Public Document Pack

COMMONS REGISTRATION COMMITTEE
Regulatory Committee
Agenda

Date	Monday 18 March 2019
Time	4.30 pm
Venue	Crompton Suite, Civic Centre, Oldham, West Street, Oldham, OL1 1NL
Notes	1. DECLARATIONS OF INTEREST- If a Member requires any advice on any item involving a possible declaration of interest which could affect his/her ability to speak and/or vote he/she is advised to contact Paul Entwistle or Sian Walter-Browne in advance of the meeting.

2. CONTACT OFFICER for this Agenda is Sian Walter-Browne Tel. 0161 770 5151 or email sian.walter-browne@oldham.gov.uk

3. PUBLIC QUESTIONS – Any member of the public wishing to ask a question at the above meeting can do so only if a written copy of the question is submitted to the Contact officer by 12 Noon on Wednesday 13th March 2019.

4. FILMING - The Council, members of the public and the press may record / film / photograph or broadcast this meeting when the public and the press are not lawfully excluded. Any member of the public who attends a meeting and objects to being filmed should advise the Constitutional Services Officer who will instruct that they are not included in the filming.

Please note that anyone using recording equipment both audio and visual will not be permitted to leave the equipment in the room where a private meeting is held.

Recording and reporting the Council's meetings is subject to the law including the law of defamation, the Human Rights Act, the Data Protection Act and the law on public order offences.

MEMBERSHIP OF THE COMMONS REGISTRATION COMMITTEE IS AS FOLLOWS:
Councillors S Bashforth, Phythian, Shuttleworth, Sykes and Toor

Item No	
1	Apologies For Absence
2	Urgent Business

Urgent business, if any, introduced by the Chair

3 Declarations of Interest

To Receive Declarations of Interest in any Contract or matter to be discussed at the meeting.

4 Public Question Time

To receive Questions from the Public, in accordance with the Council's Constitution.

5 Application to Register a Village Green - Land at Hodge Clough Road, Oldham (Pages 1 - 240)

Oldham Council

Report to COMMONS REGISTRATION COMMITTEE

Application to Register a Village Green – Land at Hodge Clough Road, Oldham

Portfolio Holder: Cllr Shah, Cabinet Member for Neighbourhood Services

Officer Contact: Director of Legal Services

Report Author: Alan Evans Group Solicitor
Ext. 3019

18 March 2019

Reason for Decision
Members are asked to determine an application to register land at Hodge Clough Road, Oldham as a village green.

Recommendations
It is recommended that Members accept the recommendation of Alan Evans (barrister of Kings Chambers, Manchester) and reject the application to register land at Hodge Clough Road, Oldham as a village green on the grounds that the land does not meet the legal test for registration as a village green, because use of the land for lawful sports and pastimes has not been “as of right”.

Application to register a village green – land at Hodge Clough Road, Oldham

1 **Background**

1.1 The Council is the Commons Registration Authority for the borough of Oldham and is responsible for determining any applications to register a village green within the borough. The Council has established the Commons Registration Committee which has delegated authority to consider such applications.

1.2 On 27 June 2018, the Council received an application to register land on Hodge Clough Road as a village green. A plan showing the location of the land claimed as a village green is annexed to this report as Appendix 1. The land is owned by the Council. First Choice Homes Oldham Ltd (FCHO) has applied for planning permission to develop the land for housing. The application was submitted by Mr Fred Williamson and was supported by 11 letters/statements from local residents setting out their use of the land and a petition containing over 100 signatures that the land should be granted village green status. The letters are annexed to this report as Appendix 2. The petition will be available at the committee meeting for Members to view.

1.3 The application was made under section 15(2) of the Commons Act 2006. In accordance with statutory procedures, the application was advertised and two objections were received before the closing date for objection, from FCHO and from the land owner (Oldham Council). The objection from FCHO is annexed to this report as Appendix 3 and the objection from Oldham Council is annexed as Appendix 4. The objections were sent to Mr Williamson for further comment and he made further representations which are annexed to this report as Appendix 5.

1.4 To avoid the potential for conflict of interest where an application to register land as a village green relates to Council owned land, the Council has previously agreed that any such application should be subject to independent scrutiny by a barrister who will consider whether the application meets the legal test for registration as a village green and produce a report of his/her findings for consideration by the Commons Registration Committee, which takes the final decision on the application.

1.5 The Council appointed Alan Evans, a barrister at Kings Chambers in Manchester with considerable experience of village green law to consider the application and the objections. Mr Evans was instructed that if he was unable to make a recommendation on the submitted documents, he was to hold a non statutory public inquiry to hear evidence relating to the application. In the event, Mr Evans was able to consider the application without holding an inquiry and a copy of his report is annexed to this report as Appendix 6.

2 **Legal Test for Registration**

2.1 The application was made to register the land as a village green under section 15(2) of the Commons Act 2006 which states:

(2) this subsection applies where –

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

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

The onus of proof is on the applicant to prove his case meets all the requirements of section 15(2) on the balance of probabilities. A significant body of case law has developed

over the years which provides interpretation of the wording contained in section 15(2) as follows:

2.2 ***"a significant number"***

Significant does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers. It is not necessary that the users come predominantly from the claimed locality or neighbourhood, provided a significant number of the inhabitants of the claimed locality or neighbourhood are among the users. The requirement is that the users include a significant number of inhabitants of the claimed locality or neighbourhood, so as to establish a clear link between the locality or neighbourhood and the proposed village green, even if such people do not comprise most of the users.

2.3 ***"of the inhabitants of any locality or of any neighbourhood within a locality"***

A "locality" cannot be created by drawing a line on a map. It must be some division of the county known to the law such as a borough or parish. A "neighbourhood" need not be a recognised administrative unit but it must have a significant degree of cohesiveness e.g. a housing estate can be a neighbourhood. A neighbourhood need not lie wholly within a single locality.

2.4 ***"have indulged as of right"***

Use of land 'as of right' means use that is not by force, nor stealth, nor with the licence of the owner. Whether use is of right does not turn on the subjective beliefs of the users i.e. whether they believed they were using it as of right. The unifying element of the three vitiating circumstances (force, stealth and permission) is that each constitutes a reason why it would not have been reasonable to expect the owner to resist the exercise of the right – in the case of use by force, because rights should not be acquired by the use of force; in the case of use by stealth, because the owner would have not known of the user; and in the case of use by permission, because he had consented to the user, but for a limited period. The use must be judged objectively from the stand point of a reasonable land owner.

2.5 ***"in lawful sports and pastimes"***

The words "lawful sports and pastimes" can include informal recreation such as walking, with or without dogs and children's play.

2.6 ***"on the land"***

Land, substantial parts of which were overgrown and inaccessible for recreation can be registered as a green, provided that the land could be regarded as having been used as a whole for recreation.

2.7 **"for a period of at least 20 years"**

The relevant use must continue throughout the whole of the 20 year period relied upon, although certain periods of non use can be disregarded.

2.8 **"and they continue to do so at the time of the application"**

The qualifying use must continue at the date of the application.

3. **Mr Evans' Report**

3.1 Mr Evans considered the application, the objections from FCHO and the Council and the applicant's response to the objections. His overall conclusion is that the application land was acquired by the Council for housing purposes in the 1960s, that it was provided and laid out by the Council as public open space in the 1990s and that there was appropriate

power to do so under housing legislation in the Housing Act 1985. Consequently the use of the land by local inhabitants for informal recreation was use of public open space provided and laid out by the Council for that purpose. Their use of the land was pursuant to a public right or a publicly based licence and thus use "*by right*" and not "*as of right*".

3.2 Mr Evans concluded that as the use of the land by local residents has been use *"by right"*, a fundamental requirement for registration of the land as a village green under section 15(2) of the Commons Act 2006 has not been met and the application must fail.

3 **Options/Alternatives**

3.1 The options available to Members are as follows:

Approve the application to register the land at Hodge Clough Road as a village green. In order to do so Members would have to be satisfied that the application met the legal tests for registration set out in paragraph 2 above and that Mr Evans was wrong in his assessment of the application.

Reject the application to register the land at Hodge Clough Road as a village green, based on the report of Mr Evans.

4 **Preferred Option**

4.1 The preferred option is for the application to be rejected based on the report prepared by Mr Evans, who has considered all the evidence and applied the relevant legal test for registration of land as a village green.

6 **Financial Implications**

6.1 As detailed in Para 1.2, the Council has received an application for planning permission from First Choice Homes Oldham Ltd (FCHO) to develop the land for housing, however Members must note this cannot be taken into consideration.

6.2 There are no other financial implications arising from the outcome of this report. (Jit Kara/Lee Walsh)

7 **Legal Services Comments**

7.1 These are incorporated within the report. Members must determine the application taking all relevant matters into consideration, ignoring those that are irrelevant and giving reasons for their decision that are lawful, reasonable and rational. (A Evans)

8. **Co-operative Agenda**

8.1 Not applicable

9 **Human Resources Comments**

9.1 Not applicable

10 **Risk Assessments**

10.1 Not applicable

11 **IT Implications**

11.1 None

12 **Property Implications**

12.1 The application land is owned by the Council. However the decision on whether to register the land as a village green can only be taken if the legal test for registration is met. Therefore any property implications are irrelevant and cannot be taken into account in deciding whether to register the land as a village green.

13 **Procurement Implications**

13.1 None

14 **Environmental and Health & Safety Implications**

14.1 None

15 **Equality, community cohesion and crime implications**

15.1 None

16 **Equality Impact Assessment Completed?**

16.1 No

17 **Key Decision**

17.1 No

18 **Key Decision Reference**

18.1 N/A

19 **Background Papers**

19.1 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: 13461 (RTG/6)
Name of File: Hodge Clough Road Village Green Application
Records held in Legal Department, Civic Centre, West Street, Oldham OL1 1UL
Officer Name: Alan Evans
Contact No: (0161) 770 3019

20 **Appendices**

20.1 Appendix 1 – Plan showing the application land
Appendix 2 – Evidence submitted in support of the application
Appendix 3 – Objection from FCHO
Appendix 4 – Objection from Oldham Council
Appendix 5 – Further representations by Mr Williamson
Appendix 6 – Report of Alan Evans (barrister)

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THIS IS THE MAP REFERRED TO AT PARA 3 OF THE STATUTORY DECLARATION

S.C.

A SOLICITOR 6/6/18.

No.

CUTTLE & CO
SOLICITORS
115 UNION ST
OLDHAM OL1 1RU

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Section 106 agreement dated 11 January 1996

DATED 11th January, 1996

OLDHAM BOROUGH COUNCIL

and

BARRATT HOMES LIMITED

SEE SHEET Nº2 F.W.

PLANNING OBLIGATION

Under Section 106 of the Town and
Country Planning Act 1990
in connection with land at Hodge Clough Road,
Oldham

Graham F Smith LL.B Dip.LG
Solicitor to the Council
Oldham Borough Council
Civic Centre
West Street
Oldham OL1 1UL

THIS PLANNING OBLIGATION is made the 11th day of January 1996 BETWEEN OI BOROUGH COUNCIL of Civic Centre West Street Oldham (hereinafter referred t "the Council") of the one part and BARRATT HOMES LIMITED of Wingrove : Ponteland Road Newcastle-Upon-Tyne (hereinafter referred to as "the Develop of the other part

WHEREAS

1. (a) THE Council is the freehold owner of the land described in schedule hereto (hereinafter referred to as "the Land")

   (b) The Council has entered into an agreement of even date with Developer by way of Licence to develop the Land

2. THE Council is the local planning authority for the purpose of the Town Country Planning Act 1990 (hereinafter referred to as "the Act") for area within which the Land is situated

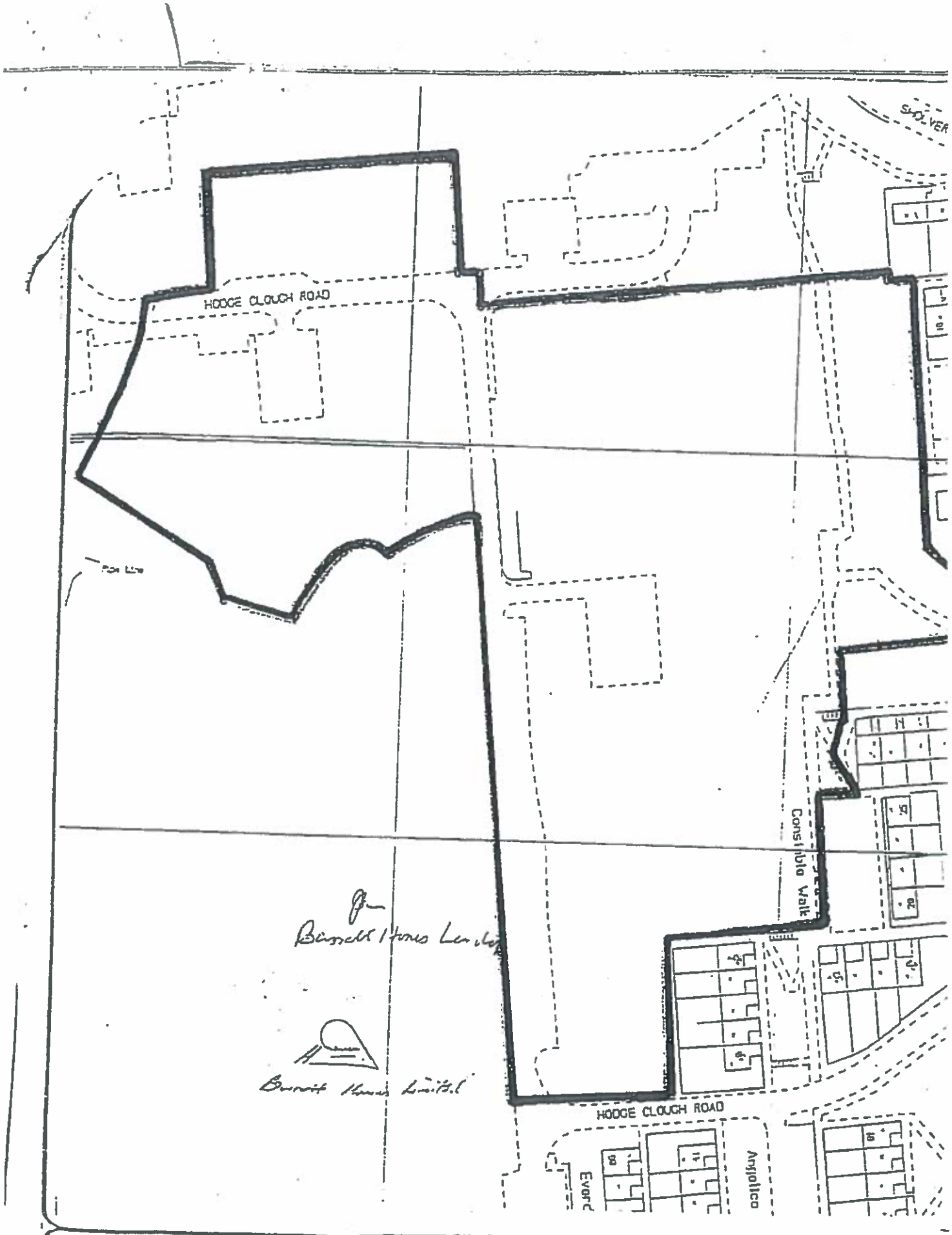
3. THE Developer has by written application dated the 21st July 1995 bearing the Council's reference number 033351/95 applied for permission develop the Land in the manner and for the uses set out in the pl specifications and particulars comprising the said application

4. THE Council is satisfied that subject to the provisions of this Planni Obligation the development disclosed by the said application is such as r be approved by them under the Act and other Acts and Regulatic appertaining thereto and accordingly have issued a notice of planni permission of even date (hereinafter referred to as "the Planni Permission")

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. THIS Planning Obligation is made in pursuance of Section 106 of the Act a the covenants herein contained by the Developer shall be covenants whic shall be enforceable by the Council against the Developer

2. THAT the Land shall be subject to the conditions restrictions ar provisions regulating the development and use thereof contained in th



TOWN AND COUNTRY PLANNING ACT 1990
SECTION 106 PLANNING OBLIGATION
APPLICATION NUMBER PA/033351/95
LAND AT HODGE CLOUGH ROAD, OLDHAM

Number in Seal Book 35/96

SECRETARY ECONOMIC DEVELOPMENT

OLDHAM

in this Planning Obligation

3. The Developer shall upon completion of this Planning Obligation pay to the Council the sum of £30,000 (receipt whereof is hereby acknowledged) as a contribution towards the cost of the Council providing an area of public open space in the area of the Land and the Council shall within a reasonable period provide and lay out the area of public open space

4. NOTHING in this Planning Obligation shall be taken or construed as absolving the Developer from obtaining any other consent or approval required by law

5. IF any difference or dispute arises between the parties hereto touching or concerning their respective rights duties liabilities or obligations under or by virtue of this Planning Obligation the same shall be referred to a member of the Royal Institution of Chartered Surveyors (RICS) to be agreed between the parties or failing agreement upon request by one party for arbitration that party may after 21 days of that request by him request that an arbitrator be appointed by the President for the time being of the said RICS or his duly authorised deputy on the application of either party and in this respect such referral shall be construed as a submission to arbitration within the meaning of the Arbitration Acts 1950-1979 or any statutory modification or re-enactment thereof for the time being in force

6. EACH party shall bear and pay any costs which they incur in the preparation and execution of this Planning Obligation

SCHEDULE

ALL THAT plot of land situate at Hodge Clough Road, Oldham, more particularly delineated and edged in red on the plan annexed hereto

IN WITNESS whereof the Council and the Developer [illegible] affixed their respective Common Seals to be hereunto affixed the day and year first before written

Number in Seal Book
35A/96

THE COMMON SEAL of)
OLDHAM BOROUGH COUNCIL)
was hereunto affixed)
in the presence of:-)

SOLICITOR - ECONOMIC DEVELOPMENT

EXECUTED AS A DEED on behalf)
of BARRATT HOMES LIMITED by)
Joint Secretary
and [illegible])
in exercise of the powers)
conferred on them by a Power)
of Attorney dated 1st July)
1995 who have hereunto set)
the name of Barratt Homes)
Limited in the presence of:-)

24, Goodwood Crescent
Timperley
Cheshire

Land Manager

Doc ref: 30167/12/SF

Letters in support of the application

42 Hodge Clough Road
Holly Mount
OLDHAM
OL1 4PW

24 June 2018

TO WHOM IT MAY CONCERN

Dear Sir/Madam

Re ***Application for Village Green Status: Land on Hodge Clough Road***

I am writing to you to strongly support the application for 'Village Green Status' for the land on Hodge Clough Road.

I have lived here now for almost 22 years. My two children were born and raised here, my daughter now 20 and my son 15.

This land is where our memories have formed and where I have watched my children grow and learn, teaching my children to ride their bikes without stabilisers, kicking a ball about, having pretend teddy bear tea parties. It is here where they have met other children and developed friendships and through their playing many parents have met and become good friends often joining in the fun playing ball games and rounders with them. When they wanted to camp out, but no longer camp in the back garden this land is where they camped with their friends, where I could watch over them from the house.

We have had paddling pools on here, a trampoline, water balloon fights, snow ball fights, built snowmen and igloos, the games we have all played are endless.

We have celebrated birthdays with bouncy castles, fireworks at Bonfire Night and New Year's Eves.

Not only have my children, their friends and cousins played and enjoyed this land they have also been fortunate enough to learn about its wildlife. There are wild deer that come up onto this land most mornings, foxes, bees and at night you can often spot bats. It also attracts various birds, ducks, Canadian geese and we have even seen a heron on a number of occasions.

There are also many dog walkers walk here and enjoy themselves. This is where we walked our dogs before they sadly died. My daughter used to sometimes ride her horse here.

It has also been a pleasure to see my neighbours children grow here who now bring their children to play and explore like they did.

When I moved into my home 22 years' ago I didn't know anyone in the area but I feel that through this land I have met some lovely people who have become good friends. It has been a strong hub

and focal point of the local community bringing families together. During all this time there has never been any trouble with fighting, gangs or drugs which I feel demonstrates just how strong this land has brought the community together. I believe it is this land that has helped stop our children from standing and congregating on street corners. This land has enabled them to thrive and enjoy their childhood.

I fully support this application for 'Village Green Status'.

Yours sincerely

[redacted]

Judith Langley

100 Hodge Clough Rd
Oldham
22.6.18

In support of:-
The Application for Village Green Status
on land on Hodge Clough Road.
D Wild (Mrs.)

I am writing re the spare field on Hodge Clough Road.
I have lived here for over 19 years and over that time I have used and <u>still use</u> the field for walking our dog.
Our Son (when he was young at home) used it for activities my grandchildren use it when visiting.
Its the only accessible field for us to use within this area.
We often see wildlife ie. Pheasants foxes and even deer have been seen by me personally.
Its also the way to the further fields which where supposed to be used as a golf course.
We definately need to keep this space otherwise all there will be will be concrete unsafe roads for us, our →

children and pets to use.

My husband and I do believe in community spirit and we need to keep this space for further use by us, our children, pets, to be able to have games on, fun times and make happy memories.

Yours sincerely

Mrs. D. Wild

MR & MRS G C & J D BRADDOCK

50 HODGE CLOUGH ROAD

MOORSIDE

OL1 4PW

RE: APPLICATION FOR VILLAGE STATUS

My wife and i have lived here for nearly 22 years, and have raised two children, and now a grandson so far. All former and present children view the open space as focal point for the community, to play,meet and be safe.

Our own two children used it for ball games, riding bikes, hide and seek, and pitching tents in the summer. These activities are now carried on by another generation, like uor grandson and his friends.

It is also used as a focal point for celebrations through out the year, one been new years eve. It is also used by a vast amount of dog walkers, including ourselves.

I think the main thing that attracts young and old is the widlife here, foxes,bats,,bees,deer,birds etc. These are things that wouldn`t be here if it wasn`t for the open space be preserved.

We cannot stress enough how this piece of land is an integeral part of daily life for the community, which if it wasnt here, would be lost and become just another no name street,area of the country.

We hole heartedly support the application for village green status. Enclosed is a picture of our grandson enjoying one of the many area`s here.

[redacted]

21/6/18

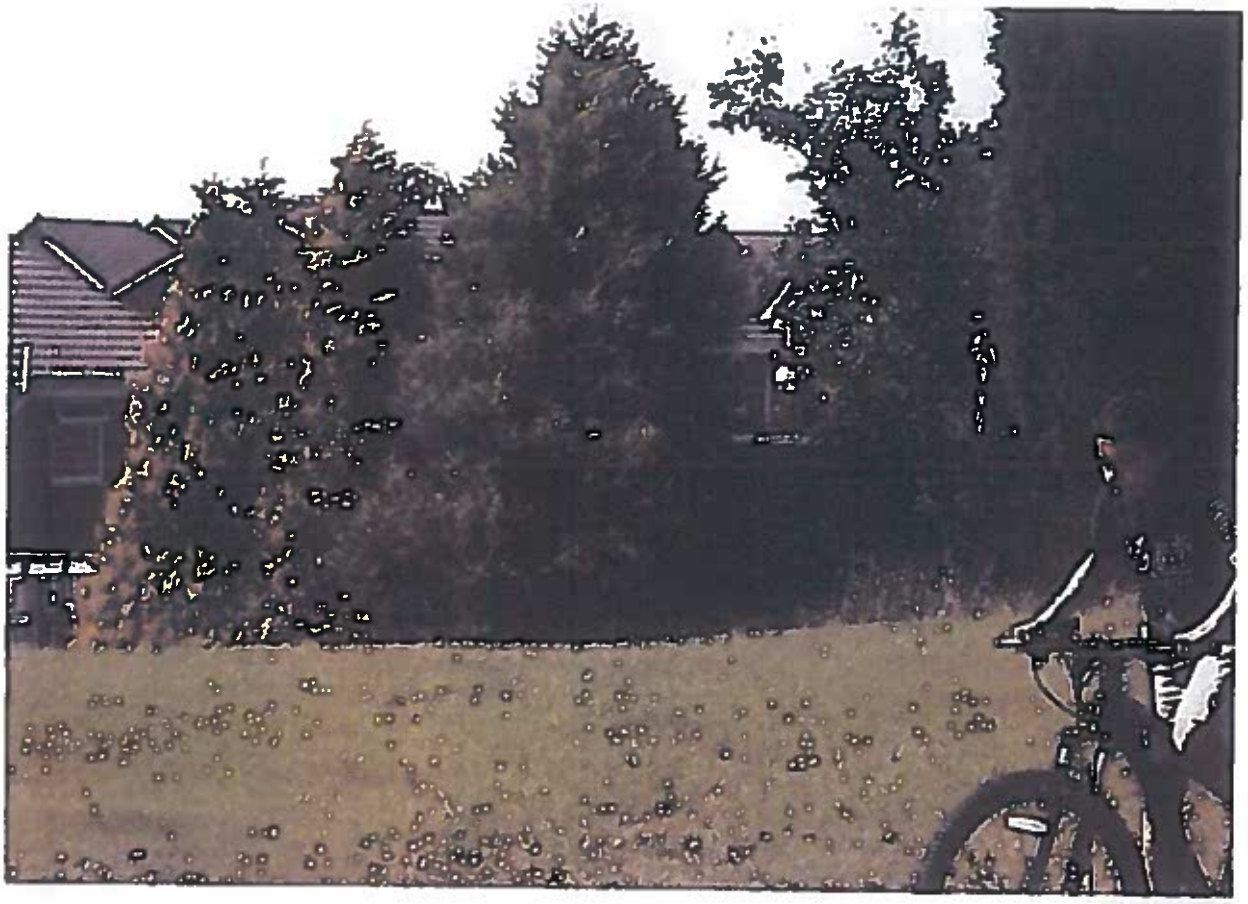
Miss C Williamson
40 Hodge Clough Road
Moorside
24 June

To whom it may concern.

I would like to send you my opinion why I think the land on Hodge Clough Road should become a village green status.

I lived at my parents address for over 20 years until i recently moved out of the house. My son, now 12 years old has spent all his life there. I feel he has been blessed because of the land being available for him to play on over the years. It has been invaluable for him and the communities children for meeting and being able to make friends. The land has been the focal point of children congregating and playing sports within eye and ear shot of parent ,grandparents and friends. There is a shortage of places for children to play safely away from cars and this land provided a safe area, everyone knows other peoples children so its SAFE. There has been organised celebrations like camping, New years eve celebration, Bonfire night celebrations, bouncy castles , plenty of water fights, the list is endless. I, like others have so many happy memories seeing the children grow up together round there. Now we need a space for the younger generation, which are just starting to play out,to give them the chance and learn the valuable way of life of being able to play out safely. Very important note is that there has never EVER been any trouble or cause for concern about the land being used for children playing on it. Another added bonus of the land for everyone as well as the children is the wild life. Deer, foxes and bats just to name a few are living around here in their natural habitat. It is a wonderful sight to see the animals living naturally for all ages. There are plenty of dog walkers that use the land, people can have a chat and get to know one another. One thing I would say about that is everybody takes pride of this little piece of green so not once has it been reported for dog fouling. The area is cherished by the community and is well loved.

Thanks .



Mrs Diane Elson
82 Hodge Clough Road
Oldham.
OL1 4PW.
22.6.2018

The following information is in support of Village Green Status for the green land on Hodge Clough Road.

The application for Village Green Status has my full support. I have lived in this area for 21 years. In which time my son & his friend (local residents) have spent & still spend many hours playing safely on the green open land.
The Hough Clough Road green area is a common place for local residents to meet up. We regularly use it for sports activities - both adult & child. To promote everyones health & well being. The community come together on the field for social events & celebrations. We use the area to walk our dogs, to socialise - getting to know each other, respecting & supporting each others needs & well being. It's a lovely safe place for children to play - they run around having fun - being active - keeping them healthy.
Without this space it would cause a negative effect on residents health - physically, mentally, emotionally & socially.
Wildlife would be effected, we regularly see foxes, bats, deer & a huge variety of birds within this area.

Signed - [redacted]

This letter is in support of the village green status application on the land at Hodge Clough Rd

JULIE LEE
34 HODGE CLOUGH RD
OLDHAM
OL1 4PW
22.6.18

I have lived at my property for 21 years as I bought it as a new build.

I have a daughter who has played on the fields opposite my home. Most families with children use the land for the children to play on as most gardens in the area are on a slope at the rear therefore cannot enjoy a lot of activities due to them not being flat enough.

The land is used for paddling pools, slides, swings, football with nets, cricket and various other activities.

We have had bouncy castles on the land and children with bikes as it is safe and flat.

I have been wildlife spotting with my child and seen deers, ducks, bats, foxes, frogs etc. I have also been blackberry picking along the hedges.

We have fireworks displays every year for the families to enjoy and celebrate occasions such as Bonfire nights (on the land)

Early morning I have spotted deer on the land and children camp out on it every Summer as it is in easy reach of their families as they feel it is flat and safe

Yours Sincerely

[redacted]

Mr Fred Williamson & Mrs Marlene Williamson,

40 Hodge Clough Rd, Oldham, OL1 4PW.

RE: Village Green Status

We have lived at the above address for over 21 years and have enjoyed the open aspect of the field opposite our property, as have many other people from Hodge Clough Rd and the surrounding area.

The field is used regularly for dog walking by most people in the area and is a place where people from the community casually meet whilst doing this activity. It has helped develop a community spirit amongst the residents of the development which was commissioned in 1997. The builders (Barratt's) payed Oldham Council £30,000 to develop and maintain this as an open space, after they had completed their Planning obligation, (Documentation is available to prove this).

Children regularly play on this field, (including our grand-son), enjoying a variety of activities including: cycling, football, rugby, cricket, kite flying, more recently drone flying, and games such as chase and tag where it considered safe and away from traffic, but still highly visible from the opposite properties, which gives a sense of safety and security that is not offered by the Millennium Green, as it too far away and has to be reached by crossing a busy road. Parties have also been held on this field including the use of "Bouncy Castles".

The field is not fouled by the dog walkers as it is a respected amenity by all and the dog waste is removed by the owners.

A variety of wildlife has been observed on the field including bats, deer, foxes, badgers, ducks and other bird species.

Hopefully this integral part of our community will remain as the open space the residents use and enjoy.

Yours sincerely,

Fred & Marlene Williamson

[redacted] 24-06-18

24-06.18

1 of 2

in this Planning Obligation

3. The Developer shall upon completion of this Planning Obligation pay to the Council the sum of £30,000 (receipt whereof is hereby acknowledged) as a contribution towards the cost of the Council providing an area of public open space in the area of the Land and the Council shall within a reasonable period provide and lay out the area of public open space

4. NOTHING in this Planning Obligation shall be taken or construed as absolving the Developer from obtaining any other consent or approval required by law

5. IF any difference or dispute arises between the parties hereto touching or concerning their respective rights duties liabilities or obligations under or by virtue of this Planning Obligation the same shall be referred to a member of the Royal Institution of Chartered Surveyors (RICS) to be agreed between the parties or failing agreement upon request by one party for arbitration that party may after 21 days of that request by him request that an arbitrator be appointed by the President for the time being of the said RICS or his duly authorised deputy on the application of either party and in this respect such referral shall be construed as a submission to arbitration within the meaning of the Arbitration Acts 1950-1979 or any statutory modification or re-enactment thereof for the time being in force

6. EACH party shall bear and pay any costs which they incur in the preparation and execution of this Planning Obligation

SCHEDULE

ALL THAT plot of land situate at Hodge Clough Road, Oldham, more particularly delineated and edged in red on the plan annexed hereto

Mr & Mrs G & T Skinner,
9, Leywell Drive
Moorside
Oldham
OL4 2DA
24th June 2018

IN SUPPORT OF THE APPLICATION FOR VILLAGE GREEN STATUS

TO WHOM IT MAY CONCERN.

I wish to support the application for the purpose of securing the land on Hodge Clough Rd, to make it a green space. The reasons are as follows:

1, This is our community green, which is a safe area for our children. Their play can be clearly seen from many windows

2, I have hearing loss and suffer from tinitus, I have 2 dogs which I exercise twice daily, I roam freely with my dogs in complete safety.

3, On my walks I have regularly seen, local wild life eg: DEER, Fox, Badger, Shrooks, a pair of breeding Malard Ducks, we have an hawk which can be seen hovering in the air for food, I have also seen male pheasant, and listen to a variety of birds.

4, This area is within yards of our homes, and we all feel the benefit of this space for our heathe well being.

5, This last week the press has reported asian youths attacking a woman in Tandle Hill Park with knives. Two 12 year old threatened in Shaw with knives and robbed of their phones and money. In Alexander Park, a 14 year old woman attacked [illegible] by Romanian men, I disabled

children robbed of their bikes, by Romanian men.

6, We should be considered, this area is for the good of all our community.

Yours truly

Mrs [redacted]

MR & MRS A BROOKS
28 HODGE CLOUGH ROAD
MOORSIDE
OLDHAM
OL1 4PW

Date 23/06/2018

RE: APPLICATION FOR VILLAGE STATUS

My husband and I have lived here for 11 years with our daughter, this open space is used to play/meet up with her friends also playing with children on this street/in the area, a community point to play and be safe having fun/laughter, using it for prams/dolls-ball games-riding bikes-hand stands/roly polys etc, our daughter and other children have even pitched Tents, all these activities have continued from year to year, generation after generation, hopefully carrying on if we ever get grandchildren.

It is also used as an area for celebrations throughout the year (New Year, birthdays etc) where bouncey castles have been set up also used by a considerable amount of dog walkers including ourselves.

A main attraction for young/old to the area is the nature/wildlife, (birds-ducks-bats-foxes/we have also seen deer as well), these wouldn't be here if only for the preserved open space.

We cannot emphasis enough how much this piece of land is part of daily life, to lose this piece of land would be a devastation to our family and the community.

Yours Faithfully

[redacted]

[redacted]

Mr & Mrs Marshall
97 Hodge Clough Rd
Oldham OL1 4PX
22-06-18.

This information is in support of Village Green Status for the open land on Hodge Clough Rd.
The application for village Green status has my full support. The green open space has be regularly used by ourselves and our children and grand children over the years and years.
As a community we meet up and enjoy there together celebrating events i.e. bonfire nights New Year and the recent Royal wedding.
The children play safely on this land, they play football and other games, ensuring everyone promotes their health and well being.
We walk our dogs on a regular basis and enjoy meeting our neighbours on a daily basis.
The wild life on this field is amazing and needs to be protected. We have seen Dead, Bats, Foxes and a wide variety of birds, destroying this land by building on it will have a devastating impact on the young and old within the community.

[redacted]

.....

This is in support of the application for village green status for land on Hodge Clough Road.

46 Hodge Clough Road
Moorside
Oldham
Lancs
OL1 4PW

Dear Sir/Madam

I'm writting to you in regards to the land on Hodge Clough Road. We have lived on Hodge Clough road for nearly 5 years. We have an Olde English Sheepdog who needs plenty of exercise and we use this land at least twice a day. We also have 3 children aged 11, 8 and 3 and they use the field on a daily basis. My husband goes on the field and organises all the children in the area they all come together in the school holidays to play football games, cricket and athletics. They ride their bikes and play with all of their friends on here and its a safe place for them as there isn't anywhere else near by for them to play. The land is also very beneficial to the community and being a green space is good for peoples health and well being. The land is a focal point for all of the community with events such as new years eve fireworks displays and november the 5th bonfire night. I'm enclosing a picture of some of the wildlife that i have witnessed directly outside of my home which my children benefit from seeing.

Kind Regards
Mr and Mrs Holtom

[redacted]

24/6/2018

This is the deer we saw directly outside our house

mrs melanie Holtom

[redacted]

24/6/2018

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firstchoice HOMES OLDHAM

My FCHO

First Choice Homes Oldham
First Place, 22 Union Street, Oldham OL1 1BE
T: 0161 393 7117
W: www.fcho.co.uk
MyFCHO - your customer portal

facebook.com/FirstChoiceHomesOldham
@FirstForFCHO

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

14th September 2018

Dear Sir/Madam,

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

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

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

Yours sincerely

Natalie Blackston

Natalie Blackston

Email: natalie.blackston@fcho.co.uk

THE COMMONS ACT 2006

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

OBJECTIONS OF FIRST CHOICE HOMES OLDHAM LIMITED

1. Introduction

1.1 The Objections are made on behalf of First Choice Homes Oldham Limited (FCHO) of First Place, 22 Union Street, Oldham OL1 1BE, the interested party in relation to the land which constitutes the land the subject of the Application (the Claimed Land). FCHO is a provider of social housing.

1.2 Oldham Metropolitan Borough Council's (the Owner) title to part of the Claimed Land is registered at HM Land Registry under two Titles: First Title LA88157 Freehold - purchased by the Owner on 26th June 1966. Second Title LA43936 Freehold. Land was purchased by the Council on 19th May 1964. Evidence of these titles is annexed to the Statutory Declaration of Julie Florence Hall as exhibit 'JFH1'.

1.3 The Claimed Land was in the ownership of County Borough of Oldham up to local government re- organisation in 1974 and thereafter came onto the ownership of the Oldham Metropolitan Borough Council the successor authority to County Borough of Oldham under the Local Government Act 1972 (the 1972 Act).

1.4 There have been various sales out of the original parcel of LA88157 including Stock transfer land to FCHO. FCHO does not know the powers utilised to purchase the Claimed Land in title LA88157. The second part of the Claimed Land is in title LA43936 which was purchased by the Owner pursuant to Part V of the Housing Act 1957. The Owner has disposed of some of its land including land under stock transfer to FCHO but remains the Owner of the Claimed Land.

1.5 It is for the Applicant to prove his case.

1.6 The Applicant asserts, but provides no evidence to support, that £30,000 was given as a direct contribution to maintain the Claimed Land.

1.7 It is usual for a Claim to be supported by Witness Statements or forms of evidence such as the evidence questionnaire provided by the Open Spaces Society. Since those conventions have not been observed, it is, by and large, difficult to assess the evidence of the Applicant and his witnesses. The majority of the supporters of the Applicant provide household statements made jointly with other persons or have otherwise signed a pre-prepared notice compiled by the Applicant. The individual statements of witnesses are not open to be tested by FCHO or any other objector. In

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

2. Description of the Claimed Land

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

(a) a gritting bin;

(b) regular mowing and maintenance by the Owner;

(c) a street light sited on the Claimed Land;

(d) clear boundaries to all sides;

(e) a lack of pathways, gates or obstructions to entry

(f) a lack of shrubbery on the Claimed Land

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

3. Dwelling houses Hodge Clough Road

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

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

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

4. Maintenance of the Claimed Land

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

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

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

5. Signage

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

6. Playing/Wildlife/Picnic

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

7. The Commons Registration Act 1965 (The CRA)

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

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

(a) which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality, or

(b) on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes, or

(c) on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than 20 years."

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

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

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

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

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

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

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

(a) continue to do so, or

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

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

9. The Commons Act 2006 (CA)

9.1 Qualifying Criteria

(a) The relevant sub-section is Section 15(2) which enables registration of land as a TVG and the common requirements for registration in the sub-section can be listed as follows;-

(i) a significant number of;

(ii) the inhabitants of any locality, or any neighbourhood within a locality

(iii) ... have indulged

(iv) ... in lawful sports and pastimes;

(v) ... as of right;

(vi) ... on the land;

(vii) ... for a period of at least twenty years (the Qualifying Period)

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

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

10. The elements to be proved by the Applicant.

10.1 Significant Number

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

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

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

(c) The right being claimed on the understanding of FCHO is a right for the inhabitants of St James Ward, Lower Sholver, Moorside, Oldham. According to the Profile of St James Ward 2016, the population was 11,862, seeing no movement since 2001.

(d) The evidence presented by the Applicant as set out in the various letters in support is of use of the Claimed Land by residents of Hodge Clough Road and one person of Leywell Drive, over the Qualifying Period. As stated above, it is submitted that the letters are of little evidential value and should properly be disregarded.

(e) The Petition, is of no evidential value. The signatories simply state that they agree with the view of the Applicant rather than provide their own evidence to be tested in this claim.

(f) It is noted that one person who has written a letter in support appears to no longer reside in the locality and that there is no clear evidence of the length of residence of any of the persons who support the Application. The number of letters in support totals 11.

(e) In so far as the Application defines a local area, those who have written letters in support of the Application largely come from one street in St James Ward.

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

Hodge Clough Road – 15

Leywell Drive – 2

(g) The Applicant resides in St James Ward on Hodge Clough Road. The Applicant does not claim to have used the Claimed Land at all. In his letter of support written jointly with his household he simply attests to its use by other un-named persons. The Applicant provides no evidence of the use of the Claimed Land by himself or his co-signatory Mrs Marlene Williamson. There is no evidence to support the length of time he claims to have resided in the locality.

(h) The documents provided by the Applicant, do not necessarily demonstrate that the Claimed Land is used by a significant number of local residents spread over the Applicant's Qualifying Area, namely St James Ward. The letters and joint letters in support indicate 0.14% of residents may support the claim. That percentage is not a significant number.

(i) A general use of land by the local community, according to Sullivan J In (R (on the Application of McAlpine Homes) -v-Staffordshire County Council [2002] EWHC 76 (Admin), has to be demonstrated. A single street is does not represent a local community.

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

(a) The Applicant has to demonstrate that the use of the Claimed Land is by a significant number of the inhabitants of any locality or any neighbourhood within a locality and not just a general use by the public at large.

(b) The "locality" from which a significant number of the users live, must be an entity known to the law: Ministry of Defence -v- Wiltshire County Council Ch D (Harman J) 03/05/1995.

(c) The locality does not have to be defined in the Application. However if not, the Registration Authority must, from the evidence provided by the Applicant, be capable of identifying it. R (on the Application of Laing Homes Limited) -v- Buckinghamshire County Council (2004) JPL 313.

(d) The Application Form at Part 6 requests the Applicant to identify the "Locality" or "Neighbourhood". The Applicant has entered "St James Ward" but has also entered "Lower Sholver" and "Moorside" and "Oldham" and given a postcode "OL1 4PW" and stated "Hodge Clough Road".

(e) All bar one of those providing letters in support reside on Hodge Clough Road which is not a locality or a neighbourhood, or an entity known to law.

(f) It is not known whether the persons who have given letters in support regard themselves as residents of St James Ward or residents of Lower Sholver. There is no evidence that clarifies the position.

(g) The Applicant has not submitted a plan identifying either the locality or of the neighbourhood.

(h) Prior to local government reorganisation in 1974, a predecessor Authority to the Oldham Metropolitan Borough Council was the County Borough of Oldham, which ceased to exist as of 1st April 1974, by virtue of the 1972 Act. The County Borough of Oldham's functions and powers became vested in the Oldham Metropolitan Borough Council.

(i) St James Ward is an electoral ward in the Oldham Metropolitan Borough.

(j) There has not to FCHO's knowledge been an entity known to the law as Lower Sholver or Moorside, or Hodge Clough Road within the Qualifying Period.

(k) In Cheltenham Builders Ltd v South Gloucestershire District Council [2003] EWHC 2803 (Admin). stated that whereas the term locality in the context of TVGs meant a legally recognised administrative unit, a neighbourhood need not be an administrative unit and might include a housing estate. He also rejected the notion that a neighbourhood is any area of land that an Applicant chooses to delineate on a plan. He said at [85];-

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

(l) The pronouncement of Sullivan J. was subsequently confirmed in Oxfordshire County Council v Oxford City Council [2006] UKHL 25 where Lord Hoffmann spoke at [27] of a neighbourhood as not being an area of legal or technical significance.

(m) In Paddico Ltd v Kirklees Metropolitan Council & Others [2012] EWCA Civ 262 at first instance Vos J. confirmed at [97] the prior jurisprudence and said "in section 22(1A), the term "'neighbourhood" is to be understood as being a cohesive area and must be capable of meaningful description in some way"":

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

10.3 Lawful Sports and Pastimes

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

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

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

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

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

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

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

(ii) The following are not activities and community events, that can be asserted, amount to use of the Claimed Land: Use by a bee, badger, duck, deer a bat or a Fox is not within the ambit of the legislative provisions.

(v) The Applicant has submitted a photograph of a person in a body of water – there is no body of water on the Claimed Land. Other pictures that are not of the Claimed Land have also been submitted.

10.4 As of Right

(a) The Applicant has to demonstrate that those using the Claimed Land have done "as of right" and not "by right'. As of Right means "nec vi, nec clem, nec precario" - without force, without stealth and without licence" All three elements have to be demonstrated by the Applicant.

(b) As described earlier, the Claimed Land is open and accessible to the public at large. The letters in support of the Application make no reference to any impediment to the public entering onto the land. Indeed that is consistent with the land being maintained by the Owner so that it can be enjoyed both visually and physically by the public at large.

(c) The public's use of the Claimed Land has been nec vi and nec clam. However, it is not nec precario - without licence, but "precario" by license and therefore "by right".

(d) FCHO contends and demonstrates herein that use of the Claimed Land during the Qualifying Period, has been by a licence granted by the

Owner, although arguably initially granted by its predecessor Local Authority

(e) The Claimed Land was acquired at two separate points in time and held under two different titles as detailed above for the purpose of the creation of a "Council Estate".

(f) The Inspector on a TVG Application that was considered in Barkas v North Yorkshire CC Scarborough Council [2011] EWHC 3653, drawing on the principle established by the obiter dictum in Beresford that use by the public of land held under the Open Spaces Act 1906 and the 1875 Act, will be permissive (precario),in his Report to the Registration Authority, concluded by analogy:

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

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

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

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

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

(g) Consequently the Owner's Land has been held by the Owner for the whole of the Qualifying Period on trust for recreational purposes.

(h) Consequently recreational use of the Owner's Land has been "by right" for the whole of the Qualifying Period.

(i) The maintenance regime of the Owner's Land encourages and enables the public to enter onto the land for recreational purposes, as described in the Application.

(j) The requirements necessary to demonstrate that use of the land by the public, is "precario" following the judgement delivered by their Lordships in R –v- City of Sunderland ex parte Beresford [2003] UKHL 60, has been met.

(k) The licence granted is a temporary licence which can be withdrawn at any time, or extinguished by Notice as the case may be.

10.5 Claimed Land

(a) The Claimed Land must be clearly identified by means of a plan.

(b) A plan accompanying the Application identifies an area of land of 9,915m2.

10.6 Physical Extent of use

(a) the Application does not demonstrate a restriction as to the extent of the use of the Claimed Land for lawful sports and pastimes.

(b) there are no permanent or transient physical impediments preventing the public from using and accessing all parts of the Claimed Land.

(c) The Applicant does not need to show that every square inch of the Claimed Land is used, see R (on the Application of Cheltenham Builders Limited) –v- South Gloucestershire District Council [2003] EWHC 2803 (Admin). In that Case, Sullivan J said:-

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

(d) The evidence, in so far as it is presented by the Applicant in the does not address the extent of the use claimed.

(e) There are no public footpaths or bridleways cross the Claimed Land.

10.7 Twenty Years Use

(a) There is no direct evidence of twenty years use as there is no direct evidence of residency by any of the witnesses or those supporting.

(b) In the absence of such FCHO disputes that the Application and the Statements in support provide evidence of recreational use over the whole of the Qualifying Period.

10.9 Continue to do so

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

11. Right of Way Uses

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

12. Summary

12.1 FCHO objects to the Application and contends that the Owner's Land should not be registered as a Village Green. The Application is misconceived: the statutory ingredients necessary to show that the Owner's Land qualifies as a Village Green have not been made and cannot be established. The Applicant contends that the Claimed Land is public open space. Management of land as public open space under section 10 of the Open Spaces Act 1906 does not lend itself to that land being registered as a Village Green.

12.2 The Applicant has failed to prove the following

(a) Significant number - the Application has not established that a significant number use the Claimed Land and the spread is not sufficient to support the claim, and

(b) Neighbourhood within a locality - the Applicant has not identified a cohesive entity that would be understood by those living in the area as their "neighbourhood",

(c) Capable of registration – the Applicant has not demonstrated that the Claimed Land is capable of being registered as a Village Green

12.3 FCHO has demonstrated that the Owner's Land, has not been used "as of right" for the Qualifying Period but "by right" – "precario". The use has been by permission or a licence, for all of the Qualifying Period. Whether as undeveloped housing land or as open space.

12.4 The Claimed Land is open to being regarded by the Owner and the Registration Authority as open space. Alternatively the Claimed Land is undeveloped housing land held on trust for the use of the local inhabitants.

13. Conclusion

13.1 FCHO requests that on the evidence the Registration Authority determines not to register the Claimed Land as a Village Green.

13.2 FCHO reserves the right to add or to delete any information, as set out in these Objections, as information is established from records held by various public bodies, relating to the Owner's Land.

Dated this 12th day of Sept 2018

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

THE COMMONS ACT 2006

VILLAGE GREEN APPLICATION – LAND AT HODGE CLOUGH ROAD, OLDHAM

STATUTORY DECLARATION OF JULIE FLORENCE HALL

I, Julie Florence Hall, Legal Officer, Property and Conveyancing Service of First Choice Homes Oldham Limited ('FCHO' Registered Provider of Social Housing), First Place., 22 Union Street, Oldham OL1 1BE, do solemnly and sincerely declare:

1. I make this declaration from my own knowledge and the contents of my files, unless otherwise stated.

2. I am in receipt of an Application referenced RTG/6 from a Fred Williamson of 40 Hodge Clough Road (the Claimed Land). The Application has a petition, map, and various letters and other documents appended to it.

3. In light of the Application I have investigated the title, and visited the Land at Hodge Clough Road, that is the subject of the Application for Village Green status.

4. Oldham Metropolitan Borough Council is the Owner (the Owner) of the Claimed Land which is registered at HM Land Registry under two Titles: First Title LA88157 Freehold - purchased by the Owner on 26th June 1966. Second Title LA43936 Freehold. Land was purchased by the Council on 19th May 1964.

5. Evidence of these titles is annexed as exhibit 'JFH1'.

6. The Claimed Land was in the ownership of County Borough of Oldham up to local government re- organisation in 1974 and thereafter came onto the ownership of the Oldham Metropolitan Borough Council the successor authority to County Borough of Oldham under the Local Government Act 1972 (the 1972 Act).

7. There have been various sales out of the original parcel of LA88157 including Stock transfer land to FCHO.

8. FCHO does not know the powers utilised to purchase the Claimed Land in title LA88157.

9. The second part of the Claimed Land is in title LA43936 which was purchased by the Owner pursuant to Part V of the Housing Act 1957. The Owner has disposed of some of its land including land under stock transfer to FCHO but remains the Owner of the Claimed Land which is I would submit to be classed as either undeveloped housing land or open space. Both designations give a licence to the public to use the land for leisure purposes.

10. I carried out the site visit on 22nd August 2018. I attach photographs as exhibit 'JFH2.'

11. I attach a map of the Claimed Land as exhibit 'JFH3.'

12. It is clear from the map that the land is of a rectangular shape and this is borne out by the photographs.

13. At the site visit I did not witness any person engaging in any sports or past times on the Claimed Land. There were no desire lines indicating walk ways across the Claimed Land. In fact the Claimed Land had clearly been mowed as opposed to the land to the south and west which was untended.

14. I observed a gritting bin, mowed grass, a street light sited on the Claimed Land, clear boundaries to all sides, a distinct lack of pathways, gates or obstructions to entry, a lack of shrubbery on the Claimed Land.

15. On the same day I also visited a registered Village Green which is half a mile away from the Claimed Land and in comparison one would certainly say it has all of the hall marks of a village green. It is a discernible 'green' with a village pub adjacent to it. Across from that green is the Millennium Green.

16. In short the Claimed Land is not and never has been the village green of the locality and from the evidence provided it is not used by a significant number of the occupants of the locality or neighbourhood within the locality. I have seen no evidence as to whether the claimed use of the Claimed Land has been for an uninterrupted period of 20 years.

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

DECLARED BY

Signed.....

Dated.....05 - SEPTEMBER 2015.....

Before me

Solicitor HELEN BRAMALL-PRIOTT

Stamp

Garratts
King Street Buildings
Manchester Street
Oldham
Greater Manchester
OL8 1DH
Tel:-0161 665 3502 Fax:-0161 665 4060
www.garrattssolicitors.co.uk

THE COMMONS ACT 2006

VILLAGE GREEN APPLICATION – LAND AT HODGE CLOUGH ROAD, OLDHAM

STATUTORY DECLARATION OF JULIE FLORENCE HALL

EXHIBIT JFH1

And produced to me on the 5th day of SEPTEMBER 2018

Declared by Julie Florence Hall

Signed.....

Dated.....05 - SEPTEMBER 2018.....

Before me

Solicitor HELEN BRAMALL-PIMLOTT

Stamp

Garratts
King Street Buildings
Manchester Street
Oldham
Greater Manchester
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The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

HM Land Registry

Official copy of register of title

Title number LA43936

Edition date 04.05.2012

This official copy shows the entries on the register of title on 04 SEP 2018 at 12:51:34.

This date must be quoted as the "search from date" in any official search application based on this copy.

The date at the beginning of an entry is the date on which the entry was made in the register.

Issued on 04 Sep 2018.

Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.

This title is dealt with by HM Land Registry, Fylde Office.

A: Property Register

This register describes the land and estate comprised in the title.

GREATER MANCHESTER : OLDHAM

1 (10.06.1964) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 56 to 66 (even numbers) Sholver Fold and land lying to the West and South West of Sholver Lane.

2 The land tinted green on the title plan is not included in the registration.

3 The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

4 The Transfers of those parts edged and numbered in green on the title plan which were made pursuant to Part V of the Housing Act 1985 took effect with the benefit of and subject to the easements and other rights prescribed by paragraph 2 of Schedule 6 of that Act.

5 (20.01.1997) The title plan has been subdivided into two parts.

6 (07.05.1998) The title plan has been subdivided into three parts.

7 (04.05.2012) The land has the benefit of the rights reserved by but is subject to the rights granted by the Transfer dated 7 February 2011 referred to in the Charges Register.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

1 (10.06.1964) PROPRIETOR: OLDHAM BOROUGH COUNCIL of PO Box 33, Civic Centre, West Street, Oldham OL1 1UL.

C: Charges Register

This register contains any charges and other matters that affect the land.

Title number LA43936

1 The land tinted yellow on the title plan is subject to the following rights reserved by a Conveyance dated 17 December 1936 made between (1) Thomas Mellodew and Company Limited (Vendors) and (2) Edmund Spencer (Purchaser):-

"EXCEPT AND RESERVING nevertheless unto the Vendors:-

1. The right to pass and repass with or without animals carriages and other vehicles over and along the roads and passages or portions of roads and passages as are comprised in the property hereby conveyed and assigned.

2. The full and free right of running of water and soil to and from any other land and buildings of the Vendors through the gutters drains sewers pipes and watercourses upon the land and premises hereby conveyed and assigned and to enter upon the said premises for the purpose of making any connections with or repairs to such gutters drains sewers pipes and watercourses making reasonable compensation to the Purchaser and his successors in title for any damage caused thereby."

2 A Conveyance and Assignment of the land tinted pink on the title plan dated 8 February 1960 made between (1) William Henry Spencer and Edmund Spencer and (2) Thomas Platt contains restrictive covenants and reserves rights.

¬NOTE: Copy filed under OL5899.

3 The land is subject to rights of drainage and ancillary rights of entry.

4 The paths and passages are subject to rights of way.

5 (24.10.1995) An Agreement dated 6 June 1995 affecting the land edged blue on the title plan and other land made between (1) Oldham Borough Council and (2) Lovell Partnerships (Northern) Limited relates to planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990.

The said Agreement also contains covenants.

¬NOTE: Copy filed under GM216307.

6 (29.01.1996) A Licence Agreement dated 11 January 1996 affecting the land edged yellow on the title plan and other land made between (1) The Oldham Borough Council and (2) Barratt Homes Limited relates to building development and planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990.

¬NOTE: Copy filed under GM619490.

7 (10.10.1996) The parts of the land affected thereby are subject to the leases set out in the schedule of leases hereto.
The leases grant and reserve easements as therein mentioned.

8 (20.01.1998) The parts of the land affected thereby are subject to the following rights granted by a Deed of Grant dated 5 January 1998 made between (1) The Oldham Borough Council (Grantor) and (2) Norweb PLC (Grantee):-

IN pursuance of the said agreement the Grantor hereby grants with full title guarantee unto the Grantee FULL AND FREE RIGHT AND LIBERTY for the Grantee and its successors in title and all persons authorised by it to lay construct use inspect maintain repair alter relay renew and remove or render unusable along and under the Easement Land such underground electric lines as the Grantee may from time to time require in connection with its undertaking and for this purpose to break open the surface of and excavate in the Easement Land so far as this may be necessary from time to time reinstating the same in accordance with the covenants on that part of the Grantee hereinafter contained TO HOLD the said rights and liberties unto the Grantee in fee simple as appurtenant to its undertaking and electricity distribution system

2. THE Grantee hereby covenants with the Grantor as follows:-

(a) To exercise the rights and liberties hereby granted in accordance with all regulations and requirements whether statutory or otherwise

C: Charges Register continued

for the time being in force affecting the same

(b) That as soon as reasonably possible following the initial laying of the said underground electric lines the Grantee will back-fill the cable trench PROVIDED however that the Grantee will not be responsible for any further reinstatement of the Easement Land

(c) That if the Grantee carries out any excavations in the Easement Land subsequent to the initial laying of the said underground electric lines the Grantee will (unless otherwise agreed with the Grantor as a future term of supply) make good at its own expense all damage caused to the Easement Land or to the adjoining property of the Grantor in the exercise of the rights and liberties hereby granted and the execution of the works hereby authorised as soon as is reasonably practicable."

The said Deed also contains the following covenants by the Grantor:-

"THE Grantor with intent to bind the Easement Land and (so far as the same is affected by the stipulations and restrictions in this clause contained) the adjoining land of the Grantor into whosoever hands the same may come and for the benefit and protection of the underground electric lines and the undertaking and electricity distribution system of the Grantee HEREBY COVENANTS with the Grantee that the Grantor and those deriving title under the Grantor shall at all times hereafter observe and perform the following stipulations and restrictions:-

(a) To keep the Easement Land forever hereafter open and unbuilt upon

(b) Not to alter the level of the Easement Land from that existing at the date hereof

(c) That nothing shall be done or suffered to be done by the Grantor its servants or agents upon the Easement Land or the said adjoining property of the Grantor which may in any way interfere with or damage the said underground electric lines

IN this Deed the expression "electric lines" shall have the meaning (in the plural) assigned to the expression "electric line" by Section 64 of the Electricity Act 1989 and shall be interpreted and construed accordingly and shall also included all joint boxes and apparatus ancillary to underground electric lines."

NOTE: The Easement Land referred to above is hatched blue on the title plan so far as it affects the land in this title.

9 (07.05.1998) The parts of the land affected thereby are subject to the following rights granted by a Deed of Grant dated 23 April 1998 made between (1) The Oldham Borough Council (The Grantor) and (2) Norweb PLC (The Grantee):-

"The Grantor hereby grants with full title guarantee unto the Grantee FULL AND FREE RIGHT AND LIBERTY for the Grantee and its succcessors in title and all persons authorised by it to lay construct use inspect maintain repair alter relay renew and remove or render unusable along and under the Easement Land such underground electric lines as the Grantee may from time to time require in connection with its undertaking and for this purpose to break open the surface of and excavate in the Easement land so far as this may be necessary from time to time reinstating the same in accordance with the covenants on the part of the Grantee hereinafter contained TO HOLD the said rights and liberties unto the Grantee in fee simple as appurtenant to its undertaking and electricity distribution system.

THE Grantee hereby covenants with the Grantor as follows:-

(a) To exercise the rights and liberties hereby granted in accordance with all regulations and requirements whether statutory or otherwise for the time being in force affecting the same

(b) That as soon as reasonably possible following the initial laying of the said underground electric lines the Grantee will back-fill the cable trench PROVIDED however that the Grantee will not be responsible for any further reinstatement of the Easement Land

C: Charges Register continued

(c) That if the Grantee carries out any excavation in the Easement Land subsequent to the initial laying of the said underground electric lines the Grantee will (unless otherwise agreed with the Grantor as a future term of supply) make good at its own expense all damage caused to the Easement Land or to the adjoining property of the Grantor in the exercise of the rights and liberties hereby granted and the execution of the works hereby authorised as soon as is reasonably practicable."

IT IS HEREBY AGREED AND DECLARED by and between the parties hereto as follows:

(a) in this clause the expression:

(1) "Develop" includes redevelop

(2) "Property" means all that freehold land comprised in title numbers LA88157 LA43936 GM216307 GM619490 LA115192 and OL6770

(3) "Alternative Route(s)" means a route or routes within the Property as near as possible to the Easement Land as shall be approved by the Grantee as a suitable alternative for the Grantee's purpose

(b) If the Grantor shall desire to Develop the Property and it is necessary for such development to include the Easement Land or any part thereof and shall have obtained Planning Permission for such development the Grantee will release to the Grantor such of the rights and liberties hereby granted as require to be released subject to the following terms and conditions:

4.1 The Grantor shall give to the Grantee not less than twelve month's notice in writing of its desire to implement this clause

4.2 On or before the expiration of the said notice the Grantor shall (subject to investigation and approval of title by the Grantee's Solicitor) by deed with the concurrence of every incumbrancer (such concurrence to be procured by and at the expense of the Grantor) and without payment of any consideration by the Grantee grant in fee simple easements to the Grantee in respect of alternative route(s) for the laying of the underground electric lines such grant to be in the like form and contain the like provisions and covenants (mutatis mutandis) as are herein contained

4.3 Subject to all necesary labour and materials being available but as soon as practicable after completion of the grant of easements in respect of the alternative route(s) the Grantee shall (in the following order of events):-

(i) complete the laying of the underground electric lines along the alternative route(s) and the bringing into use thereof

(ii) remove so far as necessary the underground electric lines installed pursuant to such of the rights and liberties hereby granted as are required to be released or render dead such underground electric lines

(iii) surrender such of the rights and liberties hereby granted as are required to be released

PROVIDED THAT:

(a) if the Grantee or its contractors are prevented from complying with sub-clause 4.3 by reason of outbreak of war or civil insurrection or fire tempest frost inclement weather or other inevitable cause or accident or strike or lock out of workmen or the failure of the Grantee to obtain satisfactory supplies materials or labour or by reason of accident to the works or force majeure or by reason of the Grantee either having to redeploy the workforce assigned to carry out the works in order to carry out emergency work or repairs to its electricity plant and electric lines or by reason of any unavoidable cause for which the Grantee is not responsible in such case the Grantee shall be allowed such extensions of time as are reasonable in the circumstances

C: Charges Register continued

(b) notwithstanding any provision of this sub-clause 4.3 the Grantee shall not under any circumstances be liable to the Grantor for any special indirect or consequential loss or damage arising under contract or otherwise including negligence and breach of statutory duty The term "consequential loss" shall include but is not limited to costs claims damages or expenses calculated by reference to loss or reduction of revenue or profit or loss of contracts (provided that nothing in this sub-clause shall be construed as an attempt to exclude or limit the liabilty of the Grantee in negligence for death of or injury to any person)

4.4.1 The Grantor shall (to which effect the Grantor hereby covenants) be liable for and pay to the Grantee the costs charges and expenses incurred or sustained by the Grantee in or arising out of:

(i) the laying of the underground electric lines along the alternative route(s)

(ii) the removal as aforesaid of the underground electric lines from the land the subject of the rights and liberties hereby granted required to be released as aforesaid

(iii) the preparation and completion of the documentation required in respect of easements for the alternative route(s) and the surrender of such of the rights and liberties hereby granted as are required to be released as aforesaid including stamp duty and (if appropriate) all Land Registry fees for noting thereof on the Register of the Title relating thereto

4.4.2 The Grantor and the Grantee shall take into account betterment and/or deferment of renewal in calculating the said costs charges and expenses incurred or sustained by the Grantee referred to in clause 4.4.1. hereof in that the cost of diverting the underground electric lines due to development only relates to the underground electric lines installed pursuant to such of the rights and liberties hereby granted or equivalent replacement underground electric lines and not the cost of any additional or higher voltage underground electric lines which the Grantee may wish to lay along the alternative route(s)

AND without prejudice to the foregoing if required by the Grantee so to do shall as a condition precedent to the completion of such grant make a payment to the Grantee of the estimated amount of such costs charges and expenses and the Grantee will (as it hereby covenants so to do) repay to the Grantor the difference between the estimated amount so paid and the total amount (if smaller) of such costs charges and expenses

4.5.1 That if the Grantor shall at any time during which this Deed remains effective consider that the Grantee has ceased to make any substantive use of the Easement land for the exercise of the rights and liberties hereby granted for a continuous period of not less than one year then:

(a) the Grantor may at any time thereafter serve written notice on the Grantee requesting the Grantee to provide reasonable evidence that in the Grantee's reasonable opinion the Grantee does have a bona fide present or future requirement to use the Easement Land

(b) the Grantee shall within a reasonable period (but in any event not exceeding three months) of the receipt of the said written notice supply to the Grantor such evidence as is mentioned in sub-clause (a) above

4.5.2 In the event that the parties agree that the Grantee is unable to provide satisfactory evidence as aforesaid the Grantee shall surrender this Deed without any consideration and the Grantor shall (a) accept the surrender and (b) release the Grantee from its covenants and other obligations under this Deed

4.5.3 Prior to any surrender of the rights pursuant to this Clause 4 the Grantee shall at its own expense ensure that the Electric Cables are disconnected and made safe the Grantee making good any damage caused to

C: Charges Register continued

the Easement Land or the said adjoining property of the Grantor to the reasonable satisfaction of the Grantor

IN this Deed the expression "electric lines" shall have the meaning (in the plural) assigned to the expression "electric line" by Section 64 of the Electricity Act 1989 and shall be interpreted and construed accordingly and shall also include all joint boxes and apparatus ancillary to underground electric lines."

The said Deed also contains the following covenants by the Grantor.

"THE Grantor with intent to bind the Easement land and (so far as the same is affected by the stipulations and restrictions in this clause contained) the adjoining land of the Grantor into whosesoever hands the same may come and for the benefit and protection of the underground electric lines and the undertaking and electricity distribution system of the Grantee HEREBY COVENANTS with the Grantee that the Grantor and those deriving title under the Grantor shall at all times hereafter observe and perform the following stipulations and restrictions:-

(a) To keep the Easement Land forever hereafter open and unbuilt upon

(b) Not to alter the level of the Easement Land from that existing at the date hereof

(c) That nothing shall be done or suffered to be done by the Grantor its servants or agent upon the Easement land or the said adjoining property of the Grantor which may in any way interfere with or damage the said underground electric lines."

NOTE: The Easement Land referred to has been shown hatched brown on the title plan so far as it affects the land in this title.

10 (04.05.2012) A Transfer of the land edged and numbered MAN192489 in green on the title plan and other land dated 7 February 2011 made between (1) Oldham Borough Council and (2) First Choice Homes Oldham Limited contains restrictive covenants by the vendor.

¬NOTE: Copy filed under MAN149279.

Schedule of notices of leases

1	10.10.1996 1 & 2	Part of 11 Dalesman Drive	26.07.1996 999 years from 1.7.1995	GM732777
	NOTE: The lease comprises also other land			
2	18.12.1996 3	83 Hodge Clough Road	01.11.1996 999 years from 1.7.1995	GM739426
	NOTE: The lease comprises also other land			
3	20.01.1997 4	2 Mellodew Drive	12.12.1996 999 years from 1.7.1995	GM741515
4	20.01.1997 5	1 Mellodew Drive	29.11.1996 999 years from 1.7.1995	GM741519
	NOTE: Lease comprises also other land			
5	07.02.1997 6	4 Mellodew Drive	12.12.1996 999 years from 1.7.1995	GM743150
6	07.02.1997	50 Hodge Clough Road	19.12.1996 999 years from 1.7.1995	GM743172
7	10.02.1997 8	3 Mellodew Drive	11.12.1996 999 years from 1.7.1995	GM743312
	NOTE: Lease comprises also other land			

Title number LA43936

Schedule of notices of leases continued

8	24.02.1997 9	52 Hodge Clough Road	19.12.1996 999 years from 1.7.1995	GM744180
9	26.03.1997 10	56 Hodge Clough Road	17.01.1997 999 years from 1.7.1995	GM746329
10	27.03.1997 11	48 Hodge Clough Road	07.03.1997 999 years from 1.7.1995	GM746414
11	27.03.1997 12	54 Hodge Clough Road	05.02.1997 999 years from 1.7.1995	GM746421
12	11.04.1997 13	7 Mellodew Drive	24.02.1997 999 years from 1.7.1995	GM747499
13	15.04.1997 14	10 Mellodew Drive	21.03.1997 999 years from 1.7.1995	GM747704
14	06.05.1997 15	42 Hodge Clough Road	14.03.1997 999 years from 1.7.1995	GM749131
15	06.05.1997 16	8 Mellodew Drive	28.02.1997 999 years from 1.7.1995	GM749134
16	22.05.1997 17	6 Mellodew Drive	27.02.1997 999 years from 1.7.1995	GM750635
17	28.05.1997 18	5 Mellodew Drive	28.02.1997 999 years from 1.7.1995	GM750845
18	30.05.1997 19	11 Mellodew Drive	27.03.1997 999 years from 1.7.1995	GM751037
19	30.05.1997 20	12 Mellodew Drive	20.03.1997 999 years from 1.7.1995	GM751039
20	06.06.1997 21	23 Mellodew Drive	22.05.1997 999 years from 1.7.1995	GM751677
	NOTE: The Lease comprises also other land			
21	11.06.1997 22	46 Hodge Clough Road	25.04.1997 999 years from 1.7.1995	GM752032
22	16.06.1997 23	9 Mellodew Drive	27.03.1997 999 years from 1.7.1995	GM752278
23	28.07.1997 24	16 Mellodew Drive	27.06.1997 999 years from 1.7.1995	GM755335
	NOTE: The lease comprises also other land			
24	11.08.1997 25	21 Mellodew Drive	30.05.1997 999 years from 1.7.1995	GM755216
	NOTE: The lease comprises also other land			
25	12.08.1997 28	25 Mellodew Drive	27.05.1997 999 years from 1.7.1995	GM756764
	NOTE: The lease comprises also other land			
26	22.08.1997	10 Hodge Clough Road	[illegible]	[illegible]

Schedule of notices of leases continued

	29		999 years from 1.7.1995	
	NOTE: The lease comprises also other land			
27	10.09.1997 27	14 Mellodew Drive	27.06.1997 999 years from 1.7.1995	GM755799
	NOTE: The lease comprises also other land			
28	12.09.1997 26	15 Mellowdew Drive	27.06.1997 999 years from 1.7.1995	GM755615
	NOTE: The lease comprises also other land			
29	06.10.1997 30	Part of 32 Hodge Clough Road	15.08.1997 999 years from 1.7.1995	GM765736
	NOTE: The lease comprises also other land			
30	16.10.1997 31	26 Hodge Clough Road	29.08.1997 999 years from 1.7.1995	GM768486
31	22.10.1997 32	44 Hodge Clough Road	07.03.1997 999 years from 1.7.1995	GM768871
32	22.10.1997 34	Part of 28 Hodge Clough Road	29.08.1997 999 years from 1.7.1995	GM768878
	NOTE: The lease comprises also other land			
33	22.10.1997 33	22 Hodge Clough Road	26.09.1997 999 years from 1.7.1995	GM768883
34	29.10.1997 35	Part of 40 Hodge Clough Road	30.05.1997 999 years from 1.7.1995	GM769303
	NOTE: The lease comprises also other land			
35	03.11.1997 37	Part of 19 Mellowdew Drive	03.11.1997 999 years from 1.7.1995	GM769544
	NOTE: The lease comprises also other land			
36	21.11.1997 36	Part of 5 Leywell Drive	24.10.1997 999 years from 1.7.1995	GM771058
	NOTE: The lease comprises also other land			
37	08.12.1997 38	Part of 3 Leywell Drive	24.10.1997 999 years from 1.7.1995	GM770802
	NOTE: The lease comprises also other land			
38	06.01.1998 39	24 Hodge Clough Road	14.11.1997 999 years from 1.7.1995	GM774742
39	13.02.1998 40	Part of 7 Leywell Drive	09.01.1998 999 years from 1.7.1995	GM778841
	NOTE: The lease comprises also other land			
40	14.05.1998 41	Part of 11 Leywell Drive	27.03.1998 999 years from 1.7.1995	GM784907
41	08.06.1998 42	15 Leywell Drive	23.04.1998 999 years from 1.7.1995	GM786221
42	09.06.1998 43	Part of 9 Leywell Drive	24.04.1998 999 years from 1.7.1995	GM786303

Schedule of notices of leases continued

	NOTE: The lease comprises also other land			
43	15.06.1998 44	Part of 17 Leywell Drive	12.05.1998 999 years from 1.7.1995	GM786662
	NOTE: The lease comprises also other land			
44	25.06.1998 45	Part of 30 Leywell Drive	29.05.1998 999 years from 1.7.1975	GM787374
	NOTE: The lease comprises also other land			
45	16.07.1998 47	17 Mellodew Drive	26.06.1998 999 years from 1.7.1995	GM788912
	NOTE: The lease comprises also other land			
46	14.07.1998 46	19 Leywell Drive	26.06.1998 999 years from 1.7.1995	GM788719
	NOTE: The lease comprises also other land			
47	24.07.1998 48	21 Leywell Drive	24.04.1998 999 years fromm 1.7.1995	GM789498
48	09.11.2011 49	Land lying to the south of Cop Road	30.09.2011 250 years from and including 30.9.2011	MAN184084
	NOTE: The lease comprises also other land.			

End of register

These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 04 September 2018 shows the state of this title plan on 04 September 2018 at 12:51:35. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.
This title is dealt with by the HM Land Registry, Fylde Office .

M.B. 25

H.M. LAND REGISTRY

Filed Plan of Title No. LA 42936

Scale 1/2500

County— LANCASHIRE
O.S. Sheet SD 9407

S20607 338558 W28900 D785 7/63 16M (2 sons) T&Co. G837.

Crown Copyright Reserved

NOTE:- THE LAND TINTED GREEN HEREON IS NOT INCLUDED IN THIS REGISTRATION.

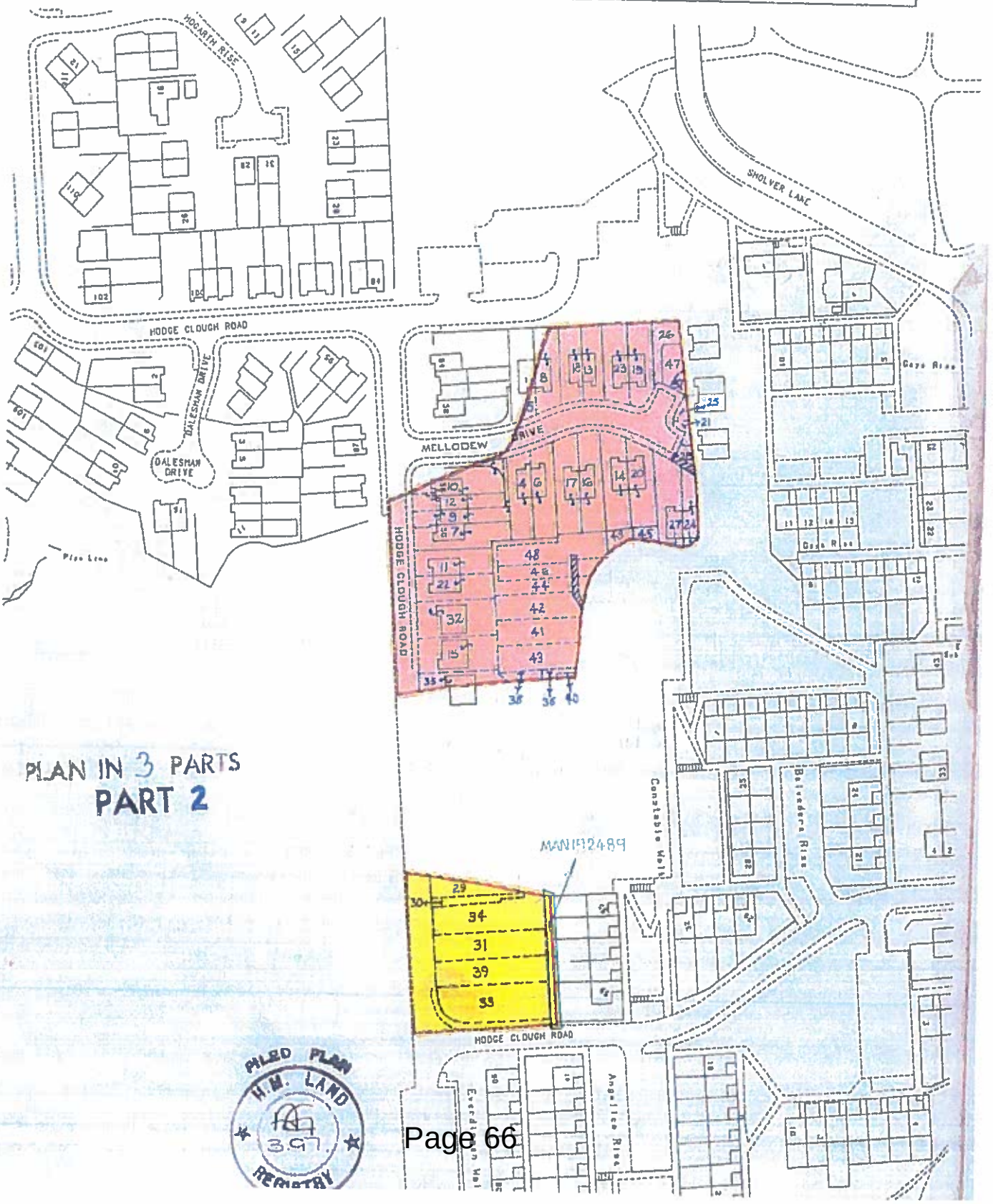
PLAN IN 3 PARTS
PART 1

Note: This area edged hatched in green has been removed to Part 3 of the filed plan, and is shown at a larger scale and edged with red thereon.

Note: This area edge hatched in green has been removed to Plan 2 of the filed plan and is shown at a larger scale and edged with red thereon.

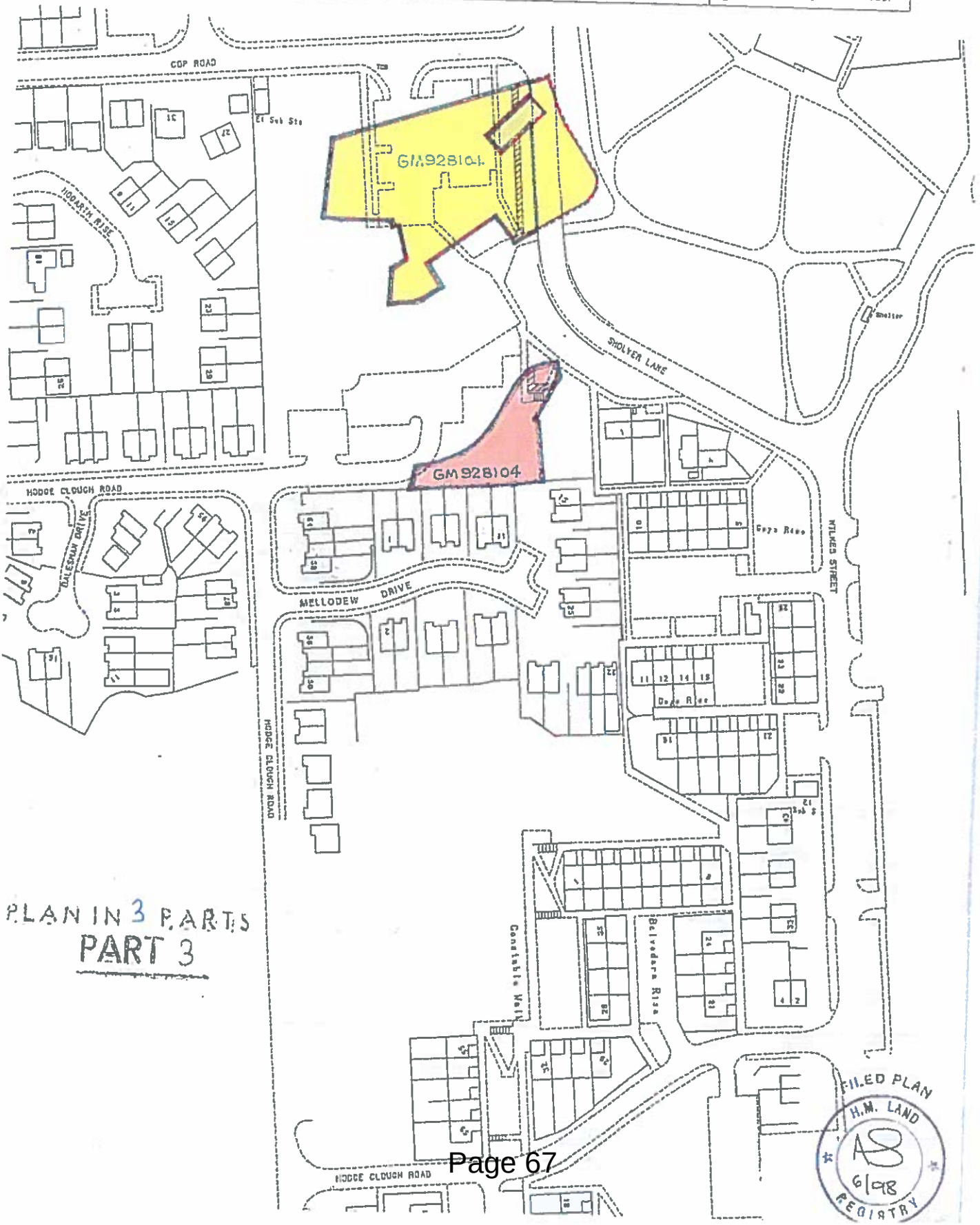
Sholver Fold
SHOLVER
SHOLVER LANE
Sholver Green
Pullet Inn (B.H.)
Bent Gate
Pond
Harleyroad
Hodge Clough
ST JAMES' WARD
49
MAN105176
MAN192489
MAN35890
MAN11172
GM561930
GM536546
Spreads
Sink
Collects
Issues
B.M. 760·76
B.M. 707·82
B.M. 656·96
Reservoir
Footbridge
Page 65

H.M. LAND REGISTRY		TITLE NUMBER LA 43936	
ORDNANCE SURVEY PLAN REFERENCE	SD9407	SECTION P	Scale 1/1250
ADMINISTRATIVE AREA GREATER MANCHESTER : OLDHAM			© Crown Copyright 1997



PLAN IN 3 PARTS
PART 2

H.M. LAND REGISTRY		TITLE NUMBER LA43936	
ORDNANCE SURVEY PLAN REFERENCE	SD9407	SECTION	Scale 1/1250
COUNTY GREATER MANCHESTER	OLDHAM DISTRICT		© Crown Copyright 1997



PLAN IN 3 PARTS
PART 3

FILED PLAN
H.M. LAND REGISTRY
AB
6/98

~~Removals~~/ Leases from Title											
Title No.	Date	Lease No. Ref	Remarks	Title No.	Date	Lease No. Ref	Remarks	Title No.	Date	Lease No. Ref	Remarks
GM732777	10.10.96	1&2	11 DOLESMOR DRIVE	GM769544	3.11.97	37	11 MELLODEW DRIVE (PART OF)				
(LEASE INCLUDES ALSO OTHER LAND)				(LEASE INCLUDES ALSO OTHER LAND)							
GM739426	18.12.96	3	83 HODGE CLOUGH ROAD	GM770802	18.11.97	38	3 LEYWELL DRIVE (PART OF)				
(LEASE INCLUDES ALSO OTHER LAND)				(LEASE INCLUDES ALSO OTHER LAND)							
GM741515	20.1.97	4	2 MELLODEW DRIVE.	GM774742	6.1.98	39	22 HODGE CLOUGH ROAD				
GM741519	20.1.97	5	1 MELLODEW DRIVE	GM778891	13.2.98	40	7 LEYWELL DRIVE				
(LEASE INCLUDES ALSO OTHER LAND)				(LEASE INCLUDES ALSO OTHER LAND)							
GM743150	7.2.97	6	4 MELLODEW DRIVE.	GM784997	14.5.98	41	11 LEYWELL DRIVE				
GM743172	7.2.97	7	50 HODGE CLOUGH ROAD	GM786221	8.6.98	42	15 LEYWELL DRIVE.				
GM743312	10.2.97	8	3 MELLODEW DRIVE	GM786303	9.6.98	43	PART OF 9 LEYWELL DRIVE				
(LEASE INCLUDES ALSO OTHER LAND)				GM786662	15.6.98	44	PART OF 17 LEYWELL DRIVE				
GM744180	24.2.97	9	52 HODGE CLOUGH ROAD	GM787374	25.6.98	45	PART OF 30 LEYWELL DRIVE				
GM746329	26.3.97	10	56 HODGE CLOUGH ROAD	(LEASE INCLUDES ALSO OTHER LAND)							
(LEASE INCLUDES ALSO OTHER LAND)				GM788720	14.7.98	46	PART OF 19 LEYWELL DRIVE				
GM746414	27.3.97	11	48 HODGE CLOUGH ROAD	(LEASE INCLUDES ALSO OTHER LAND)							
GM746421	27.3.97	12	54 HODGE CLOUGH ROAD	GM788912	14.7.98	47	PART OF 17 MELLODEW DRIVE				
GM747499	11.4.97	13	7 MELLODEW DRIVE	(LEASE INCLUDES ALSO OTHER LAND)							
GM747704	15.4.97	14	10 MELLODEW DRIVE	GM789498	24.7.98	48	21 LEYWELL DRIVE.				
GM749131	6.5.97	15	42 HODGE CLOUGH ROAD	GM799763	7.12.98	49	PART OF 32 LEYWELL DRIVE				
GM749134	6.5.97	16	8 MELLODEW DRIVE								
GM750635	22.5.97	17	6 MELLODEW DRIVE								
GM750645	28.5.97	18	5 MELLODEW DRIVE								
GM751037	30.5.97	19	11 MELLODEW DRIVE								
GM751039	30.5.97	20	12 MELLODEW DRIVE								
GM751677	6.6.97	21	23 MELLODEW DRIVE								
(LEASE INCLUDES ALSO OTHER LAND)											
GM752032	11.6.97	22	40 HODGE CLOUGH ROAD								
GM752278	16.6.97	23	9 MELLODEW DRIVE								
GM755335	28.7.97	24	16 MELLODEW DRIVE								
(LEASE INCLUDES ALSO OTHER LAND)											
GM755216	25.7.97	25	21 MELLODEW DRIVE								
(LEASE INCLUDES ALSO OTHER LAND).											
GM755615	31.7.97	26	15 MELLODEW DRIVE								
(LEASE INCLUDES ALSO OTHER LAND)											
GM755799	1.8.97	27	14 MELLODEW DRIVE								
(LEASE INCLUDES ALSO OTHER LAND)											
GM756764	12.8.97	28	25 MELLODEW DRIVE								
(LEASE INCLUDES ALSO OTHER LAND)											
GM761117	1.9.97	29	30 HODGE CLOUGH ROAD								
(LEASE INCLUDES ALSO OTHER LAND)											
GM765736	25.9.97	30	32 HODGE (PART OF) CLOUGH ROAD								
(LEASE INCLUDES ALSO OTHER LAND)											
GM768486	16.10.97	31	26 HODGE CLOUGH ROAD.								
GM768871	22.10.97	32	44 HODGE CLOUGH ROAD.								
GM768883	22.10.97	33	22 HODGE CLOUGH ROAD.								
GM768878	22.10.97	34	28 HODGE (PART OF) CLOUGH ROAD								
(LEASE INCLUDES ALSO OTHER LAND)											
GM769303	29.10.97	35	40 HODGE CLOUGH ROAD (PART OF)								
(LEASE INCLUDES ALSO OTHER LAND)											
GM771058	21.11.97	36	5 LEYWELL DRIVE (PART OF)								
(LEASE INCLUDES ALSO OTHER LAND)											

E 187 LEGAL STAFF REQUIREMENTS

References required on new title filed plans for T. P.'s and absolute DFL's falling party within:

(a) the tinted pink - please reproduce

the tinted yellow - please reproduce

(b) So far as affected by: Plots falling in both titles LA43936 & LA88157 and falling in pink tinting on LA43936 - Reproduce pink tinting only on N/TFP.

No references required (at this stage for): edged yellow (please inform legal if affected)

Additional notes required on Official Searches, Form 94:

Additional notes required on Certificates in Form 102:

Signed..... HEO. Date.....

Sent to Field (or see MB 64D)

Title No.	Date	Plot Nos.	Title No.	Date	Plot Nos.	Title No.	Date	Plot Nos.	Title No.	Date	Plot Nos.
Em741515	10.2.97	1 - 73									
DA1203		(inc)									

DFL Mapping Instructions	LESSORS TITLE	LESSEES TITLE	Signed .....HEO Date .....

MB64B procedure will (not) apply.

Create a Part 2 of the O/TFP. at 1/1250 scale as per U4 of Perms Practice Book for the edged yellow as discussed. Ullspinall 5/3/97

Filed Plan Scanned:

Date: 15/12/1994

Standard Form of Lease Refers To :-

lease term clause ..... page..... demise clause..... page.....

ben. ease. clause..... page..... sub. ease.clause..... page.....

Delete to record last number reference used

Official copy of register of title

Title number LA88157

Edition date 03.05.2011

- This official copy shows the entries in the register of title on 4 September 2018 at 12:50:35.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 4 September 2018.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title, see www.gov.uk/land-registry.
- This title is dealt with by HM Land Registry Durham Office.

A: Property register

This register describes the land and estate comprised in the title.

GREATER MANCHESTER : OLDHAM

1 (11.07.1966) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Bent Gate Farm, Sholver Lane, Oldham.

2 The mines and minerals are excepted.

3 The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

4 The transfers of those parts edged and numbered in green on the title plan which were made pursuant to Part V of the Housing Act 1985 took effect with the benefit of and subject to the easements and other rights prescribed by paragraph 2 of Schedule 6 of that Act.

5 (03.05.2011) A new title plan based on the latest revision of the Ordnance Survey Map has been prepared.

6 (04.05.2012) The land has the benefit of the rights reserved by but is subject to the rights granted by the Transfer dated 7 February 2011 referred to in the Charges Register.

B: Proprietorship register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

1 PROPRIETOR: OLDHAM BOROUGH COUNCIL of PO Box 33, Civic Centre, West Street, Oldham OL1 1UL.

C: Charges register

This register contains any charges and other matters that affect the land.

1 The land is subject to rights of drainage rights in respect of water, soil, gas and electricity supply services and ancillary rights of entry.

2 The paths and passages are subject to rights of way.

3 (15.11.1993) A Building Agreement and Licence dated 5 January 1993 made between (1) The Oldham Borough Council (2) John Maunders Group PLC relates to the building and development of the land in this title and other land.

NOTE: Copy filed under GM216307.

4 (24.10.1995) An Agreement dated 6 June 1995 affecting the land tinted blue on the title plan and other land made between (1) Oldham Borough Council and (2) Lovell Partnerships (Northern) Limited relates to planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990.

The said Agreement also contains covenants.

NOTE: Copy filed under GM216307.

5 (29.01.1996) A Licence Agreement dated 11 January 1996 affecting the land tinted pink and yellow on the title plan and other land made between (1) The Oldham Borough Council and (2) Barratt Homes Limited relates to building development and planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990.

NOTE: Copy filed under GM619490.

6 (06.06.1997) The parts of the land affected thereby are subject to the leases set out in the schedule of leases hereto.
The leases grant and reserve easements as therein mentioned.

7 (20.01.1998) The parts of the land affected thereby are subject to the following rights granted by a Deed of Grant dated 5 January 1998 made between (1) The Oldham Borough Council (Grantor) and (2) Norweb Plc (Grantee):-

"IN pursuance of the said agreement the Grantor hereby grants will full title guarantee unto the Grantee FULL AND FREE RIGHT AND LIBERTY for the Grantee and its successors in title and all persons authorised by it to lay construct use inspect maintain repair alter relay renew and remove or render unusable along and under the Easement Land such underground electric lines as the Grantee may from time to time require in connection with its undertaking and for this purpose to break open the surface of and excavate in the Easement Land so far as this may be necessary from time to time reinstating the same in accordance with the covenants on the part of the Grantee hereinafter contained TO HOLD the said rights and liberties unto

C: Charges register continued

the Grantee in fee simple as appurtenant to its undertaking and electricity distribution system

2. THE Grantee hereby covenants with the Grantor as follows:-

(a) To exercise the rights and liberties hereby granted in accordance with all regulations and requirements whether statutory or otherwise for the time being in force affect the sme

(b) That as soon as reasonably possible following the initial laying of the said underground electric lines the Grantee will back-fill the cable trench PROVIDED however that the Grantee will not be responsible for any further reinstatement of the Easement Land

(c) That if the Grantee carries out any excavations in the Easement Land subsequent to the initial laying of the said underground electric lines the Grantee will (unless otherwise agreed with the Grantor as a future term of supply) make good at its own expense all damage caused to the Easement Land or to the adjoining property of the Grantor in the exercise of the rights and liberties hereby granted and the execution of the works hereby authorised as soon as is reasonably practicable."

The said Deed also contains the following covenants by the Grantor:-

"THE Grantor with intent to bind the Easement Land and (so far as the same is affected by the stipulations and restrictions in this clause contained) the adjoining land of the Grantor into whosoever hands the same may come and for the benefit and protection of the underground electric lines and the undertaking and electricity distribution system of the Grantee HEREBY COVENANTS with the Grantee that the Grantor and those deriving title under the Grantor shall at all times hereafter observe and perform the following stipulations and restrictions:-

(a) To keep the Easement Land forever hereafter open and unbuilt upon

(b) Not to alter the level of the Easement Land from that existing at the date hereof

(c) That nothing shall be done or suffered to be done by the Grantor its servants or agents upon the Easement land or the said adjoining property of the Grantor which may in any way interfere with or damage the said underground electric lines.

IN this Deed the expression "electric lines" shall have the meaning (in the plural) assigned to the expression "electric line" by Section 64 of the Electricity Act 1989 and shall be interpreted and construed accordingly and shall also include all joint boxes and apparatus ancillary to underground electric lines."

NOTE: The Easement Land referred to above is tinted yellow on the title plan so far as it affects the land in this title.

8 (07.05.1998) The parts of the land affected thereby are subject to the following rights granted by a Deed of Grant dated 23 April 1998 made between (1) The Oldham Borough Council (The Grantor) and (2) Norweb PLC (The Grantee):-

"The Grantor hereby grants with full title guarantee unto the Grantee FULL AND FREE RIGHT AND LIBERTY for the Grantee and its succcessors in title and all persons authorised by it to lay construct use inspect maintain repair alter relay renew and remove or render unusable along and under the Easement Land such underground electric lines as the Grantee may from time

C: Charges register continued

to time require in connection with its undertaking and for this purpose to break open the surface of and excavate in the Easement land so far as this may be necessary from time to time reinstating the same in accordance with the covenants on the part of the Grantee hereinafter contained TO HOLD the said rights and liberties unto the Grantee in fee simple as appurtenant to its undertaking and electricity distribution system.

THE Grantee hereby covenants with the Grantor as follows:-

(a) To exercise the rights and liberties hereby granted in accordance with all regulations and requirements whether statutory or otherwise for the time being in force affecting the same

(b) That as soon as reasonably possible following the initial laying of the said underground electric lines the Grantee will back-fill the cable trench PROVIDED however that the Grantee will not be responsible for any further reinstatement of the Easement Land

(c) That if the Grantee carries out any excavation in the Easement Land subsequent to the initial laying of the said underground electric lines the Grantee will (unless otherwise agreed with the Grantor as a future term of supply) make good at its own expense all damage caused to the Easement Land or to the adjoining property of the Grantor in the exercise of the rights and liberties hereby granted and the execution of the works hereby authorised as soon as is reasonably practicable."

IT IS HEREBY AGREED AND DECLARED by and between the parties hereto as follows:

(a) in this clause the expression:

(1) "Develop" includes redevelop

(2) "Property" means all that freehold land comprised in title numbers LA88157 LA43936 GM216307 GM619490 LA115192 and OL6770

(3) "Alternative Route(s)" means a route or routes within the Property as near as possible to the Easement Land as shall be approved by the Grantee as a suitable alternative for the Grantee's purpose

(b) If the Grantor shall desire to Develop the Property and it is necessary for such development to include the Easement Land or any part thereof and shall have obtained Planning Permission for such development the Grantee will release to the Grantor such of the rights and liberties hereby granted as require to be released subject to the following terms and conditions:

4.1 The Grantor shall give to the Grantee not less than twelve month's notice in writing of its desire to implement this clause

4.2 On or before the expiration of the said notice the Grantor shall (subject to investigation and approval of title by the Grantee's Solicitor) by deed with the concurrence of every incumbrancer (such concurrence to be procured by and at the expense of the Grantor) and without payment of any consideration by the Grantee grant in fee simple easements to the Grantee in respect of alternative route(s) for the laying of the underground electric lines such grant to be in the like form and contain the like provisions and covenants (mutatis mutandis) as are herein contained

4.3 Subject to all necesary labour and materials being available but as soon as practicable after completion of the grant of easements in respect of the alternative route(s) the Grantee shall (in the following order of events):-

C: Charges register continued

(i) complete the laying of the underground electric lines along the alternative route(s) and the bringing into use thereof

(ii) remove so far as necessary the underground electric lines installed pursuant to such of the rights and liberties hereby granted as are required to be released or render dead such underground electric lines

(iii) surrender such of the rights and liberties hereby granted as are required to be released

PROVIDED THAT:

(a) if the Grantee or its contractors are prevented from complying with sub-clause 4.3 by reason of outbreak of war or civil insurrection or fire tempest frost inclement weather or other inevitable cause or accident or strike or lock out of workmen or the failure of the Grantee to obtain satisfactory supplies materials or labour or by reason of accident to the works or force majeure or by reason of the Grantee either having to redeploy the workforce assigned to carry out the works in order to carry out emergency work or repairs to its electricity plant and electric lines or by reason of any unavoidable cause for which the Grantee is not responsible in each such case the Grantee shall be allowed such extensions of time as are reasonable in the circumstances

(b) notwithstanding any provision of this sub-clause 4.3 the Grantee shall not under any circumstances be liable to the Grantor for any special indirect or consequential loss or damage arising under contract or otherwise including negligence and breach of statutory duty The term "consequential loss" shall include but is not limited to costs claims damages or expenses calculated by reference to loss or reduction of revenue or profit or loss of contracts (provided that nothing in this sub-clause shall be construed as an attempt to exclude or limit the liabilty of the Grantee in negligence for death of or injury to any person)

4.4.1 The Grantor shall (to which effect the Grantor hereby covenants) be liable for and pay to the Grantee the costs charges and expenses incurred or sustained by the Grantee in or arising out of:

(i) the laying of the underground electric lines along the alternative route(s)

(ii) the removal as aforesaid of the underground electric lines from the land the subject of the rights and liberties hereby granted required to be released as aforesaid

(iii) the preparation and completion of the documentation required in respect of easements for the alternative route(s) and the surrender of such of the rights and liberties hereby granted as are required to be released as aforesaid including stamp duty and (if appropriate) all Land Registry fees for noting thereof on the Register of the Title relating thereto

4.4.2 The Grantor and the Grantee shall take into account betterment and/or deferment of renewal in calculating the said costs charges and expenses incurred or sustained by the Grantee referred to in clause 4.4.1. hereof in that the cost of diverting the underground electric lines due to development only relates to the underground electric lines installed pursuant to such of the rights and liberties hereby granted or equivalent replacement underground electric lines and not the cost of any additional or higher voltage underground electric lines which the Grantee may wish to lay along the alternative route(s)

C: Charges register continued

AND without prejudice to the foregoing if required by the Grantee so to do shall as a condition precedent to the completion of such grant make a payment to the Grantee of the estimated amount of such costs charges and expenses and the Grantee will (as it hereby covenants so to do) repay to the Grantor the difference between the estimated amount so paid and the total amount (if smaller) of such costs charges and expenses

4.5.1 That if the Grantor shall at any time during which this Deed remains effective consider that the Grantee has ceased to make any substantive use of the Easement land for the exercise of the rights and liberties hereby granted for a continuous period of not less than one year then:

(a) the Grantor may at any time thereafter serve written notice on the Grantee requesting the Grantee to provide reasonable evidence that in the Grantee's reasonable opinion the Grantee does have a bona fide present or future requirement to use the Easement Land

(b) the Grantee shall within a reasonable period (but in any event not exceeding three months) of the receipt of the said written notice supply to the Grantor such evidence as is mentioned in sub-clause (a) above

4.5.2 In the event that the parties agree that the Grantee is unable to provide satisfactory evidence as aforesaid the Grantee shall surrender this Deed without any consideration and the Grantor shall (a) accept the surrender and (b) release the Grantee from its covenants and other obligations under this Deed

4.5.3 Prior to any surrender of this Deed pursuant to this Clause 4 the Grantee shall at its own expense ensure that the Electric Cables are disconnected and made safe the Grantee making good any damage caused to the Easement Land or the said adjoining property of the Grantor to the reasonable satisfaction of the Grantor

IN this Deed the expression "electric lines" shall have the meaning (in the plural) assigned to the expression "electric line" by Section 64 of the Electricity Act 1989 and shall be interpreted and construed accordingly and shall also include all joint boxes and apparatus ancillary to underground electric lines."

The said Deed also contains the following covenants by the Grantor.

"THE Grantor with intent to bind the Easement land and (so far as the same is affected by the stipulations and restrictions in this clause contained) the adjoining land of the Grantor into whosesoever hands the same may come and for the benefit and protection of the underground electric lines and the undertaking and electricity distribution system of the Grantee HEREBY COVENANTS with the Grantee that the Grantor and those deriving title under the Grantor shall at all times hereafter observe and perform the following stipulations and restrictions:-

(a) To keep the Easement Land forever hereafter open and unbuilt upon

(b) Not to alter the level of the Easement Land from that existing at the date hereof

(c) That nothing shall be done or suffered to be done by the Grantor its servants or agent upon the Easement land or the said adjoining property of the Grantor which may in any way interfere with or damage the said underground electric lines."

NOTE: The Easement Land referred to has been shown hatched brown on the title plan so far as it affects the land in this title.

C: Charges register continued

9 (04.05.2012) A Transfer which included the land edged and numbered MAN192482 in green on the title plan and other land dated 7 February 2011 made between (1) Oldham Borough Council and (2) First Choice Homes Oldham Limited contains restrictive covenants by the vendor.

NOTE: Copy filed under MAN149279.

Schedule of notices of leases

	Registration date and plan ref.	Property description	Date of lease and term	Lessee's title
1	06.06.1997 edged and numbered 2 in blue NOTE: The Lease comprises also other land	part of 23 Mellodew Drive	22.05.1997 999 years from 1.7.1995	GM751677
2	10.07.1997 edged and numbered 3 in blue	22 Mellodew Drive	30.05.1997 999 years from 1.7.1995	GM754002
3	25.07.1997 edged and numbered 8 in blue NOTE: The lease comprises also other land	part of 21 Mellodew Drive	30.05.1997 999 years from 1.7.1995	GM755216
4	28.07.1997 edged and numbered 4 and 5 in blue	20 Mellodew Drive and parking space	10.06.1997 999 years from 1.7.1995	GM755313
5	28.07.1997 edged and numbered 6 in blue NOTE: The lease comprises also other land	part of 16 Mellodew Drive	27.06.1997 999 years from 1.7.1995	GM755335
6	30.07.1997 edged and numbered 7 in blue	18 Mellodew Drive	27.06.1997 999 years from 1.7.1995	GM755485
7	31.07.1997 edged and numbered 9 in blue NOTE: The lease comprises also other land	part of 15 Mellodew Drive	27.06.1997 999 years from 1.7.1995	GM755615
8	01.08.1997 edged and numbered 10 in blue NOTE: The lease comprises also other land	part of 14 Mellodew Drive	27.06.1997 999 years from 1.7.1995	GM755799
9	01.08.1997 edged and numbered 11 in blue	36 Hodge Clough Road	27.06.1997 999 years from 1.7.1995	GM755800

Schedule of notices of leases continued

	Registration date and plan ref.	Property description	Date of lease and term	Lessee's title
10	15.09.1997 edged and numbered 12 in blue NOTE: The lease comprises also other land	part of 25 Mellowdew Drive	27.05.1997 999 years from 1.7.1995	GM756764
11	22.09.1997 edged and numbered 13 in blue NOTE: The lease comprises also other land	part of 30 Hodge Clough Road	28.07.1997 999 years from 1.7.1995	GM761117
12	25.09.1997 edged and numbered 14 in blue	34 Hodge Clough Road	25.07.1997 999 years from 1.7.1995	GM765712
13	25.09.1997 edged and numbered 15 and 16 in blue NOTE: The lease comprises also other land	part of 32 Hodge Clough Road	15.08.1997 999 years from 1.7.1995	GM765736
14	22.10.1997 edged and numbered 17 in blue NOTE: The lease comprises also other land	part of 28 Hodge Clough Road	29.08.1997 999 years from 1.7.1995	GM768878
15	29.10.1997 edged and numbered 18 in blue NOTE: The lease comprises also other land	part of 40 Hodge Clough Road	30.05.1997 999 years from 1.7.1995	GM769303
16	11.11.1997 edged and numbered 19 in blue	38 Hodge Clough Road	26.06.1997 999 years from 1.7.1995	GM770213
17	18.11.1997 edged and numbered 23 in blue NOTE: The lease comprises also other land	part of 3 Leywell Drive	24.10.1997 999 years from 1.7.1995	GM770802
18	21.11.1997 edged and numbered 20 and 21 in blue NOTE: The lease comprises also other land	part of 5 Leywell Drive	24.10.1997 999 years from 1.7.1995	GM771058
19	01.12.1997 edged and numbered 22 in blue NOTE: The lease comprises also other land	part of 19 Mellowdew Drive	29.08.1997 999 years from 1.7.1995	GM769544

Schedule of notices of leases continued

	Registration date and plan ref.	Property description	Date of lease and term	Lessee's title
20	10.12.1997 edged and numbered 24 in blue	4 Leywell Drive	21.11.1997 999 years from 1.7.1995	GM772943
21	06.01.1998 edged and numbered 25 in blue	2 Leywell Drive	21.11.1997 999 years from 1.7.1995	GM774745
22	16.01.1998 edged and numbered 26 in blue	1 Leywell Drive	20.11.1997 999 years from 1.7.1995	GM775815
23	20.01.1998 edged and numbered 27	6 Leywell Drive	20.01.1998 999 years from 1.7.1995	GM776040
24	13.02.1998 edged and numbered 28 in blue NOTE: The lease comprises also other land	part of 7 Leywell Drive	09.01.1998 999 years from 1.7.1995	GM778841
25	10.03.1998 edged and numbered 29 in blue	14 Leywell Drive	06.02.1998 999 years from 1.7.1995	GM780666
26	14.05.1998 edged and numbered 30 in blue	16 Leywell Drive	27.03.1998 999 years from 1.7.1995	GM784930
27	29.05.1998 edged and numbered 31 in blue	22 Leywell Drive	24.03.1998 999 years from 1.7.1995	GM785745
28	09.06.1998 edged and numbered 32 in blue NOTE: The lease comprises also other land	part of 9 Leywell Drive	24.04.1998 999 years from 1.7.1995	GM786303
29	15.06.1998 edged and numbered 33 in blue NOTE: The lease comprises also other land	part of 17 Leywell Drive	12.05.1998 999 years from 1.7.1995	GM786662
30	25.06.1998 edged and numbered 34 in blue NOTE: The Lease comprises also other land	part of 30 Leywell Drive	29.05.1998 999 years from 1.7.1995	GM787374

Schedule of notices of leases continued

	Registration date and plan ref.	Property description	Date of lease and term	Lessee's title
31	03.07.1998 edged and numbered 35 in blue	10 Leywell Drive	29.05.1998 999 years from 1.7.1995	GM787913
32	07.07.1998 edged and numbered 36 in blue	20 Leywell Drive	05.06.1998 999 years from 1.7.1995	GM788224
33	14.07.1998 edged and numbered 37 in blue	28 Leywell Drive	26.06.1998 999 years from 1.7.1995	GM788719
34	14.07.1998 edged and numbered 38 in blue NOTE: The lease comprises also other land	part of 19 Leywell Drive	26.06.1998 999 years from 1.7.1995	GM788720
35	14.07.1998 edged and numbered 39 in blue NOTE: The lease comprises also other land	part of 17 Mellodew Drive	26.06.1998 999 years from 1.7.1995	GM788912
36	28.07.1998 edged and numbered 40 in blue	24 Leywell Drive	26.06.1998 999 years from 1.7.1995	GM789649
37	04.08.1998 edged and numbered 41 in blue	24 Leywell Drive	26.06.1998 999 years from 1.7.1995	GM790083
38	04.09.1998 edged and numbered 42 in blue	18 Leywell Drive	15.07.1998 999 years from 1.7.1995	GM792337
39	17.09.1998 edged and numbered 43 in blue	8 Leywell Drive	27.02.1998 999 years from 1.7.1995	GM793360
40	22.09.1998 edged and numbered 44 in blue	26 Leywell Drive	31.07.1998 999 years from 1.7.1995	GM793568
41	07.12.1998 edged and numbered 45 in blue NOTE: The lease comprises also other land	part of 32 Leywell Drive	29.05.1998 999 years from 1.7.1995	GM799763

Schedule of notices of leases continued

	Registration date and plan ref.	Property description	Date of lease and term	Lessee's title
42	09.11.2011 edged and numbered 46 and 47 in blue	Land lying to the south of Cop Road	30.09.2011 250 years from and including 30.9.2011	MAN184084

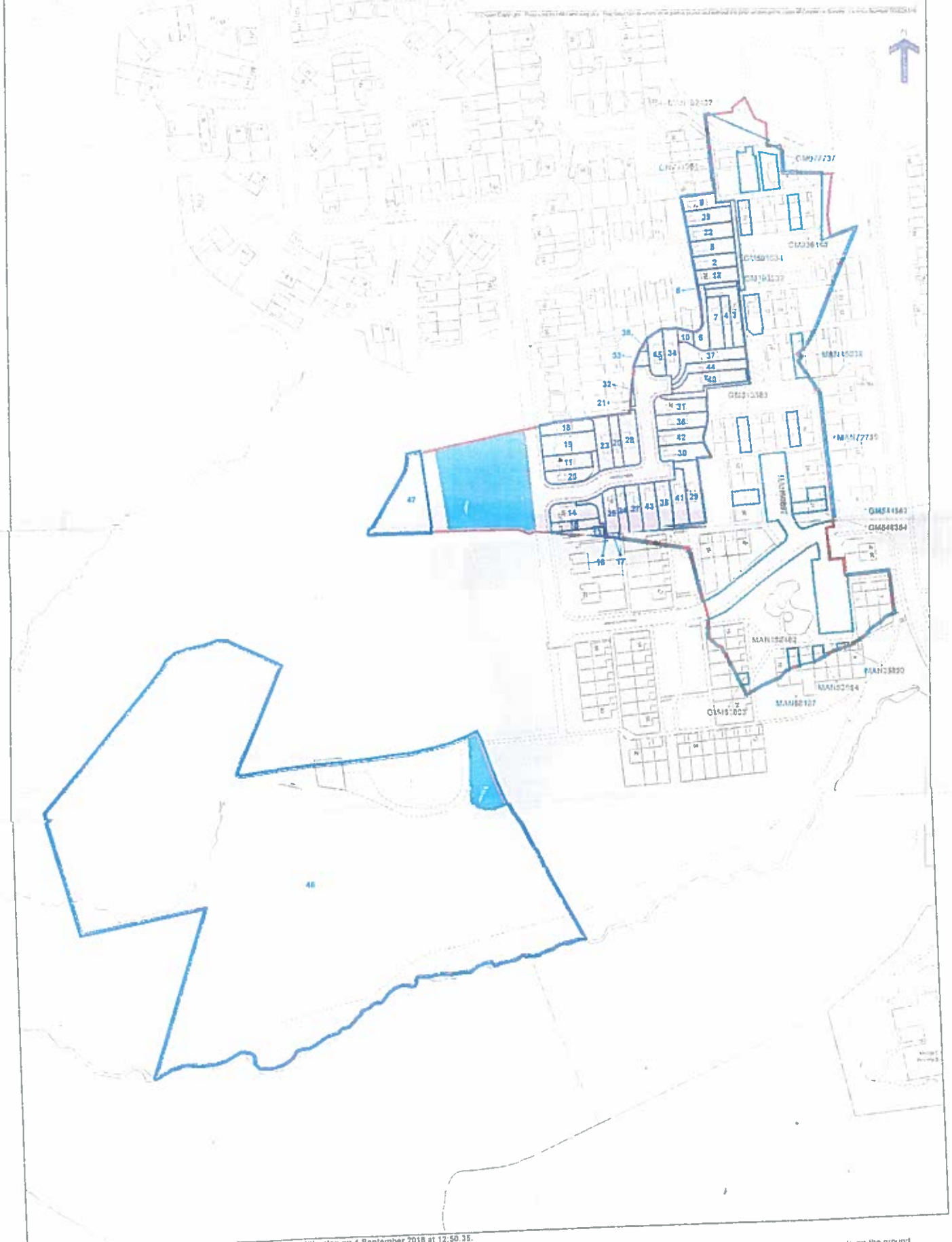
NOTE: The lease comprises also other land.

End of register

2 5 0 4 0 1 1 0 0 8

HM Land Registry

Title number LA88157
Ordnance Survey map reference SD9407SE
Scale 1:1250
Administrative area Greater Manchester: Oldham



This official copy issued on 4 September 2018 shows the state of this title plan on 4 September 2018 at 12:50:35.
It is admissible in evidence to the same extent as the original (s 67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.
This title is dealt with by HM Land Registry, Durham Office.

THE COMMONS ACT 2006

VILLAGE GREEN APPLICATION – LAND AT HODGE CLOUGH ROAD, OLDHAM

STATUTORY DECLARATION OF JULIE FLORENCE HALL

EXHIBIT JFH2

And produced to me on the 5th day of SEPTEMBER 2018

Declared by Julie Florence Hall

Signed.....

Dated.....05 - SEPTEMBER - 2018.....

Before me

Solicitor HELEN BEARNALL-PIMLOTT

Stamp

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King Street Buildings
Manchester Street
Oldham
Greater Manchester
OL8 1DH
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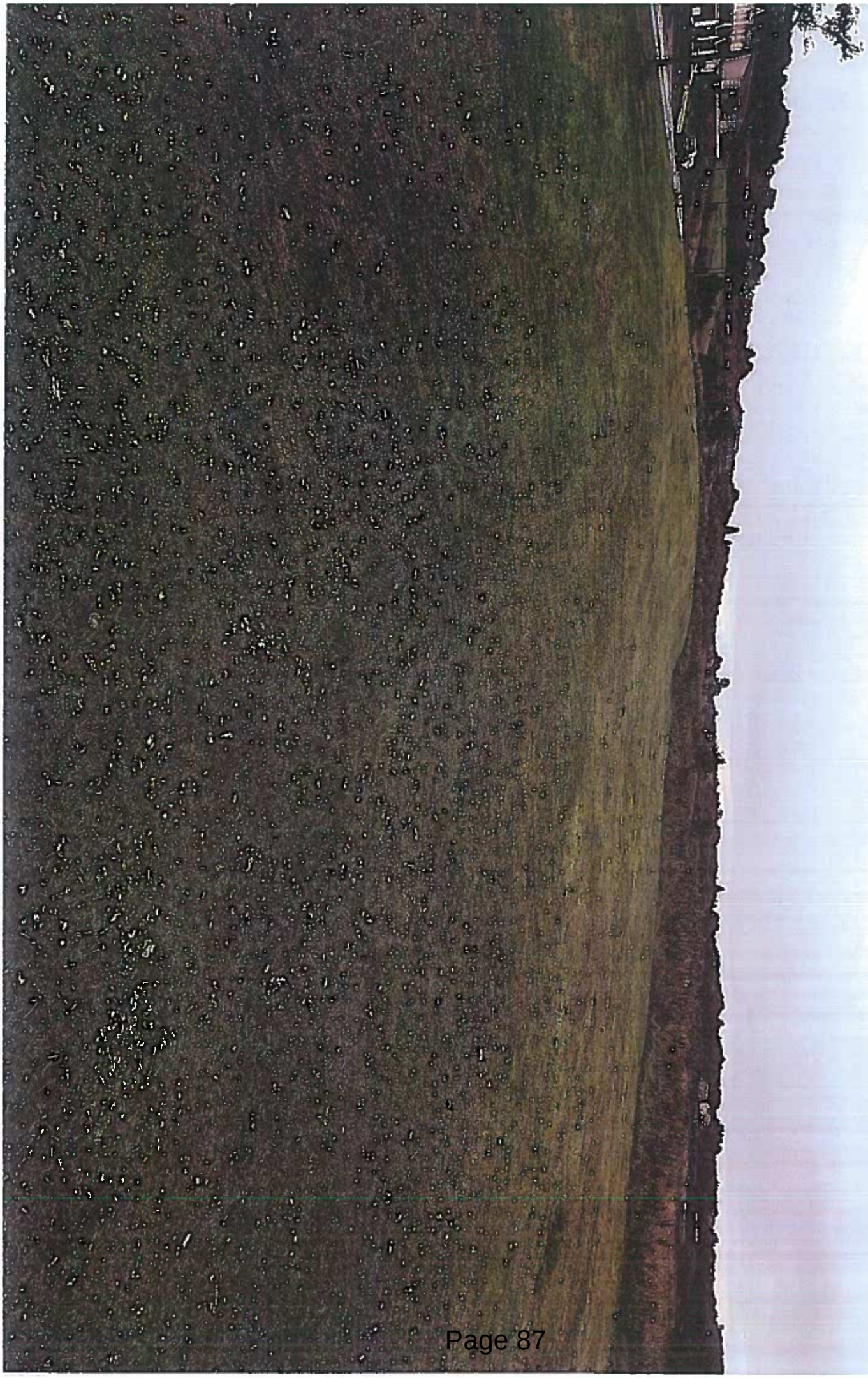
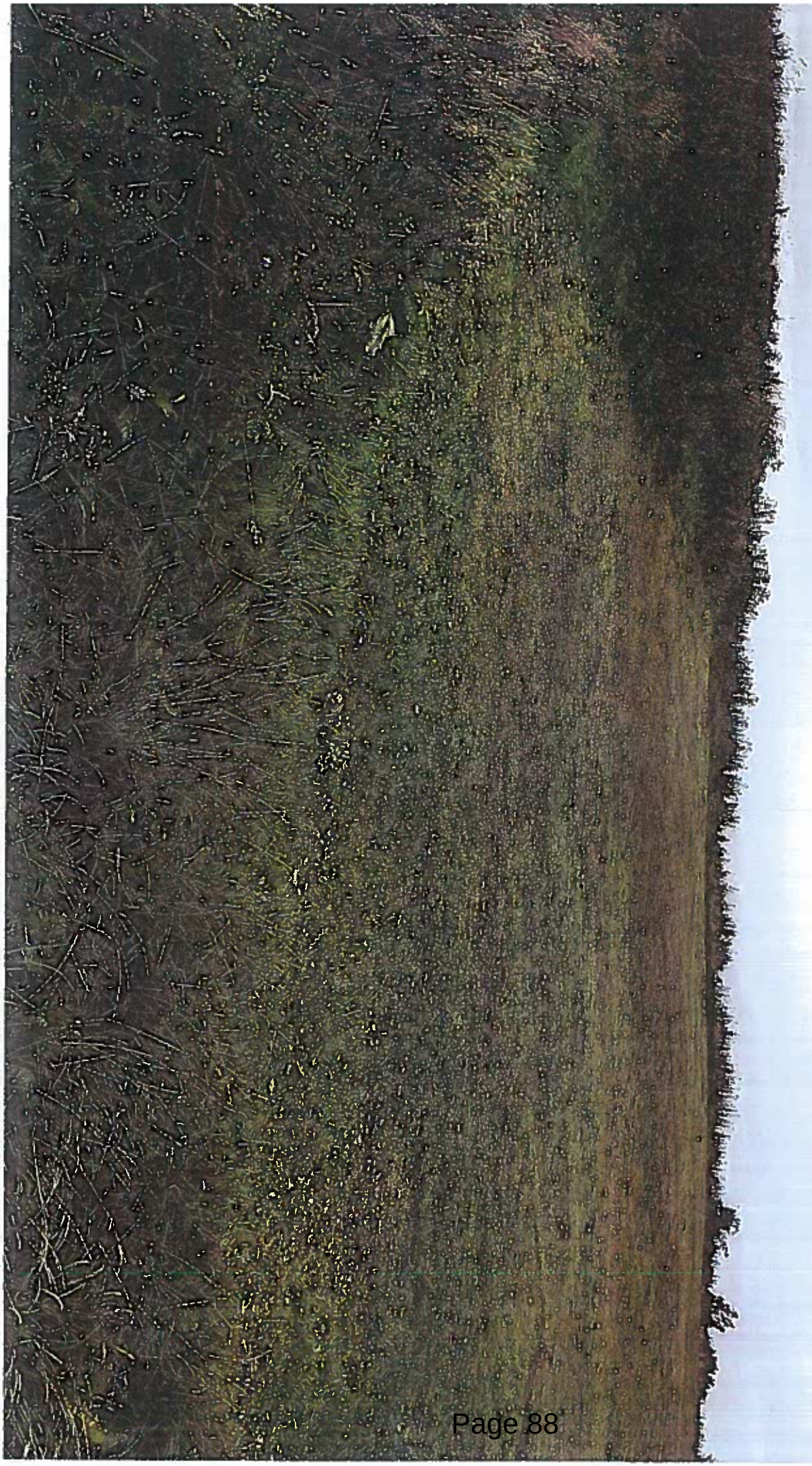
GRIT
SALT





THE COMMONS ACT 2006

VILLAGE GREEN APPLICATION – LAND AT HODGE CLOUGH ROAD, OLDHAM

STATUTORY DECLARATION OF JULIE FLORENCE HALL

EXHIBIT JFH3

And produced to me on the 5th day of SEPTEMBER 2018

Declared by Julie Florence Hall

Signed.....

Dated.....05 SEPTEMBER 2018.....

Before me

Solicitor HELEN BRENNAN-TIMLOTT

Stamp

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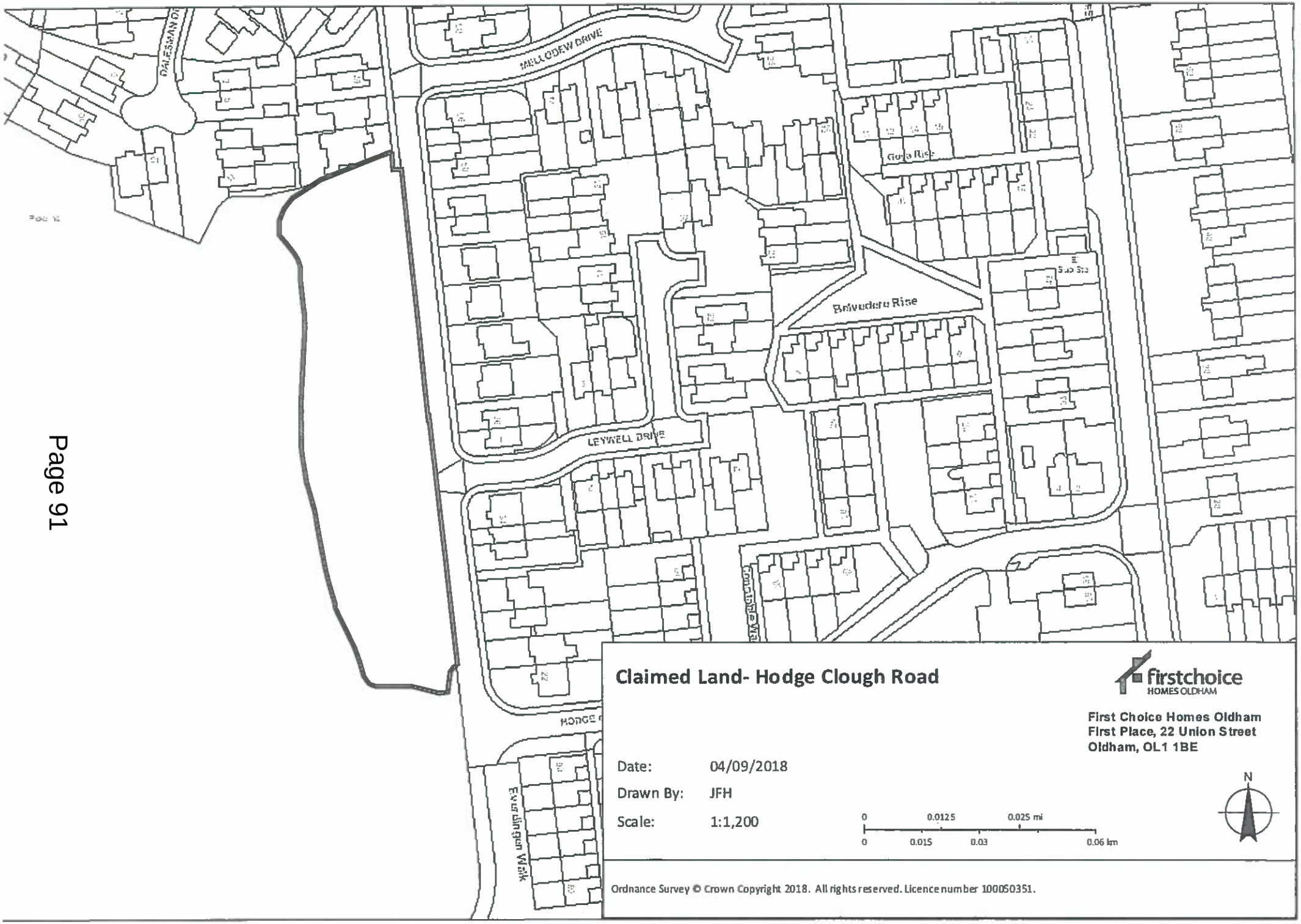
MELLODEW DRIVE
Belvedere Rise
LEYWELL DRIVE
Everlington Walk
Claimed Land- Hodge Clough Road
firstchoice
HOMES OLDHAM
First Choice Homes Oldham
First Place, 22 Union Street
Oldham, OL1 1BE
Date: 04/09/2018
Drawn By: JFH
Scale: 1:1,200
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0 0.015 0.03 0.06 km
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Ordnance Survey © Crown Copyright 2018. All rights reserved. Licence number 100050351.

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Date: 21st September 2018
Our ref: RB/BI
Your ref: Alan Evans

Oldham Council

Commons Registration Officer
Oldham Council
Civic Centre
West Street
Oldham OL1 1UL

Corporate and Commercial Services
Legal Services
Level 4, Civic Centre, West Street
Oldham, OL1 1UL
DX 710000 Oldham

Tel: 0161 770 4701

Dear Sir

Land at Hodge Clough Road, Lower Sholver, Moorside, Oldham ("the Land")
Town or Village Green Application made by Mr Fred Wilkinson dated 8.6.18
("the Application")

On behalf of Oldham Council as landowner of the Land, please find enclosed Objections ("the Objections") to the Application in respect of the Land in response to the Notice dated 8th August 2018 published by the Council as Commons Registration Authority together with exhibits 1-8 inclusive referred to in the Objections.

Please acknowledge safe receipt and contact the writer if you have any queries or wish to discuss any matter in connection with the Objections.

Yours faithfully,

Rebecca Boyle.

Rebecca Boyle
Group Solicitor (Corporate)
Legal and Democratic Services
Oldham Council
Civic Centre
West Street
Oldham
OL1 1UL
Tel: 0161 770 4701
Fax: 0161 770 3701
e-mail: rebecca.boyle@oldham.gov.uk

IN THE MATTER OF:

LAND KNOWN AS 'HODGE CLOUGH' OFF HODGE CLOUGH ROAD, LOWER SHOLVER, MOORSIDE, OLDHAM

OBJECTIONS ON BEHALF OF OLDHAM METROPOLITAN BOROUGH COUNCIL

The Site

1. The Application land ('the Land') is an area of 2.45 acres of open land known as 'Hodge Clough' at Hodge Clough Road, Lower Sholver, Moorside, Oldham. The freehold interest in the Land is owned by Oldham Borough Council who hold the Land in two registered absolute freehold titles being LA43936 and LA88157 (appendices OMBC1 and OMBC2). These objections are made on behalf of Oldham Metropolitan Borough Council ('the Council') of Civic Centre, West Street Oldham OL1 1UL.

2. The Moorside area lies some three kilometres northeast of the centre of Oldham, its eastern boundary stretching for just over a kilometre along the Ripponden Road (A672). Sholver is the most extensive of the two estates within Moorside and is

separated into two halves. Top Sholver, which is mostly social rented stock, (with older terraced dwellings on the Ripponden Road frontage) and Bottom Sholver (referred to by the Applicant as Lower Sholver) which is at a lower elevation and consists mainly private housing developed on land formerly occupied by social rented housing. The Land lies to the western edge of Bottom Sholver.

3. The Land was purchased by the Council in the 1960s (LA88157 – 26/06/66, LA43936 – 19/05/64) to construct a large estate of new houses and flats to rent, one of a number of such edge-of-town estates built to house the population of large areas of town centre housing which had in the 1950s been designated as substandard and earmarked for clearance. Building of the Sholver new housing began in May 1966 and was completed in 1971, the estate being built in two parts — Top and Bottom Sholver.

4. Large scale demolition occurred in the mid-1980s which was followed by redevelopment of Bottom Sholver with market housing in the 1990s.

5. The Land is in the form of an irregular rectangle. It forms an area of open grassland adjoining the unmaintained open moorland. The Land is maintained by the Council's Environmental Management Department. There is a gritting bin on the eastern edge of the Land. There is a street light sited on the eastern edge of the Land. The Land is regularly mowed by the Council.

6. That part of the Land within title LA43936 was purchased by the Council pursuant to Part V of the Housing Act 1957 (Appendix OMBC3). The Council does not know which specific statutory powers were utilised to purchase title LA88157. Attached as appendix OMBC5 is the witness statement of Deborah Taylor, an employee of the Council, confirming that the two deeds wallets for the title deeds for the Land are marked with a red symbol that denotes that the sites were acquired and held for housing purposes.

7. However, the Council possesses, for both titles, 'Deed Record Cards' (appendix OMBC4). The Deed Record Card for LA43936 is dated 19th May 1964. The Deed Record Card for LA88157 is dated 29th June 1966. The Deed Record Cards state the prices paid by the Council. Both Deed Record Cards list the titles as being acquired under the 'Housing' Committee. The Council considers the Deed Record Cards to provide sufficient evidence, on the balance of probabilities, that the Land was

acquired by the Council in 1964 and 1966 under its Housing Act powers. This conclusion is relevant to the 'as of right' test (see below). Appendix OMBC5 supports this evidence as referred to in paragraph 6 above.

Notification

8. Oldham Metropolitan Borough Council is the Commons Registration Authority ('CRA') for the purposes of the Commons Act 2006.

9. By notice dated 8th August 2018 the Council as CRA gave notice of the Application to register the Land as a town or village green for the purposes of the Commons Act 2006. The deadline for any objection being 24th September 2018.

The Application

10. The Application was made by Mr Fred Wilkinson by a Town or Village Green (Form 44) application received by Oldham Metropolitan Borough Council on 27th June 2018. The Application is accompanied by a statutory declaration in support signed by Mr Wilkinson and dated 8th June 2018.

11. Mr Wilkinson confirmed in the application form that the Application is pursued under s.15(2) of the Commons Act 2006.

12. Mr Wilkinson described the relevant locality for the Application at note 6 as: 'Saint James Ward, Lower Sholver, Moorside, Oldham. OL1 4PW. Hodge Clough Road'.

13. Mr Wilkinson provided the following justification at no.7 on the form:

    "The land known as: Hodge Clough Road', should be granted 'village green status', for the following reasons:

    1. *The land has been used for more than twenty years by the residents of Lower Sholver and Moorside for recreational activities: dog walking – football – rugby – cricket – kite flying – drone flying – cycling – bonfires (5 November) – snowman building – carol singing (Christmas).*
    2. *The 'Green' is a focal point for our community and a safe place where children can play, close to their homes, and away from traffic.*

3. *In January 1996 'Barratt Homes Limited' paid 'Oldham Borough Council' the sum of thirty thousand pounds 'as a contribution towards the cost of providing an area of public open space.' 'Hodge Clough Road'.*
4. *The land is used by wildlife: deer – fox – bats."*

14. Mr Wilkinson stated on the Application that the Land is owned by 'Oldham Council'.

15. Under no.11 on Form 44 Mr Wilkinson states:

> *'The land known as 'Hodge Clough Road' is being considered for housing development by 'First Choice Homes Oldham'. The land is the focal point of our close knit community. It is a place where many activities take place: dog walking – an activity for many people in the community/ Also a safe area for children to play'.*

16. The Application is supported by 11 signed letters[1] in support and a petition[2] with 125 signatures (some of these are repeated from the letters' authors). The table attached summarises the duration and nature of the claimed user.

17. The Council submits that the submitted evidence is of questionable value. A number of the letters are jointly signed so that the extent of use by specific individuals is indeterminate. The petition is supported by a broad statement of use which cannot apply universally to all signatories, for instance 'drone flying' has not existed as a pastime for 20 years.

18. The evidence submitted is not sufficient to justify the finding of a town or village green. Before the application could be approved and the existence of a green confirmed the evidence would require to be tested under examination at inquiry. The

[1] Some with multiple signatures

[2] 'I agree that the field on Hodge Clough Rd should be granted village green status for the reasons stated below:
The green has been used for over 20 years by residents for the following activities: dog walking, bonfire on November 5th, snowman building, drone flying, kite flying, cycling, football, rugby, cricket, golf, frisbe [sic], rounders and children's party activities including bouncy castles. The green is also a communal place where chance meetings of participants of the above activities have forged and developed close neighbourhood ties and friendships. It is the heart, focal point of our community and a safe place where children can play close enough to their homes and away from traffic'.

Council reserves its right to cross examine any live witnesses called on behalf of the Applicant and to make submissions on the deficiencies of the evidence forms.

S.106 Agreements

19. The Applicant places specific reliance upon a section 106 agreement entered into by the Council. on 11th January 1996 Oldham Borough Council and Barratt Homes Limited entered into an agreement ('the 1996 Agreement') under s.106 of the Town and Country Planning Act 1990 ('the TCPA'). The 1996 Agreement was entered into in relation to a planning application (ref: 033351/95) made by Barratt Homes Ltd in relation to 'land at Hough Clough Road, Oldham'. Item 3 of the 1996 Agreement states 'the Developer [Barratts Homes Limited] shall upon completion of this Planning Obligation pay to the Council the sum of £30,000 (receipt whereof is hereby acknowledged) as a contribution towards the cost of the Council providing an area of public open space in the area of the Land and the Council shall within a reasonable period provide and lay out the area of public open space'.

20. The land the subject of the 1996 Agreement is to the immediate north, north east, and east of the Land the subject of the Application (see plan attached at appendix OMBC7). There is no plan or information in the Council's possession to confirm where the sum paid by Barratts under the 1996 s.106 Agreement was applied. If the Applicant is suggesting the Land was the land laid out for public open space then he has fundamentally undermined his application as the use of the Land would not be as of right (see Barkas). The Council cannot confirm the Land was the public open space laid out as a result of the 1996 Agreement.

21. However, the Council entered into a s.106 on 6th June 1995 ('the 1995 Agreement') with Lovell Partnerships (Northern) Limited. The 1995 Agreement relates to the development for housing of land under titles GM619490 and GM216307. Paragraph 8 of the 1995 Agreement provides:

> '8. In consideration of the sum of £29,965.65 paid by the Developer to the Council on the date hereof (the receipt of which the Council hereby acknowledges) the Council will within a reasonable period provide and layout

the area of public open space shown edged blue on the plan marked 'Public Open Space' annexed hereto'.

22. The Council's copy of the 1995 Agreement does not have the annexed Public Open Space plan. However, the titles to both LA88157 and LA43936 make specific reference to the 1995 Agreement:

> 'An Agreement dated 6 June 1995 affecting the land edged blue on the title plan and other land made between (1) Oldham Borough Council and (2) Lovell Partnerships (Northern) Limited relates to planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990.'

23. On title LA88157 the Application Land is coloured blue. On title LA43936 the Application Land is outlined in blue. The Council considers that on the balance of probabilities the Land the subject of this Application is the land laid out for Public Open Space under the 1995 Agreement. This conclusion is relevant to whether any use of the Land has been 'as of right' (see below).

APPROACH AND BURDEN OF PROOF

24. The process of determination involves simply applying the law to the facts; there is no discretion, nor are land use merits material.

25. The burden of proving that land has become a TVG lies on the applicant, on the balance of probabilities. In **Beresford v Sunderland City Council [2003] UKHL 60**, Lord Bingham quoted Pill LJ in **R v Suffolk CC ex parte Steed (1996) 75 P&CR 102 at 111**:

> *"it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green..."*

continuing:

> *"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 the 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."*

26. It is necessary, in order to achieve registration under the CA 2006, for all the relevant elements to be established. Therefore if an application fails on one element, it must fail overall; where there is a fundamental flaw, a claim cannot be rescued by success in relation to all the other elements.

Legal Framework

27. The Application in question has been made under s.15(2) Commons Act 2006 ("CA"). This section provides as follows:

> ***15 Registration of greens***
>
> *(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.*
>
> *(2) This subsection applies where–*
>
> > ***(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and***
> >
> > ***(b) they continue to do so at the time of the application.***
>
> ...
>
> *(6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a) and (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.*
>
> *(7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied–*
>
> > *(a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in subsection (6), those persons are to be regarded as continuing so to indulge; and*

(b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land "as of right".
...' ***emphasis added***

28. The CRA is required to either accept or reject the application solely on the facts. Any other issues, including those of desirability or community needs are not legally relevant and cannot be taken into consideration. The CRA must decide whether the application fully meets all the elements of qualifying use for land to have become capable of registration as a TVG. The applicant must establish on the balance of probabilities (the civil standard of proof) that use had been;

    i) by a significant number of the inhabitants,
    ii) of any locality or of a neighbourhood within a locality,
    iii) having indulged "as of right" (i.e. without force, secrecy or permission),
    iv) in lawful sports and pastimes,
    v) on the land,
    vi) for a period of at least twenty years,

"A significant number of the inhabitants of any locality, or of any neighbourhood within a locality"

29. None of the terms in this element of the requirements is defined in the CA 2006. The phrase is, however, taken from s.22 (1A) of the Commons Registration Act 1965, as amended by Countryside and Rights of Way Act 2000.

Significant number

30. **"Significant number"** under the 1965 Act was considered in **R (oao) McAlpine Homes Ltd v Staffordshire County Council [2002] EWHC 76** by Sullivan J. He said (para 71):

"... In my judgment the inspector approached the matter correctly in saying that 'significant', although imprecise, is an ordinary word in the English language and little help is to be gained from trying to define it in other language. In addition, the inspector correctly concluded that, whether the evidence showed that a significant number of the inhabitants of any locality or of any neighbourhood within a locality had used the meadow for informal recreation was very much a matter of impression. It is necessary to ask the question: significant for what purpose? In my judgment the correct answer is provided by Mr Mynors on behalf of the council, when he submits that what matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers."

31. The Application was made on the basis that the relevant area was 'St James Ward'. The population of St James Ward in 2016 was 11,862 (Ward profile at Appendix OMBC6). If all of the submitted evidence and signatures are relied upon, the Application is supported by 85[3] individuals. This is not a significant number of the population of St James Ward.

32. In spite of the terms of the Application, if the smaller area of Sholver (within St James Ward) were relied upon the population of the area is 5500ca (The Office of National Statistics – Mid Year Estimates 2016). It is submitted that 85 is not a significant number of the inhabitants of Sholver. The population of Bottom Sholver (the part of Sholver wherein the Land is located) is understood to be circa 3800 (The Office of National Statistics – Mid Year Estimates 2016). It is submitted that 85 is not a sufficient number in a population of 3800 to indicate 'general use by the local community' (McAlpine v Staffordshire).

Locality

33. A "locality" was interpreted in the pre-2006 Act case law as an area known to law, or some recognised administrative division of the county: see **MoD v Wiltshire County**

[3] This is based upon assuming (generously) that all signatories to the petition are actual inhabitants who have used the Land (but excluding repeated names.

Council [1995] 4 All ER 931; **R (oao Laing Homes Ltd) v Buckinghamshire County Council [2004] JPL 319**. More recently the Court of Appeal considered the requirements of "locality" and "neighbourhood" within a locality in **Leeds Group Plc v Leeds City Council [2010] EWCA Civ 1438**. The Court held that the singular "neighbourhood" in the definition included the plural "neighbourhoods". They considered that there was no reason to disapply the presumption in s.6(c) Interpretation Act 1978. The Court referred to Lord Hoffmann's consideration of the word "neighbourhood" in his speech in **Oxfordshire County Council v Oxford City Council [2006] UKHL 25,** where he said (at para 27):

> *' "Any neighbourhood within a locality" is obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries. I should say at this point that I cannot agree with Sullivan J. in R (Cheltenham Builders Ltd) v South Gloucestershire DC [2004] JPL 975 that the neighbourhood must be wholly within a single locality. That would introduce the kind of technicality which the amendment was clearly intended to abolish. The fact that the word "locality" when it first appears in subsection (1A) must mean a single locality is no reason why the context of "neighbourhood within a locality" should not lead to the conclusion that it means "within a locality or localities".'*

34. Any chosen locality must be an area of recognised administrative significance and certainty. Any chosen neighbourhood must be an area of pre-existing community significance; see at para 79, **Oxfordshire and Buckinghamshire Mental Health Trust [2010] EWHC 530 (Admin.)** where HHJ Waksman QC said of the term neighbourhood:

> *"The factors to be considered when determining whether a purported neighbourhood qualifies are undoubtedly looser and more varied than those relating to locality ... but, as Sullivan J. stated in Cheltenham Builders ... a neighbourhood must have a sufficient degree of (pre-existing) cohesiveness. To qualify therefore, it must be capable of meaningful description in some way. This is now emphasised by the fact that under the Commons Registration*

(England) Regulations 2008 the entry on the registry of a new TVG will specify the locality or neighbourhood referred to in the application."

35. St James Ward is self-evidently a recognised locality known to law. This is the locality relied upon by the Applicant. The choice of such a large locality by the Applicant has consequences for the 'significant number' test (see above).

36. The Council notes the case law on neighbourhood above (and relied upon within the Objection of First Choice Homes Oldham dated 12th September 2018) but notes that no neighbourhood is claimed or relied upon within the application. For the sake of completeness the Council submits that smaller 'neighbourhoods' would still not lead to the Application satisfying the 'significant number' test (see above).

"Indulged in lawful sports and pastimes"

37. "Lawful Sports and pastimes (LSP) " was held by Lord Hoffmann in **R v Oxfordshire County Council ex parte Sunningwell Parish Council [2000] 1 AC 335, 356 H**, to be a "single composite class". He continued:

> *"Class C is concerned with the creation of TVGs after 1965 and in my opinion sports and pastimes includes those activities which would be so regarded in our own day. I agree with Carnwath J, in **R v Suffolk County Council, ex p. Steed (1995) 70 P&CR 487, 503**, when he said that dog walking and playing with children were, in modern life, the kind of informal recreation which may be the main function of a village green."*

38. The use of the Land by varied wildlife (bees, badgers, ducks, deer, bats or foxes) is not within the meaning of LSP for the purposes of the Commons Act 2006.

39. The claimed use of the Land for 'drone flying' cannot have occurred upon the Land for 20 years.

"As of Right"

40. In **Sunningwell**, the House of Lords held that the test for a Class C green equated to that for prescription: user nec vi, nec clam, nec precario – not by force, not by stealth and not by permission. What matters is not the state of mind of the users, but the outward appearance of their user, judged by the yardstick of the reasonable landowner.

41. In **Newnham v Willison (1987) 56 P&CR 8**, the court was considering a claim to a prescriptive easement. The Court of Appeal approved passages from Megarry and Wade's Law of Real Property in the following terms:

> *"In Megarry and Wade the following passage in my view presents a correct summary of the position on the authorities. The heading is 'User as of Right':*
>
> > 'The claimant must show that he has used the right as if he were entitled to it, otherwise there is no ground for presuming that he enjoys it under a grant. From early times English authorities have followed the definition of Roman law: the user which will support a prescriptive claim must be user nec vi, nec clam, nec precario (without force, without secrecy, without permission). The essence of this rule is that the claimant must prove not only his own user but also circumstances which show that the servient owner acquiesced in it as in an established right. Since the necessary conditions are negative, it is usually the servient owner who alleges that the user was either forcible, secret or permissive; but the burden of proof on these matters nevertheless rests on the claimant.'
>
> *"Then the authors deal with forcible user, saying that it extends not only to user by violence, as where a claimant to a right of way breaks open a locked gate, but also to user which is contentious or allowed only under protest and there are references to Eaton v. Swansea Waterworks and Dalton v. Angus. The text goes on:*
>
> > 'If there is a state of "perpetual warfare" between the parties there can obviously be no user as of right; and if the servient owner chooses to

resist not by physical but by legal force… the claimant's user will not help a claim by prescription.'

42. The Supreme Court Judgement given on 21 May 2014 in R (on the application of Barkas) (Appellant) v North Yorkshire County Council and another (Respondents) is the leading authority on whether use has been "as of right", which satisfies the legal criterion for registration, or "by right", which does not. In the words of Lord Neuberger:

> " 24…where the owner of the land is a local, or other public authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land "as of right", simply because the authority has not objected to them using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used it for twenty years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so. The position is very different from that of a private owner, with no legal duty and no statutory power to allocate land for public use, with no ability to allocate land as a village green, and who would be expected to protect his or her legal rights."

43. Also at [46] he said this:

> The field was, as I see it, 'appropriated', in the sense of allocated or designated, as public recreational space, in that it had been acquired, and was subsequently maintained, as recreation grounds with the consent of the relevant Minister, in accordance with section 80(1) of the 1936 Act: public recreation was the intended use of the Field from the inception.

44. At [65] Lord Carnwath also states:

> 'Where the owner is a public authority, no adverse inference can sensibly be drawn from its failure to 'warn off' the users as trespassers, if it has validly

and visibly committed the land for public recreation, under powers that have nothing to do with the acquisition of village green rights'.

45. This was to be contrasted with Oxfordshire County Council v Oxford City Council [2006] 2 AC 674 where, although the land was in public ownership, it had not been laid out or identified in any way for public recreational use and indeed was largely inaccessible … (and where) .. It was held that the facts justified the inference that the rights asserted were rights under the 1965 Act.

46. The question then, arising from the decision in Barkas, is whether land has been lawfully allocated under statutory powers for public recreation? If it has then user will not have been 'as of right' as the public will already have an entitlement to use the land for recreation. Barkas accordingly makes it clear that the public use or recreational use of land pursuant to a statutory power to provide recreation land would be sufficient to entitle local inhabitants to use the land for that purpose so as to defeat a claim to that use being 'as of right'.

47. At [23] in Barkas Lord Neuberger said this:

> Where land is held for that purpose, and members of the public then use the land for that purpose, the obvious and natural conclusion is that they enjoy a public right, or a publicly based licence, to do so. If that were not so, members of the public using for recreation land held by the local authority for the statutory purpose of public recreation would be trespassing on the land, which cannot be correct.

48. The use of the Land by local inhabitants has not been without permission but rather by licence from the Council as owner of the Land. The Land has been held by the Council for the whole of the claimed period for recreational purposes stemming from its powers to acquire land under the Housing Acts[4]. Further, the Council has laid out the Land for use as Public Open Space under the 1995 Agreement with Lovell's. The laying out and maintenance of the Land as Public Open Space since 1995 is **fatal** to the Applicant's claim that the Land should be registered as a town or village green.

"For a period of at least 20 years"

[4] In Barkas the land was held under the Housing Act 1936.

49. The evidence provided by the Applicant and supporters is very limited as to the period of use. The petition is generalised and essentially a statement of support rather than confirmation of 20 years user. Only five of the letters claim more than 20 years of use and one of them (Miss Williamson) has moved away from home so that her use is, presumably, no longer that of an inhabitant of the locality. Similarly, it is not clear that the letter of J D Braddock is claiming any current use by inhabitants. The issue of twenty years user is one that would have to be tested by examination of the evidence in inquiry.

DOCUMENTS

50. Appended to these objections are all the documents concerning the land which have been found in searches of the files held by the Council.

CONCLUSION

51. The Council submits that the application should fail for all the reasons set out in this document.

52. Specifically:

    i. the application has not demonstrated user by a 'significant number' of the inhabitants of St James ward.

    ii. the use of the Land has been under licence from the Council as Public Open Space and not 'as of right'.

    iii. the Applicant has not demonstrated 20 years user of the Land

53. The Council reserves the right generally to refine, alter or amend these objections in light of any further material or clarification from the Applicant; in the event that more

relevant documents and evidence is discovered. It also reserves the right to submit such material.

54. The Council reserves the right to produce such relevant witness statements and/or statutory objections that is considered necessary to support its objections at any inquiry.

Anthony Gill

KINGS CHAMBERS

MANCHESTER

20th September 2018

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

The exhibit referred to in the
Objections above on behalf of
Oldham Borough Council
and marked "Exhibit OMBC 1

HM Land Registry

Official copy of register of title

Title number LA43936

Edition date 04.05.2012

This official copy shows the entries on the register of title on 07 AUG 2018 at 15:53:07.

This date must be quoted as the "search from date" in any official search application based on this copy.

The date at the beginning of an entry is the date on which the entry was made in the register.

Issued on 07 Aug 2018.

Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.

This title is dealt with by HM Land Registry, Fylde Office.

A: Property Register

This register describes the land and estate comprised in the title.

GREATER MANCHESTER : OLDHAM

1 (10.06.1964) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 56 to 66 (even numbers) Sholver Fold and land lying to the West and South West of Sholver Lane.

2 The land tinted green on the title plan is not included in the registration.

3 The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

4 The Transfers of those parts edged and numbered in green on the title plan which were made pursuant to Part V of the Housing Act 1985 took effect with the benefit of and subject to the easements and other rights prescribed by paragraph 2 of Schedule 6 of that Act.

5 (20.01.1997) The title plan has been subdivided into two parts.

6 (07.05.1998) The title plan has been subdivided into three parts.

7 (04.05.2012) The land has the benefit of the rights reserved by but is subject to the rights granted by the Transfer dated 7 February 2011 referred to in the Charges Register.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

1 (10.06.1964) PROPRIETOR: OLDHAM BOROUGH COUNCIL of PO Box 33, Civic Centre, West Street, Oldham OL1 1UL.

C: Charges Register

This register contains any charges and other matters that affect the land.

1 The land tinted yellow on the title plan is subject to the following rights reserved by a Conveyance dated 17 December 1936 made between (1) Thomas Mellodew and Company Limited (Vendors) and (2) Edmund Spencer (Purchaser):-

"EXCEPT AND RESERVING nevertheless unto the Vendors:-

1. The right to pass and repass with or without animals carriages and other vehicles over and along the roads and passages or portions of roads and passages as are comprised in the property hereby conveyed and assigned.

2. The full and free right of running of water and soil to and from any other land and buildings of the Vendors through the gutters drains sewers pipes and watercourses upon the land and premises hereby conveyed and assigned and to enter upon the said premises for the purpose of making any connections with or repairs to such gutters drains sewers pipes and watercourses making reasonable compensation to the Purchaser and his successors in title for any damage caused thereby."

2 A Conveyance and Assignment of the land tinted pink on the title plan dated 8 February 1960 made between (1) William Henry Spencer and Edmund Spencer and (2) Thomas Platt contains restrictive covenants and reserves rights.

¬NOTE: Copy filed under OL5899.

3 The land is subject to rights of drainage and ancillary rights of entry.

4 The paths and passages are subject to rights of way.

5 (24.10.1995) An Agreement dated 6 June 1995 affecting the land edged blue on the title plan and other land made between (1) Oldham Borough Council and (2) Lovell Partnerships (Northern) Limited relates to planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990.

The said Agreement also contains covenants.

¬NOTE: Copy filed under GM216307.

6 (29.01.1996) A Licence Agreement dated 11 January 1996 affecting the land edged yellow on the title plan and other land made between (1) The Oldham Borough Council and (2) Barratt Homes Limited relates to building development and planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990.

¬NOTE: Copy filed under GM619490.

7 (10.10.1996) The parts of the land affected thereby are subject to the leases set out in the schedule of leases hereto.
The leases grant and reserve easements as therein mentioned.

8 (20.01.1998) The parts of the land affected thereby are subject to the following rights granted by a Deed of Grant dated 5 January 1998 made between (1) The Oldham Borough Council (Grantor) and (2) Norweb PLC (Grantee):-

IN pursuance of the said agreement the Grantor hereby grants with full title guarantee unto the Grantee FULL AND FREE RIGHT AND LIBERTY for the Grantee and its successors in title and all persons authorised by it to lay construct use inspect maintain repair alter relay renew and remove or render unusable along and under the Easement Land such underground electric lines as the Grantee may from time to time require in connection with its undertaking and for this purpose to break open the surface of and excavate in the Easement Land so far as this may be necessary from time to time reinstating the same in accordance with the covenants on that part of the Grantee hereinafter contained TO HOLD the said rights and liberties unto the Grantee in fee simple as appurtenant to its undertaking and electricity distribution system

2. THE Grantee hereby covenants with the Grantor as follows:-

(a) To exercise the rights and liberties hereby granted in accordance with all regulations and requirements whether statutory or otherwise

C: Charges Register continued

for the time being in force affecting the same

(b) That as soon as reasonably possible following the initial laying of the said underground electric lines the Grantee will back-fill the cable trench PROVIDED however that the Grantee will not be responsible for any further reinstatement of the Easement Land

(c) That if the Grantee carries out any excavations in the Easement Land subsequent to the initial laying of the said underground electric lines the Grantee will (unless otherwise agreed with the Grantor as a future term of supply) make good at its own expense all damage caused to the Easement Land or to the adjoining property of the Grantor in the exercise of the rights and liberties hereby granted and the execution of the works hereby authorised as soon as is reasonably practicable."

The said Deed also contains the following covenants by the Grantor:-

"THE Grantor with intent to bind the Easement Land and (so far as the same is affected by the stipulations and restrictions in this clause contained) the adjoining land of the Grantor into whosoever hands the same may come and for the benefit and protection of the underground electric lines and the undertaking and electricity distribution system of the Grantee HEREBY COVENANTS with the Grantee that the Grantor and those deriving title under the Grantor shall at all times hereafter observe and perform the following stipulations and restrictions:-

(a) To keep the Easement Land forever hereafter open and unbuilt upon

(b) Not to alter the level of the Easement Land from that existing at the date hereof

(c) That nothing shall be done or suffered to be done by the Grantor its servants or agents upon the Easement Land or the said adjoining property of the Grantor which may in any way interfere with or damage the said underground electric lines

IN this Deed the expression "electric lines" shall have the meaning (in the plural) assigned to the expression "electric line" by Section 64 of the Electricity Act 1989 and shall be interpreted and construed accordingly and shall also included all joint boxes and apparatus ancillary to underground electric lines."

NOTE: The Easement Land referred to above is hatched blue on the title plan so far as it affects the land in this title.

9 (07.05.1998) The parts of the land affected thereby are subject to the following rights granted by a Deed of Grant dated 23 April 1998 made between (1) The Oldham Borough Council (The Grantor) and (2) Norweb PLC (The Grantee):-

"The Grantor hereby grants with full title guarantee unto the Grantee FULL AND FREE RIGHT AND LIBERTY for the Grantee and its succcessors in title and all persons authorised by it to lay construct use inspect maintain repair alter relay renew and remove or render unusable along and under the Easement Land such underground electric lines as the Grantee may from time to time require in connection with its undertaking and for this purpose to break open the surface of and excavate in the Easement land so far as this may be necessary from time to time reinstating the same in accordance with the covenants on the part of the Grantee hereinafter contained TO HOLD the said rights and liberties unto the Grantee in fee simple as appurtenant to its undertaking and electricity distribution system.

THE Grantee hereby covenants with the Grantor as follows:-

(a) To exercise the rights and liberties hereby granted in accordance with all regulations and requirements whether statutory or otherwise for the time being in force affecting the same

(b) That as soon as reasonably possible following the initial laying of the said underground electric lines the Grantee will back-fill the cable trench PROVIDED however that the Grantee will not be responsible for any further reinstatement of the Easement Land

C: Charges Register continued

(c) That if the Grantee carries out any excavation in the Easement Land subsequent to the initial laying of the said underground electric lines the Grantee will (unless otherwise agreed with the Grantor as a future term of supply) make good at its own expense all damage caused to the Easement Land or to the adjoining property of the Grantor in the exercise of the rights and liberties hereby granted and the execution of the works hereby authorised as soon as is reasonably practicable."

IT IS HEREBY AGREED AND DECLARED by and between the parties hereto as follows:

(a) in this clause the expression:

(1) "Develop" includes redevelop

(2) "Property" means all that freehold land comprised in title numbers LA88157 LA43936 GM216307 GM619490 LA115192 and OL6770

(3) "Alternative Route(s)" means a route or routes within the Property as near as possible to the Easement Land as shall be approved by the Grantee as a suitable alternative for the Grantee's purpose

(b) If the Grantor shall desire to Develop the Property and it is necessary for such development to include the Easement Land or any part thereof and shall have obtained Planning Permission for such development the Grantee will release to the Grantor such of the rights and liberties hereby granted as require to be released subject to the following terms and conditions:

4.1 The Grantor shall give to the Grantee not less than twelve month's notice in writing of its desire to implement this clause

4.2 On or before the expiration of the said notice the Grantor shall (subject to investigation and approval of title by the Grantee's Solicitor) by deed with the concurrence of every incumbrancer (such concurrence to be procured by and at the expense of the Grantor) and without payment of any consideration by the Grantee grant in fee simple easements to the Grantee in respect of alternative route(s) for the laying of the underground electric lines such grant to be in the like form and contain the like provisions and covenants (mutatis mutandis) as are herein contained

4.3 Subject to all necesary labour and materials being available but as soon as practicable after completion of the grant of easements in respect of the alternative route(s) the Grantee shall (in the following order of events):-

(i) complete the laying of the underground electric lines along the alternative route(s) and the bringing into use thereof

(ii) remove so far as necessary the underground electric lines installed pursuant to such of the rights and liberties hereby granted as are required to be released or render dead such underground electric lines

(iii) surrender such of the rights and liberties hereby granted as are required to be released

PROVIDED THAT:

(a) if the Grantee or its contractors are prevented from complying with sub-clause 4.3 by reason of outbreak of war or civil insurrection or fire tempest frost inclement weather or other inevitable cause or accident or strike or lock out of workmen or the failure of the Grantee to obtain satisfactory supplies materials or labour or by reason of accident to the works or force majeure or by reason of the Grantee either having to redeploy the workforce assigned to carry out the works in order to carry out emergency work or repairs to its electricity plant and electric lines or by reason of any unavoidable cause for which the Grantee is not responsible in each such case the Grantee shall be allowed such extensions of time as are reasonable in the circumstances

C: Charges Register continued

(b) notwithstanding any provision of this sub-clause 4.3 the Grantee shall not under any circumstances be liable to the Grantor for any special indirect or consequential loss or damage arising under contract or otherwise including negligence and breach of statutory duty The term "consequential loss" shall include but is not limited to costs claims damages or expenses calculated by reference to loss or reduction of revenue or profit or loss of contracts (provided that nothing in this sub-clause shall be construed as an attempt to exclude or limit the liabilty of the Grantee in negligence for death of or injury to any person)

4.4.1 The Grantor shall (to which effect the Grantor hereby covenants) be liable for and pay to the Grantee the costs charges and expenses incurred or sustained by the Grantee in or arising out of:

(i) the laying of the underground electric lines along the alternative route(s)

(ii) the removal as aforesaid of the underground electric lines from the land the subject of the rights and liberties hereby granted required to be released as aforesaid

(iii) the preparation and completion of the documentation required in respect of easements for the alternative route(s) and the surrender of such of the rights and liberties hereby granted as are required to be released as aforesaid including stamp duty and (if appropriate) all Land Registry fees for noting thereof on the Register of the Title relating thereto

4.4.2 The Grantor and the Grantee shall take into account betterment and/or deferment of renewal in calculating the said costs charges and expenses incurred or sustained by the Grantee referred to in clause 4.4.1. hereof in that the cost of diverting the underground electric lines due to development only relates to the underground electric lines installed pursuant to such of the rights and liberties hereby granted or equivalent replacement underground electric lines and not the cost of any additional or higher voltage underground electric lines which the Grantee may wish to lay along the alternative route(s)

AND without prejudice to the foregoing if required by the Grantee so to do shall as a condition precedent to the completion of such grant make a payment to the Grantee of the estimated amount of such costs charges and expenses and the Grantee will (as it hereby covenants so to do) repay to the Grantor the difference between the estimated amount so paid and the total amount (if smaller) of such costs charges and expenses

4.5.1 That if the Grantor shall at any time during which this Deed remains effective consider that the Grantee has ceased to make any substantive use of the Easement land for the exercise of the rights and liberties hereby granted for a continuous period of not less than one year then:

(a) the Grantor may at any time thereafter serve written notice on the Grantee requesting the Grantee to provide reasonable evidence that in the Grantee's reasonable opinion the Grantee does have a bona fide present or future requirement to use the Easement Land

(b) the Grantee shall within a reasonable period (but in any event not exceeding three months) of the receipt of the said written notice supply to the Grantor such evidence as is mentioned in sub-clause (a) above

4.5.2 In the event that the parties agree that the Grantee is unable to provide satisfactory evidence as aforesaid the Grantee shall surrender this Deed without any consideration and the Grantor shall (a) accept the surrender and (b) release the Grantee from its covenants and other obligations under this Deed

4.5.3 Prior to any surrender of this Deed pursuant to this Clause 4 the Grantee shall at its own expense ensure that the Electric Cables are disconnected and made safe the Grantee making good any damage caused to

C: Charges Register continued

the Easement Land or the said adjoining property of the Grantor to the reasonable satisfaction of the Grantor

IN this Deed the expression "electric lines" shall have the meaning (in the plural) assigned to the expression "electric line" by Section 64 of the Electricity Act 1989 and shall be interpreted and construed accordingly and shall also include all joint boxes and apparatus ancillary to underground electric lines."

The said Deed also contains the following covenants by the Grantor.

"THE Grantor with intent to bind the Easement land and (so far as the same is affected by the stipulations and restrictions in this clause contained) the adjoining land of the Grantor into whosesoever hands the same may come and for the benefit and protection of the underground electric lines and the undertaking and electricity distribution system of the Grantee HEREBY COVENANTS with the Grantee that the Grantor and those deriving title under the Grantor shall at all times hereafter observe and perform the following stipulations and restrictions:-

(a) To keep the Easement Land forever hereafter open and unbuilt upon

(b) Not to alter the level of the Easement Land from that existing at the date hereof

(c) That nothing shall be done or suffered to be done by the Grantor its servants or agent upon the Easement land or the said adjoining property of the Grantor which may in any way interfere with or damage the said underground electric lines."

NOTE: The Easement Land referred to has been shown hatched brown on the title plan so far as it affects the land in this title.

10 (04.05.2012) A Transfer of the land edged and numbered MAN192489 in green on the title plan and other land dated 7 February 2011 made between (1) Oldham Borough Council and (2) First Choice Homes Oldham Limited contains restrictive covenants by the vendor.

¬NOTE: Copy filed under MAN149279.

Schedule of notices of leases

1	10.10.1996 1 & 2	Part of 11 Dalesman Drive	26.07.1996 999 years from 1.7.1995	GM732777
	NOTE: The lease comprises also other land			
2	18.12.1996 3	83 Hodge Clough Road	01.11.1996 999 years from 1.7.1995	GM739426
	NOTE: The lease comprises also other land			
3	20.01.1997 4	2 Mellodew Drive	12.12.1996 999 years from 1.7.1995	GM741515
4	20.01.1997 5	1 Mellodew Drive	29.11.1996 999 years from 1.7.1995	GM741519
	NOTE: Lease comprises also other land			
5	07.02.1997 6	4 Mellodew Drive	12.12.1996 999 years from 1.7.1995	GM743150
6	07.02.1997	50 Hodge Clough Road	19.12.1996 999 years from 1.7.1995	GM743172
7	10.02.1997 8	3 Mellodew Drive	11.12.1996 999 years from 1.7.1995	GM743312
	NOTE: Lease comprises also other land			

Schedule of notices of leases continued

8	24.02.1997 9	52 Hodge Clough Road	19.12.1996 999 years from 1.7.1995	GM744180
9	26.03.1997 10	56 Hodge Clough Road	17.01.1997 999 years from 1.7.1995	GM746329
10	27.03.1997 11	48 Hodge Clough Road	07.03.1997 999 years from 1.7.1995	GM746414
11	27.03.1997 12	54 Hodge Clough Road	05.02.1997 999 years from 1.7.1995	GM746421
12	11.04.1997 13	7 Mellodew Drive	24.02.1997 999 years from 1.7.1995	GM747499
13	15.04.1997 14	10 Mellodew Drive	21.03.1997 999 years from 1.7.1995	GM747704
14	06.05.1997 15	42 Hodge Clough Road	14.03.1997 999 years from 1.7.1995	GM749131
15	06.05.1997 16	8 Mellodew Drive	28.02.1997 999 years from 1.7.1995	GM749134
16	22.05.1997 17	6 Mellodew Drive	27.02.1997 999 years from 1.7.1995	GM750635
17	28.05.1997 18	5 Mellodew Drive	28.02.1997 999 years from 1.7.1995	GM750845
18	30.05.1997 19	11 Mellodew Drive	27.03.1997 999 years from 1.7.1995	GM751037
19	30.05.1997 20	12 Mellodew Drive	20.03.1997 999 years from 1.7.1995	GM751039
20	06.06.1997 21 NOTE: The Lease comprises also other land	23 Mellodew Drive	22.05.1997 999 years from 1.7.1995	GM751677
21	11.06.1997 22	46 Hodge Clough Road	25.04.1997 999 years from 1.7.1995	GM752032
22	16.06.1997 23	9 Mellodew Drive	27.03.1997 999 years from 1.7.1995	GM752278
23	28.07.1997 24 NOTE: The lease comprises also other land	16 Mellodew Drive	27.06.1997 999 years from 1.7.1995	GM755335
24	11.08.1997 25 NOTE: The lease comprises also other land	21 Mellodew Drive	30.05.1997 999 years from 1.7.1995	GM755216
25	12.08.1997 28 NOTE: The lease comprises also other land	25 Mellodew Drive	27.05.1997 999 years from 1.7.1995	GM756764
26	22.09.1997	30 Hodge Clough Road	28.07.1997	GM761117

Schedule of notices of leases continued

	29		999 years from 1.7.1995	
	NOTE: The lease comprises also other land			
27	10.09.1997 27	14 Mellodew Drive	27.06.1997 999 years from 1.7.1995	GM755799
	NOTE: The lease comprises also other land			
28	12.09.1997 26	15 Mellowdew Drive	27.06.1997 999 years from 1.7.1995	GM755615
	NOTE: The lease comprises also other land			
29	06.10.1997 30	Part of 32 Hodge Clough Road	15.08.1997 999 years from 1.7.1995	GM765736
	NOTE: The lease comprises also other land			
30	16.10.1997 31	26 Hodge Clough Road	29.08.1997 999 years from 1.7.1995	GM768486
31	22.10.1997 32	44 Hodge Clough Road	07.03.1997 999 years from 1.7.1995	GM768871
32	22.10.1997 34	Part of 28 Hodge Clough Road	29.08.1997 999 years from 1.7.1995	GM768878
	NOTE: The lease comprises also other land			
33	22.10.1997 33	22 Hodge Clough Road	26.09.1997 999 years from 1.7.1995	GM768883
34	29.10.1997 35	Part of 40 Hodge Clough Road	30.05.1997 999 years from 1.7.1995	GM769303
	NOTE: The lease comprises also other land			
35	03.11.1997 37	Part of 19 Mellowdew Drive	03.11.1997 999 years from 1.7.1995	GM769544
	NOTE: The lease comprises also other land			
36	21.11.1997 36	Part of 5 Leywell Drive	24.10.1997 999 years from 1.7.1995	GM771058
	NOTE: The lease comprises also other land			
37	08.12.1997 38	Part of 3 Leywell Drive	24.10.1997 999 years from 1.7.1995	GM770802
	NOTE: The lease comprises also other land			
38	06.01.1998 39	24 Hodge Clough Road	14.11.1997 999 years from 1.7.1995	GM774742
39	13.02.1998 40	Part of 7 Leywell Drive	09.01.1998 999 years from 1.7.1995	GM778841
	NOTE: The lease comprises also other land			
40	14.05.1998 41	Part of 11 Leywell Drive	27.03.1998 999 years from 1.7.1995	GM784907
41	08.06.1998 42	15 Leywell Drive	23.04.1998 999 years from 1.7.1995	GM786221
42	09.06.1998 43	Part of 9 Leywell Drive	24.04.1998 999 years from 1.7.1995	GM786303

Schedule of notices of leases continued

	NOTE: The lease comprises also other land			
43	15.06.1998 44	Part of 17 Leywell Drive	12.05.1998 999 years from 1.7.1995	GM786662
	NOTE: The lease comprises also other land			
44	25.06.1998 45	Part of 30 Leywell Drive	29.05.1998 999 years from 1.7.1975	GM787374
	NOTE: The lease comprises also other land			
45	16.07.1998 47	17 Mellodew Drive	26.06.1998 999 years from 1.7.1995	GM788912
	NOTE: The lease comprises also other land			
46	14.07.1998 46	19 Leywell Drive	26.06.1998 999 years from 1.7.1995	GM788719
	NOTE: The lease comprises also other land			
47	24.07.1998 48	21 Leywell Drive	24.04.1998 999 years fromm 1.7.1995	GM789498
48	09.11.2011 49	Land lying to the south of Cop Road	30.09.2011 250 years from and including 30.9.2011	MAN184084
	NOTE: The lease comprises also other land.			

End of register

These are the notes referred to on the following official copy

The electronic official copy of the title plan follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

This official copy was delivered electronically and when printed will not be to scale. You can obtain a paper official copy by ordering one from HM Land Registry.

This official copy is issued on 07 August 2018 shows the state of this title plan on 07 August 2018 at 15:53:08. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002). This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. This title is dealt with by the HM Land Registry, Fylde Office .

M.B. 25

H.M. LAND REGISTRY

Filed Plan of Title No. LA 40936

Scale 1/2500

County— LANCASHIRE

O.S. Sheet SD 9407

S20607 338558 W118900 D783 7/63 16M (2 sorts) T&Co. G837.

Crown Copyright Reserved

NOTE:- THE LAND TINTED GREEN HEREON IS NOT INCLUDED IN THIS REGISTRATION.

PLAN IN 3 PARTS

PART 1

Note: This area edge hatched in green has been removed to Part 3, of the filed plan, and is shown at a larger scale and edged with red thereon.

Note: This area edge hatched in green has been removed to Part 2 of the filed plan and is shown at a larger scale and edged with red thereon.

Sholver Fold

SHOLVER

Pallet Inn (B.H.)

Sholver Green

Bent Gate

Harleyroad

Hodge Clough

ST JAMES' WARD

49

MAN192489

MAN35890

MAN105176

MAN192489

MAN11172

GM636546

GM561930

Spreads

Stake

Collects

Issues

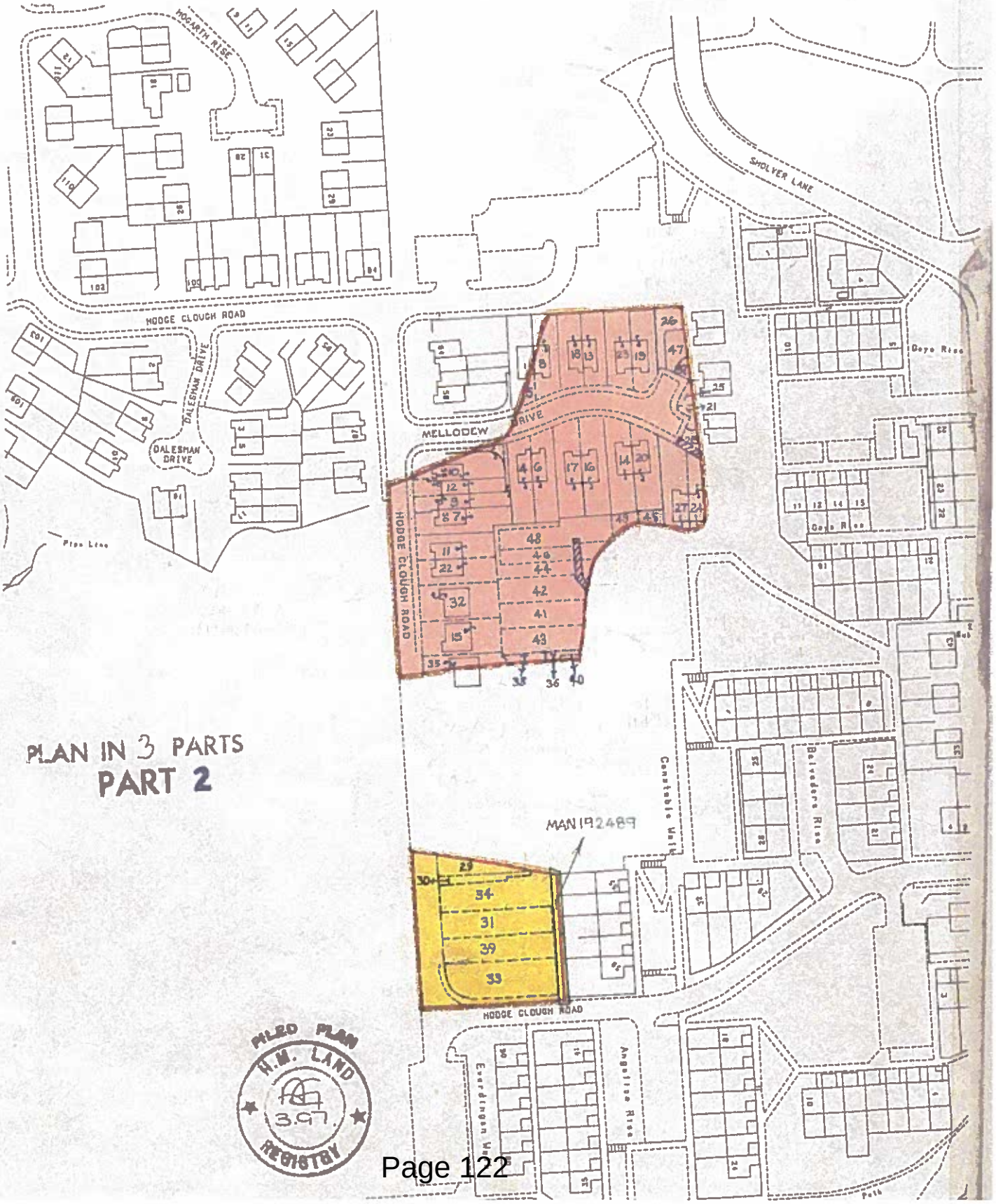
Pond

Reservoir

Footpath

Page 121

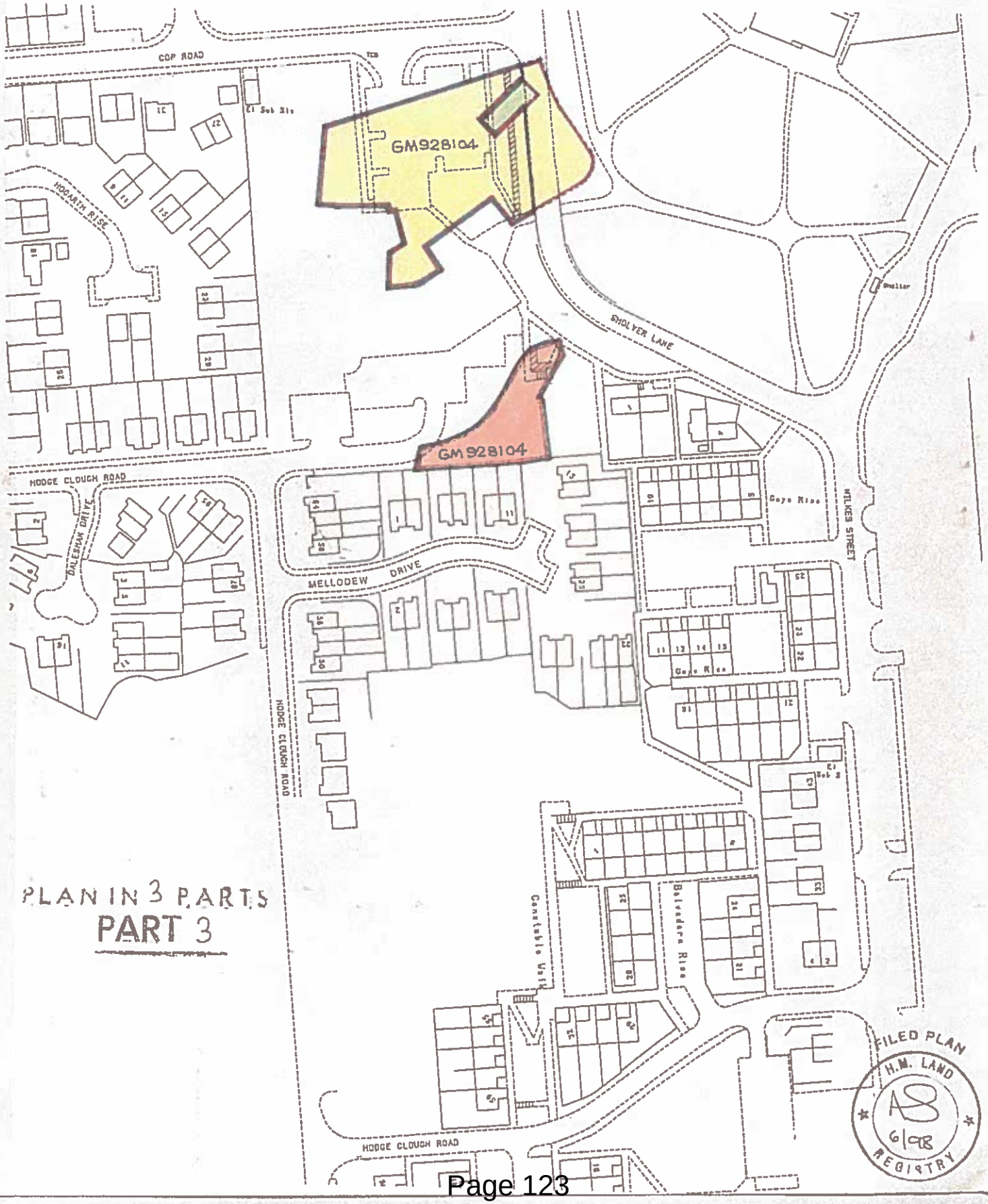
H.M. LAND REGISTRY		TITLE NUMBER LA 43936	
ORDNANCE SURVEY PLAN REFERENCE	SD9407	SECTION P	Scale 1/1250
ADMINISTRATIVE AREA GREATER MANCHESTER : OLDHAM			© Crown Copyright 1997



PLAN IN 3 PARTS
PART 2

FILED PLAN H.M. LAND REGISTRY 3.97

H.M. LAND REGISTRY		TITLE NUMBER LA43936	
ORDNANCE SURVEY PLAN REFERENCE	SD9407	SECTION	Scale 1/1250
COUNTY GREATER MANCHESTER	OLDHAM DISTRICT		© Crown Copyright 1997



PLAN IN 3 PARTS
PART 3

Removals / Leases from Title

Title No.	Date	Lease No. Ref	Remarks	Title No.	Date	Lease No. Ref	Remarks	Title No.	Date	Lease No. Ref	Remarks
GM732777	10.10.96	1&2	11 DOLLESTON DRIVE	GM769544	3.11.97	37	17 MELLODEN DRIVE (PART OF)				
(LEASE INCLUDES ALSO OTHER LAND)				(LEASE INCLUDES ALSO OTHER LAND)							
GM739426	18.12.96	3	83 HODGE CLOUGH ROAD	GM770802	18.11.97	38	3 LEYWELL DRIVE (PART OF)				
(LEASE INCLUDES ALSO OTHER LAND)				(LEASE INCLUDES ALSO OTHER LAND)							
GM741515	20.1.97	4	2 MELLODEN DRIVE.	GM774742	6.1.98	39	24 HODGE CLOUGH ROAD				
GM741519	20.1.97	5	1 MELLODEN DRIVE	GM778841	13.2.98	40	7 LEYWELL DRIVE				
(LEASE INCLUDES ALSO OTHER LAND)				(LEASE INCLUDES ALSO OTHER LAND)							
GM743150	7.2.97	6	4 MELLODEN DRIVE.	GM784997	14.5.98	41	11 LEYWELL DRIVE				
GM743172	7.2.97	7	50 HODGE CLOUGH ROAD	GM786221	8.6.98	42	15 LEYWELL DRIVE.				
GM743312	10.2.97	8	3 MELLODEN DRIVE	GM786303	9.6.98	43	PART OF 9 LEYWELL DRIVE				
(LEASE INCLUDES ALSO OTHER LAND)				GM786662	15.6.98	44	PART OF 17 LEYWELL DRIVE				
GM744180	24.2.97	9	52 HODGE CLOUGH ROAD	GM787374	25.6.98	45	PART OF 30 LEYWELL DRIVE				
GM746329	26.3.97	10	56 HODGE CLOUGH ROAD	(LEASE INCLUDES ALSO OTHER LAND)							
(LEASE INCLUDES ALSO OTHER LAND)				GM788720	14.7.98	46	PART OF 19 LEYWELL DRIVE				
GM746414	27.3.97	11	48 HODGE CLOUGH ROAD	(LEASE INCLUDES ALSO OTHER LAND)							
GM746421	27.3.97	12	54 HODGE CLOUGH ROAD	GM788912	16.7.98	47	PART OF 17 MELLODEN DRIVE				
GM747499	11.4.97	13	7 MELLODEN DRIVE	(LEASE INCLUDES ALSO OTHER LAND)							
GM747704	15.4.97	14	10 MELLODEN DRIVE	GM789498	24.7.98	48	21 LEYWELL DRIVE.				
GM749131	6.5.97	15	42 HODGE CLOUGH ROAD	GM799763	7.12.98	49	PART OF 32 LEYWELL DRIVE				
GM749134	6.5.97	16	8 MELLODEN DRIVE								
GM750635	22.5.97	17	6 MELLODEN DRIVE								
GM750845	28.5.97	18	5 MELLODEN DRIVE								
GM751037	30.5.97	19	11 MELLODEN DRIVE								
GM751039	30.5.97	20	12 MELLODEN DRIVE								
GM751677	6.6.97	21	23 MELLODEN DRIVE								
(LEASE INCLUDES ALSO OTHER LAND)											
GM752032	11.6.97	22	46 HODGE CLOUGH ROAD								
GM752278	16.6.97	23	9 MELLODEN DRIVE								
GM755335	28.7.97	24	16 MELLODEN DRIVE								
(LEASE INCLUDES ALSO OTHER LAND)											
GM755216	25.7.97	25	21 MELLODEN DRIVE								
(LEASE INCLUDES ALSO OTHER LAND)											
GM755615	31.7.97	26	15 MELLODEN DRIVE								
(LEASE INCLUDES ALSO OTHER LAND)											
GM755799	1.8.97	27	14 MELLODEN DRIVE								
(LEASE INCLUDES ALSO OTHER LAND)											
GM756764	12.8.97	28	25 MELLODEN DRIVE								
(LEASE INCLUDES ALSO OTHER LAND)											
GM761117	1.9.97	29	30 HODGE CLOUGH ROAD								
(LEASE INCLUDES ALSO OTHER LAND)											
GM765736	25.9.97	30	32 HODGE CLOUGH ROAD (PART OF)								
(LEASE INCLUDES ALSO OTHER LAND)											
GM768486	16.10.97	31	26 HODGE CLOUGH ROAD.								
GM768871	22.10.97	32	44 HODGE CLOUGH ROAD.								
GM768883	22.10.97	33	22 HODGE CLOUGH ROAD.								
GM768878	22.10.97	34	28 HODGE CLOUGH ROAD (PART OF)								
(LEASE INCLUDES ALSO OTHER LAND)											
GM769303	29.10.97	35	40 HODGE CLOUGH ROAD (PART OF)								
(LEASE INCLUDES ALSO OTHER LAND)											
GM771058	21.11.97	36	5 LEYWELL DRIVE (PART OF)								
(LEASE INCLUDES ALSO OTHER LAND)											

HMSO Dmd 476010889. C275. 9/94, 5600, 43184

E 187 LEGAL STAFF REQUIREMENTS

References required on new title filed plans for T. P.'s and absolute DFL's falling party within:

(a) the tinted pink - please reproduce

the tinted yellow - please reproduce

(b) So far as affected by: Plots falling in both titles LA43936 & LA88157 and falling in pink tinting on LA43936 – Reproduce pink tinting only on N/TFP.

No references required (at this stage for): edged yellow (please inform legal if affected)

Additional notes required on Official Searches, Form 94:

Additional notes required on Certificates in Form 102:

Signed..... HEO. Date.....

Sent to Field (or see MB 64D)

Title No.	Date	Plot Nos.	Title No.	Date	Plot Nos.	Title No.	Date	Plot Nos.	Title No.	Date	Plot Nos.
GM741515	10.2.97	1 - 73									
DG1203		(inc)									

DFL Mapping Instructions	LESSORS TITLE	LESSEES TITLE	Signed .....HEO Date .....

MB64B procedure will [not] apply.

Create a Part 2 of the O/TFP. at 1/1250 scale as per U4 of Pearce Practice Book for the edged yellow as discussed. UMspinell 5/3/97

Filed Plan Scanned.

Petr: 15/12/2004

Standard Form of Lease Refers To :–

lease term clause ..... page..... demise clause..... page.....

ben. ease. clause..... page..... sub. ease clause..... page.....

Delete to record last number reference used

The electronic official copy of the register follows this message.

Please note that this is the only official copy we will issue. We will not issue a paper official copy.

The exhibit referred to in the
Objections above on behalf of
Oldham Borough Council
and marked "Exhibit OMBC 2

HM Land Registry

Official copy of register of title

Title number LA88157

Edition date 03.05.2011

This official copy shows the entries on the register of title on 07 AUG 2018 at 15:52:05.

This date must be quoted as the "search from date" in any official search application based on this copy.

The date at the beginning of an entry is the date on which the entry was made in the register.

Issued on 07 Aug 2018.

Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.

This title is dealt with by HM Land Registry, Fylde Office.

A: Property Register

This register describes the land and estate comprised in the title.

GREATER MANCHESTER : OLDHAM

1 (11.07.1966) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Bent Gate Farm, Sholver Lane, Oldham.

2 The mines and minerals are excepted.

3 The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

4 The transfers of those parts edged and numbered in green on the title plan which were made pursuant to Part V of the Housing Act 1985 took effect with the benefit of and subject to the easements and other rights prescribed by paragraph 2 of Schedule 6 of that Act.

5 (03.05.2011) A new title plan based on the latest revision of the Ordnance Survey Map has been prepared.

6 (04.05.2012) The land has the benefit of the rights reserved by but is subject to the rights granted by the Transfer dated 7 February 2011 referred to in the Charges Register.

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

1 PROPRIETOR: OLDHAM BOROUGH COUNCIL of PO Box 33, Civic Centre, West Street, Oldham OL1 1UL.

C: Charges Register

This register contains any charges and other matters that affect the land.

1 The land is subject to rights of drainage rights in respect of water,

C: Charges Register continued

soil, gas and electricity supply services and ancillary rights of entry.

2 The paths and passages are subject to rights of way.

3 (15.11.1993) A Building Agreement and Licence dated 5 January 1993 made between (1) The Oldham Borough Council (2) John Maunders Group PLC relates to the building and development of the land in this title and other land.

¬NOTE: Copy filed under GM216307.

4 (24.10.1995) An Agreement dated 6 June 1995 affecting the land tinted blue on the title plan and other land made between (1) Oldham Borough Council and (2) Lovell Partnerships (Northern) Limited relates to planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990.

The said Agreement also contains covenants.

¬NOTE: Copy filed under GM216307.

5 (29.01.1996) A Licence Agreement dated 11 January 1996 affecting the land tinted pink and yellow on the title plan and other land made between (1) The Oldham Borough Council and (2) Barratt Homes Limited relates to building development and planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990.

¬NOTE: Copy filed under GM619490.

6 (06.06.1997) The parts of the land affected thereby are subject to the leases set out in the schedule of leases hereto.
The leases grant and reserve easements as therein mentioned.

7 (20.01.1998) The parts of the land affected thereby are subject to the following rights granted by a Deed of Grant dated 5 January 1998 made between (1) The Oldham Borough Council (Grantor) and (2) Norweb Plc (Grantee):-

"IN pursuance of the said agreement the Grantor hereby grants will full title guarantee unto the Grantee FULL AND FREE RIGHT AND LIBERTY for the Grantee and its successors in title and all persons authorised by it to lay construct use inspect maintain repair alter relay renew and remove or render unusable along and under the Easement Land such underground electric lines as the Grantee may from time to time require in connection with its undertaking and for this purpose to break open the surface of and excavate in the Easement Land so far as this may be necessary from time to time reinstating the same in accordance with the covenants on the part of the Grantee hereinafter contained TO HOLD the said rights and liberties unto the Grantee in fee simple as appurtenant to its undertaking and electricity distribution system

2. THE Grantee hereby covenants with the Grantor as follows:-

(a) To exercise the rights and liberties hereby granted in accordance with all regulations and requirements whether statutory or otherwise for the time being in force affect the sme

(b) That as soon as reasonably possible following the initial laying of the said underground electric lines the Grantee will back-fill the cable trench PROVIDED however that the Grantee will not be responsible for any further reinstatement of the Easement Land

(c) That if the Grantee carries out any excavations in the Easement Land subsequent to the initial laying of the said underground electric lines the Grantee will (unless otherwise agreed with the Grantor as a future term of supply) make good at its own expense all damage caused to the Easement Land or to the adjoining property of the Grantor in the exercise of the rights and liberties hereby granted and the execution of the works hereby authorised as soon as is reasonably practicable."

The said Deed also contains the following covenants by the Grantor:-

"THE Grantor with intent to bind the Easement Land and (so far as the

C: Charges Register continued

same is affected by the stipulations and restrictions in this clause contained) the adjoining land of the Grantor into whosoever hands the same may come and for the benefit and protection of the underground electric lines and the undertaking and electricity distribution system of the Grantee HEREBY COVENANTS with the Grantee that the Grantor and those deriving title under the Grantor shall at all times hereafter observe and perform the following stipulations and restrictions:-

(a) To keep the Easement Land forever hereafter open and unbuilt upon

(b) Not to alter the level of the Easement Land from that existing at the date hereof

(c) That nothing shall be done or suffered to be done by the Grantor its servants or agents upon the Easement land or the said adjoining property of the Grantor which may in any way interfere with or damage the said underground electric lines.

IN this Deed the expression "electric lines" shall have the meaning (in the plural) assigned to the expression "electric line" by Section 64 of the Electricity Act 1989 and shall be interpreted and construed accordingly and shall also include all joint boxes and apparatus ancillary to underground electric lines."

NOTE: The Easement Land referred to above is tinted yellow on the title plan so far as it affects the land in this title.

8 (07.05.1998) The parts of the land affected thereby are subject to the following rights granted by a Deed of Grant dated 23 April 1998 made between (1) The Oldham Borough Council (The Grantor) and (2) Norweb PLC (The Grantee):-

"The Grantor hereby grants with full title guarantee unto the Grantee FULL AND FREE RIGHT AND LIBERTY for the Grantee and its succcessors in title and all persons authorised by it to lay construct use inspect maintain repair alter relay renew and remove or render unusable along and under the Easement Land such underground electric lines as the Grantee may from time to time require in connection with its undertaking and for this purpose to break open the surface of and excavate in the Easement land so far as this may be necessary from time to time reinstating the same in accordance with the covenants on the part of the Grantee hereinafter contained TO HOLD the said rights and liberties unto the Grantee in fee simple as appurtenant to its undertaking and electricity distribution system.

THE Grantee hereby covenants with the Grantor as follows:-

(a) To exercise the rights and liberties hereby granted in accordance with all regulations and requirements whether statutory or otherwise for the time being in force affecting the same

(b) That as soon as reasonably possible following the initial laying of the said underground electric lines the Grantee will back-fill the cable trench PROVIDED however that the Grantee will not be responsible for any further reinstatement of the Easement Land

(c) That if the Grantee carries out any excavation in the Easement Land subsequent to the initial laying of the said underground electric lines the Grantee will (unless otherwise agreed with the Grantor as a future term of supply) make good at its own expense all damage caused to the Easement Land or to the adjoining property of the Grantor in the exercise of the rights and liberties hereby granted and the execution of the works hereby authorised as soon as is reasonably practicable."

IT IS HEREBY AGREED AND DECLARED by and between the parties hereto as follows:

(a) in this clause the expression:

(1) "Develop" includes redevelop

(2) "Property" means all that freehold land comprised in title numbers LA88157 LA43936 GM216307 GM619490 LA115192 and OL6770

C: Charges Register continued

(3) "Alternative Route(s)" means a route or routes within the Property as near as possible to the Easement Land as shall be approved by the Grantee as a suitable alternative for the Grantee's purpose

(b) If the Grantor shall desire to Develop the Property and it is necessary for such development to include the Easement Land or any part thereof and shall have obtained Planning Permission for such development the Grantee will release to the Grantor such of the rights and liberties hereby granted as require to be released subject to the following terms and conditions:

4.1 The Grantor shall give to the Grantee not less than twelve month's notice in writing of its desire to implement this clause

4.2 On or before the expiration of the said notice the Grantor shall (subject to investigation and approval of title by the Grantee's Solicitor) by deed with the concurrence of every incumbrancer (such concurrence to be procured by and at the expense of the Grantor) and without payment of any consideration by the Grantee grant in fee simple easements to the Grantee in respect of alternative route(s) for the laying of the underground electric lines such grant to be in the like form and contain the like provisions and covenants (mutatis mutandis) as are herein contained

4.3 Subject to all necesary labour and materials being available but as soon as practicable after completion of the grant of easements in respect of the alternative route(s) the Grantee shall (in the following order of events):-

(i) complete the laying of the underground electric lines along the alternative route(s) and the bringing into use thereof

(ii) remove so far as necessary the underground electric lines installed pursuant to such of the rights and liberties hereby granted as are required to be released or render dead such underground electric lines

(iii) surrender such of the rights and liberties hereby granted as are required to be released

PROVIDED THAT:

(a) if the Grantee or its contractors are prevented from complying with sub-clause 4.3 by reason of outbreak of war or civil insurrection or fire tempest frost inclement weather or other inevitable cause or accident or strike or lock out of workmen or the failure of the Grantee to obtain satisfactory supplies materials or labour or by reason of accident to the works or force majeure or by reason of the Grantee either having to redeploy the workforce assigned to carry out the works in order to carry out emergency work or repairs to its electricity plant and electric lines or by reason of any unavoidable cause for which the Grantee is not responsible in each such case the Grantee shall be allowed such extensions of time as are reasonable in the circumstances

(b) notwithstanding any provision of this sub-clause 4.3 the Grantee shall not under any circumstances be liable to the Grantor for any special indirect or consequential loss or damage arising under contract or otherwise including negligence and breach of statutory duty The term "consequential loss" shall include but is not limited to costs claims damages or expenses calculated by reference to loss or reduction of revenue or profit or loss of contracts (provided that nothing in this sub-clause shall be construed as an attempt to exclude or limit the liabilty of the Grantee in negligence for death of or injury to any person)

4.4.1 The Grantor shall (to which effect the Grantor hereby covenants) be liable for and pay to the Grantee the costs charges and expenses incurred or sustained by the Grantee in or arising out of:

(i) the laying of the underground electric lines along the alternative route(s)

C: Charges Register continued

(ii) the removal as aforesaid of the underground electric lines from the land the subject of the rights and liberties hereby granted required to be released as aforesaid

(iii) the preparation and completion of the documentation required in respect of easements for the alternative route(s) and the surrender of such of the rights and liberties hereby granted as are required to be released as aforesaid including stamp duty and (if appropriate) all Land Registry fees for noting thereof on the Register of the Title relating thereto

4.4.2 The Grantor and the Grantee shall take into account betterment and/or deferment of renewal in calculating the said costs charges and expenses incurred or sustained by the Grantee referred to in clause 4.4.1. hereof in that the cost of diverting the underground electric lines due to development only relates to the underground electric lines installed pursuant to such of the rights and liberties hereby granted or equivalent replacement underground electric lines and not the cost of any additional or higher voltage underground electric lines which the Grantee may wish to lay along the alternative route(s)

AND without prejudice to the foregoing if required by the Grantee so to do shall as a condition precedent to the completion of such grant make a payment to the Grantee of the estimated amount of such costs charges and expenses and the Grantee will (as it hereby covenants so to do) repay to the Grantor the difference between the estimated amount so paid and the total amount (if smaller) of such costs charges and expenses

4.5.1 That if the Grantor shall at any time during which this Deed remains effective consider that the Grantee has ceased to make any substantive use of the Easement land for the exercise of the rights and liberties hereby granted for a continuous period of not less than one year then:

(a) the Grantor may at any time thereafter serve written notice on the Grantee requesting the Grantee to provide reasonable evidence that in the Grantee's reasonable opinion the Grantee does have a bona fide present or future requirement to use the Easement Land

(b) the Grantee shall within a reasonable period (but in any event not exceeding three months) of the receipt of the said written notice supply to the Grantor such evidence as is mentioned in sub-clause (a) above

4.5.2 In the event that the parties agree that the Grantee is unable to provide satisfactory evidence as aforesaid the Grantee shall surrender this Deed without any consideration and the Grantor shall (a) accept the surrender and (b) release the Grantee from its covenants and other obligations under this Deed

4.5.3 Prior to any surrender of this Deed pursuant to this Clause 4 the Grantee shall at its own expense ensure that the Electric Cables are disconnected and made safe the Grantee making good any damage caused to the Easement Land or the said adjoining property of the Grantor to the reasonable satisfaction of the Grantor

IN this Deed the expression "electric lines" shall have the meaning (in the plural) assigned to the expression "electric line" by Section 64 of the Electricity Act 1989 and shall be interpreted and construed accordingly and shall also include all joint boxes and apparatus ancillary to underground electric lines."

The said Deed also contains the following covenants by the Grantor.

"THE Grantor with intent to bind the Easement land and (so far as the same is affected by the stipulations and restrictions in this clause contained) the adjoining land of the Grantor into whosesoever hands the same may come and for the benefit and protection of the underground electric lines and the undertaking and electricity distribution system of the Grantee HEREBY COVENANTS with the Grantee that the Grantor and those deriving title under the Grantor shall at all times hereafter

C: Charges Register continued

observe and perform the following stipulations and restrictions:-

(a) To keep the Easement Land forever hereafter open and unbuilt upon

(b) Not to alter the level of the Easement Land from that existing at the date hereof

(c) That nothing shall be done or suffered to be done by the Grantor its servants or agent upon the Easement land or the said adjoining property of the Grantor which may in any way interfere with or damage the said underground electric lines."

NOTE: The Easement Land referred to has been shown hatched brown on the title plan so far as it affects the land in this title.

9 (04.05.2012) A Transfer which included the land edged and numbered MAN192482 in green on the title plan and other land dated 7 February 2011 made between (1) Oldham Borough Council and (2) First Choice Homes Oldham Limited contains restrictive covenants by the vendor.

¬NOTE: Copy filed under MAN149279.

Schedule of notices of leases

1	06.06.1997 edged and numbered 2 in blue NOTE: The Lease comprises also other land	part of 23 Mellodew Drive	22.05.1997 999 years from 1.7.1995	GM751677
2	10.07.1997 edged and numbered 3 in blue	22 Mellodew Drive	30.05.1997 999 years from 1.7.1995	GM754002
3	25.07.1997 edged and numbered 8 in blue NOTE: The lease comprises also other land	part of 21 Mellodew Drive	30.05.1997 999 years from 1.7.1995	GM755216
4	28.07.1997 edged and numbered 4 and 5 in blue	20 Mellodew Drive and parking space	10.06.1997 999 years from 1.7.1995	GM755313
5	28.07.1997 edged and numbered 6 in blue NOTE: The lease comprises also other land	part of 16 Mellodew Drive	27.06.1997 999 years from 1.7.1995	GM755335
6	30.07.1997 edged and numbered 7 in blue	18 Mellodew Drive	27.06.1997 999 years from 1.7.1995	GM755485
7	31.07.1997 edged and numbered 9 in blue NOTE: The lease comprises also other land	part of 15 Mellodew Drive	27.06.1997 999 years from 1.7.1995	GM755615
8	01.08.1997 edged and numbered 10 in blue NOTE: The lease comprises also other land	part of 14 Mellodew Drive	27.06.1997 999 years from 1.7.1995	GM755799
9	01.08.1997 edged and numbered 11 in blue	36 Hodge Clough Road	27.06.1997 999 years from 1.7.1995	GM755800

Schedule of notices of leases continued

10	15.09.1997 edged and numbered 12 in blue NOTE: The lease comprises also other land	part of 25 Mellowdew Drive	27.05.1997 999 years from 1.7.1995	GM756764
11	22.09.1997 edged and numbered 13 in blue NOTE: The lease comprises also other land	part of 30 Hodge Clough Road	28.07.1997 999 years from 1.7.1995	GM761117
12	25.09.1997 edged and numbered 14 in blue	34 Hodge Clough Road	25.07.1997 999 years from 1.7.1995	GM765712
13	25.09.1997 edged and numbered 15 and 16 in blue NOTE: The lease comprises also other land	part of 32 Hodge Clough Road	15.08.1997 999 years from 1.7.1995	GM765736
14	22.10.1997 edged and numbered 17 in blue NOTE: The lease comprises also other land	part of 28 Hodge Clough Road	29.08.1997 999 years from 1.7.1995	GM768878
15	29.10.1997 edged and numbered 18 in blue NOTE: The lease comprises also other land	part of 40 Hodge Clough Road	30.05.1997 999 years from 1.7.1995	GM769303
16	11.11.1997 edged and numbered 19 in blue	38 Hodge Clough Road	26.06.1997 999 years from 1.7.1995	GM770213
17	18.11.1997 edged and numbered 23 in blue NOTE: The lease comprises also other land	part of 3 Leywell Drive	24.10.1997 999 years from 1.7.1995	GM770802
18	21.11.1997 edged and numbered 20 and 21 in blue NOTE: The lease comprises also other land	part of 5 Leywell Drive	24.10.1997 999 years from 1.7.1995	GM771058
19	01.12.1997 edged and numbered 22 in blue NOTE: The lease comprises also other land	part of 19 Mellowdew Drive	29.08.1997 999 years from 1.7.1995	GM769544
20	10.12.1997 edged and numbered 24 in blue	4 Leywell Drive	21.11.1997 999 years from 1.7.1995	GM772943
21	06.01.1998 edged and numbered 25 in blue	2 Leywell Drive	21.11.1997 999 years from 1.7.1995	GM774745
22	16.01.1998 edged and numbered 26 in blue	1 Leywell Drive	20.11.1997 999 years from 1.7.1995	GM775815
23	20.01.1998 edged and numbered 27	6 Leywell Drive	20.01.1998 999 years from 1.7.1995	GM776040

Schedule of notices of leases continued

24	13.02.1998 edged and numbered 28 in blue NOTE: The lease comprises also other land	part of 7 Leywell Drive	09.01.1998 999 years from 1.7.1995	GM778841
25	10.03.1998 edged and numbered 29 in blue	14 Leywell Drive	06.02.1998 999 years from 1.7.1995	GM780666
26	14.05.1998 edged and numbered 30 in blue	16 Leywell Drive	27.03.1998 999 years from 1.7.1995	GM784930
27	29.05.1998 edged and numbered 31 in blue	22 Leywell Drive	24.03.1998 999 years from 1.7.1995	GM785745
28	09.06.1998 edged and numbered 32 in blue NOTE: The lease comprises also other land	part of 9 Leywell Drive	24.04.1998 999 years from 1.7.1995	GM786303
29	15.06.1998 edged and numbered 33 in blue NOTE: The lease comprises also other land	part of 17 Leywell Drive	12.05.1998 999 years from 1.7.1995	GM786662
30	25.06.1998 edged and numbered 34 in blue NOTE: The Lease comprises also other land	part of 30 Leywell Drive	29.05.1998 999 years from 1.7.1995	GM787374
31	03.07.1998 edged and numbered 35 in blue	10 Leywell Drive	29.05.1998 999 years from 1.7.1995	GM787913
32	07.07.1998 edged and numbered 36 in blue	20 Leywell Drive	05.06.1998 999 years from 1.7.1995	GM788224
33	14.07.1998 edged and numbered 37 in blue	28 Leywell Drive	26.06.1998 999 years from 1.7.1995	GM788719
34	14.07.1998 edged and numbered 38 in blue NOTE: The lease comprises also other land	part of 19 Leywell Drive	26.06.1998 999 years from 1.7.1995	GM788720
35	14.07.1998 edged and numbered 39 in blue NOTE: The lease comprises also other land	part of 17 Mellodew Drive	26.06.1998 999 years from 1.7.1995	GM788912
36	28.07.1998 edged and numbered 40 in blue	24 Leywell Drive	26.06.1998 999 years from 1.7.1995	GM789649
37	04.08.1998 edged and numbered 41 in blue	24 Leywell Drive	26.06.1998 999 years from 1.7.1995	GM790083

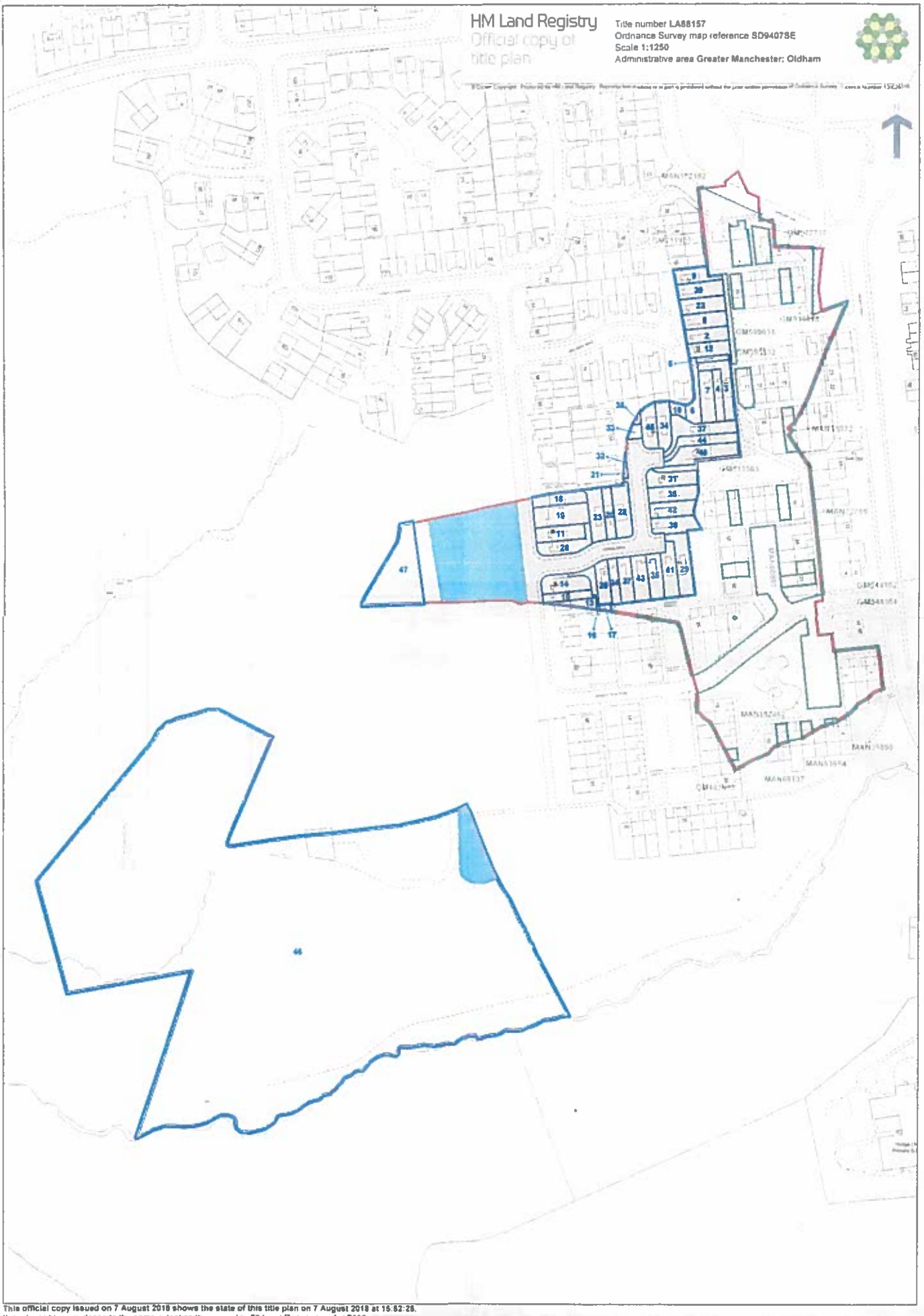
Schedule of notices of leases continued

38	04.09.1998 edged and numbered 42 in blue	18 Leywell Drive	15.07.1998 999 years from 1.7.1995	GM792337
39	17.09.1998 edged and numbered 43 in blue	8 Leywell Drive	27.02.1998 999 years from 1.7.1995	GM793360
40	22.09.1998 edged and numbered 44 in blue	26 Leywell Drive	31.07.1998 999 years from 1.7.1995	GM793568
41	07.12.1998 edged and numbered 45 in blue NOTE: The lease comprises also other land	part of 32 Leywell Drive	29.05.1998 999 years from 1.7.1995	GM799763
42	09.11.2011 edged and numbered 46 and 47 in blue NOTE: The lease comprises also other land.	Land lying to the south of Cop Road	30.09.2011 250 years from and including 30.9.2011	MAN184084

End of register

HM Land Registry
Official copy of
title plan

Title number LA88157
Ordnance Survey map reference SD9407SE
Scale 1:1250
Administrative area Greater Manchester: Oldham



This official copy issued on 7 August 2018 shows the state of this title plan on 7 August 2018 at 15:52:28.
It is admissible in evidence to the same extent as the original (s 67 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.
This title is dealt with by HM Land Registry, Durham Office.

~~46~~ 28

DATED 19th May 1964.

THE TRUSTEES OF THE CHARITY
OF EDWARD MAYES AND OTHERS

- to -

THE MAYOR ALDERMEN AND BURGESSES
OF THE COUNTY BOROUGH OF OLDHAM

CONVEYANCE

of land at Sholver subject to a
lease for 5,000 years.

Edward Haines, LL.M.,
Town Clerk,
Oldham.

The exhibit referred to in the
Objections above on behalf of
Oldham Borough Council
and marked "Exhibit OMBC 3

THIS CONVEYANCE is made the nineteenth day of May One thousand nine hundred and sixty-four BETWEEN THE OFFICIAL CUSTODIAN FOR CHARITIES of the first part CHARLES COLLIER JOHNSTON of Narrow Lane House "Wards End" Adlington near Macclesfield in the County of Chester Gentleman IRIS GOODIER HAWORTH of "High Hedges" Sugar Pit Lane Knutsford in the said County Widow and JAMES FREDERICK SIMPSON of "the Hermitage" Holmes Chapel in the said County Merchant (hereinafter called "the trustees") of the second part and THE MAYOR ALDERMEN AND BURGESSES OF THE COUNTY BOROUGH OF OLDHAM (hereinafter called "the Corporation") of the third part

WHEREAS:-

1. By a Lease dated the Seventh day of June One thousand six hundred and eighty-nine and made between Francis Cartwright and John Heywood of the one part and John Mellor of the other part (hereinafter called "the Lease") the lands described in the schedule hereto were demised to the said John Mellor for a term of Five thousand years from the Seventh day of June One thousand six hundred and eighty-nine subject (after the first three years of the said term) to a yearly rent of Ten pounds and to the terms and conditions contained in the Lease

2. The lands described in the schedule hereto are vested in the Official Custodian for Charities in fee simple subject to but with the benefit of the Lease in trust for the Charity of Edward Mayes and others

3. This Conveyance is executed by three of the Trustees of the said Charity under an authority given in pursuance of Section 34 of the

Charities Act, 1960

4. By an Order dated the Seventh day of February One thousand nine hundred and sixty-four the Charity Commissioners for England and Wales consented to the sale of the said lands for not less than One hundred and forty pounds and the Corporation have agreed to purchase the same for One hundred and forty pounds pursuant to Part V of the Housing Act, 1957

NOW THIS DEED WITNESSETH as follows:-

IN consideration of the sum of ONE HUNDRED AND FORTY POUNDS now paid by the Corporation to the trustees (the receipt whereof the trustees hereby acknowledge) the trustees in the name and on behalf of the Official Custodian for Charities convey and as trustees convey and confirm unto the purchaser ALL THOSE the lands described in the schedule hereto TO HOLD the same unto the Corporation in fee simple SUBJECT to but with the benefit of the Lease

IT IS HEREBY CERTIFIED that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds Four thousand five hundred pounds

- THE SCHEDULE -

ALL THAT messuage and tenements land and hereditaments with other and every of their appurtenances situate lying and being in Sholver aforesaid in the said County of Lancaster commonly called or known by the several or other name or names of the Great Meadow and the land thereunto adjoining or belonging the ley and

the land thereunto belonging the Over Starring the Lower Starring the Little Field and the land thereunto belonging the Great Bank the Little Bank the Broad Hollin the Over Wood the Middle Wood the Little Meadow the Great Thawley Wood the Little Thawley Wood the Great Meadow High Field the Little Owland Road Little Owland Wood Little Owland and the Lower Mough Meadow or by what other name or names the said closes of the lands before mentioned and every or any of them then or theretofore having been or thereafter or might be called or known and containing Twenty acres of land or ground or thereabouts whether the same more or less then or late in the several or other holdings or occupations of the said Thomas Mellor and John Mellor or the one of them or the one of their assigns or under tenants Together with all and singular the houses outoffices buildings barns and other dwellinghouses upon the said closes or any of them then situate erected or standing on the said gardens crofts fields meadows together with the waters watercourses paths common of pasture liberties quarries private commodities advantages emoluments whatsoever unto the said messuage tenement land and hereditaments lying being and in any way therewith or thereto or with the same or any part thereof with their appurtenances

IN WITNESS whereof the said Charles Collier Johnston Iris Goodier Haworth and James Frederick Simpson in pursuance of Section 34 of the Charities Act, 1960 and in the name and on behalf of the Official Custodian for Charities and also of the trustees have hereunto set their respective hands and seals

SIGNED SEALED AND DELIVERED by the said CHARLES COLLIER JOHNSTON in the presence of:-

C. C. Johnston

7 St. James' Square
Manchester 2
Charity Secretary

SIGNED SEALED AND DELIVERED by the said IRIS GOODIER HAWORTH in the presence of:-

Iris Haworth

SIGNED SEALED AND DELIVERED by the said JAMES FREDERICK SIMPSON in the presence of:-

J. F. Simpson.

The exhibit referred to in the Objections above on behalf of Oldham Borough Council and marked "Exhibit OMBC 4

Property Land at Shaw

Committee Housing

Vendor Trustees of the Charity of Edward Mayson Mr.

Date Property acquired 19th May 1964 Consideration £1100

Freehold/Leasehold. Term of years Freehold subject to subsisting leasehold interest

Date of Commencement of Term

Chief or Ground Rent Payable £

Dates Payable

Receivable Rent(s)

Title No. LA 43936 Parcel Number 4158

Remarks

Property Bent Gate Farm, Slower.

Committee Housing

Vendor Emma Howard

Date Property acquired 29th June 1966. Consideration £6400

Freehold/~~Leasehold.~~ Term-of-years

Date of Commencement of Term

Chief or Ground Rent Payable £

Dates Payable

Receivable Rent(s)

Title No. LA88157 Parcel Number 4988

Remarks

The exhibit referred to in the Objections above on behalf of Oldham Borough Council and marked "Exhibit OMBC 5

1. Objector
2. Deborah Anne Taylor
3. 1st Statement
4. Dated: September 2018

IN THE MATTER OF AN APPLICATION TO

REGISTER A TOWN OR VILLAGE GREEN

B E T W E E N:

MR FRED WILKINSON

Applicant

and

OLDHAM METROPOLITAN BOROUGH COUNCIL

Objector

WITNESS STATEMENT OF DEBORAH ANNE TAYLOR

I Deborah Anne Taylor state as follows:

1. I confirm that the facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

2. I have been employed by Oldham Council within the Legal Department for over 25 years, primarily working within the legal team responsible for property/corporate matters.

3. Prior to computerised records of the Council's property deeds, records were kept using a card system containing information relating to each individual deed packet. The Deed Record Cards documented when the property was acquired, whom it was acquired from, the committee whose portfolio the land would belong in and any other relevant information relating to the acquisition of the property.

4. Exhibit '**DT1**' shows the Deed Record Card for deed packet D4158 (registered at HM Land Registry as LA43936) and shows that the property fell within the portfolio of the Housing Committee when acquired on 19th May 1964. Exhibit '**DT2**' shows the Deed Record Card for deed packet D4988 (registered at HM Land Registry as LA88157) and shows that the property fell within the portfolio of the Housing Committee when acquired on 29th June 1966.

5. Deed packets which contained land under the portfolio of the Housing Committee or land that was specified as land for housing, were specifically recorded with a distinctive red mark which took the form of a red rectangle on the cover of the deed packet.

6. Exhibit '**DT3**' shows the deed packet cover for D4988. The red marking indicating that land within the deed packet contains land for housing, can be seen to the top centre of the deed packet, as well as the word 'Housing' to the left of it. Exhibit '**DT4**' shows the deed packet cover for D4158'. The red mark indicating that land within the deed packet contains land for housing can be clearly seen to the top centre of the deed packet and also in the middle of the deed packet.

I believe that the facts stated in this witness statement are true.

Signed .....D A Taylor.....

DEBORAH ANNE TAYLOR

Date .....20/9/2018.....

The exhibit referred to in a witness statement dated 20/8/18 and marked "Exhibit DTI"

Property Land at Shalvan

Committee Housing

Vendor Trustees of the Charity of Edward Mayso Esq.

Date Property acquired 19th May 1964 Consideration £140

Freehold/Leasehold. Term of years Freehold subject to a lease with the benefit of a lease

Date of Commencement of Term

Chief or Ground Rent Payable £

Dates Payable

Receivable Rent(s)

Title No. LA 43936 Parcel Number 4158

Remarks

Property Bent Gate Farm, Slower.

Committee Housing

Vendor Emma Howard

Date Property acquired 29th June 1966. Consideration £6400

Freehold/~~Leasehold.~~ Term-of-years

Date of Commencement of Term

Chief or Ground Rent Payable £

Dates Payable

Receivable Rent(s)

Title No. LA88157 Parcel Number 4988

Remarks

The exhibit referred to in a witness statement dated 20/09/18 and marked "Exhibit DT2"

HOUSING

MAN 192482
MAN 192489

D4988

222 29TH JUNE 1966 S

EMMA HOWARD
TO
THE CORPORATION

on Deposit
N° 542640D

LAND CERTIFICATE RELATING TO
BENT GATE FARM, SHOLVER.

Deposit No. 4566 75D

~~LA 88167~~ — Sent for deposit 15.1.96 LJM

Land Certificate sent to
HMLR 15/1/03 for
deposit + [illegible] 75D

TRANS NO:
2870

The exhibit referred to
in a witness statement
dated 20/9/18
and marked "Exhibit DT3"

158 MAN 192489-F

4158

Trustees of the Charity of Edward Hayes etc

to

Corporation

Conveyance of freehold land situate at Sholver Moorside Oldham

Consideration £140.

Registered KA 43936

On Deposit Number:

4158

T.NO.

2369.

Dep No. 566880.

on Deposit

No 542644D

B54

S

The exhibit referred to in a witness statement dated 30/01/18 and marked "Exhibit DTH"

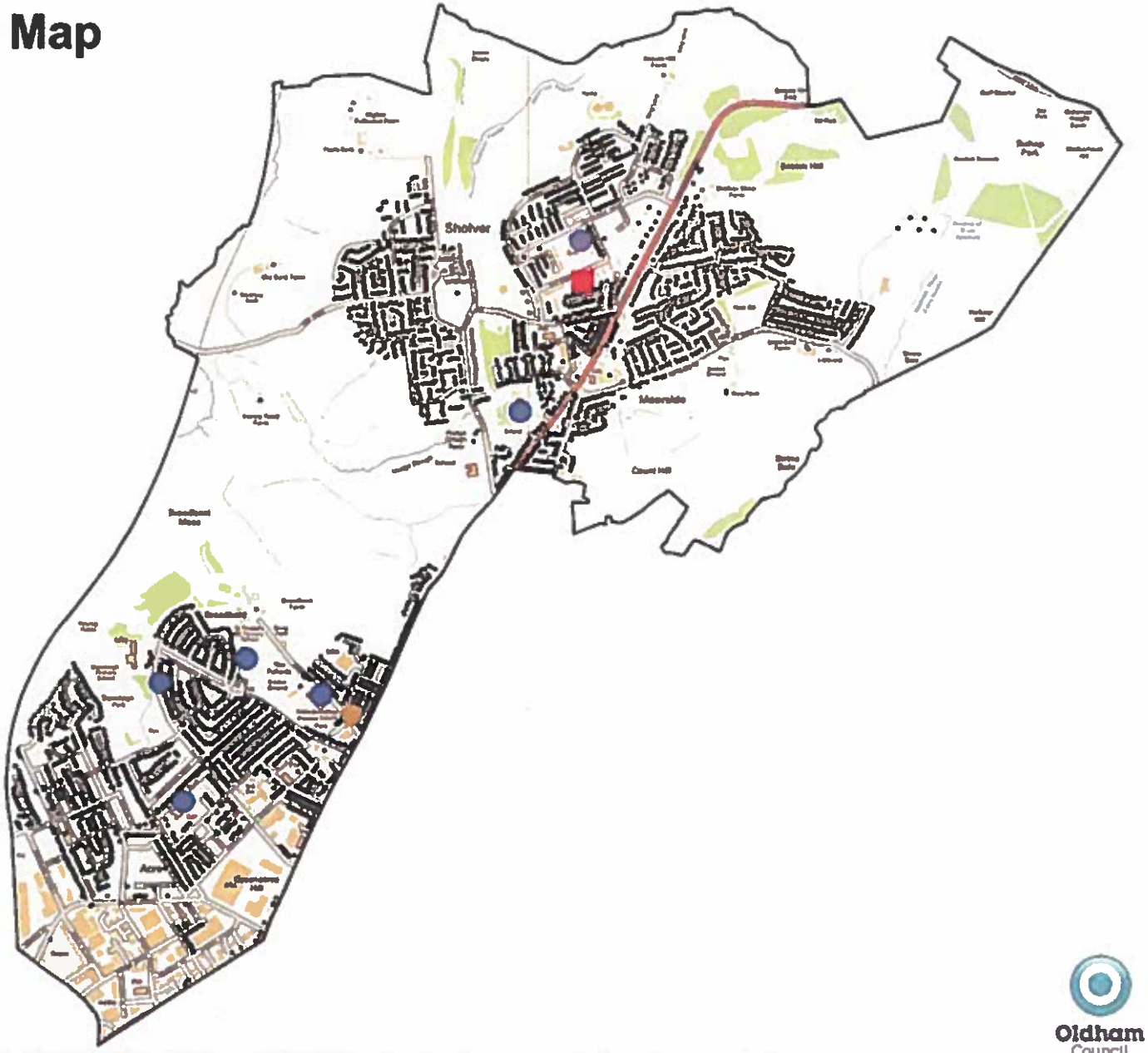
Ward Profile 2016: St James'

The exhibit referred to in the Objections above on behalf of Oldham Borough Council and marked "Exhibit OMBC 6

Produced by Oldham Council's Business Intelligence Service

Oldham Council

St James' Ward Map



- Housing
- Primary Schools
- Pupil Referral Unit
- Childrens Centres

Oldham Council

Population

11,862

St James' population (0.0% since 2001)
(Oldham population + 5.3% since 2001)

48.4%

Male population 5,739
(Oldham male population 49%)

51.6%

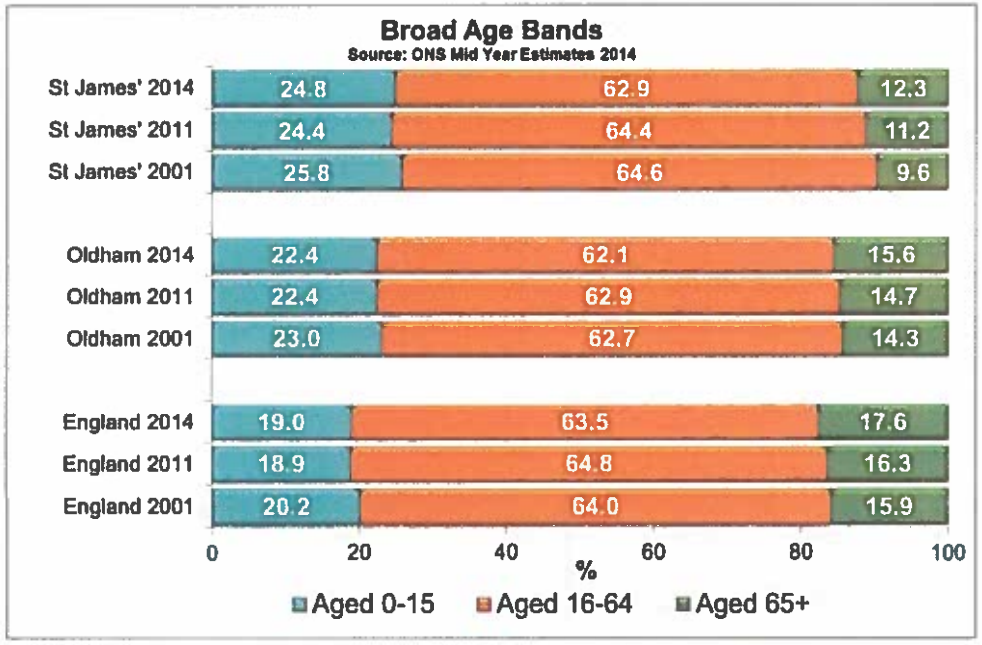
Female population 6,123
(Oldham female population 51%)

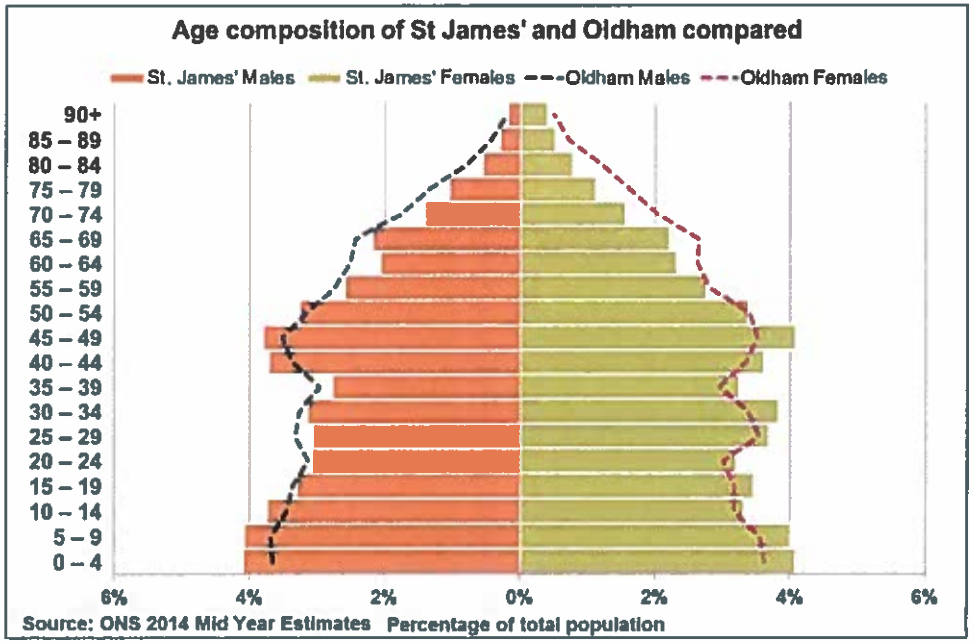
This ward is split into a more prosperous area of housing to the east of the Ripponden Road, and more deprived areas to the west and south. Figures are therefore likely to conceal localised issues. This is a young ward, with a strong middle-aged population peak that will begin to retire in about 10 years. Ethnic minority proportions are very low also.

**Population figures reflect 2014 ONS mid-year estimates: Business Intelligence Service analysis indicates these are likely to be underestimates, and new projection systems are being developed to allow more accurate estimation.*

Ethnic Composition - Source: ONS Census 2011

	% White 2011 (2001)	% Pakistani 2011 (2001)	% Bangladeshi 2011 (2001)	% Other non-white 2011 (2001)
St James'	94.4 (95.3)	0.5 (0.9)	0.3 (0.9)	4.7 (2.9)
Oldham	79.5 (87.1)	9.1 (5.9)	6.6 (4.1)	4.9 (2.9)
England	85.4 (90.9)	2.1 (1.4)	0.8 (0.6)	11.7 (7.1)





Economy and Income

£24,315
Median Household Income
(Oldham average = £23,920)

62.3%
Employment Rate
(Oldham average = 58.2%)

14.4%
Out-of-work benefit claimants
(Oldham average = 13.1%)

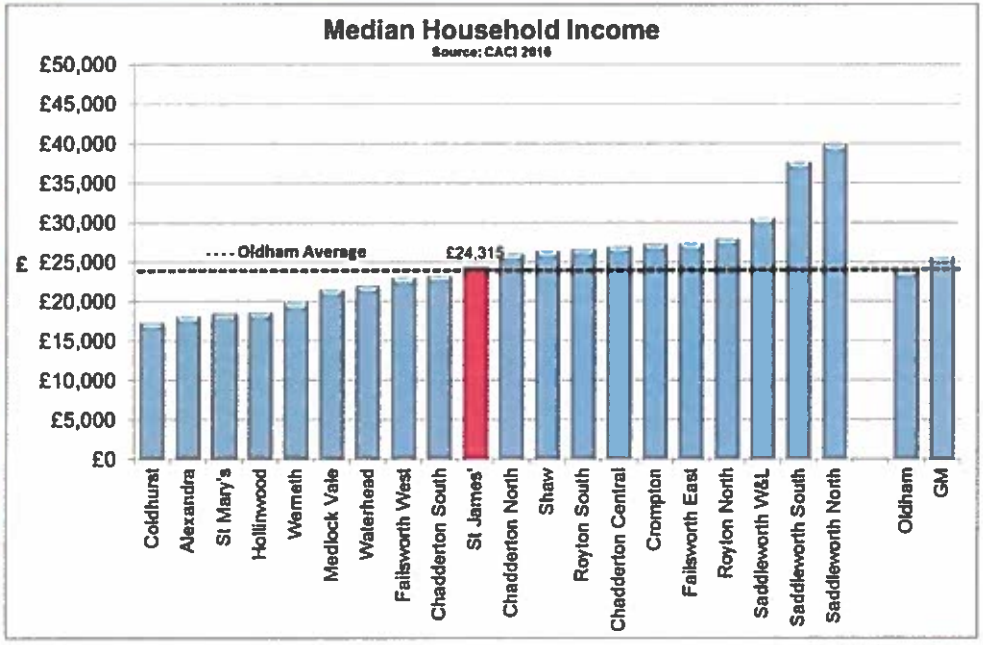
Average income in St. James' (£24,315) is slightly than the Oldham average (£23,920) However, previous work shows that there is significant variation across the ward.
A high proportion of residents are employed (62.3%), especially full-time. However, there are above average proportions of residents claiming out-of-work benefits (14.4%).

Economic Status (aged 16-74) - Source ONS Census 2011

	St James'	St James' %	Oldham %	England %
Employed	5,085	62.3	58.2	62.1
Part-time	1,109	13.6	13.9	13.7
Full-time	3,369	41.3	36.6	38.6
Self employed	607	7.4	7.8	9.8

Out of work benefit claimants (aged 16-64) - Source: DWP 2015

	St James' (number)	St James' %	Oldham %	England %
Unemployment	218	2.9	1.7	3.4
Employment Support Allowance (ESA)	638	8.6	8.4	5.9
Lone Parents (claiming Income Support)	205	2.7	1.7	1.3
Other	15	0.2	0.4	0.4
Total out of work benefit claimants	1076	14.4	13.1	10.9



Housing

4988
Number of Households

9.2%
Households in Fuel Poverty
(Oldham average = 10.7%)

£115,285
Average Sold House Price
(Oldham average = £129,268)

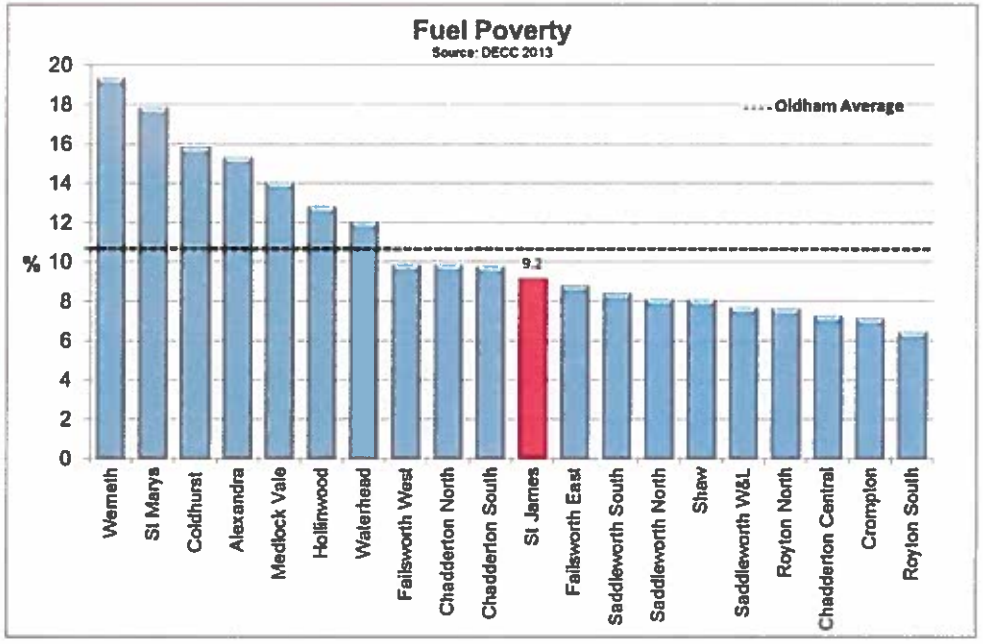
Housing in this ward is predominantly owner-occupied (60.4%), but less so than average, and 27.2% of housing is social rented, with two relatively large estates.
Private rented accommodation has grown since 2001 (7.0% to 12.1%), and is in line with the Oldham average. Other housing indicators are broadly in line with Oldham norms, although there is a high proportion of residents (32%) with pre-pay energy meters.

Housing Tenure: Source ONS Census 2011

	2011			2001		
	% Owner occupied	% Social rented	% Private rented	% Owner occupied	% Social rented	% Private rented
St James'	60.0	27.2	12.1	60.4	29.4	7.0
Oldham	65.3	21.1	12.2	68.4	22.9	5.5
England	64.1	17.7	16.8	68.7	19.3	8.8

Housing - Source: Oldham Council 2016
You and Your Community Survey 2013

	St James' %	Oldham %
Vacant properties	2.3	3.4
Claiming Council Tax Reduction and/or Housing Benefit	29.4	28.0
Can afford to keep house in decent state of repair	52	54
Pre-pay energy meters	32	20



Household Composition

28.6%
Single person households
(Oldham average = 30.3%)

18.3%
Lone Parent households
(Oldham average = 13.1%)

6.4%
Overcrowded households
(Oldham average = 7.5%)

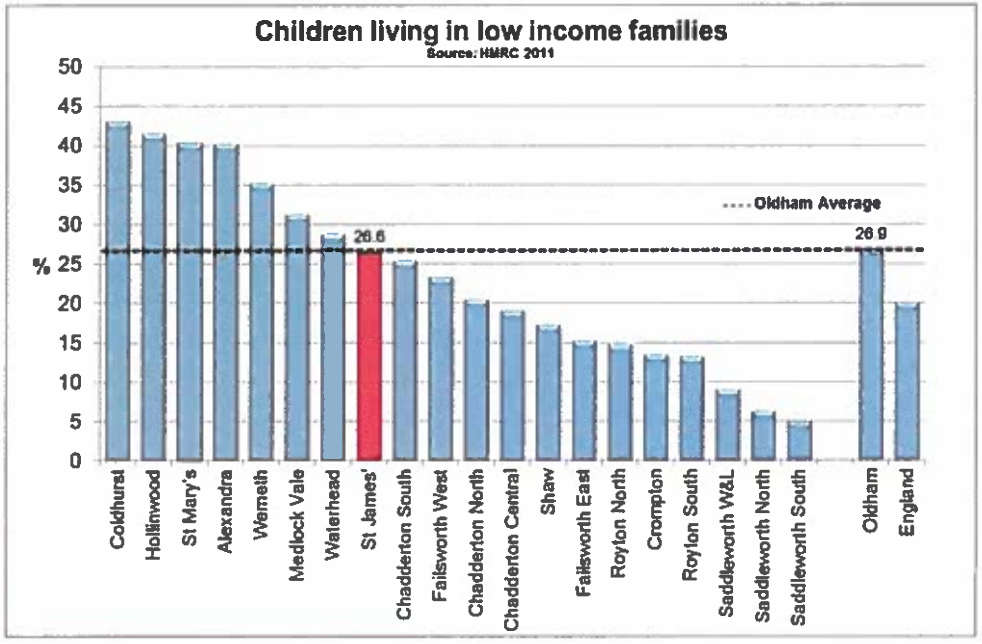
St. James' has some interesting patterns of household composition. There are high proportions of households with one adult of working age, excluding those over 65 (37.9%, compared to 30.2% for Oldham) and many of these are lone parents with dependent children (13.9%). Child poverty is average, which is to say over a quarter (26.6%) of children are living in low income families.

Number of Children Source: ONS Census 2011/HMRC 2015

Households with:	St James' %	Oldham %
No Children	57.7	60.7
Three or more Children	6.8	7.4

Household Composition - Source ONS Census 2011

	St James' %	Oldham	England
Single person households aged under 65	19.6	17.1	17.9
Single person households aged 65 and over	9.0	12.8	12.4
Married couples	34.9	39.7	41.3
Cohabiting couples	13.7	10.2	9.9
Lone parents (with dependent children)	13.9	9.1	7.1
Lone parents (without dependent children)	4.4	4.0	3.5
Other	4.5	7.1	8.0



Education and Skills

55.7%
Early Years Good development
(Oldham average = 57.3%)

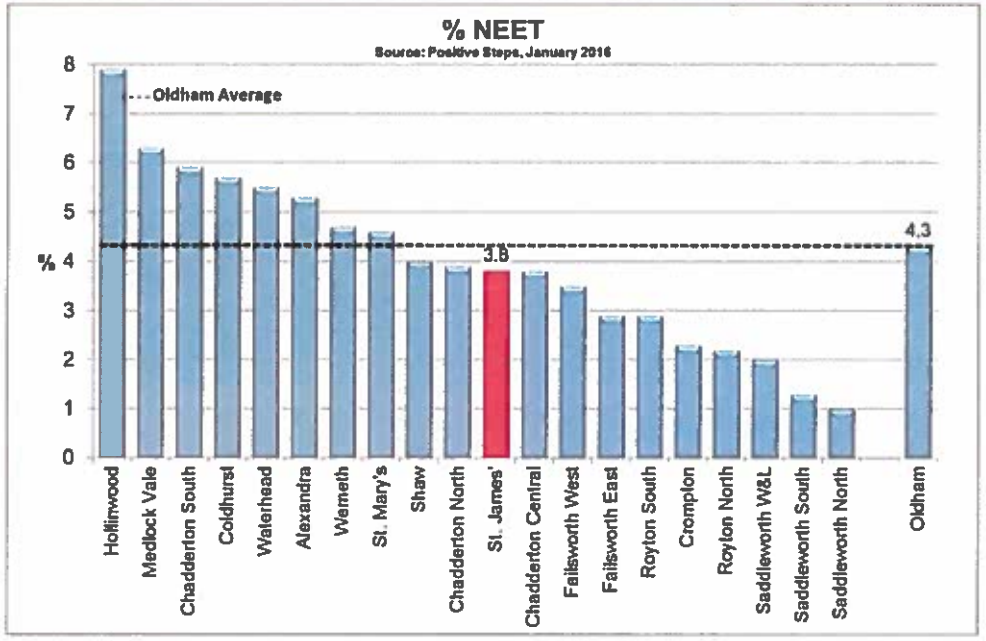
29.2%
Adults with no Qualifications
(Oldham average = 29.6%)

15.7%
Adults with Degree
(Oldham average = 18.6%)

Education and skill levels in this ward are somewhat mixed. Few adults have degrees (15.7%), and the proportion with no qualifications (29.2%) is in line with the Oldham average. The proportion of school leavers with no GCSEs (1.3%) is below average, while just below the expected proportion (47%) gain 5 GCSEs including English and Maths. Foundation Stage outcomes are mixed, Boys being higher than the Oldham average and Girls being lower. The percentage of NEETS (Not in Employment Education or Training) is marginally below the Oldham average at 3.8%.

Early Years Foundation Stage 2014/15 - Source DfE

Good level of development:	St James' %	Oldham %
All	55.7	57.3
Boys	52.9	49.7
Girls	58.3	64.9



GCSE Results 2014/15 - Source: DfE

	St James' %	Oldham %	England %
5 GCSEs at grade A*-C	51.0	60.2	64.9
5 GCSEs at grade A*-C inc English and Maths	47.0	50.5	53.8
No GCSEs	1.3	2.2	2.2

Health

17.0%
Long-term health problems
(Oldham, average 16.3%)

74.4 ♂
Male Life Expectancy
(Oldham average = 76.4%)

79.3 ♀
Female Life Expectancy
(Oldham average = 80.7%)

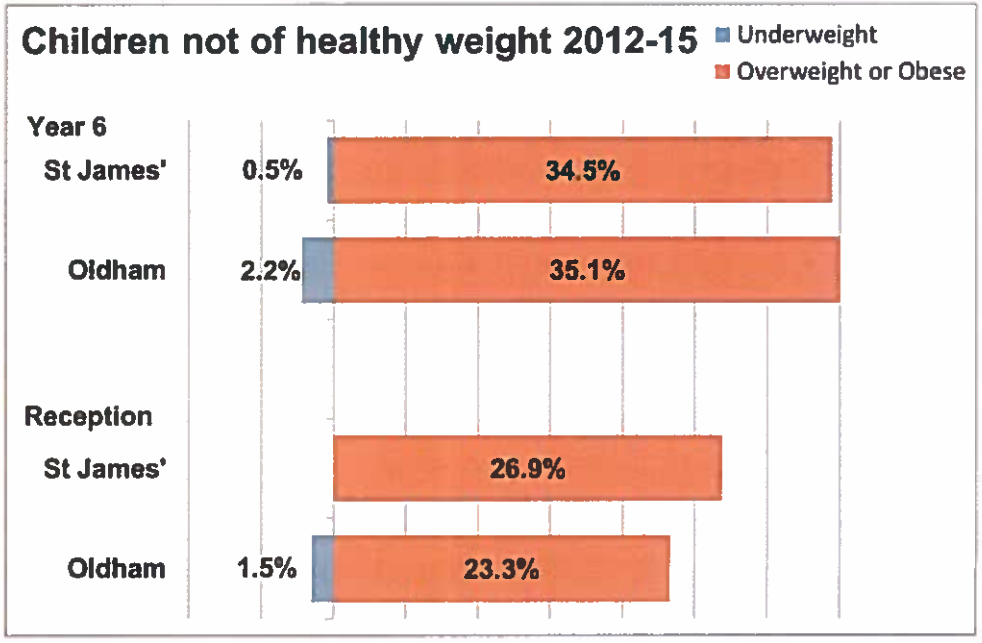
Health in St. James' is broadly in line with Oldham norms, in terms of long term health problems and poor health. Percentage of children underweight is the lowest in Oldham, however, smoking rates (29.2%) are much higher than the Oldham average (24.7%). The proportion of under 75 deaths are slightly above the average. Both male and female life expectancy is the 6th lowest in Oldham, with both below the Oldham average.

Health Behaviours
Pennine Care 2016 / Acorn 2015 / Hospital Episode Statistics 2008-13

	St James'	Oldham
Mothers breastfeeding at 6-8 weeks %	27.9	37.5
Smoking %	29.2	24.7
Hospital stays for alcohol related harm (ratio)	126.9	123.1

Health Outcomes
Hospital Episode Statistics 2008-13 / Public Health England 2008-12

	St James'	Oldham
Emergency hospital admissions -all causes (ratio)	133.6	128.8
Emergency hospital admissions -CHD (ratio)	111.1	129.1
A&E attendances in under 5's (ratio)	527.9	523.9
Under 75 deaths all causes (ratio)	140.5	133.7
Under 75 deaths for cancer (ratio)	134.5	123.7



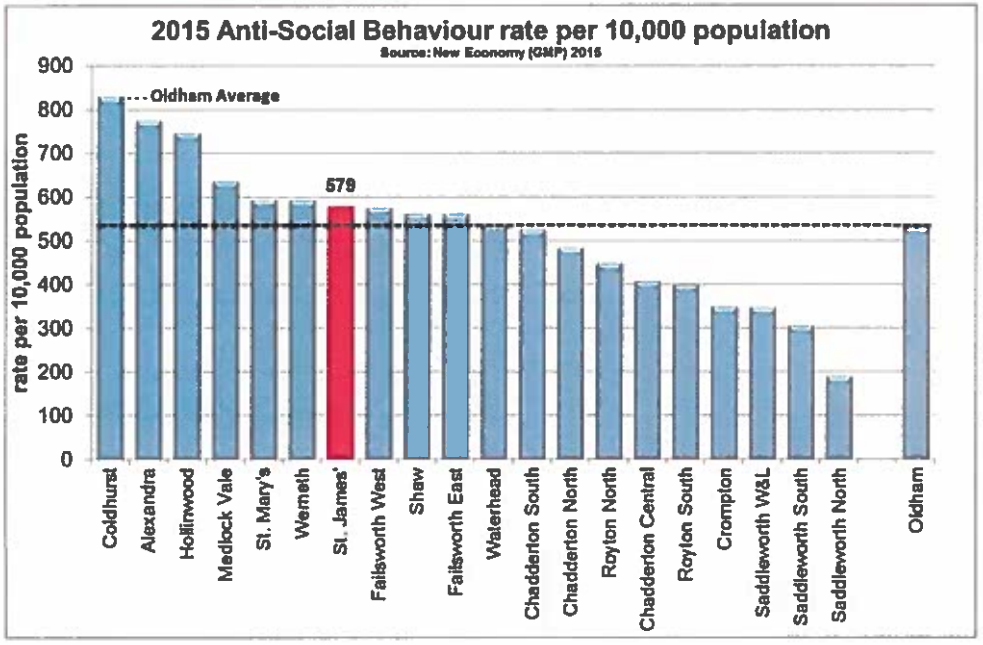
Crime

904 ↑
Total number of crimes
(+10.9% since 2014, Oldham average +19.3%)

45 ↑
Burglary Dwellings
(36.4% since 2014, Oldham average +15.9%)

687 ↓
Anti-Social Behaviour
(-3.8% since 2014, Oldham Average 2.2%)

The crime rate in St. James' increased by over 10% between 2014 and 2015, but remains slightly below the Oldham average. The overall increase in crime is due to increases in Assaults, Vehicle Crimes, ABH and Burglary Dwelling.
St. James' saw a 3.8% decrease in the number Anti-Social Behaviour incidents between 2014 and 2015. However, the ASB rate still remains just above the Oldham average.



Crime statistics (rates per 10,000 population) - Source: GMP

	St James' 2014	St James' 2015	Oldham 2014	Oldham 2015
Theft	109	99	132	130
Burglary Dwelling	28	38	59	68
Burglary other	50	46	53	49
Criminal Damage	148	164	108	143
Assault	96	108	61	81
Vehicle Crime	55	76	88	102
Actual Bodily Harm	66	79	58	71
Total crime	704	762	684	802

Top 5 crimes 2015 - St James'

Criminal Damage	194
Affray/Common Assault	128
Theft	118
Violence without injury	99
Actually bodily harm	94

Co-operation and Community

62%

Satisfaction with local area
(Oldham average = 71%)

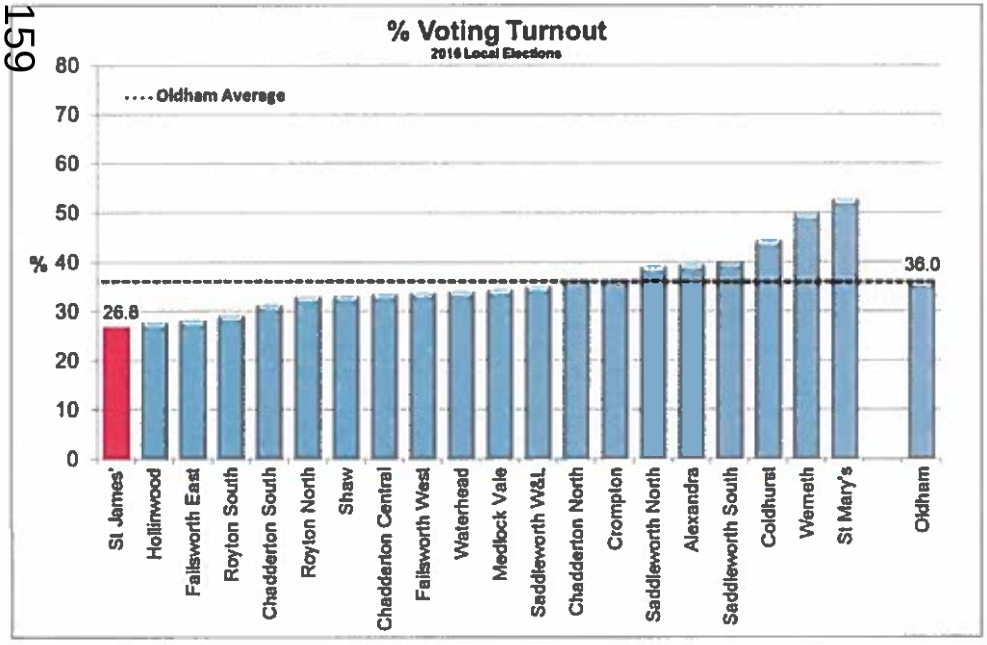
26.8%

% Turnout
(Oldham average = 36.0%)

33%

% Volunteered in last 12 months
(Oldham average = 38%)

Turnout levels for the 2016 local elections in St. James' (26.8%) were the lowest across the borough and well below the average.
Perceptions of community involvement, volunteering levels and satisfaction with the local area are all below the Oldham averages.



Co-operation and cohesion :You and Your Community Survey 2013		
	St James'%	Oldham %
Satisfied with local area as place to live	62	71
Dissatisfied with local area as place to live	14	15
Neighbourhood has improved in last two years	9	11
Neighbourhood has got worse in last two years	28	27
Feel very involved/fairly involved in your local community	23	26
Have volunteered in last 12 months	33	38
Neighbourhood is a place where people from different ethnic backgrounds get on well together	24	30

Factors which are important in making somewhere a good place to live?

1. Clean streets 57%
2. Low levels of crime 51%
3. Good access to health services 40%

Source: You and Your Community Survey 2013

Local Intelligence

Later in the year we will release pilot updates to the ward profiles, which will include feedback from local residents, providing a further level of depth to this analysis.

Sources

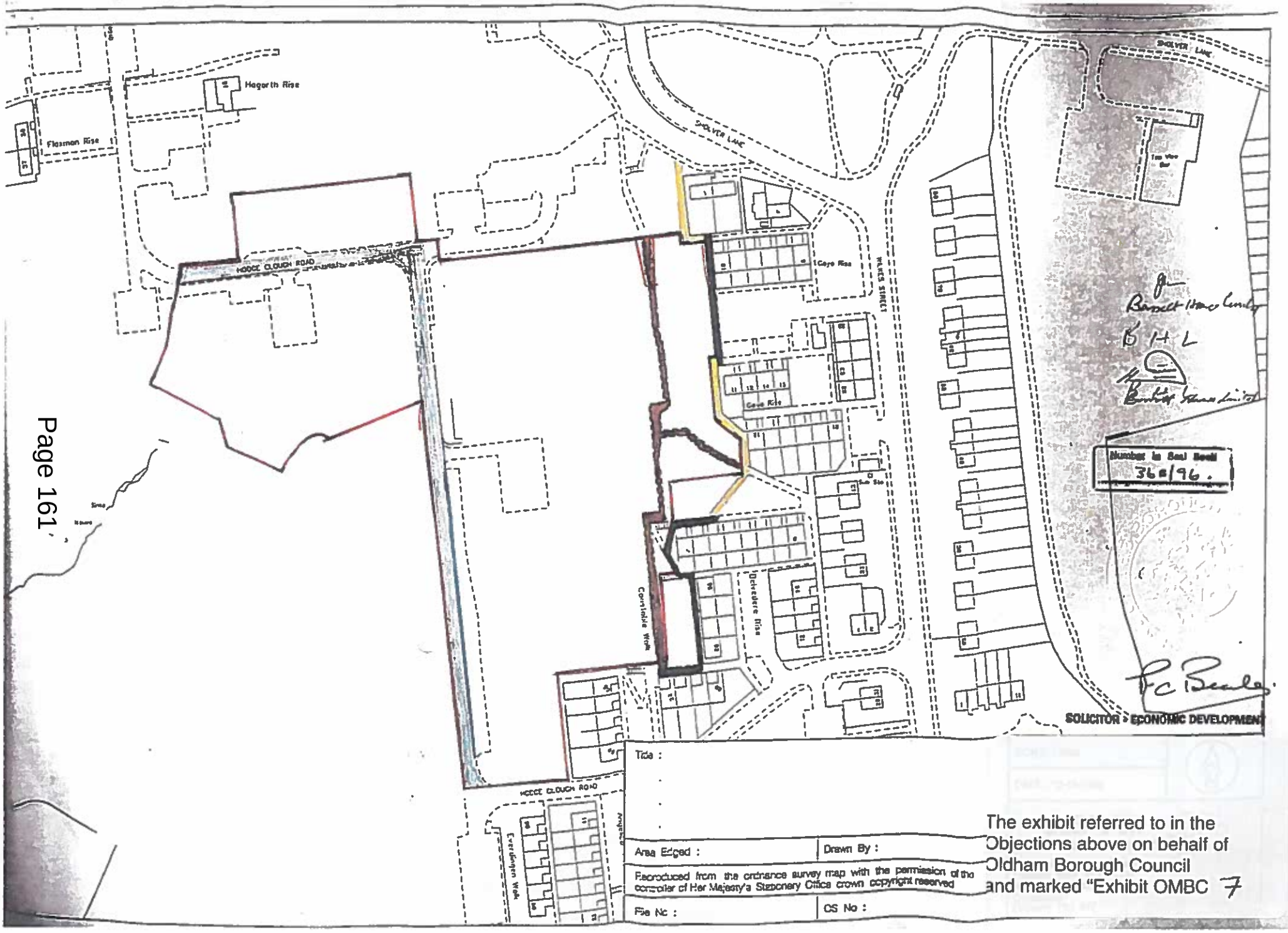
Population:	Office for National Statistics (ONS) Census 2011, Office for National Statistics (ONS) Mid Year estimates 2014.
Economy and Income:	Department for Work and Pensions (DWP) Data 2015, Office for National Statistics (ONS) Census 2011, CACI Paycheck data 2016.
Housing:	Office of National Statistics (ONS) Census 2011, Land Registry 2016, You and Your Community Survey, September 2013, Ipsos MORI, Oldham Council Benefits data 2016, Department for Energy and Climate Change (DECC) 2013.
Household Composition:	HM Revenue and Customs 2015, Office for National Statistics (ONS) Census 2011.
Education:	Department for Education (DfE) 2014/15, Office for National Statistics (ONS) Census 2011, Positive Steps 2016.
Health:	Office for National Statistics (ONS) 2008-12, Acorn 2015, Public Health England 2008-12, Hospital Episodes 2008-13, Pennine Care 2016, NCMP 2012-15.
Crime:	New Economy (GMP) 2015
Cooperation and Community:	You and Your Community Survey, September 2013, Ipsos MORI, Oldham Council Elections Data 2016

Further Information

For further information on the 2016 Ward Profiles, please contact the Business Intelligence Service on: business.intelligence@oldham.gov.uk

To download the full dataset used for the 2016 ward profiles please use the link below and click on ward profile data. Each individual profile can also be downloaded from the neighbourhood pages.

Research and statistics about Oldham



The exhibit referred to in the Objections above on behalf of Oldham Borough Council and marked "Exhibit OMBC 7

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1. Objector

2. John Ogden

3. 1st Statement

4. Dated: 6th November 2018

IN THE MATTER OF AN APPLICATION TO

REGISTER A TOWN OR VILLAGE GREEN

B E T W E E N:

MR FRED WILKINSON

Applicant

and

OLDHAM METROPOLITAN BOROUGH COUNCIL

Objector

WITNESS STATEMENT OF JOHN OGDEN

I John Ogden state as follows:

1. I confirm that the facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.

2. I have been employed by Oldham Council for 31 years and during that time have worked in the Parks and Environmental Services Department. I started at the Council has a gardener over 30 years ago working on maintaining grounds throughout the borough, during my years' service I have progressed into my current role of Area Operations Supervisor based at Alexandra Park based at Alexandra Park. My current area to Supervise is Oldham East Royton and Shaw Districts helping my Manager maintain Parks and open spaces for the past 10 years I have helped manage the site above within my area.

3. Exhibit 'JO1' shows the land subject to the Village Green Application. I confirm that the land has been maintained and mowed by Oldham Council for a number of years prior to 10 years, as above worked within the area of Oldham East Moorside Sholver.

I believe that the facts stated in this witness statement are true.

Signed .....

JOHN OGDEN

Date ....5th November 2018.

ENVIRONMENTAL SERVICES.

J. B.

Oldham Council

3/5 SET Mowing Route Lees / Saddleworth and Oldham East area.

WEEK ENDING 03/08/2018

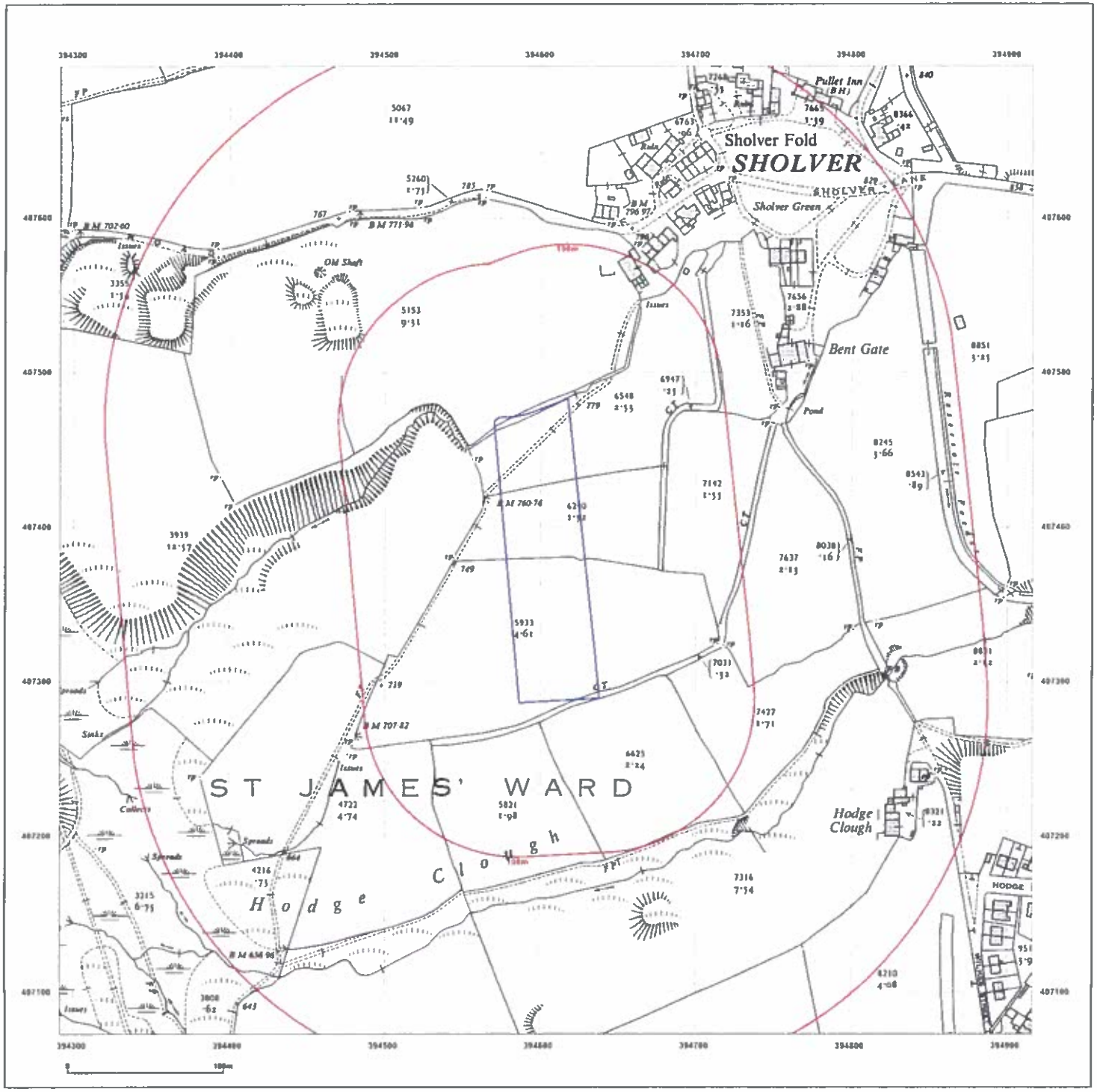
		CHECK AREA FIRST.	NOTE ANY POTHOLES OR OBSTACLES.	MOW	LITTERPICK	AD – HOC WORK	ESTATE WORK	RE-ENSTATE.	SPRAYING.	SEED.	OTHER PLEASE SPECIF	DATE.
1.	Mills rec football lees			✓	✓							23/7/18
2.	Lees park			✓	✓							
3.	Springhead football			✓	✓							
4.	Ashfield crescent			✓	✓							
5.	Cooper street school			N/A	—							—
6.	Stoneleigh quarry			✓	✓							
7.	Grotton Kilns			✓	✓							
8.	Shaw street school			N/A	—						—	
9.	Ladd hill park			✓	✓							30/7/18
10.	Churchill fields (weekly)			✓	✓							" "
11.	King George Fields			✓	✓							" "
12.	Diggle school			N/A		—					—	
13.	Denshaw school			✓	✓							30/7/18
14.	Dobcross School			✓	✓							" "
15.	Dawson fields			✓	✓							" "
16.	Whitehall Lane			✓	✓							" "
17.	Verne Drive			✓	✓							31/7/18
18.	Swift road sholver			✓	✓							" "
19.	St Thomas school			✓	✓							" "
20.	Sholver Youth Centre			✓	✓							" "
21.	Sholver green open space			✓	✓							" "
22.	Pearly Bank			✓	✓							" "
23.	Hodge clough road			✓	✓							1/8/18
24.	Waterhead park			✓	✓							" "

		CHECK AREA FIRST.	NOTE ANY POTHOLES OR OBSTACLES.	MOW	LITTERPICK	AD – HOC WORK	ESTATE WORK	RE-ENSTATE.	SPRAYING.	SEED.	OTHER PLEASE SPECIFY	DATE.
25.	Littlemoor school			✓	✓							24/7/18
26.	Greenacres cem			✓	✓							" "
27.	St Annes school			✓	✓							" "
28.	Cow lane / heap st			✓	✓							" "
29.	St James church			✓	✓							26/7/18
30.	Stoneleigh park			✓	✓							" "
31.	Mayfield school			✓	✓							2/8/18
32.	Sacred heart school			NA	—							—
33.	Horton mill school			✓	✓							" "
34.	ALEXANDRA PARK			✓	✓							27/7/18
35.	DENSHAW VILLAGE HALL			✓	✓							30/7/18
36.	KINGS RD			✓	✓							2/8/18
37.												
38.												
39.												
40.												
41.												
42.												
43.												
44.												
45.												
46.												
47.												

Comments: ON QUAD 25TH WED 3 G PIECES

Signed. [signature] Signed (manager) 2/8/18.

Historic Maps



emapsite™

Site Details:

Sholver, Oldham,Land of Hodge
Clough Road,Oldham,OL1 4QA

Client Ref: EMS_443253_594119
Report Ref: EMS-443253_594119
Grid Ref: 394605, 407385

Map Name: National Grid
Map date: 1952
Scale: 1:2,500
Printed at: 1:2,500

N
W E
S

Surveyed 1952
Revised 1952
Edition N/A
Copyright N/A
Levelled 1929

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Production date: 05 October 2017

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Site Details:

Sholver, Oldham,Land of Hodge
Clough Road,Oldham,OL1 4QA

Client Ref: EMS_443253_594119
Report Ref: EMS-443253_594119
Grid Ref: 394605, 407385

Map Name: National Grid

Map date: 1973

Scale: 1:1,250

Printed at: 1:2,000

N
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Surveyed 1972
Revised 1972
Edition N/A
Copyright 1973
Levelled 1958

Surveyed 1972
Revised 1972
Edition N/A
Copyright 1973
Levelled 1958

Surveyed 1972
Revised 1972
Edition N/A
Copyright 1973
Levelled 1958

Surveyed 1972
Revised 1972
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Levelled 1958

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Site Details:

Sholver, Oldham,Land of Hodge Clough Road,Oldham,OL1 4QA

Client Ref: EMS_443253_594119
Report Ref: EMS-443253_594119
Grid Ref: 394605, 407385

Map Name: National Grid
Map date: 1980
Scale: 1:1,250
Printed at: 1:2,000

N
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S

Surveyed N/A
Revised N/A
Edition N/A
Copyright 1980
Levelled 1958

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Site Details:

Sholver, Oldham,Land of Hodge Clough Road,Oldham,OL1 4QA

Client Ref: EMS_443253_594119
Report Ref: EMS-443253_594119
Grid Ref: 394605, 407385

Map Name: National Grid
Map date: 1987-1992
Scale: 1:1,250
Printed at: 1:2,000

N
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Surveyed 1992
Revised N/A
Edition N/A
Copyright 1992
Levelled N/A

Surveyed N/A
Revised N/A
Edition N/A
Copyright 1987
Levelled 1958

Surveyed 1992
Revised N/A
Edition N/A
Copyright 1992
Levelled N/A

Surveyed 1992
Revised N/A
Edition N/A
Copyright 1992
Levelled N/A

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Production date: 05 October 2017

To view map legend click here *Legend*

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Site Details:

Sholver, Oldham,Land of Hodge
Clough Road,Oldham,OL1 4QA

Client Ref: EMS_443253_594119
Report Ref: EMS-443253_594119
Grid Ref: 394605, 407385

Map Name: National Grid

Map date: 1992-1994

Scale: 1:1,250

Printed at: 1:2,000

N
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Surveyed 1992
Revised N/A
Edition N/A
Copyright 1992
Levelled N/A

Surveyed 1994
Revised N/A
Edition N/A
Copyright 1994
Levelled N/A

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Production date: 05 October 2017

To view map legend click here *Legend*

Section 106 agreement dated 6 June 1995

THIS PLANNING OBLIGATION is made the 6th day of June BETWEEN (1) THE OLDHAM BOROUGH COUNCIL of the Civic Centre PO Box 33 West Street Oldham OL1 1UL (hereinafter referred to as "the Council") (2) LOVELL PARTNERSHIPS (NORTHERN) LIMITED of Marsham House Gerrards Cross Buckinghamshire (hereinafter referred to as "the Developer") WHEREAS

1. THE Developer is the freehold owner of the Land

2. THE Council is the local planning authority for the purpose of the Town and Country Planning Act 1990 (hereinafter referred to as "the Act") for the area within which the Land is situated

3. THE Developer has by written application dated the 14th November 1994 and bearing the Council's reference number 32460/94 applied for permission to develop the Land in the manner and for the uses set out in the plans specifications and particulars comprising the said application

4. The Council is satisfied that subject to the provisions of this Planning Obligation the development disclosed by the said application is such as may be approved by them under the Act and other Acts and Regulations appertaining thereto and accordingly have issued a notice of planning permission of even date (hereinafter referred to as the 'Planning Permission')

5. The Council and the Developer have agreed to enter into this Planning Obligation with the intention that the obligations contained in this Planning Obligation may be enforced by the Council against the Developer or any person or persons deriving title from him

NOW IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Preliminary

1. Definitions and interpretation

In this agreement:

1.1 "The Land" means the land described in the first schedule

1.2 "Plans" means the layout plans elevations sections landscaping schemes and other drawings and specifications describing the Developer

proposals for the development of the Land and such engineering and other calculations and such other documents relating to the Works as have been approved by the Estates Surveyor

1.3 "Dwelling House" means a dwelling or dwellings and shall include any garage outbuildings car parking area and garden land and any other land or structure appurtenant to it

1.4 "the Site Highways" means the roads footways and footpaths with the verges street-lighting landscaped areas and other things appurtenant which it is intended shall become highways maintainable at the public expense and which form part of the Works

1.5 "the Works" means the works proposed to be carried out on the Land details of which are set out or referred to in the second schedule

1.6 "the Completion Date" means 3 years from the date hereof subject to the provisions of Clause 7 hereof

1.7 "the Estates Surveyor" means the Director of Economic Development of the Council for the time being or such other officer of the Council as the Council may appoint from time to time

1.8 "the Site Plan" means the plan annexed to this Agreement

1.9 "Planning Permission" means detailed planning permission under Number 32460/94 for the carrying out of such of the Works as constitute development within the meaning of the Town and Country Planning Act 1990 Section 55

1.10 "the Properties" means the existing properties surrounded by the Land

1.11 "the Developers Solicitors" means Messrs Glaisyers Glickman of 6th Floor Arkwright House Parsonage Gardens Manchester M3 2LE

1.12 Words importing one gender shall be construed as importing any other gender

1.13 Words importing the singular shall be construed as importing the plural and vice versa

1.14 Where any party comprises more than one person the obligations and liabilities of that party under this agreement shall be joint and several obligations and liabilities of those persons

1.15 The clause and paragraph headings in the body of this agreement and in the schedules do not form part of this agreement and shall not be taken into account in its construction or interpretation

1.16 Reference to a statute or a provision of a statute include any provision of a statute amending consolidating or replacing it for the time being in force

1.17 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to permit or allow infringement of the restriction

1.18 References to this agreement shall include the schedules to this agreement

1.19 Any reference to a clause or schedule shall be to a clause or schedule of this agreement

2. THIS Planning Obligation is made in pursuance of Section 106 of the Act and the covenants herein contained by the Developer shall be covenants which shall be enforceable by the Council against the Developer and all persons deriving title by through or under the Developer

3. THAT the Land shall be permanently subject to the conditions restrictions and provisions regulating the development and use thereof contained in this Planning Obligation

4. The covenants on the part of the Developer contained in this Planning Obligation shall not be enforceable against individual purchasers or lessees of dwelling units forming part of the Works or against statutory undertakers in relation to any parts of the Land acquired by them for electricity sub-stations gas governor stations or pumping stations

5.1 The Developer shall develop the land in accordance with the Planning Permission and this Planning Obligation and shall not use the land for any other purpose or development

5.2 The Developer shall within 3 months from the date of this Planning Obligation commence the Works in accordance with the Planning Permission and within 1 month of necessitating the same submit any alterations to the Estate Surveyor for approval

5.3 The Developer shall within 9 months from the date of this Planning Obligation submit for written approval to the Director of Technical Services for the time being to the Council plans of a detailed Highways and Drainage Scheme in connection with the Works

5.4 Within 12 months of the commencement of the Works or as soon as possible thereafter to the satisfaction of the Director of Technical Services for the time being to the Council both to enter into an Agreement with the Council (under the Provisions of Section 38 of the Highways Act 1980) providing for the construction and adoption of such roads and footpaths as are comprised in the Works and at the same time to enter into an Agreement with the Council or other relevant Statutory Undertaking as appropriate (under the Provisions of Section 104 of the Water Industry Act 1991) - in respect of all main sewers as are comprised in the Works Such Agreements are to be supported by Bonds for such amounts as the Council may in its absolute discretion require given by a suitable financial institution

5.5 To carry out the Works at his exclusive expense and in accordance with the Plans and Planning Permission in a good and workmanlike manner to the reasonable satisfaction of the Council and with all practical speed so that the Works shall be completed by the Completion Date

5.6 In carrying out the Works to use sound materials and to take down and remove any work or materials which shall not be in accordance with statute building regulations or the Plans or Planning Obligation of

which shall not otherwise have been carried out in accordance with this agreement within 14 days of service by the Council of notice to do so

5.7 To keep the Site Highways main sewers play recreation and landscaped areas forming part of the Works in good repair and in a clean and tidy condition to the reasonable satisfaction of the Estates Surveyor until the same shall be adopted by the local authority or other body or some other arrangement is made to the reasonable satisfaction of the Council for the future repair maintenance and use of them until adoption

5.8 To observe and use all reasonable endeavours to ensure that its employees and sub-contractors and suppliers observe the reasonable directions from time to time given by the Estates Surveyor for gaining access to the Land

5.9 Not to erect or build or permit to be erected or built on the Land any temporary structures or advertising signs save such as may be authorised in writing to the Estates Surveyor (such authority not to be unreasonably withheld or delayed)

5.10 Until the completion of the Works to keep and maintain the Land (or the parts of it for the time being remaining unsold) in a neat and tidy condition and to prevent so far as may be reasonably practicable any matters or things which may be unnecessarily unsightly or offensive visually or otherwise and to maintain all completed but unsold Dwelling Houses in repair and good marketable condition

5.11 Not to name any of its Site Highways or give any name to the Works as a whole or any part of them without the prior written approval of the Council to the name or names

5.12 Not to deposit on the Land or make up or manufacture on it any building or other materials or goods except those required for the Works and as soon as the Works are completed to remove immediately from the Land all surplus building and other materials and rubbish

5.13 In carrying out the Works to do all acts and things required by and to perform the building work in conformity in all respects with the provisions of all statutes applicable and any orders or regulations made under them and the byelaws or regulations of any statutory undertakers public utilities and other such bodies and to pay all proper fees charges fines penalties and other payments whatsoever which during the progress of the Development may become payable or be demanded by such undertakers utilities or other such bodies in respect of the Works

5.14 To indemnify and keep indemnified the Council from and against all claims demands and liabilities however arising in respect of the materials and workmanship used by the Developer in the Works or any part of them

5.15 To indemnify the Council (notwithstanding any supervision or approval of the Council or any person acting on behalf of the Council) against any liability loss claim or proceeding in respect of any injury or damage whatsoever to any person or to any property real or personal in so far as such injury or damage arises out of or in the course of or by reason of the negligent execution of the Works

5.16 That it is entered on the register maintained by the National House Building Council ("the NHBC") and that every dwelling House built by it on the Land will be built so as to comply with the requirements of the NHBC

6.1 The Council its Estates Surveyor and other authorised persons may enter upon the Land to view the state and progress of the Works and to inspect and test the materials and workmanship and for any other reasonable purpose including the exercise of the powers given to the Council by this Planning Obligation under the Act upon breach by the Developer of any requirement of this Planning Obligation

6.2 The Council shall not be under any liability whatsoever in respect of any defect in the design of the Works by reason of having approved the Plans or otherwise

6.3 Any information given to the Developer by the Council in this Planning Obligation or otherwise as to the position of sewers wires cables pipes or other conduits within or over the land or any information given as to levels or soil conditions is to the best of the Council's knowledge correct but if given on the understanding that the Council and its servants and agents shall not be liable for any inaccuracies and the Developer is expected to carry out its own surveys and site investigations

6.4 Any notice under the terms of this agreement or by statute required to be served by the parties to this Planning Obligation shall be in writing and shall be sufficiently served by the Council being sent by Recorded Delivery or Registered post to the Developer at its registered office for the time being and by the Developer by being sent by Recorded Delivery or Registered post to the Council at the office address of the Estates Surveyor

6.5 Nothing contained or implied in this Planning Obligation shall prejudice or affect the rights powers duties and obligations of the Council in the exercise of its functions as a local authority and the rights powers duties and obligations of the Council under all public or private statutes byelaws orders and regulations may be as fully and effectually exercised in relation to the Land and the Works

7.1 If delay in commencing or completing any part of the Works shall arise solely from one or more of the following causes

7.1.1 Force Majeure

meaning any event or circumstances (whether arising from natural causes human agency or otherwise) beyond the control of the Developer including fire explosion flood or lightning

7.1.2 Severe weather conditions adverse to building

7.1.3 Outbreak of war civil commotion local combination of workmen scarcity of labour strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation manufacture or transportation of any of the goods or materials required for the Works delay of the Company in complying with its obligations under this Agreement or from any other authority or body needing to give approval to the Works or to provide essential services thereto or by reason of extension variation or alteration made to the Works

7.1.4 Shortage of and consequent delay in obtaining essential materials

7.1.5 Hostilities and acts of the Queen's enemies

7.1.6 Procedures required for obtaining the consents for or appertaining to the construction of the Works and all necessary services

7.1.7 Compliance with all legislations and statutory rules orders regulations or directions

7.1.8 Accidents to the Works for which the Developer is not responsible

7.1.9 Restrictions imposed by Government Local Authority or any statutory or other competent authority

7.1.10 Lack of sales of the Dwelling Houses

7.1.11 Any other matter affecting the progress of the Works which shall be beyond the control of the Developer and would be beyond the control of any developer or any mortgagee or chargee of this Agreement

and as soon as practicable after such delay written notice of the delay and the cause thereof is given to the Council

Then the Council shall in writing allow such extension of time for the completion of such part of the Works as shall be reasonable and proper having regard to the circumstances but such extension shall not in any event exceed the period of such delay and if there shall be any dispute

or difference between the Council and the Developer as to such extension of time then the same shall be referred to an expert as hereinafter provided

8. In consideration of the sum of £29,965.65 paid by the Developer to the Council on the date hereof (the receipt of which the Council hereby acknowledges) the Council will within a reasonable period provide and layout the area of public open space shown edged blue on the plan marked "Public Open Space" annexed hereto

9. NOTHING in this Planning Obligation shall be taken or construed as absolving the Owner from obtaining any other consent or approval required by law

10. IF any difference or dispute arises between the parties hereto touching or concerning their respective rights duties liabilities or obligations under or by virtue of this Planning Obligation the same shall be referred to a member of the Royal Institution of Chartered Surveyors (RICS) to be agreed between the parties or failing agreement upon the request by one party to the other party for arbitration that party may after 21 days of that request by him request that an arbitrator be appointed by the President for the time being of the said RICS or his duly authorised deputy on the application of either party and in this respect such referral shall be construed as a submission to arbitration within the meaning of the Arbitration Acts 1950-1979 or any statutory modification or re-enactment thereof for the time being in force

11. EACH party shall bear and pay any costs which they incur in the preparation and execution of this Planning Obligation

12. THIS Planning Obligation shall be registered by the Council in the Register of Local Land Charges in accordance with S106(11) of the Town and Country Planning Act 1990

FIRST SCHEDULE

The Land

All that plot of land at Sholver in the Borough of Oldham (being 4.03 acres or thereabouts) shown edged red on the Site Plan and being

1. Part of the freehold land registered with Title Absolute at HM Land Registry under Title Number ~~GM620963~~ GM619490

2. Part of the freehold land registered with Title Absolute at HM Land Registry under Title Number GM216307

(But excluding the Properties now erected within the site)

SECOND SCHEDULE

The Works

All site and buildings investigations inspections and surveys and all ground works and preparation construction and landscaping and any and all other works and operations necessary to convert the Land into a residential development of 66 two storey dwellinghouses and bungalows in accordance with the Plans and Planning Permission Number

and of the following types:-

House Type		Number of Units
Kingswood	3 bedroom semi-detached	15
Oakwood	3 bedroom semi-detached	19
Dashwood	3 bedroom Semi detached	12
Harewood	3 bedroom detached	12
Brattan	2 bedroom bungalow	8
		66

IN WITNESS whereof the Council and the Owner have caused their respective Common Seals to be hereunto affixed the day and year first before written

Number in Seal Book
22180/95

THE COMMON SEAL of the)
OLDHAM BOROUGH COUNCIL)
was hereunto affixed)
in the presence of:-)

R. WILLIAMS
PRINCIPAL SOLICITOR

THE COMMON SEAL of)
LOVELL PARTNERSHIPS)
(NORTHERN) LIMITED)
was hereunto affixed)
in the presence of:-)

P. QUALITY

IN SUPPORT OF VILLAGE GREEN STATUS FOR LAND AT HODGE CLOUGH ROAD, LOWER SHOLVER, OLDHAM. (REF. AE/RTG/6). REPLY TO OBJECTIONS BY OLDHAM METROPOLITAN BOROUGH COUNCIL. BY FRED WILLIAMSON THE APPLICANT. (REF.: AE/RTG/6)

10. FRED WILKINSON IS NOT THE APPLICANT. THE APPLICANT IS MR. FRED WILLIAMSON.

11. AS ABOVE. (10.)

12. AS ABOVE. (10.)

13. AS ABOVE. (10.)

14. AS ABOVE. (10.)

15. AS ABOVE. (10.)

17. LETTERS OF OBJECTION ARE JOINTLY SIGNED AS THERE SEEMED TO BE NO POINT IN MULTIPLE LETTERS FROM ONE ADDRESS.

18. ALL LIVE WITNESSES WILL MAKE THEMSELVES AVAILABLE FOR CROSS EXAMINATION.

28. REFER TO THE APPLICATION FOR VILLAGE GREEN STATUS. POINTS i) THRO vi) ARE COVERED.

31. THE ADDRESS IS IN "ST. JAMES WARD". THIS DOES NOT IMPLY THAT EVERYBODY RESIDING IN THE WARD, WOULD WANT TO USE THE "LAND".

49. TWENTY YEARS USE OF THE "LAND". SOME PEOPLE WHO BOUGHT THE HOUSES ON THE ESTATE FROM NEW (MORE THAN TWENTY YEARS AGO) HAVE SINCE SOLD UP AND MOVED ON. NEW PEOPLE NOW OCCUPY THE HOUSES. BUT, BY AND LARGE, PEOPLE HAVE USED THE "LAND" FOR RECREATIONAL PURPOSES FOR OVER TWENTY YEARS.

[redacted] 1-11-2018.

IN SUPPORT OF VILLAGE GREEN STATUS FOR LAND AT HODGE CLOUGH ROAD, LOWER SHOLVER, OLDHAM. (REF. AE/RYG/6). REPLY TO OBJECTIONS BY FIRST CHOICE HOMES OLDHAM.
BY FRED WILLIAMSON THE APPLICANT.

6.1 TRY INSPECTING THE "LAND" BETWEEN THE HOURS OF 16-00 HRS. AND 20-00 HRS. YOU WILL SEE CHILDREN PLAYING AND PEOPLE EXERCISING THEIR DOGS.

10.1 [redacted] F.W.

(c) THIS IS THE ADDRESS OF THE "LAND" FOR REGISTRATION.

(d) THE WRITTEN EVIDENCE IS FROM PEOPLE WHO USE THE "LAND".

(e) THE PETITION WAS SIGNED BY USERS OF THE "LAND". THEY WOULD LIKE IT REGISTERED AS A VILLAGE GREEN, SO KEEPING THE GREEN SPACE FREE FROM HOUSING DEVELOPMENT.

(f) THE ONE PERSON WHO APPEARS TO NO LONGER RESIDE IN THE LOCALITY, DOES LIVE IN MOORSIDE AND USES THE "LAND" ON A REGULAR BASIS.

(g) THE APPLICANT (FRED WILLIAMSON) ALONG WITH HIS WIFE (MARLENE WILLIAMSON) HAS LIVED AT, Nº 40, HODGE CLOUGH ROAD, SINCE MAY 1991.

(h) SAINT JAMES WARD IS THE ADDRESS FOR THE "LAND". THE "LAND" IS USED BY THE RESIDENTS OF BOTTOM SHOLVER AND MOORSIDE AND BY ANYONE WHO WANTS TO USE IT.

(i) BOTTOM SHOLVER, MOORSIDE, OLDHAM, IS AN ADDRESS KNOWN BY LAW. CHECK OBJECTIONS BY O.M.B.C. (THE COUNCIL).

(c) THE LOCALITY IS DEFINED.

(d) IT IS FROM THIS ADDRESS, THAT THE "LOCALITY" OF THE "LAND" CAN BE IDENTIFIED.

(j) F.W. LOWER SHOLVER, MOORSIDE, OLDHAM. IS AN ENTITY.

10.4

(a) THE LAND IS USED - WITHOUT FORCE - WITHOUT STEALTH - WITHOUT LICENCE.

[redacted] F.O.

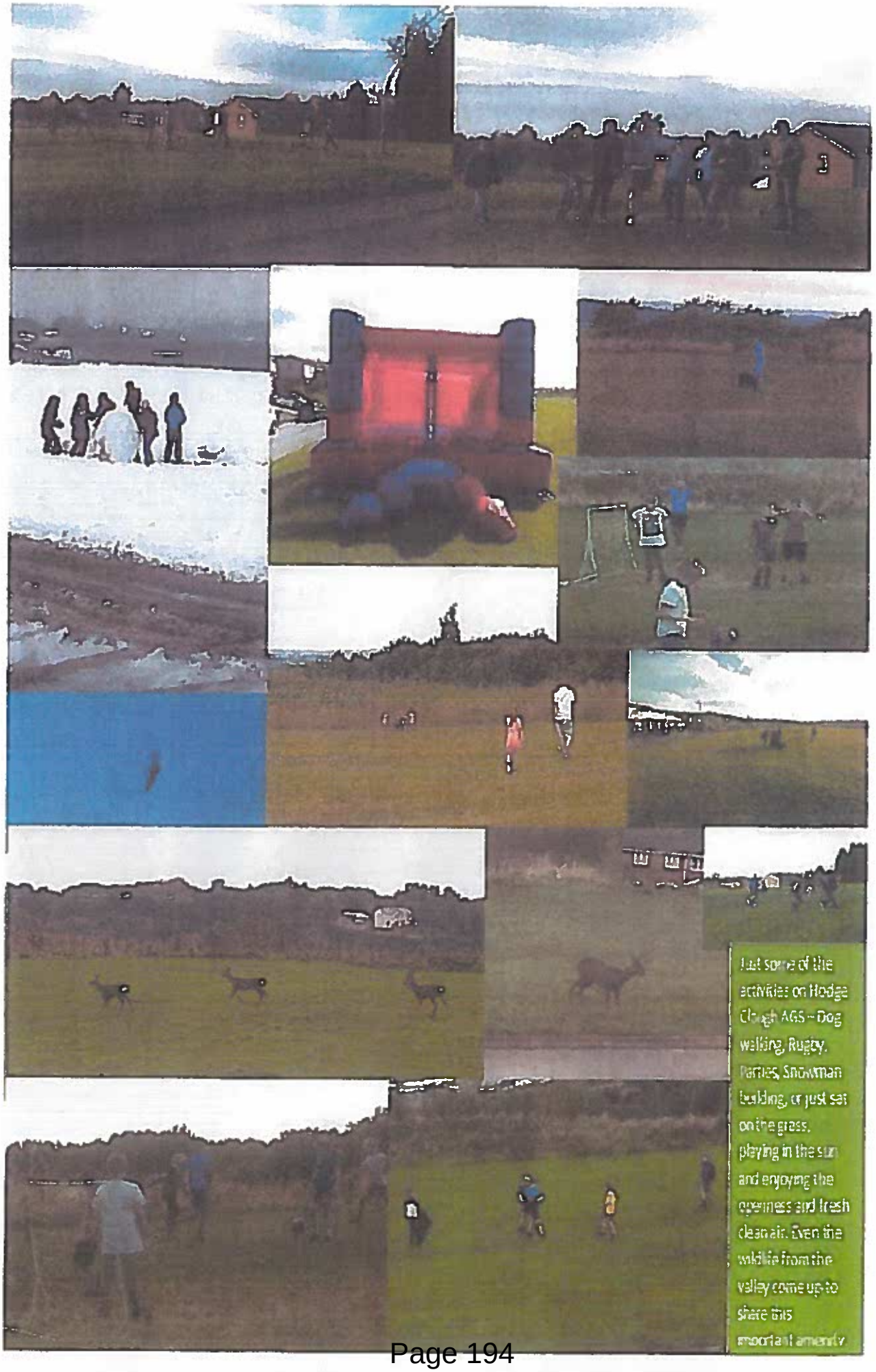
12.2

(a) HOW MANY IS A SIGNIFICANT NUMBER? ALL THE PEOPLE WHO SIGNED THE PETITION WILL AT SOME TIME USE THE "LAND".

(b) THE NEIGHBOURHOOD IS THE PEOPLE WHO LIVE ON THE ESTATE. REFER TO THE PETITION.

(c) THE "CLAIMED LAND" IS USED BY ADULTS AND CHILDREN FROM THE NEIGHBOURHOOD.

[redacted] 1-11-2018



Just some of the activities on Hodge Clough AGS – Dog walking, Rugby, Parties, Snowman building, or just sat on the grass, playing in the sun and enjoying the openness and fresh clean air. Even the wildlife from the valley come up to share this important amenity

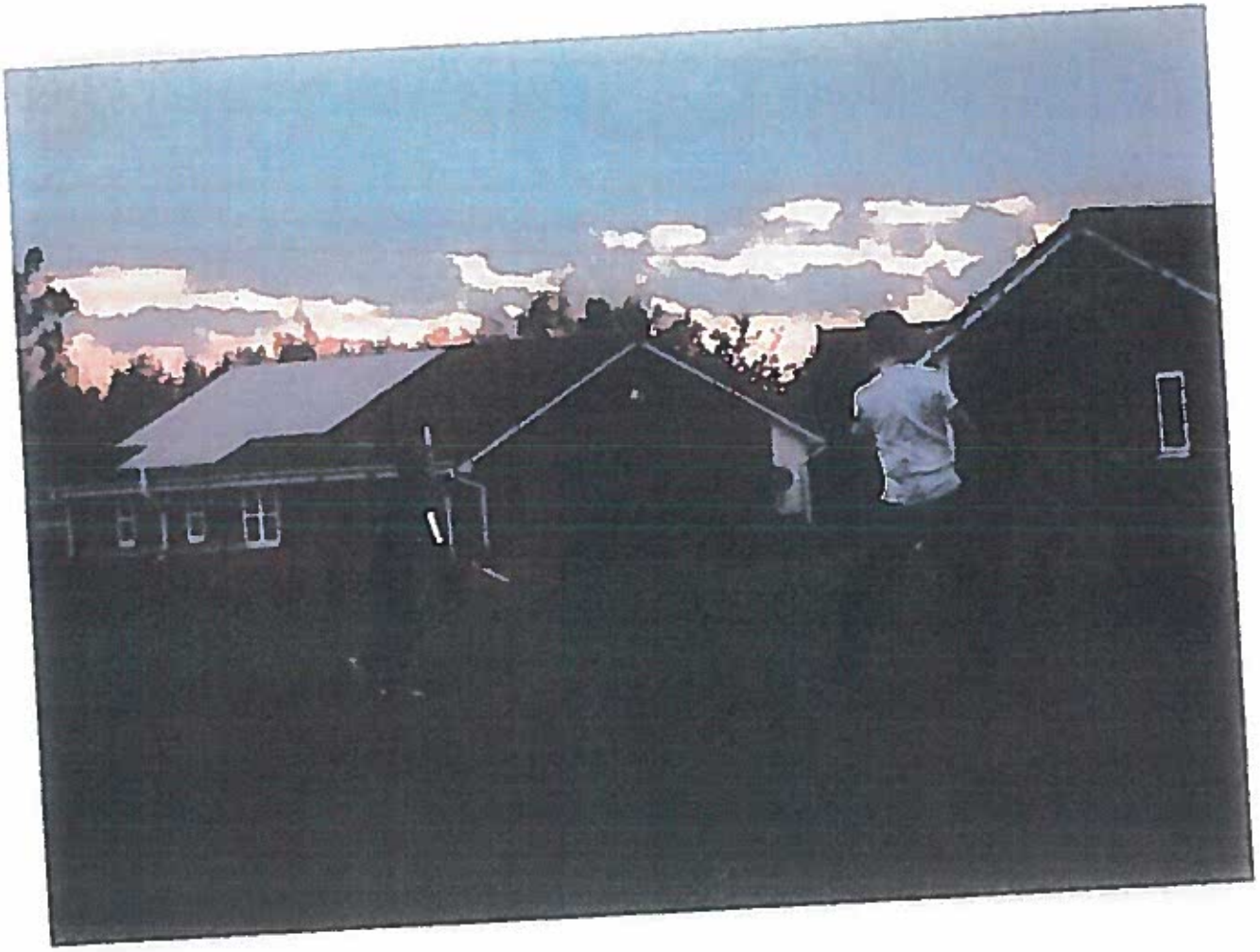
CHILDREN ENJOYING THE OPEN GREEN SPACE ON HODGE CLOUGH ROAD.

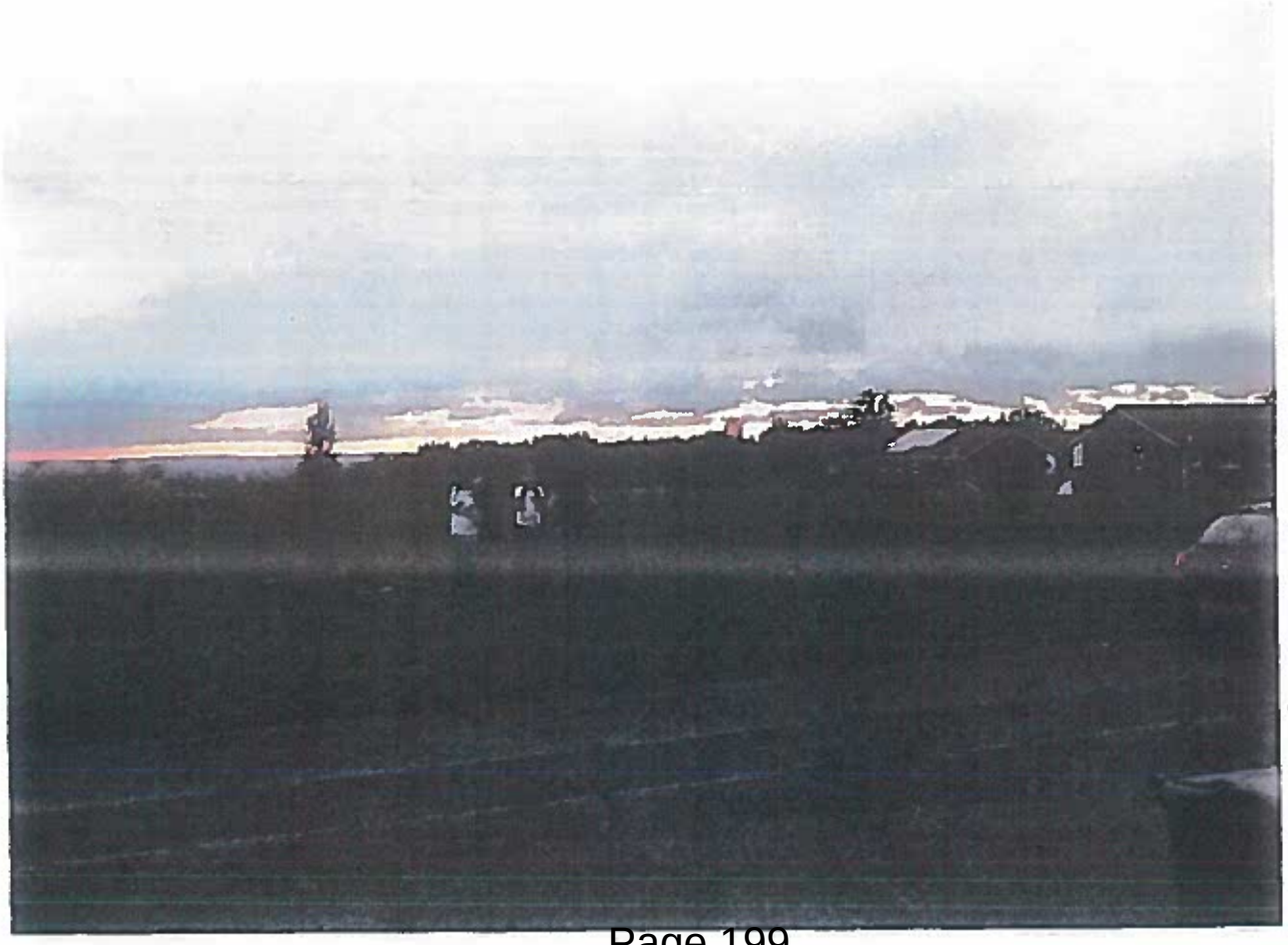
PHOTO EVIDENCE IN SUPPORT OF VILLAGE GREEN STATUS. (RTG/6)

[redacted] 3-1-18.

3

4





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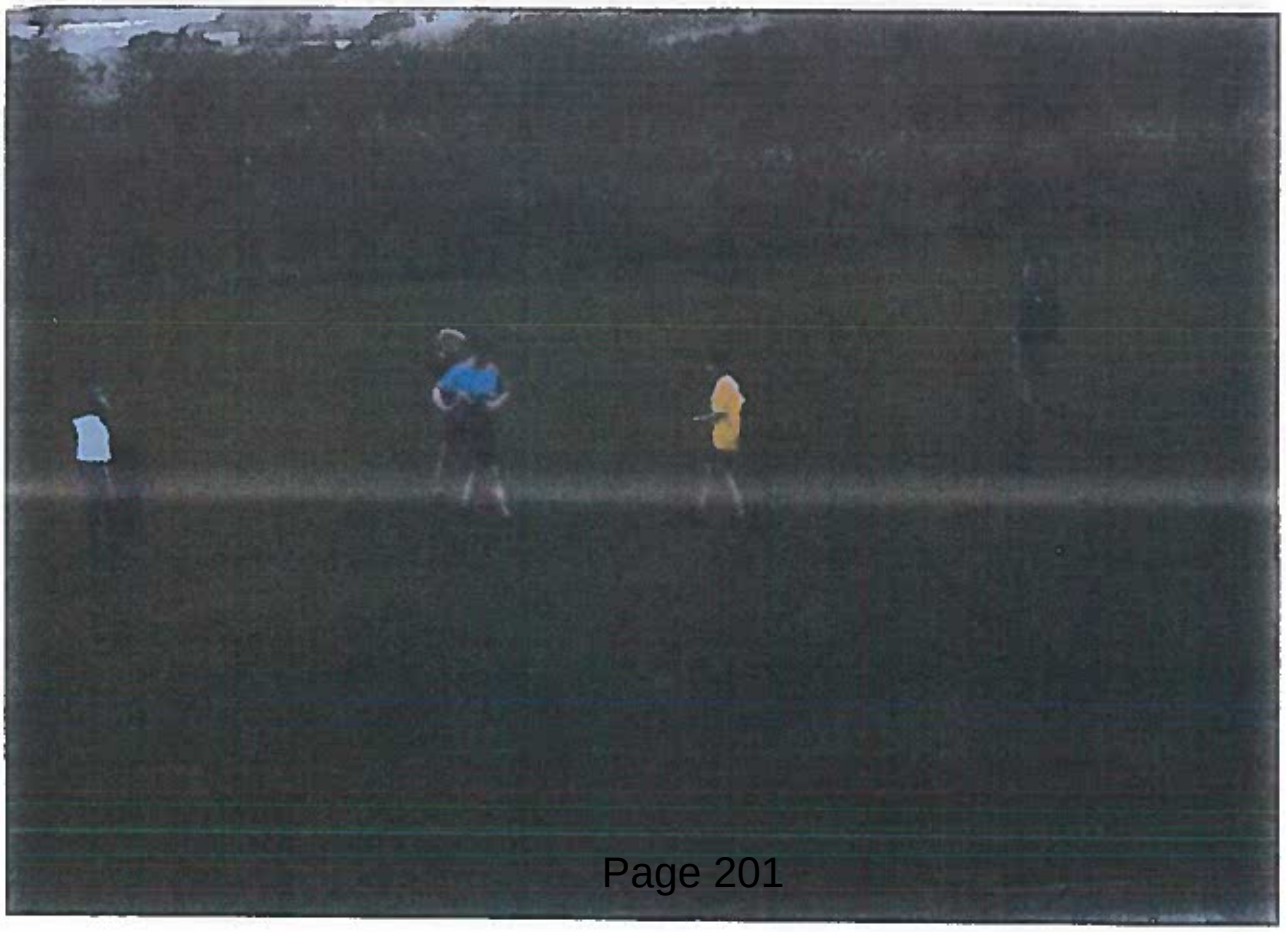
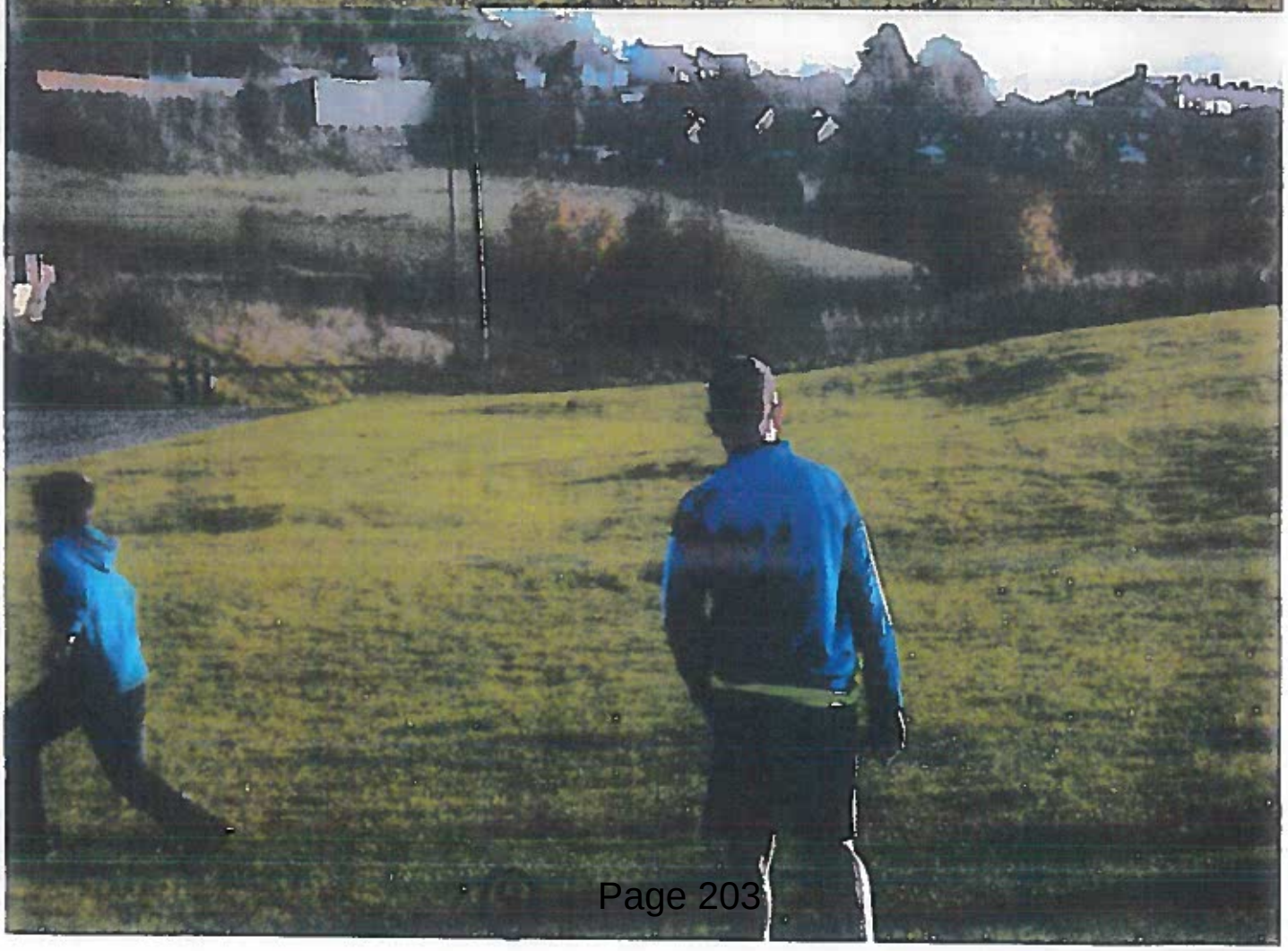
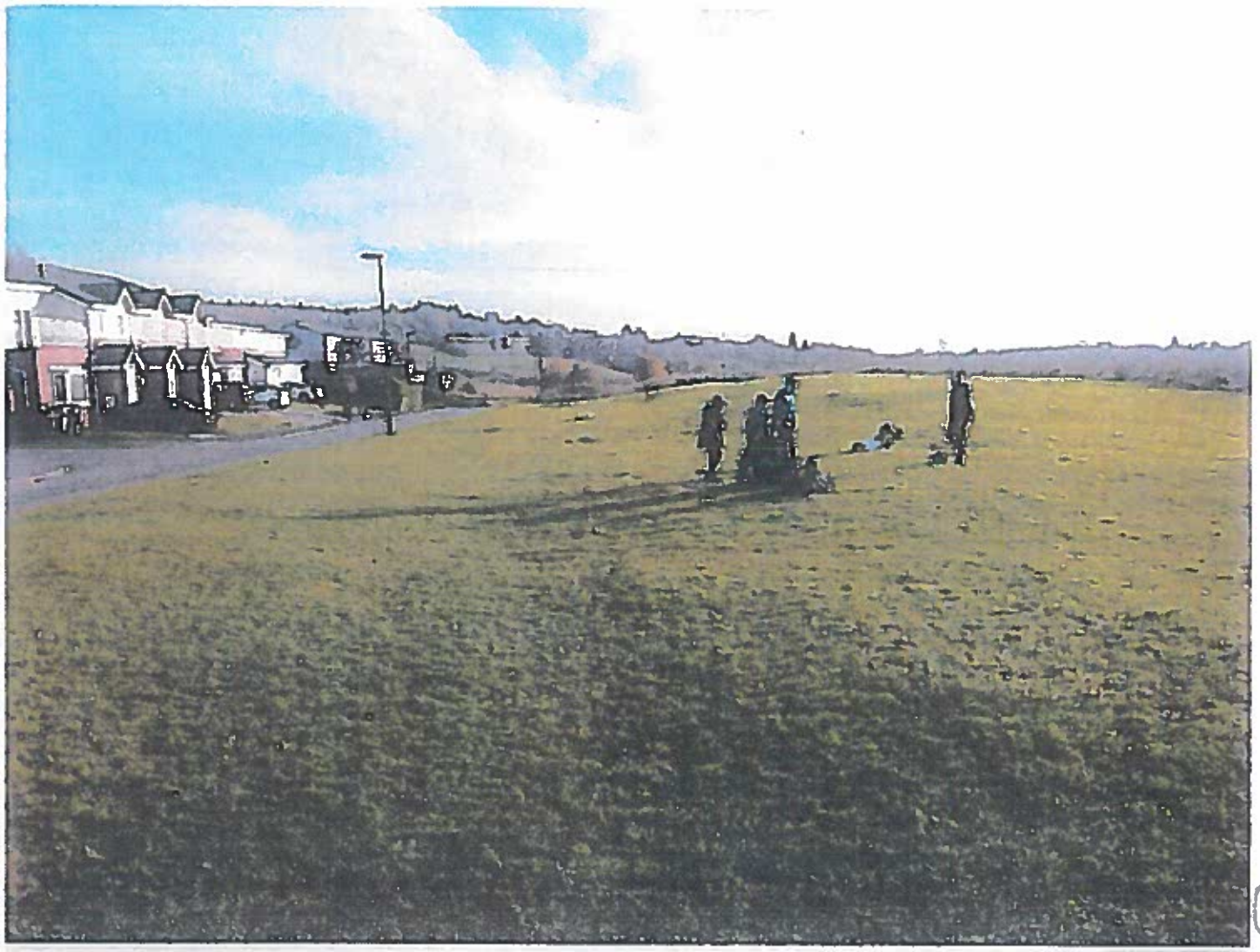


7

(7)





11

12

HODGE CLOUGH

A True Village Green In All But Title

A NIGHTLY FOOTBALL GAME ON HODGE CLOUGH

Tony Martin

THE TEAM CHANGES CONSTANTLY

Tony Martin

ALL ARE WELCOME – BOYS & GIRLS

Tony Martin

THERE'S NO SHORTAGE OF PLAYERS

Tony Martin

SPACE FOR ALL

Tony Martin

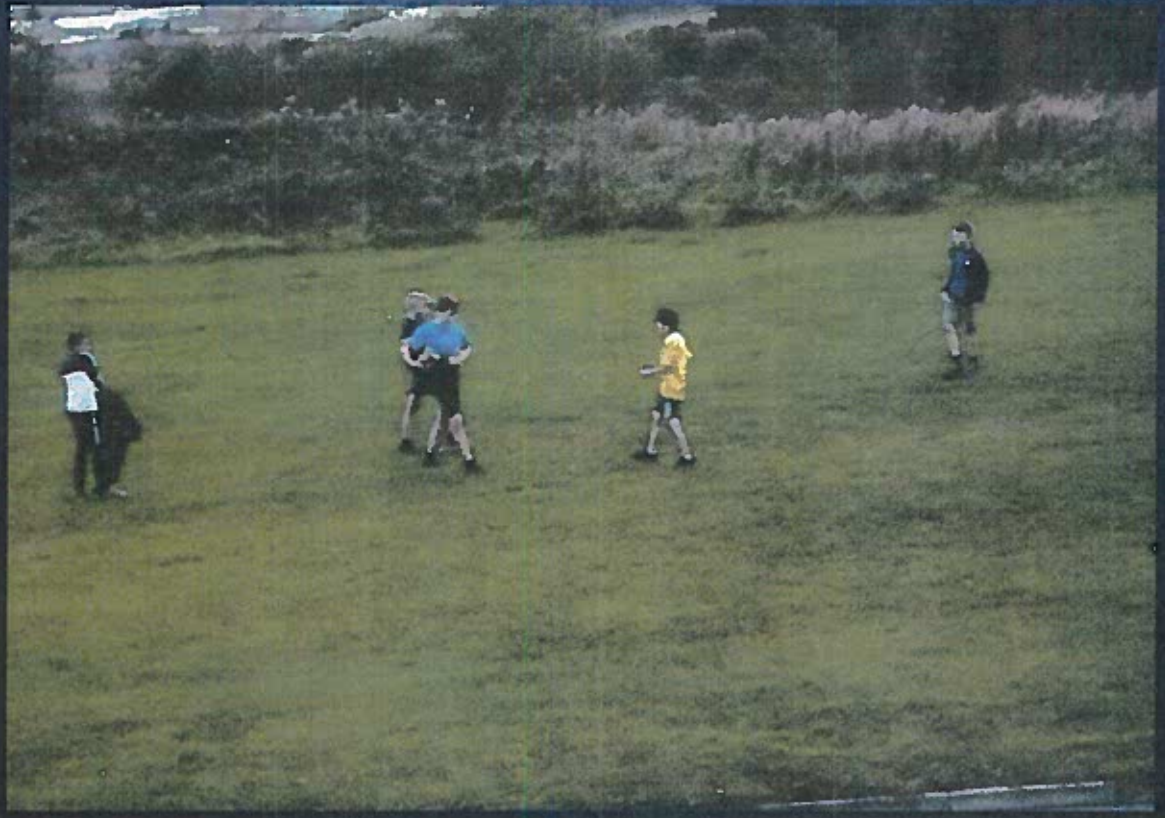
PARENTS AND CHILDREN – ALL HAVE FUN PROMOTES BOTH PHYSICAL & MENTAL WELL-BEING

Tony Martin

DOGS & OWNERS GET EXERCISE

Tony Martin

A GAME OF RUGBY BREAKS OUT



Tony Martin

PARTY TIME

Tony Martin

PLENTY OF SNOW TO BUILD A GIANT SNOWMAN

Tony Martin

EVEN THE WILDLIFE GETS IN ON THE ACT

Tony Martin

SUNSET TO BE ENJOYED BY ALL

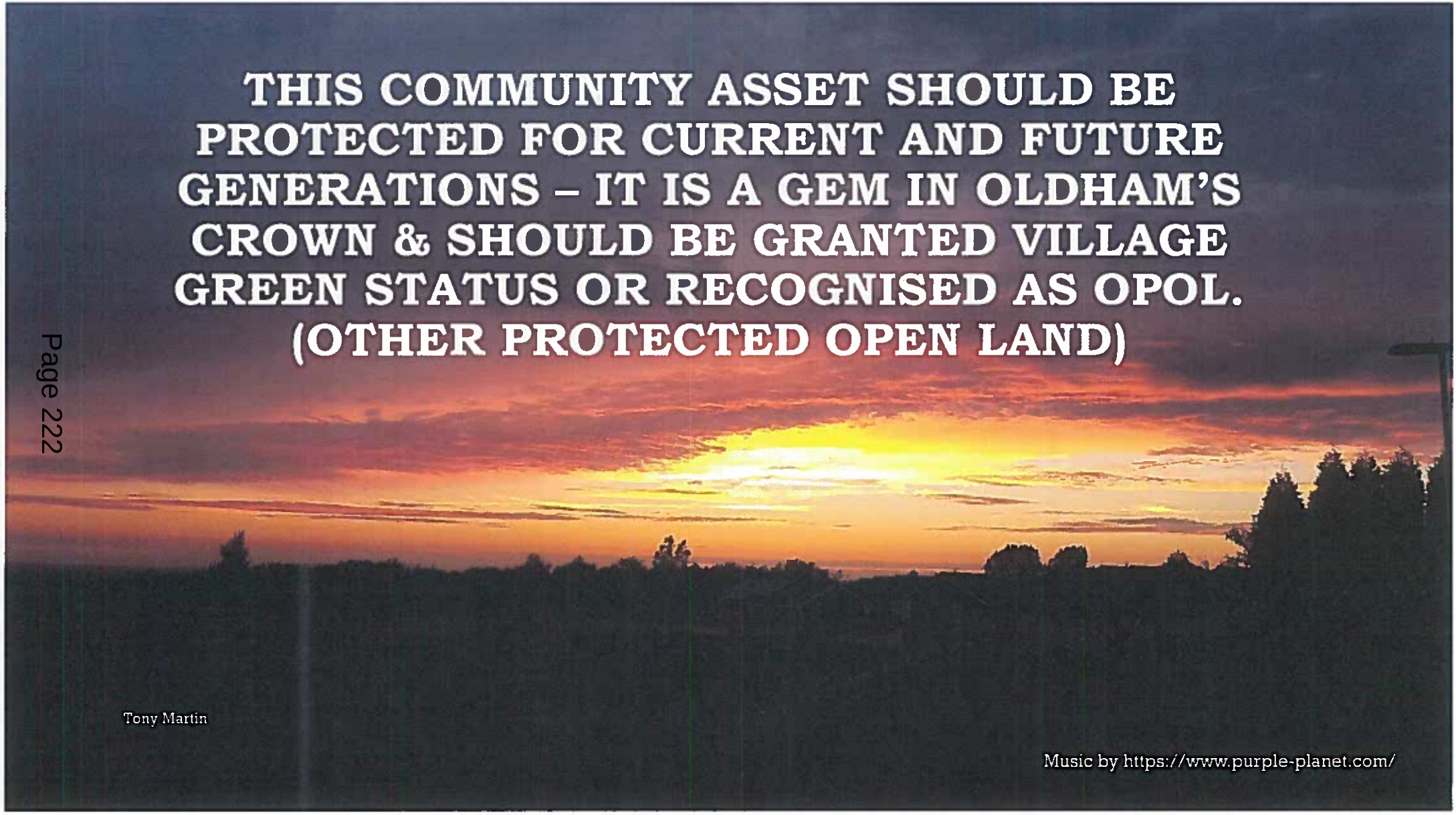
Tony Martin

A DIFFERENT ONE EVERY NIGHT

Tony Martin

THIS AMENITY IS UNDER THREAT FROM DEVELOPERS

Tony Martin


THIS COMMUNITY ASSET SHOULD BE PROTECTED FOR CURRENT AND FUTURE GENERATIONS – IT IS A GEM IN OLDHAM'S CROWN & SHOULD BE GRANTED VILLAGE GREEN STATUS OR RECOGNISED AS OPOL. (OTHER PROTECTED OPEN LAND)
Tony Martin
Music by https://www.purple-planet.com/

APPLICATION FOR REGISTRATION OF LAND AT HODGE CLOUGH ROAD, LOWER SHOLVER, MOORSIDE, OLDHAM AS A TOWN OR VILLAGE GREEN

APPLICATION NUMBER: RTG/6

REPORT

By

Alan Evans

Kings Chambers

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RECOMMENDATION

The Application should be rejected

1. INTRODUCTION

1.1 I am instructed in this case by Oldham Metropolitan Borough Council in its capacity as the registration authority for town or village greens within its administrative area and I will refer to the Council in this capacity as "the Registration Authority". I will use the expression "the Council" when referring to it in any other capacity.

1.2 My instructions are to consider an application, reference number RTG/6, to register land at Hodge Clough Road, Lower Sholver, Moorside, Oldham as a town or village green ("the Application") and to provide a report for the Registration Authority's Commons Registration Committee containing my recommendation on how the Application should be determined.

1.3 If I consider that I cannot report on the Application, and, consequently, that it cannot be determined, without the holding of a non-statutory inquiry, I am instructed to liaise with my Instructing Solicitor so that arrangements can be made for such an inquiry.

1.4 In the event, I consider that I can properly report (with a recommendation) on the Application, as it stands on paper, without the necessity for an inquiry and that it can be determined without one. Hence I report at this stage on the basis of the written material before me.

2. THE APPLICATION

2.1 The Application was made by Mr Fred Williamson of 40 Hodge Clough Road, Lower Sholver, Moorside, Oldham ("the Applicant"). It was stamped as received by the Registration Authority on 27th June 2018.

2.2 The Application seeks to have registered as a town or village green a plot of land at Hodge Clough Road ("the Application Land"). I will describe the Application Land in section 3 below.

2.3 The Application was made on the basis that section 15(2) of the Commons Act 2006 ("the 2006 Act") applies. Section 15(2) *"applies where–*
(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
(b) they continue to do so at the time of the application."

2.4 The locality, or neighbourhood within a locality, in respect of which the Application was made was said to be *"Saint James Ward, Lower Sholver, Moorside, Oldham. OL1 4PW. Hodge Clough Road."*

2.5 The justification for the Application was expressed in the following terms:

"(1) The land has been used for more than twenty years by the residents of Lower Sholver and Moorside for recreational activities: dog walking, football, rugby, cricket, kite flying, drone flying, bonfires (5th November), snowman building, carol singing (Christmas).
(2) The 'Green' is a focal point for our community and a safe place where children can play, close to their homes, and away from traffic.
(3) In January 1996 'Barratt Homes Limited' paid 'Oldham Borough Council' the sum of thirty thousand pounds 'as a contribution towards the cost of providing an area of public open space.' 'Hodge Clough Road'.
(4) The land is used by wildlife: deer, fox, bats."

2.6 The Application was supported by the following material apart from the standard statutory declaration by the Applicant. First, documentary evidence, in the form of a copy of a section 106 agreement of 11th January 1996 between the Council and Barratt Homes Limited, was submitted to substantiate the payment referred to in the previous paragraph. I will call this section 106 agreement "the 1996 Agreement". It related to land at Hodge Clough Road, Oldham and was made in connection with the development of the same. Secondly, two photographs of the Application Land were submitted. These showed a deer on the Application Land. Thirdly, 11 letters/statements from local residents setting out the use of the Application Land were submitted. These spoke of the sort of recreational activities on the Application Land mentioned in the justification for the Application. Fourthly, a petition, containing over 100 signatures, was submitted in support of the grant of village green status for the Application Land. The heading to the petition stated: *"I agree that the field on*

Hodge Clough Rd should be granted village green status for the reasons stated below" and the reasons were then set out. The stated reasons were that *"The green has been used for over 20 years by residents for the following activities: dog walking, bonfire on November 5th, snowman building, drone flying, kite flying, cycling, football, rugby, cricket, golf, frisbe [sic], rounders and children's party activities including bouncy castles. The green is also a communal place where chance meetings of participants of the above activities have forged and developed close neighbourhood ties and friendships. It is the heart, focal point of our community and a safe place where children can play close enough to their homes and away from traffic."*

3. THE APPLICATION LAND

3.1 The Application Land is an open area, broadly rectangular in shape, which lies immediately to the west of that section of Hodge Clough Road which runs in a north-south direction. The rectangle is much longer in a north-south direction than it is wide in a west-east direction. The map of the Application Land accompanying the Application records it as having an area of 9,915m^2 (which equates to 2.45 acres).

3.2 The eastern boundary of the Application Land is formed by the western kerb line of Hodge Clough Road. There is housing development opposite the Application Land on the eastern side of Hodge Clough Road. Housing development on Hodge Clough Road and Dalesman Drive marks the northern boundary of the Application Land. There are no physical boundaries to the southern and western sides of the Application Land where it merges into a further area of open land. Save for the boundary features of the properties to its north, the Application Land is not enclosed in any way and access to it is easy and unobstructed.

3.3 The Application Land is relatively flat, grassed and generally featureless. It is evident that a large part of the Application Land (extending from its northern boundary southwards to a point level with a right angled bend in Hodge Clough Road) is regularly maintained by mowing the grass. However, there are also unmaintained areas in the south of the Application Land and along its western boundary. These areas are indistinguishable from the adjoining open land.

3.4 The Application Land is owned by the Council. It forms part of two registered title numbers, LA43936 and LA88157, each registered title relating not just to the Application

Land but also to a wider area of land. The different title numbers reflect the fact that the two land acquisitions which include what is now the Application Land occurred at different points in time. The area of land with title number LA43936 was acquired by the Council's statutory predecessor on 19th May 1964 and the area of land with title number LA88157 was acquired by the Council's statutory predecessor on 29th June 1966.

4. THE OBJECTIONS TO THE APPLICATION

4.1 The Application produced two objections following its notification and publication by the Registration Authority. The first, submitted to the Registration Authority under cover of a letter dated 14th September 2018, was from First Choice Homes Oldham Limited ("First Choice"). The second, submitted to the Registration Authority under cover of a letter dated 21st September 2018, was from the Council in its capacity as the owner of the Application Land.

4.2 First Choice is a provider of social housing and, according to the Application, is considering the Application Land for housing development. First Choice objected to the Application on several grounds which may be summarised as follows:

- The Application had not made clear what qualifying area was being relied on; Lower Sholver or Moorside were not localities and it had not been shown that they were neighbourhoods; the same applied to Hodge Clough Road.
- If the qualifying locality was St James' Ward, it had not been demonstrated that use of the Application Land had been by a significant number of the inhabitants of the ward.
- Use of the Application Land had not been *"as of right"* but *"by right"* by the licence of the Council and/or the Application Land was public open space.
- It had not been demonstrated that there had been use of the Application Land for the whole of the necessary 20 year qualifying period.

4.3 First Choice's objection was accompanied by a witness statement exhibiting the relevant official copies of the Land Registry's register of title, various photographs of the Application Land and a plan of it.

4.4 The Council also objected to the Application on a number of grounds. Before turning to these, there are a number of evidential matters which arise from the Council's objection and the evidence it has submitted.

4.5 The first matter relates to general background evidence in relation to Lower Sholver. The Council explained in its objection that Lower (or Bottom) Sholver was part of an edge-of-town estate development which was begun in the 1960s to re-house the population of large areas of more central locations in Oldham which had been subject to clearance programmes. The rental stock making up the estate was, however, itself subject to large scale demolition in the mid-1980s following which Lower Sholver was re-developed with modern housing in the 1990s.

4.6 The second matter relates to the Application Land itself. In this regard, the Council has supplied (subsequent to its objection[1]) a sequence of historical maps. These show that the Application Land was undeveloped in the 1950s but was occupied by housing in the 1970s and 1980s whereas, in the period from 1992-1994, the Application Land is shown again as undeveloped. I should add at this point that, consistent with the last piece of map evidence, the evidence in support of the Application tends to suggest that new housing in the area of Hodge Clough Road was completed in approximately the late 1990s.

4.7 The third matter concerns the statutory purpose for which the areas of land in Lower Sholver, within which the Application Land is situated, were originally acquired by the Council in the 1960s. The Council's objection exhibits a copy of an original conveyance of 19th May 1964 ("the 1964 Conveyance") to (what was then) the County Borough of Oldham of a large area of land at Sholver which is now registered to the Council under title number LA43936. The conveyance recorded that the purchase was pursuant to Part V of the Housing Act 1957. The Council does not have any corresponding conveyance for the land within title number LA88157. However, the Council does produce deed record cards in respect of title numbers LA43936 and LA88157. These confirm that the relevant purchases were made on 19th May 1964 and 29th June 1966 respectively and that, in each case, the relevant committee of the Council in respect of whose portfolio the land was acquired was the Housing Committee. Moreover, the Council also provides a witness statement confirming that the deed packet covers (exhibited to the statement) for the parcels of land registered under title numbers LA43936 and LA88157 each bore a distinctive red, rectangular mark to indicate that the land fell within the portfolio of the Housing Committee

[1] Subsequent to its objection the Council submitted not just the historical maps referred to in the paragraph of the text above but also a copy of a 1995 section 106 agreement (see paragraph 4.9 below) which had been referred to in its objection and a short witness statement (see paragraph 4.13 below) evidencing the maintenance of the Application Land which had been referred to in its objection. The Applicant was given the opportunity to comment on this additional material but did not offer any such comments.

or was land which was specified for housing. The deed packet cover in respect of LA88157 also bears the word *"housing"*. It was therefore submitted on behalf of the Council that there was sufficient evidence to show, on the balance of probabilities, that the Application Land was acquired under Housing Act powers.

4.8 The fourth matter relates to the 1996 Agreement produced in support of the Application and to another section 106 agreement on which the Council particularly relies. As for the 1966 Agreement, the Council's objection explains that the particular area of land to which it applied lay to the immediate north, north east and east of the Application Land but that it did not include the Application Land itself. The contribution in the 1996 Agreement was towards the provision by the Council of an area of public open space in the area of the land subject to the agreement but the Council did not have any plan or other information in its possession to show how the sum paid had been applied. The Council was therefore not able to confirm that the Application Land had been provided and laid out as public open space as a result of the 1996 Agreement.

4.9 However, on 6th June 1995 the Council had entered into another section 106 agreement ("the 1995 Agreement") with Lovell Partnerships (Northern) Limited (a copy of which was supplied by the Council subsequent to the submission of its objection). The 1995 Agreement relates to the development of land for housing within land defined by reference to title numbers GM619490 and GM216307. These title numbers are referred to in the official copies of the Land Registry's register of title for both title numbers LA43936 and LA88157.

4.10 Clause 8 of the 1995 Agreement provided that *"In consideration of the sum of £29,965.65 paid by the Developer to the Council on the date hereof (the receipt of which the Council hereby acknowledges) the Council will within a reasonable period provide and layout the area of public open space shown edged blue on the plan marked 'Public Open Space' annexed hereto."*

4.11 The Council's copy of the 1995 Agreement does not have the annexed "Public Open Space" plan. Nevertheless, the official copies of the Land Registry's register of title for both title LA43936 and LA88157 make specific reference to the 1995 Agreement. The first contains the reference *"An Agreement dated 6 June 1995 affecting the land edged blue on the title plan and other land made between (1) Oldham Borough Council and (2) Lovell*

Partnerships (Northern) Limited relates to planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990." The second contains the reference *"An Agreement dated 6 June 1995 affecting the land tinted blue on the title plan and other land made between (1) Oldham Borough Council and (2) Lovell Partnerships (Northern) Limited relates to planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990."* On the title plan for LA43936 the Application Land was outlined in blue and, on the title plan for LA88157, the Application Land was coloured blue. It was therefore submitted on behalf of the Council that, on the balance of probabilities, the Application Land had been provided and laid out as public open space under the 1995 Agreement.

4.12 Before leaving this topic I would add that the 1995 Agreement and the 1996 Agreement both indicate that associated planning permissions for development in the Hodge Clough Road area were being granted in the mid-1990s. This in turn is consistent again with the picture which emerges from the evidence in support of the Application of new housing being completed round about the late 1990s.

4.13 The fifth matter concerns the maintenance of the Application Land. The Council's objection stated that the Application Land was maintained and mowed by the Council. Subsequent to the objection the Council submitted a witness statement confirming that this has taken place for in excess of ten years.

4.14 Against that background, the main grounds of the Council's objection may be summarised as follows.

- While St James' Ward was a locality, the Application had not demonstrated use of the Application Land by a significant number of the inhabitants of this ward.
- No neighbourhood had been put forward in the Application but, if any were to be relied upon (such as Sholver or Lower Sholver), the significant number test would still not be satisfied.
- Use of the Application Land had not been *"as of right"* but with the licence of the Council because the Application Land had been held by the Council for the whole of the claimed qualifying period for recreational purposes stemming from its powers to acquire land under the Housing Acts. Further, the Council had laid out the Application Land for use as public open space under the 1995 Agreement. These points were fatal

to the Application. Reliance was placed on the Supreme Court decision in *Barkas v North Yorkshire County Council*[2].

- The evidence of the period of use was very limited and, untested, not sufficient to justify registration of a new green.

5. THE APPLICANT'S RESPONSE TO THE OBJECTIONS

5.1 In due course the Applicant responded to the objections (under cover of a letter to the Registration Authority dated 7th November 2018). The response was accompanied by photographs of the Application Land showing, in the main, children playing on it.

5.2 The Applicant's response adds little to the original Application material. I note in particular that it does not engage in any detail with the objections made on the basis that use of the Application Land was not *"as of right"* and provides no substantive response to the case made against the Application in this respect.

5.3 A still of a YouTube video was also submitted to the Registration Authority on behalf of the Applicant by way of an email dated 4th November 2018. The email also contained a link to the video itself (which I have watched).

6. ANALYSIS

Introduction

6.1 It is a fundamental requirement of section 15(2) of the 2006 Act that use relied upon to support an application for registration of a new green must be *"as of right"*. In the Supreme Court decision in *Barkas*[3], Lord Neuberger said (at paragraph 14) that it was *"helpful to explain that the legal meaning of the expression 'as of right' is, somewhat counterintuitively, almost the converse of 'of right' or 'by right'. Thus, if a person uses privately owned land 'of right' or 'by right', the use will have been permitted by the landowner—hence the use is rightful. However, if the use of such land is 'as of right', it is without the permission of the landowner, and therefore is not 'of right' or 'by right', but is actually carried on as if it were by right—hence 'as of right'. The significance of the little*

[2] [2014] UKSC 31.
[3] See footnote 2 above for the case reference.

word 'as' is therefore crucial, and renders the expression 'as of right' effectively the antithesis of 'of right' or 'by right'".

6.2 Lord Neuberger also explained (at paragraph 27) that *"[as] against the owner (or more accurately, the person entitled to possession) of land, third parties on the land either have the right to be there and to do what they are doing, or they do not. If they have a right in some shape or form (whether in private or public law), then they are permitted to be there, and if they have no right to be there, then they are trespassers. I cannot see how someone could have the right to be on the land and yet be a trespasser".*

6.3 In the present case I am left in no doubt from the objections which have been submitted, particularly that of the Council, that the Application cannot succeed and that it must fail on the issue of whether use of the Application Land has been *"as of right"*. It is clear to me from the documentary material which the Council has produced that, when considered in the context of the relevant legal framework, use of the Application Land for informal recreation by local residents (which plainly has occurred) has been *"by right"* and not *"as of right"*. I do not consider that there can be any serious dispute about this matter and that there is, accordingly, no need for any non-statutory inquiry to be held[4]. Indeed, it would be a waste of public money to hold an inquiry to explore such issues as the extent of the use of the Application Land over time or whether its use has been by a significant number of the inhabitants of any locality or any neighbourhood within a locality, given that any use must inevitably fail to satisfy the requirement that it be *"as of right"*.

6.4 In the rest of this section of my report I expand on my reasoning in relation to the issue of use *"as of right"*.

The statutory purpose of the acquisition of the land within which the Application Land lies

6.5 I turn first to the question of the statutory purpose for which the land within which the Application Land lies was originally acquired by the Council. This question is relevant to the issue of the powers available to the Council, which, in turn, is relevant to the issue of whether use was *"as of right"*. I will turn to analysis of the relevant statutory powers in due course but consider at this point the factual question of the statutory purpose of the

[4] See *Whitmey v Commons Commissioners* [2004] EWCA Civ 951.

acquisition as shown by the documentary evidence. My conclusion is that the documentary evidence clearly establishes that the land in question was acquired for housing purposes.

6.6 The 1964 Conveyance in respect of the land registered under title number LA43936 states expressly that that land was acquired pursuant to Part V of the Housing Act 1957[5]. Moreover, the deed record card for the land registered under title number LA43936 shows that it fell within the portfolio of the Council's Housing Committee and the mark on the deed packet cover confirms this position.

6.7 While there is no conveyance available in respect of the land registered under title number LA88157, I consider that it is clear that this land too was acquired for housing purposes. The relevant deed record card shows that the land fell within the portfolio of the Council's Housing Committee and the deed packet cover contains the appropriate mark to confirm this as well as bearing the word *"housing"*. The conclusion that the land registered under title number LA88157 was acquired for housing purposes is also entirely consistent with both the fact that the neighbouring land registered under title LA43936 was so acquired and the general context of the estate construction programme in the area which began in the 1960s. The official copy of the Land Registry's register of title for LA88157 also refers to transfers out of this title having been made pursuant to Part V of the Housing Act 1985[6].

Did the Council provide and lay out the Application Land as public open space?

6.8 Next, I consider the factual question of whether the Application Land was provided and laid out as public open space by the Council, again another factor relevant to the issue of whether use of the Application Land was *"as of right"*. I conclude, on the basis of the documentary material produced by the Council, that it clearly was. Of particular significance here is the 1995 Agreement. This provided that the Council would, within a reasonable period, provide and layout an area of public open space as shown on an annexed plan. The plan in question is not available. However, the official copies of the Land Registry's register of title for both title LA43936 and LA88157 each make specific reference to the 1995 Agreement. The first contains the reference *"An Agreement dated 6 June 1995 affecting the land edged blue on the title plan and other land made between (1) Oldham Borough Council and (2) Lovell Partnerships (Northern) Limited relates to*

[5] This concerns the provision of housing accommodation.
[6] This concerns the right to buy.

planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990." The second contains the reference *"An Agreement dated 6 June 1995 affecting the land tinted blue on the title plan and other land made between (1) Oldham Borough Council and (2) Lovell Partnerships (Northern) Limited relates to planning obligations pursuant to Section 106 of the Town and Country Planning Act 1990."*

6.9 Turning first to the title plan for the latter title, LA88157, those parts of the Application Land which fall within this title number are clearly tinted blue while no other areas on the plan are similarly tinted. This ties the statement in the 1995 Agreement about the provision and laying out by the Council of public open space specifically to the Application Land. The title plan for LA43936 also shows that the other parts of the Application Land fall within an area of land edged blue on that plan. The Council's long-standing maintenance and mowing of the Application Land is all of a piece with the conclusion that it was provided and laid out as public open space by the Council.

6.10 I also think that, while the Council has not sought to rely on the 1996 Agreement as such, the public open space referred to therein was probably the Application Land. It is correct that the land subject to the 1996 Agreement (in the sense of the land bound by it) does not include the Application Land and that the plan annexed to the 1996 Agreement does not identify the land on which the public open space was to be provided and laid out. Nevertheless, the area of public open space which the Council was to provide and lay out was not to be *"on"* the land subject to the 1996 Agreement but *"in the area of it"*. The obvious area where that was to be was the Application Land immediately next to the land subject to the 1996 Agreement.

6.11 As to the date at which the Application Land was provided and laid out by the Council as public open space, the clear inference that is to be drawn is that this would have been in approximately the late 1990s when the new housing in the immediate area was completed.

The power of the Council to do what it did

6.12 The next question to be considered is that of the power of the Council to lay out and provide public open space under the Housing Acts. I focus on the Housing Acts because there is nothing to suggest that so much of the land falling within title numbers LA43936 and LA88157 as comprises the Application Land has ever been appropriated by the Council

to anything other than the housing purposes for which it was first acquired. The power to provide public open space is therefore to be sourced from the Housing Acts.

6.13 At the time of the acquisition of the land within title numbers LA43936 and LA88157 the relevant Housing Act under which the acquisition took place was the Housing Act 1957 ("the 1957 Act"). By the time of the new development in the area of Hodge Clough Road and the provision and laying out of the Application Land as public open space in approximately the late 1990s the relevant statute was the Housing Act 1985 ("the 1985 Act").

6.14 There are two candidate powers under the 1985 Act. Each power applies to a local housing authority which the Council is and was[7]. The first candidate power is found in section 12(1) of the 1985 Act which provides that a *"local housing authority may, with the consent of the Secretary of State, provide and maintain in connection with housing accommodation provided by them under this Part—*

(a) ...

(b) recreation grounds, and

(c) *other buildings or land which, in the opinion of the Secretary of State, will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided."*

6.15 The second candidate power is found in section 13(1) of the 1985 Act which provides that a *"local housing authority may lay out and construct public streets or roads and open spaces on land acquired by them for the purposes of this Part."*

6.16 As to the second candidate power under section 13(1) of the 1985 Act, I consider that the reference to *"open space"* which is contained in it should be construed to be a reference to *"public open space"*. While there is no definition of *"open space"* in the 1985 Act, I see no good reason of principle why the word *"public"* which appears before the word *"streets"* should not be read across to the later words *"or roads and open spaces"*. The natural reading of section 13(1) is that the word *"public"* governs not just the word *"streets"* but also the words *"roads"* and *"open spaces"*. And, in terms of statutory

[7]See section 1 of the 1985 Act.

purpose, it is difficult to see what would justify limiting the meaning of *"open spaces"* to those which were not public or not for public use[8].

6.17 Moreover, the view of the inspector who reported in the decision which became the subject of the *Barkas* litigation was that the words *"open spaces"* in the corresponding power of an earlier Housing Act[9] enabled the laying out of public open space[10]. This view was endorsed in the first instance decision in the case[11]. The judge also took the view that the emphasis in the corresponding provisions of the earlier statute was on public provision[12]. There is no reason why these views (which were not affected by the subsequent proceedings in the Court of Appeal and Supreme Court) should not hold good for the current power in section 13(1) of the 1985 Act.

6.18 For the sake of completeness, I should also add that the words – *"land acquired by them for the purposes of this Part"* – found in section 13(1) of the 1985 Act are satisfied in this case. Section 13 is found in Part II of the 1985 Act which is concerned with the purpose of the provision of housing accommodation. The land in title numbers LA43936 and LA88157 was acquired for such purpose under the 1957 Act[13]. The continuity of the law as between the 1957 Act and the 1985 Act and the treatment under the 1985 Act of references to its provisions to include reference to corresponding earlier provisions is expressly provided for in section 2 of the Housing (Consequential Provisions) Act 1985.

6.19 I have focused above on section 13(1) of the 1985 Act rather than section 12(1)(b) because it seems to me that, of these two candidate powers, it is the former which is the more appropriate one in the present case. I say that for three reasons. First, in circumstances where alternative powers might have applied but one power did not require ministerial consent for its exercise whereas the other did, and there is no evidence of such consent, the inference to be drawn as to which power was used should be that it was the former power.

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[8] I do not regard the fact that ministerial consent was required in order for a recreation ground to be provided under section 12(1)(b) should in some way be regarded as a factor which should be taken to narrow the meaning of what could be done under the alternative power to do something different (albeit potentially similar) – lay out open spaces – under section 13(1).
[9] Section 79(1)(a) of the Housing Act 1936.
[10] See paragraph 122 of the inspector's report as quoted in the first instance decision in *Barkas* [2011] EWHC 3653 (Admin) at paragraph 7. The terms of section 79(1)(a) are set out at paragraph 9 of the first instance judgment.
[11] [2011] EWHC 3653 (Admin) at paragraph 27.
[12] Ibid at paragraph 31.
[13] Part V of the 1957 Act which is referred to in the 1964 Conveyance dealt with the provision of housing accommodation. See footnote 5 above.

That favours section 13(1) in this case as there is no evidence of ministerial consent. Secondly, the 1995 Agreement and the 1996 Agreement each referred to the Council providing and laying out public open space. The description given in these agreements of what the Council considered it was doing matches more closely the power in section 13(1) rather than the power to provide a recreation ground in section 12(1)(b). Thirdly, the power under section 13(1) is untrammelled by any requirement that the open space must be provided *"in connection with housing accommodation provided by them"* (that is, the local housing authority) [underlining added]. While the Application Land was no doubt provided for the benefit of the new housing built in about the late 1990s, it may be open to question whether this housing was provided by the Council. I do not express any more definitive view than that on this last matter. I simply make the point that the question does not arise under section 13(1) of the 1985 Act.

6.20 The power to maintain land laid out as open space under section 13(1) of the 1985 Act is either necessarily implicit in that provision or may be seen as a subsidiary power authorised under section 111 of the Local Government Act 1972.

Was use of the Application Land as of right?

6.21 Summarising my analysis at this point, I have concluded that the Application Land was acquired by the Council (as part of the acquisition of wider areas of land) for housing purposes, that it was provided and laid out by the Council as public open space in approximately the late 1990s and that there was appropriate power to do so under housing legislation in the 1985 Act.

6.22 In these circumstances the decision of the Supreme Court in *Barkas* leaves no room for any doubt that the use of the Application Land cannot have been *"as of right"*. Use of the Application Land by local inhabitants for informal recreation was use of public open space provided and laid out by the Council for that purpose. Users of the Application Land could not have been trespassers on it. Their use of it was pursuant to a public right or a publicly based licence and thus use *"by right"* and not *"as of right"*. I refer, in particular, to paragraphs 20-24 of the speech of Lord Neuberger (with whom Baroness Hale, Lord Reed and Lord Hughes agreed).

6.23 *Barkas* concerned a recreation ground provided under an earlier statutory power corresponding to that now found in section 12(1)(b) of the 1985 Act rather than the power relating to open space now found in section 13 of the 1985 Act. This makes no difference; the principle is the same. This emerges with particular clarity from paragraph 24 of Lord Neuberger's speech where he said: *"I agree with Lord Carnwath JSC that, where the owner of the land is a local, or other public, authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land 'as of right, simply because the authority has not objected to their using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used it for 20 years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so. The position is very different from that of a private owner, with no legal duty and no statutory power to allocate land for public use, with no ability to allocate land as a village green, and who would be expected to protect his or her legal rights."*

6.24 The principle enunciated in this passage is fatal to the Application.

6.25 To similar effect in *Barkas*, Lord Carnwath (who agreed with Lord Neuberger and with whom Baroness Hale, Lord Reed and Lord Hughes agreed) observed that where *"land is owned by a public authority with power to dedicate it for public recreation, and is laid out as such, there may be no reason to attribute subsequent public use to the assertion of a distinct village green right"* (at paragraph 64) and that *"where the owner is a public authority, no adverse inference can sensibly be drawn from its failure to 'warn off' the users as trespassers, if it has validly and visibly committed the land for public recreation, under powers that have nothing to do with the acquisition of village green rights."* (Paragraph 65).

7. <u>OVERALL CONCLUSIONS AND RECOMMENDATION</u>

7.1 Use of the Application Land by local inhabitants in this case cannot have been *"as of right"* but was *"by right"*. As such, a fundamental requirement for the registration of a new green

on the basis of section 15(2) of the 2006 Act is not met. The Application must therefore fail.

7.2 These conclusions follow inevitably from the documentary material in this case when considered against the applicable law. In these circumstances there is no need for a public inquiry to be held in order to determine the Application and it would be a waste of public money to do so.

7.3 I recommend that the Application should be rejected.

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Alan Evans
13th December 2018