COMMONS REGISTRATION COMMITTEE

Application to register land north of Chadderton Fire Station, Broadway, Chadderton as a town green

Report of the Borough Solicitor

31st March 2010

Portfolio Responsibility: Environment and Infrastructure

Officer Contact: Alan Evans – Group Solicitor
Ext. 3019

Purpose of Report
To report to Members on the recommendation of Miss Ruth Stockley (Counsel), the independent inspector who heard an application for town green status for land north of Chadderton Fire Station, Broadway, Chadderton.

Executive Summary
In April 2008 the Committee determined that a number of applications to register Council owned land as town or village greens should be dealt with by way of non-statutory public inquiries conducted by independent barristers. The barristers were to consider the evidence and make a recommendation to the Commons Registration Committee. One of the applications was from Mr John Arnold and related to land north of Chadderton Fire Station, Broadway, Chadderton.

Following the Committee's decision, the Borough Solicitor appointed Miss Ruth Stockley, a barrister with experience at this area of law, to conduct an inquiry into Mr Arnold's application. Miss Stockley's report and recommendations to the Council as Commons Registration Authority are set out in her Report dated 4 October 2009 at Appendix A.

Oldham Council

Recommendations

Members are recommended to consider Miss Stockley's report and decide whether the application to register land north of Chadderton Fire Station, Broadway, Chadderton as a town green should be granted.

EXECUTIVE DECISION RECORDING SYSTEM
REFERENCE NO:

COMMONS REGISTRATION COMMITTEE

31 March 2010

Application to register land north of Chadderton Fire Station, Broadway, Chadderton as a town green

Report of the Borough Solicitor

Portfolio Responsibility: Environment and Infrastructure

1 Purpose of Report

1.1 To report to Members on the recommendation of Miss Ruth Stockley (Counsel) the independent inspector who heard an application from Mr John Arnold for Town Green status for land north of Chadderton Fire Station, Broadway, Chadderton.

1.2 To invite Members to now determine the application from Mr Arnold to which the Council as landlord submitted an objection.

2 Recommendation

2.1 Members are recommended to determine the application to register land north of Chadderton Fire Station, Broadway, Chadderton as a town green based on the report and recommendation of Miss Stockley, taking all relevant matters into consideration, ignoring matters which are irrelevant and giving reasons for their decision that are lawful, reasonable and rational.

3 Background

3.1 The Council is the Commons Registration Authority for the Borough of Oldham and as such is responsible for determining all applications to register land within the Borough as town greens. The Council has established the Commons Registration Committee as the body which determines such applications. In April 2008 the Commons Registration Committee decided that a number of applications to register Council owned land as town or village greens should be dealt with by way of non-statutory public inquiries conducted by independent barristers. One of the applications was from Mr Arnold and related to land north of Chadderton Fire Station, Broadway, Chadderton.

3.2 Following the Committee's decision, the Borough Solicitor appointed Miss Ruth Stockley, a barrister with experience of this area of law, to conduct the inquiry into Mr Arnold's application. Miss Stockley had previously acted as an inspector at town green inquiries. She had no prior involvement with Mr Arnold's application. The inquiry was held on 23 and 24 June 2009 at the

Civic Centre, Oldham and a number of witnesses gave evidence, both in support of the application and against the application. Miss Stockley then produced a report containing her findings arising from the inquiry and making a recommendation that the application should not be granted as it fails to meet the statutory requirements set out in section 13 of the Commons Registration Act 1965 for registration of land as a town green. Miss Stockley's report is at Appendix A to this report and her conclusions are contained in paragraph 9 of her report.

3.3 As Miss Stockley points out at paragraph 1.4 of her report, it is for the Council as Commons Registration Authority to determine the application. She has no power to determine anything. Her report is only a set of recommendations to the Council as Commons Registration Authority.

4 Options/Alternatives

4.1 In determining the application the Committee must ensure it provides reasons whether it accepts or rejects Miss Stockley's recommendations. A decision either to grant or refuse the application must be made solely on the basis that it does or does not satisfy the statutory requirements contained within Section 13 of the Commons Registration Act 1965. The statutory requirements are set out in Miss Stockley's report at paragraphs 6.1 to 6.21.

5 Preferred Option

5.1 The preferred option is to refuse the application on the basis that the statutory requirements of Section 13 of the Commons Registration Act 1965 have not been met. If Members wish to grant the application they can only do so on the basis that they are satisfied that there is evidence which satisfies the statutory tests contained in Section 13 of the Commons Registration Act 1965.

6 Consultation

6.1 The Applicant (Mr Arnold) and the Council (as objector) were invited to make representations on Miss Stockley's report. The Council's comments are contained in paragraph 12 below. Mr Arnold's response was that he accepted the comments of the inspector that the land could not be registered as a town green because it was appropriated as public open space by the Council during the 20 year period that is required by law to establish the land should become a town green. However, Mr Arnold asked that the land remains as public open space on behalf of the local inhabitants and their children to use in safety.

7 Financial Implications

7.1 The application must be considered on its merits alone and financial implications are not a relevant consideration. (J. Molloy)

8 Legal Services Comments

8.1 The application must be considered on its legal merits alone. These are adequately explained in Miss Stockley's report at paragraph 6.1 to 6.29 (A. Evans).

9 Human Resources Comments

9.1 None applicable

10 Risk Assessments

10.1 None applicable

11 IT Implications

11.1 None

12 Property Implications

12.1 The report by Miss Stockley has been read and considered by Officers of the Council's Economy Places and Skills Directorate and Unity Partnership who believe the report to be a comprehensive, thoughtful and useful summary and explanation of the current legal position. In particular the report documents clearly and in detail the legal background to town green registrations including extracts from case law precedents and 'obiter dicta' from senior Judges. We would endorse the findings of the report author and recommend that the land not be registered as a town green.

12.2 It should be noted that by implementing the recommendation in the independent report not to register the land as a town green, the Council is doing no more at this stage than allowing the current situation to continue. Accepting the recommendation not to register does not imply that the Council is bound to, or would consider, alternative uses or that the Council would restrict access to and use of the land as open space. Although the Council would potentially have greater flexibility in use of the land, it could be that the use would remain unchanged and no alternative use to sport and recreational uses are currently being considered by Officers (M Simister/C Conroy).

13 Procurement Implications

13.1 None

14 Environmental and Health & Safety Implications

14.1 None

15 **Community Cohesion Implications [including Crime & Disorder Implications in accordance with Section 17 of the Act] and Equalities Implications**

15.1 None

16 **Forward Plan Reference**

16.1 None

17 **Key Decision**

17.1 No

18 **Background Papers**

18.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

File Ref: GEN0331
Name of File: Town Green Application Broadway, Chadderton
Records held in Borough Solicitor's Department, Civic Centre, West Street, Oldham
Officer Name: A Evans – Group Solicitor
Contact No: 0161 770 3019

19 **Appendices**

19.1 Report of Miss Ruth Stockley in the matter of an application to register land north of Chadderton Fire Station, Broadway, Chadderton as a town green.

IN THE MATTER OF AN APPLICATION TO REGISTER LAND

NORTH OF CHADDERTON FIRE STATION, BROADWAY,

CHADDERTON AS A TOWN GREEN

REPORT

of Miss Ruth Stockley

04 October 2009

Oldham Metropolitan Borough Council,

Legal & Democratic Services

Civic Centre

West Street

Oldham

OL1 1UL

Ref: AE/GEN0331

Application Ref: VG 11 (N)

IN THE MATTER OF AN APPLICATION TO REGISTER LAND

NORTH OF CHADDERTON FIRE STATION, BROADWAY,

CHADDERTON AS A TOWN GREEN

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REPORT

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1. INTRODUCTION

1.1 This Report relates to an Application made under Section 13 of the Commons Registration Act 1965 ("the 1965 Act"). By virtue of that provision and Regulations made under the 1965 Act, namely the Commons Registration (New Land) Regulations 1969, Oldham Metropolitan Borough Council, as the Registration Authority, is required to register land as a town or village green where such land has become a town or village green after January 2 1970. Although Section 15 of the Commons Act 2006 came into force on April 6 2007, registration authorities are required to continue to deal with applications made before that date pursuant to Section 13 of the 1965 Act.[1]

1.2 The 1965 Act and Regulations made thereunder do not make provision for any mechanism for the Registration Authority to carry out any factual investigation which

[1] By virtue of Article 4(4) of the Commons Act 2006 (Commencement No 2, Transitional Provisions and Savings) (England) Order 2007.

may be necessary by allowing applicants and objectors to put their respective cases. In accordance with common practice, the Registration Authority instructed me to hold a non-statutory public inquiry to consider the Parties' views and any views which members of the public wished to express, and then to prepare a Report containing my recommendations for consideration by the Authority.

1.3 I held such an Inquiry over 2 days, namely on 23rd and 24th June 2009, and I also undertook an accompanied site visit on 23rd June 2009. Prior to the Inquiry, I was invited to make informal directions as to the exchange of evidence and of other documents. Those documents were duly provided to me by both Parties which significantly assisted my preparation for the Inquiry and which I shall refer to in this Report.

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

2. THE APPLICATION

2.1 The Application is dated 8th November 2002 and was made by Mr John Francis Arnold of 42 Whitegate Road, Chadderton, Oldham ("the Applicant"). It was made under the 1965 Act on the requisite Form 30. Part 3 of the Application Form states that the land sought to be registered is usually known as "*Land North of Chadderton Fire Station*", and under "Locality" the entry "*The Ward of Chadderton North*" has been

made. I shall return to that reference later in this Report. In Part 4 of the Application Form, it is stated that the land sought to be registered became a town green on 1st January 2002. The reasons given for that are expressed in Part 5, namely "*The inhabitations (sic) of the locality and/or the neighbours of have indulged in lawful sports or pastimes as of right for not less than twenty years*".

2.2 The Application was accompanied by 12 sworn statements, the contents of which I shall refer to below, together with a petition containing some 74 signatures. In addition, it was verified by a statutory declaration made by Mr Arnold on 8th November 2002. There were also two Plans submitted. The first showed the Land subject to the Application shaded in pink, namely the Plan marked "A" as referred to in Mr Arnold's statutory declaration. I shall return to that Plan below. The second showed the ward boundary of Chadderton North shaded in pink.

2.3 The Registration Authority received the Application on 11th November 2002, and duly advertised it on 10th December 2002 giving a closing date for objections of 24th January 2003. An Objection was received from the owner of the Application Land, namely Oldham Metropolitan Borough Council ("the Objector"), dated 23rd January 2003. I understand that an objection was also received from the Greater Manchester Police Authority. I have not had sight of that objection, but I further understand that it was subsequently withdrawn. The Applicant responded to the Objection from the Landowner in an undated Response received by the Registration Authority on 18th February 2003. A number of further representations were then made by the Applicant and the Objector, culminating in a letter from the Applicant dated 27th April 2004, all of

which I have seen and read and the contents of which I have taken into account in this Report.

2.4 At that time, the very significant case relating to town and village greens of ***Oxfordshire County Council v. Oxford City Council and Robinson***[2] was proceeding through the Courts which culminated in the House of Lords' decision in May 2006. In his letter dated 27th April 2004 referred to above, the Applicant acknowledged that the determination of his Application ought to await the outcome of that case. Thereafter, the Registration Authority determined to hold a non-statutory public inquiry into the Application.

2.5 I have been informed by the Registration Authority that all the procedural statutory formalities leading up to the Inquiry were complied with in full.

2.6 At the Inquiry, the Applicant appeared in person and represented himself. The Objector was represented by Mr John Barrett of Counsel. Third parties were invited to speak, but no additional persons wished to do so other than those called as witnesses by the Applicant and the Objector.

2.7 Prior to the Inquiry, a paginated bundle of documents was prepared containing all the documents referred to above together with the further evidence the Applicant and the Objector wished to rely upon. That Bundle was used by the Parties at the Inquiry, and all references in this Report to "the Bundle" are references to that document. In addition, the Parties were invited to provide skeleton arguments of their

[2] [2006] 2 WLR 1235.

respective cases in advance of the Inquiry. Pursuant to that, the Applicant provided a letter dated 15 June 2009, and the Objector provided a Skelton Argument with authorities relied upon attached.

3. THE APPLICATION LAND

3.1 The original Application Plan marked "A" and referred to in Paragraph 2.2 above is at page A4 of the Bundle. It identified in pink the area of land subject to the Application. Subsequently, on 11th May 2009, the Applicant submitted a revised plan marked "A" showing a reduced area of land shaded in pink that he wished to be subject to the Application. That revised plan was duly provided to the Objector and is at page A7 of the Bundle. The Applicant confirmed at the outset of the Inquiry that he wished the revised plan at page A7 of the Bundle to be substituted as the Application Plan and for his Application to be amended accordingly. The Objector confirmed that it had no objection to that proposed amendment to the Application. I deal below with the appropriateness of that amendment and my recommendation as to the approach the Registration Authority ought to adopt in relation to it. However, for the purposes of this Report, all references to the Application Land, or "the Land", are references to the area of land shaded in pink in the revised plan at page A7 of the Bundle.

3.2 The Land is located in Chadderton. It lies to the north of Chadderton Fire Station and to the east of Broadway, the A663 trunk road. The Land is bound to the north by residential properties on Eustace Street. To the east are Bare Trees Infant and Junior Schools, and also an area of open space which is in turn flanked to the east and south by residential properties at Holly Grove and Cypress Avenue

respectively. Further to the south of the Land is the football ground used by Chadderton Football Club.

3.3 The Land is rectangular in shape and comprises a pleasant tree lined grassed area of open space. The evidence indicates that it measures some 22852 square metres in area.[3] Tarmacadam surfaced paths cross the Land and an area of hardstanding is located in the southern part. It is apparent that there has been a lack of any recent maintenance to the Land, which has naturally regenerated, and there is no doubt an abundance of flora and fauna on the Land. There is open access onto the Land. There is no evidence of any signs on the Land.

4. HISTORY OF THE LAND

4.1 The Land is currently owned in its entirety by Oldham Metropolitan Borough Council. It was acquired pursuant to a Compulsory Purchase Order as part of a wider area of land by the former Urban District Council of Chadderton, the Borough Council's predecessor, in 1955 for housing purposes. It was retained as open space as it was not part of the land that was used for such purposes nor was it otherwise developed. In particular, as referred to by witnesses for both the Applicant and the Objector, the Urban District Council obtained grant funding to landscape the Land, to lay out paths and to construct a play area, which works were carried out around 1972.

4.2 In March 1994, the Land was specifically appropriated from the Borough Council's housing committee to its leisure services committee to be held as public open space.

[3] According to the Map at Page C6 of the Bundle.

4.3 In May 2002, planning permission was granted by the Borough Council in its capacity as local planning authority for the development of the southern part of the Land as a police station, subject to the payment of a commuted sum in relation to the loss of public open space. Subsequently, the Borough Council as Landowner has sought to dispose of that southern part of the Land to the Greater Manchester Police Authority pursuant to the procedures contained in the Local Government Act 1972 relating to the disposal of public open space. However, no such disposal has to date taken place.

4.4 There is no dispute between the Applicant and the Objector in relation to the above factual matters, save that the Applicant suggested in his oral evidence that the Land was owned until 1969 by a private company, namely Foxdenton Estate Company Limited. However, in cross examination, he indicated that he was unclear from when the Urban District Council owned the Land, and the Conveyance I have seen dated 22nd April 1955[4] indicates that the Land was part of the land conveyed from that private company to the Urban District Council thereunder.

5. THE EVIDENCE

5.1 I would like to record at the outset that every witness from both Parties presented their evidence in an open, straightforward and helpful way. Further, I have no reason to doubt any of the evidence given by any witness, and I regard each and every witness as having given very credible evidence.

[4] At pages C23-C32 of the Bundle.

5.2 Indeed, the relevant factual evidence adduced is largely undisputed. Notably, the Applicant did not challenge any of the Objector's evidence by way of cross examination, whilst the Objector accepted that all the witnesses who gave evidence for the Applicant were being truthful and their veracity was not being challenged.[5] Instead, the issues for determination essentially involve the appropriate application of the legal framework to the agreed factual circumstances.

5.3 The following is not an exhaustive summary of the evidence given by every witness to the Inquiry. However, it purports to set out the flavour and main points of each witness's evidence. I shall consider the evidence in the general order in which each witness was called at the Inquiry.

CASE FOR THE APPLICANT

Oral Evidence in Support of Application

5.4 **Mrs Joan McMahon**[6] has lived at 4 Eustace Street for the past 49½ years. She recalls witnessing her children playing on the Land, especially during the summer months. She refers in her written statement to playing with her children and then her grandchildren on the Land, to sledging on the Land during the winter and to the annual bonfire on the Land. She has also seen many other people using the Land, including courting couples and people walking their dogs. In response to a question from myself, she was unaware where many of the people who used the Land came from. She pointed out that some appeared to come from beyond the immediate area as they would park their cars on Broadway and then use the Land. She expressed the view that the Land should be kept for younger families to use. She also noted that

[5] Paragraph 8 of Objector's Closing Submissions.
[6] Her written evidence is contained at pages A16-A17 and B1 of the Bundle.

there is much wildlife on the Land. She stated that it is a pretty area with trees around it, and that in her opinion, the selling off of the Land for development would be a travesty.

5.5 She also referred to a concrete area in the middle of the Land. It had been constructed as a play area, but it is now overgrown. During the 1970's, Chadderton Urban District Council spent a considerable amount of money landscaping the Land, laying footpaths and laying the hardstanding as a play area. She pointed out that there was a mounted plaque on the Broadway side of the Land near to the football ground, but she could not recall what it stated. It could not be located during the subsequent accompanied Site Visit that I undertook.

5.6 In cross examination, she considered various maps showing the area where the Land is located over the years. The 1896 Map[7] showed the area before Broadway had been constructed, which was around the 1930's, and before Eustace Street was constructed. The area was shown similarly undeveloped on the 1909 Map[8] and the 1922 Map.[9] She acknowledged that the 1954 Map[10] showed Broadway in situ, and also Eustace Street to the north of the Land. The secondary school had then also been constructed on the western side of Broadway and part of Holly Grove had been constructed. A pond and allotment gardens were shown on the Application Land. The 1964 Map[11] showed the wider area, and she acknowledged that there was nothing to prevent anyone walking from Broadway across to Holly Grove nor, she added, to where the football ground is located in the vicinity of Andrew Street. She noted that

[7] At page C12 of the Bundle.
[8] At page C13 of the Bundle.
[9] At page C14 of the Bundle.
[10] At page C15 of the Bundle.
[11] At page C16 of the Bundle.

the 1984 Map[12] showed that Bare Trees Junior School had been constructed, and that a number of paths and an area of hardstanding had been laid out on the Land. Having considered those Maps, she agreed that the Land was previously part of a larger area which could be walked over and through.

5.7 She further acknowledged that public access to Bare Trees School and its playground were now prohibited by a fence, and that the area on which the fire station was constructed was taken out and so developed resulting in the public no longer being able to walk across the fire station site. However, she pointed out that the fire station and the school had "*not made a mess of the area*" and local residents regarded those developments as being needed and they had not encroached on the area the residents wanted to save. She agreed that the public were able to see those various developments with their own eyes and on land that had been used in exactly the same way by the public as the Application Land was used. She therefore accepted that the public knew that when a beneficial use came forward for part of that wider area of land, their enjoyment of that area of the land would be relinquished, as had occurred on the site of Bare Trees School. She pointed out, though, that such previous developments had still kept some land free and available for general use.

5.8 In relation to the Application Land, she regarded it as public open space. She agreed with the Objector's stance that in 1994 at the very latest when the Land was appropriated to the Council's leisure services, people were allowed to use it because it had been laid out as public open space. People were not discouraged from using it. She further acknowledged that the Land is designated as public open space in the

[12]At page C17 of the Bundle.

Council's Unitary Development Plan; that it was advertised as public open space in the publication of the planning application for its development; and that the statutory procedure to dispose of public open space had been implemented by the Council.

5.9 Mrs McMahon and her husband had been responsible for the petition in support of the Application.[13] She explained that although some of the signatures were from people who lived outside the local area, such as in Chester and Stockport, they were from people who had previously lived in the area and then moved away. It was pointed out in cross examination that the wording of the petition was not specific as to the extent of use by individuals, to which she responded that when they went to collect signatures, her and her husband informed people what had to be established in order for the Land to have become a town green. She was unsure whether the plan attached to the petition was the same plan as the Application Plan.

5.10 **Mr Dennis Jarvis**[14] has lived at 10 Eustace Street for the past 12 years, and he has used the Land for nearly 50 years as when he was a child, his Auntie lived on Eustace Street. He refers in his written Statement to having used the Land for walking, playing football and other games, flying kites, walking dogs and bonfires. It has always been regarded as a recreation area and open space for the enjoyment of local residents and the general public, and has been used openly and freely without seeking permission from anyone to use it. He recalled Bare Trees School being built, and that when the school site was fenced off the local residents wanted to have a cut through retained, but that was not provided. The School was built on a pond, namely

[13] At pages A23-A27 of the Bundle.
[14] His written evidence is contained at page A21 of the Bundle.

that shown outside the blue line on the 1964 Map.[15] He pointed out that there is much wildlife on the Application Land, and that all the land in the area is being taken for development leaving nowhere for children to play.

5.11 In cross examination, Mr Jarvis indicated that part of the area was taken out of the public's use for the construction of the School around the early 1970's. That was around the same time that the Council obtained a grant and laid out the paths and hardstanding area on the Land as shown on the 1984 Map.[16] The allotment gardens and the other pond on the Application Land shown on the 1964 Map[17] were also taken out at that time. He recollected the fire station being constructed on land that had been part of the wider area and used as part of the wider area, and that the same had occurred for the construction of the mortuary to the south of the fire station. In relation to the football club, he acknowledged the Chadderton Urban District Council Minute from 1971[18] referring to a complaint that the contractor carrying out improvement works to the football ground had tipped soil onto "*the area of public open space to the north of the Fire Station*" and that the land referred to was the Application Land which was described as public open space even in the 1970's. He indicated that people perceived the Land as public open space even at that time.

5.12 **Mr Gary Raynor**[19] has lived at 2 Eustace Street since 1987, and had previously lived in the area during the 1960's. He has used the Land regularly since 1965 for recreational purposes and saw people from the wider area using the Land. In response to a question from myself, he indicated that he was unaware where those

[15]At page C16 of the Bundle.
[16]At page C17 of the Bundle.
[17]At page C16 of the Bundle.
[18]At page A32 of the Bundle.
[19]His written evidence is contained at page A18 of the Bundle.

other people came from, but they appeared to be from the wider area as some would arrive by car. In his written Statement, he refers to the purposes he and others used the Land, such as to play ball games, play other games, walk, sledge, cycle, observe wildlife and have bonfires. From 1982 onwards, he has owned dogs which he has walked on the Land on a daily basis and still continues to do so. He was always of the view that the Land was a recreational area that was freely available to anyone to use without requiring permission. He further pointed out that Chadderton Football Ground is still available for the public's use, save that people are not allowed to use it when the Football Club have a match there. He acknowledged in cross examination that the reason is that from the mid-1970's, the Council insisted that the Club had to allow people access to the Ground save when matches were occurring. He also remembered the mounted plaque referred to by Mrs McMahon, but stated that it was no longer in situ. He was unable to recall what it said.

5.13 **Mr John Arnold**[20] is the Applicant. He lives at 42 Whitegate Road, Chadderton, and has known the Land for over 60 years, using it since he was a child. He refers in his written evidence to Chadderton Urban District Council receiving a grant in 1972 which was used to lay footpaths, a recreational area and to plant trees on the Land, and that the Land has been used openly and freely and without permission since.

5.14 In cross examination, he dealt with the issue of the "locality" of the Land. He acknowledged that Part 3 of the Application identifies the locality as the North Chadderton Ward and he confirmed that his Solicitors had advised him upon so

[20] His written evidence is contained at pages B3-B7 of the Bundle.

identifying the locality for the purposes of his Application. He agreed that the boundaries of that Ward, and thus of the locality as described in the Application, were Middleton Road to the south-west and the A627(M) to the north-east. He further acknowledged that the addresses of those who had compiled witness statements in support of the Application and who were signatories to the Petition submitted in support were correctly identified in purple on the Plan at page C11 of the Bundle. He accepted that on the basis of the locality as defined in the Application, all the houses in the Chadderton Park area would be within that locality, as would all the houses up to Garforth Street to the east. Moreover, he agreed that many of the inhabitants in the locality as identified in the Application would not use the Land.

5.15 However, he went on to indicate that the "*locality*" referred to in the Application was merely intended to identify the area where the Land was situated rather than to have any further implications. He suggested that instead the Land was used by the inhabitants of a neighbourhood, such neighbourhood being identified as "the Bare Trees Estate" bounded by Burnley Lane, Victoria Street, Middleton Road and Broadway. His justification for that particular area being identified as the appropriate neighbourhood was that that was the area where the compilers of the witness statements in support of the Application and the signatories to the Petition lived, rather than it being a recognised geographical area. He agreed that the areas included within that identified area were different in character and included different types of housing. In terms of facilities, he agreed that the Plan at Page C10 of the Bundle correctly identified the various facilities in the area.

5.16 **Mr Gary Raynor** gave some additional oral evidence on the issue of the appropriate locality or neighbourhood. He identified a smaller area as the appropriate "neighbourhood" that was known as the "Bare Trees Estate", namely an area incorporating Mora Avenue, Briar Grove, Laburnum Avenue, Brook Street, Milne Street and Andrew Street. He confirmed in cross examination that that area excluded both sides of Broadway. He indicated that his justification for identifying that area was similar to Mr Arnold's, namely it was the area where the supporters of the Application lived. He acknowledged that the area referred to was built at different times as the Maps indicated, and that the School from which the Estate apparently took its name was only constructed in the early 1970's after the Estate had been built. However, he stated that that area was referred to locally as the Bare Trees Estate.

Written Evidence in Support of Application

5.17 In addition to the evidence of the witnesses who appeared at the Inquiry, I have also considered and had regard to the written evidence submitted in support of the Application. I note that as the Application was made back in 2002, the witness statements were made at that time, namely some 7 years ago. I am unaware as to the updated position in relation to those particular witnesses and their use of the Land over the past 7 years. Further, whilst the Registration Authority must also take into account such written evidence, I and the Authority must bear in mind that it has not been tested by cross examination. Hence, particularly where it is in conflict with oral evidence given to the Inquiry, I have attributed such evidence less weight as it was not subject to such cross examination.

5.18 Some 12 witness statements were submitted in support of the Application, including 3 from the witnesses who also gave oral evidence in support and whose evidence I have referred to above.[21] The main relevant points referred to in that additional evidence are as follows.

5.19 The various witnesses indicated that they had used the Land for many types of recreational activities over different periods of time, often with their children and/or grandchildren and/or whilst walking their dogs, and they had seen others similarly using the Land. They all used the Land openly and freely and without having to seek permission from anyone, and the Land was regarded as open space available for their general use. The location of those supporters are marked in purple on the Map at page C11 of the Bundle.

5.20 As referred to above, a Petition containing some 74 signatures has also been submitted which I have noted. Those signatories were thereby indicating that they have used the Land "*for lawful pastime and recreation since at least January 1982*", and that they have done so openly and freely and without seeking permission from anyone. I have also taken into account the other supporting documentation submitted by the Applicant in response to the Objection.[22]

CASE FOR THE OBJECTOR

Oral Evidence Objecting to the Application

5.21 **Glenn Dale**[23] is Oldham Borough Council's Horticultural Services Manager, a position he has held for over 10 years. He is responsible for ensuring that the

[21] Those 12 Statements are at pages A8-A22 of the Bundle.
[22] At pages A46-A52, A58-A59, A60 and A77-A78 of the Bundle.
[23] His Witness Statement is at page C98 of the Bundle.

Borough's greenspace is managed and maintained appropriately. He noted that in 1994, an appropriation was made transferring the Land from Housing to Leisure Services. The effect from his point of view was that the Land was then managed and maintained as public open space thereafter. He also pointed out that if anyone was to use the Land for a formal event, there would be a requirement to complete a booking form, as is the case for such use of any public open space in the Borough. However, in response to a question from myself, he indicated that he was not aware of any such booking forms having been completed for the Application Land.

5.22 Mr Dale's evidence was not challenged by the Applicant.

5.23 **Douglas Chisholm**[24] is a Principal Legal Assistant at Oldham Borough Council. His evidence dealt with the procedures the Council have recently followed in order to dispose of part of the Land for the purposes of enabling the construction of a new police station to take place. On 23rd July 2001, a decision was made in principle to dispose of part of the Land, namely that part that was the subject of the planning application for a new police station and which is identified on the Plan at page C92 of the Bundle. He then embarked upon the advertisement of the Council's intention to dispose of that part of the Land pursuant to Section 123(2A) of the Local Government Act 1972, which provision is relevant to the disposal of public open space and must be complied with before public open space can be disposed of by a local authority. One objection was received to that advertisement, namely from Mr McMahon. Consideration was given to that objection, but approval to the disposal was nonetheless given by the Council on 22nd October 2002. He emphasised that the

[24] His Witness Statement and Exhibits are at pages C88-C97 of the Bundle.

particular procedure undergone to dispose of part of the Land would not have been undertaken unless the Council regarded that Land as public open space, as that procedure is only and specifically applicable to the disposal of public open space by a local authority.

5.24 Mr Chisholm's evidence was not challenged by the Applicant.

5.25 **Graham Dixon**[25] is the Facilities Management and Development Officer at Oldham Borough Council. In his evidence, he addressed the history of the Land and how it was dealt with by the Council as Landowner. The Land was part of a wider area of land acquired by the Council over a number of years, and in particular was part of the area of land acquired specifically for housing purposes in 1955 pursuant to a compulsory purchase order.[26] Over time, that wider area of land was divided up and developed for different purposes, including a housing estate, a school, a mortuary and a fire station. A further parcel of that wider area has been licensed to Chadderton Football Club for use as a football ground since the 1950's. The Application Land was originally part of that wider area of land that was not fenced off nor otherwise delineated. The public could access that wider area of land until parts of it were required for other beneficial purposes. That occurred, for example, on the parcel of land on which the Bare Trees School was built in the early 1970's. In response to a question from myself, Mr Dixon confirmed that the School was the latest development that had occurred on the wider area of land. He expressed the view that it was thereby clear to the local population from the above circumstances that their

[25] His Witness Statement is at pages C3-C5 of the Bundle.
[26] The relevant conveyance is at pages C23-32 of the Bundle.

enjoyment and use of the wider area of land was subject to a revocable licence which the Council would revoke as and when a beneficial use for that land came forward.

5.26 In March 1994, all the Application Land together with other land, namely that contained in the original Application Plan at page A4 of the Bundle, was appropriated from the Council's Housing Committee to the Leisure Committee for use as public open space. That is indicated in the internal memorandum dated 11 March 2004 from the Council's Head of Property Services to the Assistant Chief Executive, which refers to the relevant area of land as "Plot B" and which area of land is identified on the attached Plan.[27] From that time onwards, the Land was treated by the Council as public open space. The Council's 1994 open space survey identified the Land as public open space, and it is subject to Policy R2 in the Council's 1996 Unitary Development Plan which seeks to protect existing open space.

5.27 The Council previously laid out paths and a play area on the Land which are still visible but have fallen into disrepair. Around 4 years ago, Mr Dixon was contacted by local residents because the drainage system on the Land had failed and the paths were not passable in wet weather. Works to the drainage system were carried out by the Council's drainage section and some £19000 was spent to reduce the levels of standing water around the paths. As public open space, the Land was maintained by the Council as a public amenity and made available to the public for recreational purposes. He was not aware of any mounted plaque near to the Land.

[27] The Memorandum and attached Plan are at pages A61-63 of the Bundle.

5.28 In May 2002, a planning application was submitted to the Council by Greater Manchester Police to develop part of the Application Land for a police station which was recommended for approval.

5.29 Mr Dixon further pointed out that the Applicant resides a considerable distance away from the Land. He expressed the view that the supporters of the Application do not constitute a significant number of the local inhabitants.

5.30 Mr Dixon's evidence was not challenged by the Applicant.

Written Evidence Objecting to the Application

5.31 There were no additional written statements submitted on behalf of the Objector. I have taken into account the contents of the Objection letters and supporting evidence referred to above that were submitted by way of response to the Application.[28]

THIRD PARTY EVIDENCE

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

6. THE LEGAL FRAMEWORK

6.1 I shall set out below the relevant basic legal framework within which I have to form my conclusions and the Registration Authority has to reach its decision. I shall

[28] At pages A28-A45, A53-57 and A61-A76.

then proceed to apply the legal position to the facts I find based on the evidence that has been adduced as set out above.

Commons Registration Act 1965

6.2 The Application was made pursuant to the Commons Registration Act 1965, as amended by the Countryside and Rights of Way Act 2000. As noted in paragraph 1.1 above, as it was made prior to 6 April 2007, the Application must be determined under the 1965 Act and not under the Commons Act 2006.

6.3 The Commons Registration Act 1965 provides for each registration authority to maintain a register of town and village greens within its area. Section 13 of the 1965 Act provides for the amendment of the register to take place where any land becomes a town or village green. "Town or village green" is defined by Section 22(1) in three ways, usually referred to as class (a) statutory greens, class (b) customary greens and class (c) prescriptive greens. In this case, if the Land is a town or village green, it can only be because it is a class (c) green.

6.4 As from 30 January 2001, the definition of a class (c) green in Section 22(1) of the Act was amended by Section 98 of the Countryside and Rights of Way Act 2000, so that a class (c) green is defined for the purposes of the Application in Section 22(1A) of the 1965 Act as:

> "***…land on which for not less than twenty years a significant number of the inhabitants of any locality, or of 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."

6.5 No "prescribed provisions" have been made under subparagraph (b), so that part of the definition is not operative.

6.6 As to subparagraph (a), the House of Lords in ***Oxfordshire County Council v. Oxford City Council and Robinson***[29] held that the requirement that qualifying use should "continue" was to be construed as meaning that the qualifying use had to continue up to the date of the application for registration of land as a green, and not up to the date of registration as had been previously found by the Court of Appeal whose decision on that issue was overruled.

6.7 Therefore, for this Application to succeed, it must be shown that:-

a. the Land has been used for lawful sports and pastimes for a period of not less than 20 years;

b. it has been so used by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;

c. it has been so used as of right; and

d. that use has continued to the date of the Application for registration.

The Burden and Standard of Proof

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

[29] [2006] 2 WLR 1235.

6.9 Further, when considering whether or not the Applicant has discharged the evidential burden of proving that the Land has become a town green, it is important, I consider, to have regard to the guidance given by Lord Bingham in ***R. v Sunderland City Council ex parte Beresford***[30] where, at paragraph 2, he noted as follows:-

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

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

Statutory Elements of a Town Green

6.10 Recent caselaw has provided helpful rulings and guidance on the various elements of the statutory definition of a town green which I shall refer to in turn below.

Lawful Sports and Pastimes

6.11 It was made clear in ***R. v. Oxfordshire County Council ex parte Sunningwell Parish Council***[31] that "*lawful sports and pastimes*" is a composite expression and so it is sufficient for a use to be either a lawful sport or a lawful

[30] [2004] 1 AC 889.
[31] [2000] 1 AC 335 at 356F to 357E.

pastime. Moreover, it includes present day sports and pastimes and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and children's play. However, that element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way.

Twenty Year Period

6.12 The use can be for any 20 year period, but it must continue up to the date of the application as referred to above. Therefore, the only period upon which an applicant can rely is a period of upwards of 20 years ending with the date of the application.

6.13 Further, under Section 1(2) of the 1965 Act, as of 31 July 1970, no land capable of being registered as a town green would be deemed to be a town green unless it was so registered. The effect of non-registration on that date was made clear by Lord Hoffmann at paragraph 18 of his judgment in the ***Oxfordshire*** case, namely it was to extinguish any such rights of recreation that may then have existed. Therefore, in order for land to become a class (c) town green thereafter, any 20 year period of use can only begin after 31 July 1970.

Continuity of Use over 20 year Period

6.14 The use for lawful sports and pastimes must be continuous throughout the relevant twenty year period: ***Hollins v. Verney***.[32] The use has to be of such a nature as to show the landowner that a right is being asserted and it must be more than sporadic intrusion onto the land. It must give the landowner the appearance that rights

[32] (1884) 13 QBD 304.

of a continuous nature are being asserted. That is not to equate an intermission in use with an interruption to it. What matters is that the use is frequent, and that when sports and pastimes are not being indulged in, there must have been no other activity happening which would have prevented lawful sports and pastimes from being enjoyed, such as agricultural activity: ***Laing Homes Limited v. Buckinghamshire County Council***.[33]

Locality or Neighbourhood within a Locality

6.15 A "locality" must be a division of the County known to the law, such as a borough, parish or manor: ***MoD v Wiltshire CC***;[34] ***R. (on the application of Cheltenham Builders Limited) v. South Gloucestershire DC***;[35] and ***R. (Laing Homes Limited) v. Buckinghamshire CC***.[36] A locality cannot be created simply by drawing a line on a plan: ***Cheltenham Builders*** case at paragraphs 41 to 48.

6.16 In contrast, a "neighbourhood" need not be a recognised administrative unit. A housing estate can be a neighbourhood: ***R. (McAlpine) v. Staffordshire County Council***.[37] However, a neighbourhood cannot be any area drawn on a map. Instead, it must have some degree of cohesiveness: ***Cheltenham Builders*** case at paragraph 85.

Significant Number

6.17 "Significant" does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that

[33] [2003] EWHC 1578 (Admin).
[34] [1995] 4 All ER 931 at page 937b-e.
[35] [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.
[36] [2003] EWHC 1578 (Admin) at paragraph 133.
[37] [2002] EWHC 76 (Admin).

their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers: ***R. (McAlpine) v. Staffordshire County Council***.[38]

As of Right

6.18 Use of land "as of right" means use without force, without secrecy and without permission, namely *nec vi nec clam nec* precario. It was made clear in ***R. v. Oxfordshire County Council ex parte Sunningwell Parish Council***[39] that the issue does not turn on the subjective intention, knowledge or belief of users of the land. Moreover, it is also apparent from the ***Beresford*** decision that user "as of right" cannot be a use pursuant to a legal right which would instead be use "of right". I shall return to that specific issue below.

6.19 "Force" does not just mean physical force. User is by force in law if it involves climbing or breaking down fences or gates or if it is under protest.[40]

6.20 "Permission" can be expressly given or implied from the landowner's conduct, but it cannot be implied from the mere inaction or acts of encouragement of the landowner: ***R. v Sunderland City Council ex parte Beresford***.[41]

Amendment of Applications

6.21 In the ***Oxfordshire*** case, the House of Lords addressed the extent to which a registration authority could amend an application. All of the Law Lords found that an

[38] [2002] EWHC 76 (Admin) at 77.
[39] [2000] 1 AC 335.
[40] See ***Newnham v. Willison*** (1987) 56 P. & C.R. 8.
[41] [2004] 1 AC 889.

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

7. PROCEDURAL ISSUES

7.1 Before turning to the substantive issues, it is necessary to consider two procedural matters that arose during the Inquiry.

Application to Amend Application Land

7.2 Firstly, as noted in paragraph 3.1 above, the Applicant confirmed at the outset of the Inquiry that he wished his revised Plan at page A7 of the Bundle to be substituted for the original Application Plan at page A4 of the Bundle and for his Application to be amended accordingly.

7.3 As stated in paragraph 6.21 above, the legal position is that an amendment to an application may be made at the Registration Authority's discretion, provided that any such amendment would not occasion unfairness to any objector.

7.4 In that regard, the Objector confirmed that it had no objection to such an amendment to the Application. I further note that the revised Plan was helpfully provided to the Objector in advance of the Inquiry allowing any implications to be fully considered, and the amended area of the Land did not cause any difficulties to the Objector in the presentation of its case to the Inquiry. Moreover, as the effect of the revised Plan is to reduce the area of the Application Land rather than to increase it, and all the land included in the original

Application Land with no additions, then it does not seem to me that any prejudice would be caused to any person if the Application Land was amended as sought.

7.5 Consequently, I recommend that it would be reasonable and appropriate for the Registration Authority to exercise its discretion to allow the amendment as sought so that the Application Land is reduced accordingly to the area identified on the Plan at page A7 of the Bundle. The remainder of this Report is written on that basis.

Identification of Locality or Neighbourhood within a Locality

7.6 Secondly, an issue arose at the Inquiry in relation to the appropriate locality or neighbourhood within a locality. As noted in paragraph 2.1 above, Part 3 of the Application Form identifies the locality as the "*Ward of Chadderton North*". However, two neighbourhoods within a locality were referred to in the evidence of the Applicant and of Mr Raynor respectively as alternatives.[42] It is thus necessary to consider the approach which ought to be taken in determining the relevant locality or neighbourhood for the purposes of the statutory definition of a town green.

7.7 In that regard, the judgment of Sullivan J. in the ***Laing Homes*** case relating to this issue is particularly relevant. He noted at paragraph 137 of his judgment that Part 3 of the 1965 Act Application Form does not in itself specifically require information about the locality *in terms of the statutory definition*. Further, at page 94F to G of his judgment, he agreed with the Inspector in that case that there was no requirement for an applicant to commit himself to a definition of the locality. Instead, he stated that the "*registration authority should, subject to considerations of fairness towards the*

[42] See paragraphs 5.15 and 5.16 above respectively.

applicant and any objector to, or supporter of, the application, be able to determine the extent of the locality within which inhabitants are entitled to exercise the right in the light of all the available evidence." I shall therefore consider each of the potential localities and/or neighbourhoods for the purposes of the statutory definition in the light of all the evidence, and taking specific account of any prejudice that may ensue. That is the approach I have followed on this issue in section 8 below and which I recommend the Registration Authority to follow.

8. APPLICATION OF THE LAW TO THE FACTS

Approach to the Evidence

8.1 The impression which I obtained of all the witnesses called both for the Applicant and the Objector is that they were entirely honest and transparent witnesses, and I therefore accept for the most part the evidence of all the witnesses called for both parties. Indeed, there were few material conflicts in the factual evidence. Instead, it seems to me that the determination of this Application depends primarily upon the application of the law to such evidence rather than upon the determination of serious material conflicts in the evidence.

8.2 I have considered all the evidence put before the Inquiry, both orally and in writing. However, I emphasise that my findings and recommendations are based upon whether the Land has become a town green within the meaning of the 1965 Act. In determining that issue, it is inappropriate for me or the Registration Authority to take into account the merits of the Land being registered as a town green or of it not being so registered. Hence, although I acknowledge the view expressed by various witnesses for the Applicant and supporters of the Application that the Land is a

valuable open green space to the local community which ought to be retained for recreational purposes, that is not a matter that can be taken into account in determining whether or not the Land has become a town green. The issue for determination is whether the Land has become a town green within the meaning of the 1965 Act statutory definition rather than whether it would be appropriate for it to become a town green. For the same reason, I have not taken into account, nor should the Registration Authority, the effects of the Land being registered as a town green on the proposed development of part of the Land for a new police station nor the merits of any such development.

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

Land

8.4 There is no difficulty in identifying the relevant land sought to be registered. The Application Plan is the definitive document on which the Land that is the subject of the Application is marked. I have already indicated that it would be appropriate to amend that Plan as sought by the Applicant to reduce the area of the Land to that marked on the revised Application Plan at page A7 of the Bundle. There was no dispute at the Inquiry nor in any of the evidence adduced that that reduced area of land comprises “land” within the meaning of the statutory definition and I so find.

Use for Lawful Sports and Pastimes

8.5 Given that "lawful sports and pastimes" include informal recreational activities, such as walking with or without dogs and children playing, I am satisfied from the evidence that the Land has been used for such purposes. Each of the witnesses who gave oral evidence in support of the Application referred to having used the Land for informal recreational activities, such as walking, playing with children, sledging, flying kites, and observing wildlife, and to having seen others use the Land for similar purposes. Further, in the written statements in support, frequent references are made to such uses of the Land. The Petition submitted in support of the Application also indicates that the 74 signatories used the Land for recreational purposes.

8.6 In addition, from my site visit, it was apparent that the Land was of such a nature and in such a location that it was highly likely that it would have been used as indicated in the Applicant's evidence. It is a relatively flat, pleasant and spacious open area that is safe for use and with open access to it. It is located within a relatively densely developed residential area. In such circumstances, I would find it very surprising if it had not been used by local people for general recreational purposes.

8.7 Moreover, it was not suggested on behalf of the Objector that such uses have not occurred. On the contrary, the Objector accepts that such uses have occurred on the Land as a matter of fact.[43] Therefore, it seems to me that the evidence clearly establishes that the Land has been used for lawful sports and pastimes and I make that finding.

[43] As acknowledged in paragraph 15 of the Objector's Closing Submissions.

Use for not less than 20 years and continuing

8.8 Part 4 of the Application states that the Land became a town green on 1st January 2002. Nonetheless, as referred to above, the legal requirement is that the qualifying use must be shown to have taken place for a period of not less than 20 years and such use must have continued up to the date of the Application itself. As the Application is dated 8th November 2002, the relevant 20 year period is 8th November 1982 to 8th November 2002. User evidence can also be relied upon in relation to an earlier or later period, but irrespective of any such earlier or later use, the qualifying use must still have been ongoing from at least 8th November 1982 onwards until 8th November 2002.

8.9 Further, it is also necessary for it to be established that such use of the Land was continuous throughout that 20 year period, and was of such a nature as to indicate to the Landowner that rights were being asserted over the Land rather than merely sporadic intrusions onto the Land. I shall deal later with the specific issue as to whether such use was "*as of right*".

8.10 Starting with the four witnesses who gave oral evidence in support of the Application, each of them has used the Land for lawful sports and pastimes for the full relevant 20 year period and beyond. Mrs McMahon has used it for nearly 50 years, as has Mr Jarvis; Mr Raynor has used it for the past 44 years; and Mr Arnold, the Applicant, has used it for over 60 years since he was a child. Each of them also indicated that they continue to use the Land for such purposes to date. Moreover, Mrs McMahon, Mr Jarvis and Mr Raynor each referred to other people using the Land for

similar purposes. That oral evidence is supported by the written evidence submitted in support of the Application, the compilers of which have all used the Land during the relevant 20 year period and the majority of them for the full 20 years themselves. I further note that the Objector does not dispute that such use has taken place throughout that 20 year period. Instead, it is the Objector's contention that the Land was regarded as public open space throughout that 20 year period during which people used it as such. Hence, none of the Applicant's evidence was challenged in relation to such uses having occurred throughout the 20 year period. On the basis of such evidence, it seems to me that there has been use of the Land for lawful sports and pastimes throughout the relevant 20 year period between 8th November 1982 and 8th November 2002, which use was continuing as of the latter date when the Application was made, and I so find.

8.11 Furthermore, the clear impression I gained from the oral evidence on behalf of the Applicant, as supported by the written evidence, is that the Land has been continually used on a regular basis for informal recreational activities and with sufficient frequency over the relevant 20 year period to meet that element of the statutory definition. Mr Raynor has used the Land to exercise his pet dogs twice daily throughout the relevant 20 year period and continues to do so. He has also used it for other purposes and seen others doing so. Similarly, Mrs McMahon and Mr Jarvis referred to the many different purposes they and others have used the Land. Moreover, those activities identified indicate that the Land is used all year around, with references to playing games that are more likely during the summer months, bonfires during the autumn and sledging during the winter months. Such oral evidence was supported by similar written evidence. I further note that the Objector

did not challenge any of the witnesses as to the frequency with which they have used the Land. I acknowledge that the Petition also indicates that the 74 signatories used the Land for recreational purposes "*since at least January 1982*", which would include the relevant 20 year period. However, I further note that there is no indication from that Petition as to the extent or frequency those particular individuals so used the Land. I therefore attach little weight to that Petition in relation to that specific issue.

8.12 Nonetheless, the other evidence in support of the Application referred to above, with no evidence submitted to the contrary on that issue by the Objector, is in my view sufficient to establish that the use of the Land for lawful sports and pastimes over the relevant 20 year period has been not merely of a sporadic nature but, rather, has been of sufficient frequency and continuity that a reasonable Landowner would have been aware that such use was taking place. Hence, I find that that element of the statutory definition of a town green has been established.

Use by a Significant Number of the Inhabitants of any Locality or of any Neighbourhood within a Locality

8.13 In order to determine this issue, it is firstly necessary to identify the appropriate locality or neighbourhood within a locality. I shall follow the approach I set out in paragraph 7.7 above.

8.14 As stated in paragraph 6.15 above and for the reasons given there, a "locality" must be a division of the County known to the law. A locality cannot be created simply by drawing a line on a plan. The locality specifically referred to in Part 3 of the Application Form is the Ward of Chadderton North. That area is an identified and

recognised area with fixed known boundaries. It is thus capable of amounting to a "locality" for the purposes of the statutory definition of a town green.

8.15 Turning next to whether the Land has been used by a significant number of the inhabitants of that Ward over the relevant 20 year period, it was held in the ***McAlpine*** decision referred to above that it was inappropriate to seek to quantify a "significant number" in percentage terms. It was further held that a "significant number" need not be considerable or substantial or even a majority. Instead, the fundamental question is whether the number of people using the Land from that locality is sufficient to indicate to the landowner that it is in general use by the local community of that particular locality for recreational purposes rather than being used occasionally by individuals.

8.16 Moreover, in order to establish the statutory requirement, the users of the Land must be shown to have originated from the whole of the identified locality and not merely from a limited part of it. A situation where users originate from only a small section of a locality would not be sufficient. There must be a proper distribution of users such that it can properly be said that the use has been by the inhabitants of that locality.

8.17 Applying that legal position to the evidence, a helpful Plan was submitted to the Inquiry at my request by the Objector showing the boundaries of the Chadderton North Ward marked in red and all the residential streets and other areas within it. Mr Arnold agreed in cross examination that that Plan accurately identified the Ward boundaries. In addition, the Map submitted showing the location of the residential

addresses of those who provided evidence in support of the Application of their use of the Land is particularly useful.[44] Again, Mr Arnold confirmed in cross examination that that Map correctly showed in purple shading the location of all the supporters of the Application who had provided witness statements or who had signed the Petition. From that latter Map, it is apparent that the vast majority of the known users of the Land reside within that Ward.

8.18 However, it is also apparent that the vast majority of those users reside in very close proximity to the Land, particularly around the areas of Eustace Street, Mora Avenue, Cedar Crescent, Holly Grove, and the northern part of Broadway that is near to the Land. There is a very clear concentration of users from that area. Moreover, the evidence does not indicate that there was any regular and material use of the Land from persons who lived further afield in other parts of that Ward. I note that Mrs McMahon and Mr Raynor both referred to some users coming from further afield as they arrived by car and would park along Broadway. However, they were unaware where those persons resided, such as whether they lived in the Ward at all and, if so, in which parts. Instead, it appears from the evidence that there has been very little usage of the Land from residents of the Chadderton Park area, for example, which is within the Ward, or from residents to the west of Broadway generally save those living along Broadway itself, or from those living close to the eastern boundary of the Ward in the vicinity of Garforth Street. Indeed, Mr Arnold acknowledged in cross examination that many of the inhabitants in the wider area of the Ward beyond the area of the Land would not use it. I accept that evidence.

[44] At page C11 of the Bundle.

8.19 It therefore seems to me that the evidence clearly indicates that the vast majority of users of the Land reside very local to it, and are from one limited segment of the Ward rather than from the Ward generally. In my view, the effect of that very significant concentration of users from that limited part of the Ward is that the use of the Land has not been sufficiently distributed throughout the Ward in order to establish that the Land has been used by a significant number of the inhabitants of that particular locality.

8.20 I acknowledge that the identified users do not represent the only users of the Land but, rather, only those who provided written support to the Application. Nonetheless, the burden of proof is on the Applicant to establish this element of the definition, and it cannot be assumed that the other users that were seen on the Land were reasonably distributed throughout the Ward generally. On the contrary, the impression I gained from the evidence is that the Land is primarily used by those in relatively close proximity to it who regard it, understandably, as a valuable resource near to their own doorstep.

8.21 As to the actual numbers of users, I note the inappropriateness of undertaking a mathematical calculation to determine whether a "*significant number*" of the inhabitants of the locality have used it. Moreover, I am unaware of the actual population of the Ward in numerical terms. Nonetheless, it is my judgment that given that the evidence shows that the vast majority of users of the Land are from a limited section of the Ward, then such numbers of users would not represent a significant number of the inhabitants of the entire Ward.

8.22 Therefore, for each of the above two reasons, I find that the use of the Land has not been by a significant number of the inhabitants of the locality of the Ward of Chadderton North.

8.23 I am not aware of any other relevant area which could be regarded as a locality within the meaning of the 1965 Act definition of a town green nor was any other area suggested by the Applicant. Therefore, it is necessary to consider whether there is a relevant neighbourhood within a locality for the purposes of this element of the statutory definition.

8.24 Two alternative but relatively similar and overlapping "neighbourhoods" in terms of area were suggested by Mr Arnold and Mr Raynor respectively, both stated to be known as "the Bare Trees Estate". Firstly, Mr Arnold referred to that Estate bounded by Burnley Lane, Victoria Street, Middleton Road and Broadway as a neighbourhood within the locality of the Chadderton North Ward; secondly, Mr Raynor referred to that same Estate as being such a neighbourhood, but reduced in area so that it incorporated Mora Avenue, Briar Grove, Laburnum Avenue, Brook Street, Milne Street and Andrew Street, but excluded both sides of Broadway.

8.25 As stated in paragraph 6.16 above, unlike a "locality", a "neighbourhood" need not be a recognised administrative unit. Further, a housing estate can be a neighbourhood in appropriate circumstances. However, the fundamental point is that a neighbourhood must have some degree of cohesiveness. It cannot merely be an area drawn on a map. Instead, it should be regarded as a cohesive and separate community locally.

8.26 In that regard, I have seen a plan of some of the facilities in the area surrounding the Land,[45] and I visited the two suggested neighbourhoods referred to on the unaccompanied part of my site visit. In terms of the areas referred to, it does not seem to me that either of them function as a particular community or have any particular cohesiveness. In both areas, the house forms throughout are very different, and different parts of each area appear to have been constructed at different times and are different in character. There was no evidence submitted that facilities exist in the area to serve that particular Estate rather than the wider area. On the contrary, facilities within those areas, such as the Bare Trees School, local shops, and the other facilities located north of Middleton Road including a health centre, sports centre and library which would be in the neighbourhood suggested by Mr Arnold, appeared from their nature and location to be serving a much wider area. On my site visit, there was nothing apparent on the ground to indicate that either of those areas were a particular cohesive community. Further, I heard and read no evidence to suggest that such was the case.

8.27 Furthermore, and particularly significantly, both Mr Arnold and Mr Raynor fairly acknowledged in cross examination that the areas they had identified as potential "neighbourhoods" had been selected as they were the areas where the known users of the Land resided. That was the justification for them being so identified rather than any suggestion that they functioned as neighbourhoods. Indeed, the very fact that separate areas were identified indicates that there is no particular area known as the

[45] At page C10 of the Bundle.

Bare Trees Estate with the requisite cohesiveness that operates as a local community.

8.28 In those circumstances, it seems to me that neither of the two suggested areas is capable of being a "*neighbourhood*" within the meaning of the statutory definition. Instead, they are effectively areas that have merely been delineated on a plan. As stated by Sullivan J. in his Judgment in the ***Cheltenham Builders*** case:-

> "*I do not accept the defendant's submission that a neighbourhood is any area of land that an applicant for registration chooses to delineate upon a plan. 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 <u>any</u> area (as defined on a plan accompanying the application) to apply to register land as a village green, it would have said so.*"[46]

8.29 No other identified area was suggested by the Applicant as a potential "*neighbourhood*". Further, I am not aware from the evidence of any other area that could potentially be such a "*neighbourhood*" for the purposes of the Application.

8.30 Consequently, for the above reasons, I find that the Land has not been used by a significant number of the inhabitants of any locality or of any neighbourhood within a locality.

[46] [2003] EWHC 2803 (Admin) at paragraph 85.

Use as of Right

8.31 The remaining issue is whether the use of the Land has been "*as of right*". That element of the statutory definition was disputed by the Objector and formed the focus of the Objector's evidence.

8.32 As stated in paragraph 6.18 above, use of land "as of right" means use without secrecy, without force and without permission.

8.33 There is no suggestion that the use of the Land has been by stealth. Equally, there is no evidence that any of the use has been by force. Indeed, the Land is not fenced off and access onto it can be gained freely. Instead, the disputed question arising in that regard is whether the Land was used with permission at any time during the relevant 20 year period. If so, the use would not be "*as of right*" for 20 years and that element of the statutory definition of a town green would not be satisfied. In addition, the other question to be determined in relation to whether the use of the Land was as of right is whether land held as public open space can be used as of right in any event, or whether its use is necessarily precluded from being as of right due to its status as public open space, thereby preventing that element of the statutory definition from being satisfied. I shall consider each of those two questions below in turn.

8.34 Notably, despite this element of the statutory definition being the main contested issue between the Applicant and the Objector, the relevant material facts

are, for the most part, agreed. It is thus necessary for me, and ultimately the Registration Authority, to apply the relevant law to those agreed facts in order to determine the two questions identified above.

8.35 Starting with whether the Land has been used with permission, it has been in the ownership of the Objector throughout the relevant 20 year period. There is no evidence of any express permission having been given for its use during that time. Although Mr Dale referred to a booking form needing to be completed for any formal event on land held as public open space, he was not aware of any such booking forms having been completed for any event on the Application Land. Therefore, the fundamental question is whether the Land was used with the Landowner's implied permission at any time during the relevant 20 year period.

8.36 The House of Lords in the ***Beresford*** case made it clear that an implied permission could arise where a landowner's conduct was such that it made it clear to inhabitants that the use of the land was pursuant to the owner's permission. However, it was also emphasised that mere acquiescence or tolerance of use by a landowner is insufficient to amount to implied permission. Permission cannot therefore be implied from the mere inaction of the landowner with knowledge of the use to which the land is being put. Even conduct amounting to positive encouragement to use the land is not in itself sufficient to amount to an implied permission. Notably, the provision of benches, a cricket pitch and the cutting of grass by the landowner in the ***Beresford*** case were found not to amount to implied permission but, rather, acquiescence of the use.

8.37 Instead, in order for a landowner's conduct to amount to implied permission to use his land, the House of Lords found that he would have to do something positive and overt to make users aware that their use of his land was by his permission or licence, and that such permission or licence could be withdrawn at any time. Users ought to know from such a positive, overt act that the land was being used by them only with his permission and not as of right. Examples given of circumstances where such an implied consent may arise on the facts included where the owner made a charge for entry to the land or where the owner occasionally closed the land to the general public or where appropriate signs were erected.

8.38 Applying that legal position to the facts, there is no dispute that the use of the Land over the relevant 20 year period has been without restriction. There is no evidence of any signs having been erected restricting usage nor of anyone's use of the Land having been challenged nor of the Land having been closed off to public access at any time during that period.

8.39 It is apparent that the Council, and its predecessor, kept the Land open for public access and, indeed, during the 1970's, the Urban District Council laid out paths and a play area on the Land specifically for the public's use. Further, Mr Dale indicated that the Land was formally managed and maintained as public open space by the Objector from 1994 when it was formally appropriated as such by Leisure Services. Moreover, Mrs McMahon and Mr Jarvis agreed that the Land was regarded as public open space, even during the 1970's. However, it does not seem to me that such acts were sufficient to indicate to the public that the Landowner was permitting them to use the Land and that such permission could be revoked at any time. Rather,

it seems to me that, similarly to the position in the ***Beresford*** case, such acts were a positive encouragement by the Landowner to the public to use the Land which would amount to an acquiescence of the use rather than an implied permission to use it. Further, the acts carried out by the Urban District Council were undertaken many years prior to the relevant 20 year period, which commenced in November 1982, and so would not seem to me to amount to an implied permission to use the Land during that 20 year period for that additional reason.

8.40 Nonetheless, it is also necessary to consider the broader circumstances of the Objector's dealings with the Land which were specifically contended by the Objector to amount to implied permission to use the Land. In particular, the Objector relied upon the agreed facts that the Land was part of a wider area of land that the public was allowed to access freely until it was required by the Landowner for another purpose. Hence, for example, the areas where the fire station was constructed, the mortuary, Bare Trees School and the football ground had all been openly available for public access until they were required and developed for such purposes in turn. It was thus contended that such conduct amounted to positive and overt acts by the Landowner which indicated to users that their use of the Land was with its permission which would be revoked as and when the Land was otherwise required by the Landowner.

8.41 It seems to me that such actions by a landowner could in principle be capable of amounting to implied permission. If an area of open land used by the public was gradually reduced and removed from the public's use for development, then that could amount to overt acts that would indicate that the landowner was only permitting the

use of the land and that such permission would be revoked as and when he chose. However, in order for such conduct to amount to implied permission to avoid the use being otherwise "as of right", it is my view that the conduct amounting to implied permission must occur, or be otherwise apparent to users, during the relevant 20 year period itself. Hence, for example, if charges had been imposed in the past, or the Land had then been closed to public use, or signs had been in place at that time, but no such overt conduct had subsequently occurred in the relevant 20 year period, then that conduct in the past would not seem to me to amount to implied permission to use the Land during that later 20 year period. In such circumstances, the earlier use may have been with implied permission, but that would not prevent the use subsequently being as of right. Instead, it seems to me that the issue must be considered in relation to the relevant 20 year period and whether the use has been with implied permission due to the landowner's conduct during that particular period.

8.42 Therefore, turning to the relevant 20 year period between 1982 and 2002, it is notable that none of the wider area of land of which the Application Land formed a part was removed from public use at any time during that period. Instead, Mr Dixon confirmed that the Bare Trees School was the latest development of the wider parcel of land and that was built in the early 1970's. Consequently, the Land, and the wider area of land of which it formed a part, have remained open to the public to the same extent and in the same way since that time. In those circumstances, it does not seem to me that the reduction and removal of parts of the wider area from public access during the early 1970's and earlier amounts to implied permission to use the Land between 1982 and 2002. From 1982 onwards, there has been no conduct making it clear to users that their use of the Land was with permission. Indeed, many users may

have been unaware of that conduct of the Landowner which occurred over 10 years ago and earlier. Further, even though many of the users may in fact recall such conduct, as each of the witnesses who gave oral evidence in support of the Application confirmed they did, it does not follow in my view that any earlier implied permission of which such individual users were aware can be assumed to remain indefinitely in the absence of any more recent positive acts by the Landowner to that effect.

8.43 No other positive conduct by the Landowner has been referred to which is capable of amounting to implied permission to use the Land between 1982 and 2002. Therefore, for the above reasons, I find that the use of the Land between 1982 and 2002 was not with permission.

8.44 The other question to be determined in relation to whether the use of the Land was as of right is whether land held as public open space can be used as of right in any event, or whether its use is necessarily precluded from being as of right due to its very status as public open space. I shall firstly consider the law on that issue and then its application to the facts.

8.45 The specific issue of whether land held as public open space can be registered as a town or village green has not to date been determined definitively by the Courts. Nonetheless, the issue was raised in the ***Beresford*** case in which it was considered on an obiter basis by the House of Lords. Lord Scott in his Judgment made express reference to Section 10 of the Open Spaces Act 1906 which provides that a local authority who have acquired any interest in or control over any open space under the

1906 Act shall thereafter hold and administer that open space in trust for the general public and allow the public to use it and enjoy it as an area of open space.[47] He went on to state that as the local inhabitants' use of such open space would have been pursuant to the trust imposed by Section 10, that use "*would have been subject to regulation by the council and* ***would not have been a use "as of right"***" (my emphasis).[48] He further noted that although Section 10 which imposes such a trust only applies where the open space is acquired by a local authority **under the 1906 Act**, it was arguably not necessary for it to be expressly stated in the deed of transfer or in a council minute that the land was so acquired under that Act for that to be the case. Instead, he stated obiter:-

> "*It would be, in my view, an arguable proposition that if the current use of land acquired by a local authority were use for the purposes of recreation and if the land had not been purchased for some other inconsistent use and the local authority had the intention that the land should continue to be used for the purposes of recreation, the provisions of section 10 would apply*".[49]

Further, at the end of his Judgment, Lord Scott noted:-

> "*Where "open space" land comes into the ownership of a "principal council", I think there to be strong arguments for contending that the statutory scheme under the Local Government Act 1972, whether or not the Open Spaces Act 1906 or Section 21(1) of the New Towns Act 1981 are applicable, excludes the operation of section 22(1) of the Commons Registration Act 1965.*"[50]

He thereby indicated that when a local authority owns land that has been acquired or appropriated as public open space and is used as such, there is a strong argument

[47] [2004] 1 AC 889 at paragraph 29.
[48] At paragraph 30.
[49] At paragraph 30.
[50] [2004] 1 AC 889 at paragraph 52.

that such land should not be registered as a town or village green as a matter of principle.

8.46 Similar observations were made by Lord Walker in his Judgment in that case. He stated, again obiter, that:-

> "*Where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers (even if that expression is toned down to tolerated trespassers). The position would be the same if there were no statutory trust in the strict sense, but land had been appropriated for the purpose of public recreation.*"[51]

8.47 Hence, although that issue has not been definitively determined by the Courts, there is strong obiter dicta from the House of Lords that land owned by a local authority for the very purposes of public recreation is not used as of right by the public, but rather is used pursuant to the right the public have to use the land under the statutory trust or otherwise.

8.48 Moreover, applying first principles, it seems to me that where land is specifically held by a local authority as public open space and is used as such, then it cannot be used by local inhabitants as of right. Use as of right is effectively use as a tolerated trespasser where the landowner chooses to take no steps to prevent such use but, rather, acquiesces in that use. Local inhabitants thereby ultimately gain a

[51] [2004] 1 AC 889 at paragraph 87.

right to use the land for recreational purposes after having used it for qualifying purposes as of right for the relevant 20 year period if all the other statutory criteria are met. Yet, where land is held as public open space, users are not tolerated trespassers at all using the land as of right. Instead, they are **entitled** to use the land for recreational purposes pursuant to a statutory trust if the land has been acquired pursuant to the Open Spaces Act 1906 or pursuant to an alternative statutory right where the land has been acquired pursuant to other statutory provisions such as the Public Health Acts or merely by virtue of the fact that the land is publicly held as public open space. It is pursuant to that substantive right which the public already have that they enter onto the land and use it, rather than their use being "as of right" to enable them to subsequently claim such a right. Further, and significantly, the landowner cannot preclude such use in such circumstances. He has no option but to allow users to use land as public open space provided they are using it lawfully.

8.49 Therefore, for the above reasons, it is my view that if land is specifically held by a local authority as public open space and is used as such, then the recreational use of that land by local inhabitants cannot be as of right.

8.50 Applying that interpretation of the law to the facts, which again are agreed insofar as relevant to this issue, there are two periods to consider during the relevant 20 year period, namely 1982 until 1994 and then 1994 until 2002, 1994 being the time when the Land was appropriated by the Council's Leisure Services as public open space. In the first period up until 1994, the Land was held by the Housing Committee having been acquired for housing purposes. As it had not been used for such purposes, it was being used by the Council as public open space. However, it was not

then formally managed and maintained as public open space which Mr Dale indicated commenced from 1994. Instead, it was land that had been acquired for and was still being held for housing purposes, albeit as it had not been used for such purposes, the public was allowed access to it. In those circumstances, it does not seem to me that use of the Land as of right at that time was inconsistent with its then status. The Land had not been acquired as public open space nor appropriated as such. The Land would thus not be held in trust for the public's enjoyment under the Open Spaces Act 1906 which would not apply to the Land. Similarly, as the Land was not held as public open space under any other statutory provision, the public would have no statutory right to use the Land for recreational purposes. Equally, the public would have no other right to use the Land and the Council could have precluded such use at that time had it so wished. It was not bound to allow the public to use the Land. Instead, the status of the Land was no different to any other land owned by a local authority for purposes other than public open space or recreational land and which is in fact used by the public as open space.

8.51 Consequently, I find that prior to 1994, the use of the Land as of right would not have been inconsistent with its status as land held for housing purposes but which land was in fact being used by the public as open space. The Land could have been used as of right in principle during that period, and given my views above that the Land was not used with implied permission, I find that the Land was used "*as of right*" between 1982 and 1994.

8.52 However, in 1994, it is agreed that the Land was appropriated from the Council's Housing Committee to Leisure Services Committee and was thereafter held

as public open space. None of the Council's minutes make any specific reference to the Land being appropriated pursuant to the Open Spaces Act 1906 nor pursuant to any other statutory provision specifically governing the acquisition or appropriation of public open space or recreational land. Nonetheless, the unchallenged evidence of Mr Dixon is that the Land was part of a wider area of land appropriated to Leisure Services Committee as public open space in March 1994. That is confirmed in the internal memorandum dated 11 March 2004 with the relevant "Plot B" so appropriated identified on the attached plan.[52] From that time onwards, Mr Dale indicated that the Land was part of an area of land managed and maintained by the Council as public open space. Further, the section of the Land that was subject to the planning application for a police station was treated as formal public open space in relation to its disposal by the Council pursuant to the procedures contained in Section 123(2A) of the Local Government Act 1972. That was confirmed by Mr Chisholm. The carrying out of such procedures would not have been required had the area of the Land in question not been regarded by the Council as public open space. None of the above evidence was disputed by the Applicant. Given such evidence, I find as a fact that the Land was part of a wider area of land appropriated to Leisure Services Committee as public open space in March 1994. I further find that the Land continued to be so held by the Council as public open space throughout the remainder of the relevant 20 year period, namely until 2002 and indeed thereafter.

8.53 Having been formally appropriated as public open space, the Land was then so held by the Objector for that particular purpose. As referred to by the House of Lords in the ***Beresford*** case in the parts of the Judgments quoted above, whether or not the

[52] At pages A61-A63 of the Bundle.

Land had been appropriated under the Open Spaces Act 1906 or had been appropriated for recreational purposes under other statutory powers, the Objector was thereafter bound to allow local inhabitants, and the public generally, to use the Land for lawful recreational purposes. Similarly, local inhabitants then had a right to use the Land for such purposes given its very status as formal public open space and so were not using it "as of right", effectively as tolerated trespassers, but rather "of right". In those circumstances, it is my view that the status of the Land from 1994 onwards as land appropriated as public open space was inconsistent with its use being "as of right". Consequently, I find that from March 1994 until the end of the relevant 20 year period in November 2002, the Land was not used "*as of right*".

8.54 In order for that element of the statutory definition of a town green to be satisfied, it must be established that the qualifying use of the Land was "as of right" throughout the relevant 20 year period. Given my finding that the Land was not so used for the final 8½ years of that period, I further find that the Land has not been used as of right throughout the relevant 20 year period.

9. CONCLUSIONS AND RECOMMENDATION

9.1 My overall conclusions are therefore as follows:-

9.1.1 That it would be appropriate to permit the Applicant to amend the area of the Application Land to that identified on the Plan at page A7 of the Bundle;

9.1.2 That the Application Land has as a matter of fact been used for lawful sports and pastimes;

9.1.3 That the relevant 20 year period is 8th November 1982 until 8th November 2002;

9.1.4 That the use of the Application Land for lawful sports and pastimes has taken place throughout the relevant 20 year period and with sufficient frequency and continuity over that 20 year period to be capable of creating a town green;

9.1.5 That the use of the Application Land for lawful sports and pastimes has continued up to the date of the Application on 8th November 2002;

9.1.6 That the Ward of Chadderton North is a locality;

9.1.7 That the use of the Application Land for lawful sports and pastimes has not been carried out by a significant number of the inhabitants of the Ward of Chadderton North;

9.1.8 That no other area has been identified which amounts to a qualifying locality or neighbourhood within a locality;

9.1.9 That therefore the use of the Application Land for lawful sports and pastimes has not been carried out by a significant number of the inhabitants of any locality or of any neighbourhood within a locality;

9.1.10 That the use of the Application Land has been as of right between November 1982 and March 1994;

9.1.11 That the use of the Application Land has not been as of right from March 1994 until November 2002; and

9.1.12 That the use of the Land has not therefore been as of right throughout the relevant 20 year period.

9.2 In view of those conclusions, it is my recommendation that the Registration Authority should not add the Application Land to the register of town and village greens on two specific grounds, namely as the use of the Application Land for lawful sports and pastimes has not been carried out by a significant number of the inhabitants of any locality or of any neighbourhood within a locality, and has not been as of right for not less than 20 years.

10. ACKNOWLEDGEMENTS

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

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

RUTH A. STOCKLEY

04 October 2009

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