
- (b) As described earlier, the Claimed Land is open and accessible to the public at large. The letters in support of the Application make no reference to any impediment to the public entering onto the land. Indeed that is consistent with the land being maintained by the Owner so that it can be enjoyed both visually and physically by the public at large.
- (c) The public's use of the Claimed Land has been nec vi and nec clam. However, it is not nec precario - without licence, but "precario" by license and therefore "by right".
- (d) FCHO contends and demonstrates herein that use of the Claimed Land during the Qualifying Period, has been by a licence granted by the

Owner, although arguably initially granted by its predecessor Local Authority

- (e) The Claimed Land was acquired at two separate points in time and held under two different titles as detailed above for the purpose of the creation of a "Council Estate".
- (f) The Inspector on a TVG Application that was considered in *Barkas v North Yorkshire CC Scarborough Council* [2011] EWHC 3653, drawing on the principle established by the obiter dictum in *Beresford* that use by the public of land held under the Open Spaces Act 1906 and the 1875 Act, will be permissive (*precario*), in his Report to the Registration Authority, concluded by analogy:

The same principle must apply to recreation ground laid out under statute as an area for public recreation on a council estate. Council tenants, who are the primary objects for the provision of recreation, must have had a legal right to use the land for harmless recreation. It would be absurd to think of them as trespassers unless they first obtained the permission of the council to use the land for harmless recreation. Where the recreation ground, as in the present case, is laid out and maintained as a recreation ground open to the public pursuant to statutory powers, it seems to me that the public must similarly have a legal right to use the land for harmless recreation. Again, it would be absurd to regard them as trespassers. This view is supported by the obiter comments of Lord Walker in para 87 of *Beresford*. I therefore consider that at least until 2003, when SBC ceased to be owner of the remaining council houses, recreational use of the Field by local people was by right and not as of right.

The Inspector's analysis also relied upon a judgment of Denning J (as he then was) in *HE Green & Sons v The Minister of Health (No 2)* [1948] 1KB 34 ("*Green*") where it was held that a compulsory purchase order was not invalid where, utilising section 80 of the Housing Act 1936, the construction of a new housing estate was proposed along with nurseries, a health centre, a youth centre, shops, a public house and other amenities that might be equally used by residents of neighbouring housing estates.

The claimant submitted to the court that the analysis of the Inspector was wrong because the power to provide a recreation ground was expressly limited by the terms of section 80 of the Housing Act 1936 to serve a beneficial purpose in connection with the requirements of the persons for whom the relevant housing accommodation was provided. Those persons, the claimant asserted, were the council tenants of the Western Estate, who belonged to the working classes: it follows from this that only users of this description had a statutory right to use the playing fields, thereby enabling registration on the basis of user from the other housing estates surrounding the land. The argument it seems was that whilst use of the land by members of the general public would

---

be intra vires the authority, such use would not be pursuant to a statutory right but pursuant either to a revocable license or as of right. It was suggested that the case of Green was inapplicable, as it did not expressly deal with statutory rights at all.

The judge was not impressed with the claimant's arguments and robustly rejected them. It was held that in order to accept the claimant's submissions it was necessary to say that while there is statutory power to confer an entitlement to use the playing fields on those residents of the Western Estate "there is no power to provide the same facility for others, even although the recreation grounds provision is within the four corners of the wording of the Act". The judge reinforced his reasoning from a number of sources. First, he considered the Green case illustrated that an exercise of the power under section 80 of the Housing Act 1936 could be essentially for the benefit of the public. Secondly, the judge considered his judgment to be 'consistent with the position of a local authority as a public body' whose "powers and its duties are related to the fact that it is representative of those who come within its area of authority. That area is far larger and wider than a housing estate or part of the local authority's area." Thirdly, some comfort may have been drawn from the Inspector's description of the land "as having all the appearance of a typical municipal recreation ground" complete with entrances and exits that had been constructed by the landowning authority to enable public use. The conclusion of the judge was that the provision was public in its nature and that members of the public could not sensibly be described as trespassers, nor in these circumstances was it necessary to draw undesirable distinctions as to which users were members of the "working classes". The judge therefore decided that the Registration Authority had properly rejected the application to register the playing fields on the basis that otherwise qualifying user was permissive.

- (g) Consequently the Owner's Land has been held by the Owner for the whole of the Qualifying Period on trust for recreational purposes.
  - (h) Consequently recreational use of the Owner's Land has been "by right" for the whole of the Qualifying Period.
  - (i) The maintenance regime of the Owner's Land encourages and enables the public to enter onto the land for recreational purposes, as described in the Application.
  - (j) The requirements necessary to demonstrate that use of the land by the public, is "precarious" following the judgement delivered by their Lordships in R –v- City of Sunderland ex parte Beresford [2003] UKHL 60, has been met.
  - (k) The licence granted is a temporary licence which can be withdrawn at any time, or extinguished by Notice as the case may be.
-

## 10.5 Claimed Land

- (a) The Claimed Land must be clearly identified by means of a plan.
- (b) A plan accompanying the Application identifies an area of land of 9,915m<sup>2</sup>.

## 10.6 Physical Extent of use

- (a) the Application does not demonstrate a restriction as to the extent of the use of the Claimed Land for lawful sports and pastimes.
- (b) there are no permanent or transient physical impediments preventing the public from using and accessing all parts of the Claimed Land.
- (c) The Applicant does not need to show that every square inch of the Claimed Land is used, see R (on the Application of Cheltenham Builders Limited) –v- South Gloucestershire District Council [2003] EWHC 2803 (Admin). In that Case, Sullivan J said:-

“A common sense approach is required when considering whether the whole of the site was so used. A Registration Authority would not expect to see evidence of use of every square foot of a site, but it would have to be persuaded that for all practical purposes it could sensibly be said that the whole of the site had been so used for 20 years”.

- (d) The evidence, in so far as it is presented by the Applicant in the does not address the extent of the use claimed.
- (e) There are no public footpaths or bridleways cross the Claimed Land.

## 10.7 Twenty Years Use

- (a) There is no direct evidence of twenty years use as there is no direct evidence of residency by any of the witnesses or those supporting.
- (b) In the absence of such FCHO disputes that the Application and the Statements in support provide evidence of recreational use over the whole of the Qualifying Period.

## 10.9 Continue to do so

- (a) FCHO does not contest that the Claimed Land is used by members of the public for recreational activities.

## 11. Right of Way Uses

- (a) There is no a public right of way on the Claimed Land.
-

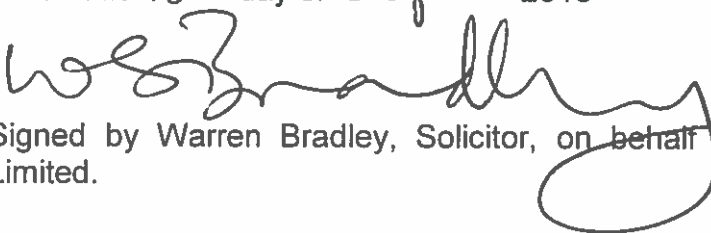
## 12. Summary

- 12.1 FCHO objects to the Application and contends that the Owner's Land should not be registered as a Village Green. The Application is misconceived: the statutory ingredients necessary to show that the Owner's Land qualifies as a Village Green have not been made and cannot be established. The Applicant contends that the Claimed Land is public open space. Management of land as public open space under section 10 of the Open Spaces Act 1906 does not lend itself to that land being registered as a Village Green.
- 12.2 The Applicant has failed to prove the following
- (a) Significant number - the Application has not established that a significant number use the Claimed Land and the spread is not sufficient to support the claim, and
  - (b) Neighbourhood within a locality - the Applicant has not identified a cohesive entity that would be understood by those living in the area as their "neighbourhood",
  - (c) Capable of registration – the Applicant has not demonstrated that the Claimed Land is capable of being registered as a Village Green
- 12.3 FCHO has demonstrated that the Owner's Land, has not been used "as of right" for the Qualifying Period but "by right" – "precario". The use has been by permission or a licence, for all of the Qualifying Period. Whether as undeveloped housing land or as open space.
- 12.4 The Claimed Land is open to being regarded by the Owner and the Registration Authority as open space. Alternatively the Claimed Land is undeveloped housing land held on trust for the use of the local inhabitants.

## 13. Conclusion

- 13.1 FCHO requests that on the evidence the Registration Authority determines not to register the Claimed Land as a Village Green.
- 13.2 FCHO reserves the right to add or to delete any information, as set out in these Objections, as information is established from records held by various public bodies, relating to the Owner's Land.

Dated this 12<sup>th</sup> day of Sep 2018

  
Signed by Warren Bradley, Solicitor, on behalf of First Choice Homes Oldham Limited.

---