



Highways Committee

Date Friday 21 March 2014
Time 11.15 am.
Venue St. Helen's Auckland Parish Church, Bishop Auckland, DL14 9EN

Business

1. Apologies for Absence
2. Substitute Members
3. Declarations of interest, if any
4. Village Green Registration West Auckland: Fleece & Nursery - Report of Head of Legal and Democratic Services (Pages 1 - 140)
5. Such other business, as in the opinion of the Chairman of the meeting, is of sufficient urgency to warrant consideration

Colette Longbottom
Head of Legal and Democratic Services

County Hall
Durham
13 March 2014

To: **The Members of the Highways Committee**

Councillor G Bleasdale (Chairman)
Councillor C Kay (Vice-Chairman)

Councillors J Allen, B Armstrong, D Bell, H Bennett, I Geldard,
O Gunn, D Hall, D Hicks, K Hopper, O Milburn, S Morrison,
R Ormerod, J Robinson, J Rowlandson, P Stradling, R Todd,
J Turnbull, M Wilkes and R Young

Contact: Michael Turnbull

Tel: 03000 269 714

This page is intentionally left blank

Special Highways Committee

21 March 2013



Village Green Registration West Auckland: Fleece & Nursery

Report of Colette Longbottom, Head of Legal and Democratic Services

Introduction

- 1 The County Council is the commons registration authority ("the CRA") for Town and Village Greens under the Commons Registration Act 1965 and the Commons Act 2006. The CRA must act impartially in its determination.

Purpose of the Report

- 2 To advise the Committee in determining an application ("the Application") to register land known as the Fleece and Nursery land ("the Land") as town or village green under the provisions of the Commons Act 2006. The land lies between Front Street and the Nursery, north of the Green, in West Auckland. The Application is made on the basis of a claimed 20 years' user of the Land to the date of the application for lawful sports and pastimes as of right by a significant number of the local inhabitants.

Background

- 3 The clerk to West Auckland Parish Council wrote to the CRA on 21 July 2010 explaining that the Parish Council wished to seek registration of the Land as a village green, and enclosed six letters and eight photographs from villagers in support of their proposed application. Advice was sought from the CRA on how to proceed. The CRA responded on 2 August 2010 enclosing the relevant forms and Defra Guidance.
- 4 By way of further background, the trigger for seeking to make the application appears to have broadly been that ownership of and/or rights over the Land were increasingly in dispute, principally between the Parish Council and the occupiers of properties adjoining the Land, and that steps had been taken by adjoining occupiers to prevent or discourage the use of the Land by local inhabitants.

The Application

- 5 The Application was made by Sharon Hall, the clerk to the West Auckland Parish Council ("the Applicant"). A copy of the Application and supporting submission is attached at **Appendix 1**. It was accompanied by a supporting statement, plans of the Land and 23 User Evidence Forms in support. Those user evidence forms are summarised in table form at **Appendix 2**. A further summary of the evidence given of interruptions of the use are at

Appendix 3. They are available to view in full on file. Receipt of the Application was acknowledged on 11 August 2011 by the CRA. Following publication of the notice of the Application objections were lodged, and these are attached at **Appendix 4** together with further pre-inquiry correspondence.

- 6 Due to the nature of the supporting evidence and the conflict with the evidence provided by the objectors, the Members of this Committee were advised that a Non-Statutory Public Inquiry would be the most appropriate way forward to test the evidence, Members agreed to this course of action. On the 12 July 2012 and to the appointment of a suitable experienced independent inspector. Miss Ruth Stockley of Kings Chambers, Manchester, a legal expert in Village Greens registration, was appointed to hold a Public Inquiry and thereafter to provide a report with a recommendation for consideration by this committee.
- 7 A Public Inquiry was held over 2 days on 26 and 27 June 2013. The Inspector subsequently reported to the CRA on 13 October 2013, recommending refusal of the Application, and a copy of her report is attached at **Appendix 5**. The report was circulated to the Applicant and other interested parties for final comment. The Applicant responded on 17 November 2013.
- 8 The Applicant subsequently approached officers with a view to supplying a 'presentation document' to the committee. The Applicant was advised of the committee's public speaking scheme allowing for oral submissions at the meeting. They were also advised that if they wished to adduce any further information that this would need to be supplied in advance of the preparation of the report which they did do, attached at **Appendix 6**. A copy of the Applicant's submissions was then sent to the objectors and their comments sought. Those comments, received on 26 February 2014, are attached at **Appendix 7**. Additionally, representations have been received from the local MP, Helen Goodman, and from Lord Foster of Bishop Auckland. Copies of those are attached at **Appendix 8**.
- 9 The decision with respect to this Application rests with this committee. An assessment of the evidence submitted by June 2013 has been undertaken by the Inspector who has had the opportunity to hear witnesses in person and consider all the written evidence supplied to that date. The conclusions in the Inspector's report should be considered by the committee. The further information received since the Inspector's report was produced will be considered further below.

The Law

The Commons Act 2006

- 10 Land that was not registered as a village green by July 31st 1970 can only now gain that status through registration under the current statutory provisions. Registration brings about general recreational rights and other statutory protection which effectively precludes further development of the site.

11 The Commons Act 2006 is the statutory regime governing village greens, the existence of and subsequent registration of which is subject to the fulfilment of all the relevant requirements set out in section 15 of the Act. Registration of village greens is determined by the CRA and the process of determination of any application made is focused on testing the evidence to decide whether a village green has come into existence as a matter of law.

12 The application in question was made under section 15(1) of the Commons Act 2006 which states that:

“Any person may apply to the commons registration authority to register land... as a town or village green in a case where subsection 2... applies.”

Subsection 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 or 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.”

13 After setting out the evidence for and against the Application in section 4 of her Report, the Inspector set out the legal framework applying to the Application in section 5. Members are referred to that section and in particular to the several elements of the test for deciding whether the Application can succeed; namely whether it has been established that:

- (i) The Land comprises “land” within the meaning of the 2006 Act;
- (ii) The Land has been used for lawful sports and pastimes;
- (iii) Such use has been for a period of not less than 20 years;
- (iv) Such use has been as of right (that is, without force, secrecy or permission);
- (v) Such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality; and
- (vi) Such use continued at the time of the Application.

14 These terms are explained more fully in the Inspector’s Report. Briefly, however:

- (i) The land must be clearly defined, but there is no requirement that it be ‘green’ or have any particular characteristics;
- (ii) Lawful sports and pastimes is a composite phrase denoting general recreational use. Walking with or without dogs, children’s play, playing games, picnicking etc. would all be included;
- (iii) The fulfilment of the 20 years’ continuous use must run until the date of the application. It must be of sufficient continuity and frequency to bring home to the reasonable landowner that recreational rights are being asserted;
- (iv) Use ‘as of right’ means without force, stealth or permission; i.e. open and peaceable and without any licence from the owner;
- (v) A ‘significant number’ is a matter of impression, meaning a number sufficient to indicate that the land is in general use by the community. Inhabitants of the ‘neighbourhood or locality’ must mean, for a

neighbourhood, a community that is sufficiently cohesive and capable of clear definition; for a locality it must mean a recognised administrative area. Users, even the majority of them, may come from outside the locality, but such extra-local use will not establish village green rights; and

- (vi) For the requirement for continuous use until the application, see (iii) above. If the use was not still continuing at the date of the Application, then (save for where access has been prohibited by statute, e.g. 'foot and mouth' restrictions) the reasons for its cessation are irrelevant.

Burden and Standard of Proof

- 15 In order for an application to be successful each aspect of the requirements of section 15(2) must be strictly proven by the Applicant. The burden of proof is the balance of probabilities, and it lies with the Applicant to prove the case. Therefore the Applicant must demonstrate to the satisfaction of the committee that all the elements contained in the definition of a village green in section 15(2) have probably been satisfied.

Application Land

- 16 A plan highlighting the Land to be considered for registration accompanied the Application (see **Appendix 1**). This plan shows two areas of land, joined together, lying north of the rear of the properties on Front Street, west of the Nursery and south of the river Gaunless, excluding a parcel of land lying directly south of the river on which formerly stood the old Mill Cottages. That parcel was acquired by its occupier by adverse possession in around 2008, having been fenced off from the public in around 1994. The Inspector records her findings about the Land in section 3 of her Report at **Appendix 5** and Members are referred to that description.

Ownership

- 17 The Land has no known owner. It appears that a number of parties (including the Applicant and one of the objectors, who is an adjoining occupier) have registered cautions against first registration with the Land Registry.

The Evidence

- 18 The evidence, particularly the oral evidence taken at the Inquiry, is summarised in the Inspector's Report. The CRA originally received 23 User Evidence Forms in support of the Application; these are summarised by the table at **Appendix 2**. The predominant uses claimed in support of the Application were walking (with or without dogs) and children playing.
- 19 Evidence was also given of attempts to prevent or discourage the use. These are summarised in the additional table at **Appendix 3**. A number of users reported that the land had been fenced off one or two years before the Application was made.

- 20 In a supporting letter of 10 August 2011 (see **Appendix 1**) the Applicant described the fencing as having been erected in May 2010 and, “although a troublesome nuisance, has been erected for less than two years and has never denied physical access to the open space (included in this application)”.
- 21 The Applicant’s supporting submission also explained the history of fencing on and nearby the Land. It appears some of the Land was fenced off in around 1993-4. Partly that fencing was of land excluded from the Application site (to the north and west of the Land, adjoining the river) that has since been acquired by adverse possession. Partly the fencing was erected by the owner of the Fleece public house in an effort to stop vehicular access over the Land to one of the adjoining properties (no. 24 Front Street).
- 22 The Applicant’s submission then reported that since 2006 the owner of 24 Front Street had taken vehicular access through the Nursery Land with private and commercial vehicles on a regular basis with many vehicle movements a day, so degrading the appearance and amenity of the Land.
- 23 An objection was received from Mr. Armstrong, the (then) owner and occupier of 24 Front Street. In it, he describes his own use of the Land since his acquisition of 24 Front Street in 1989. He stated that since then, he and his wife had used the land on a daily basis for grazing horses and for vehicular access to the public highway, both to the north across the Nursery and the south across the Fleece. A plan of the routes taken is enclosed at **Appendix 4** with Mr. Armstrong’s objection.
- 24 Mr. Armstrong stated his belief that the Land had not been used as a village green at any time. He submitted that “the land has only been used by dog-walkers and people using it as a short cut to the Front Street and back. The only piece of land that was ever used for recreational purposes was near to the river and this is now owned by Mr S D Robinson” (who had acquired the adjoining land by adverse possession in around 2008, having fenced it off in around 1993-4).
- 25 A further objection was received from Mrs. Joanne Cliff, who similarly stated that the only uses for the Land since 1994 (apart from ‘private’ use by her and her parents, Mr. & Mrs. Armstrong) had been for people to walk their dogs and to get from the Nursery to Front Street and back.
- 26 The Applicant responded, asserting that the Land “is still used for recreational enjoyment although the actions of Mr Armstrong’s and Mrs Cliff’s families in intermittently parking cars, vans, horse boxes and equipment on the land, grazing horses and burning industrial waste do not encourage community activity. Nevertheless that community activity has never ceased.”
- 27 Responses from the objectors disputed a number of the assertions made by the Applicant; however, these responses did not make any further assertions about the use or otherwise of the Land for recreational purposes, save for a statement by Mrs. Cliff that she had played on the land with her friends.

28 The Public Inquiry subsequently took place.

The Inspector's Report

Assessment of Evidence

29 At the Public Inquiry the Inspector heard evidence from a total of 8 people; 4 in support of the Application and 3 in objection, with a further third party; the evidence from these persons is set out clearly in section 4 of the Inspector's Report. In addition to this, written submissions both in support of and against the application were considered by the Inspector. However, she set out in paragraph 4.16 that she and the CRA must bear in mind that the written evidence was not tested by cross-examination. Particularly where that evidence conflicted with the oral evidence given at the Inquiry, the Inspector gave the written evidence less weight as it was not subject to cross-examination.

Applying the Law to the Facts

30 The Inspector concluded that all of the elements of the statutory test were satisfied, with the exception of one. She therefore recommended that the application be refused.

Land

31 There was no dispute that the Land meets the required definition in the 2006 Act and that it was clearly defined: 6.4.

20 Year Period

32 The Inspector found that the relevant 20 year period for analysis was that beginning in August 1991 and expiring on the date of the Application: 6.5.

Lawful Sports and Pastimes

33 The Inspector concluded that some lawful sports and pastimes had been carried out on the Land during the relevant 20 year period: 6.9. However, she noted that the main matter in dispute between the parties was the *extent* of any qualifying recreational use on the Land: 6.8.

Locality or Neighbourhood

34 This is the area whose inhabitants will acquire recreational rights to use a village green. Here, the Inspector found this to be the Parish Council area of West Auckland, which is a recognised administrative area: 6.11.

Use as of Right

35 With the exception of one occasion on which permission to use the Land was purportedly given in 2011, the Inspector found that the use of the Land had been without force, stealth or permission. Accordingly she found that it had been used 'as of right': 6.14.

Use by a Significant Number of the Inhabitants of the Locality

36 The Inspector's analysis was to exclude from the qualifying use that use which took place before the relevant 20 year period commenced; that use which took place by persons from outside the locality; and that use that was more akin to the exercise of public rights of way than the exercise of recreational rights over a Village Green. In particular this meant excluding

the evidence which was of such nature as to suggest that the user was exercising a right of way over specific routes rather than exercising a recreational right over the land generally..

- 37 Having discounted such use, her impression of the evidence was that a significant amount of walking and dog walking on the land took place along a specific linear route as a means of access from one point to another, often using the land as a short cut , rather than recreating over the land generally. Please see paragraph 6.19 of the Inspectors report and also 6.21.
- 38 The Inspector noted “significantly” that no oral evidence was given by any witness of people exercising their dogs over the Land generally or walking over the Land generally rather than along a specific linear route used as a shortcut or as a means of access: 6.20. A number of the written statements referring to walking on the Land were unspecific about whether they were using the Land as a thoroughfare or as a more general recreational facility. Accordingly, given that the burden of proof lies upon the Applicant, the Inspector was unable to assume the latter, which would anyway have been inconsistent with the oral evidence she received: 6.23.
- 39 That left children’s play. The Inspector found that there was a “limited amount of evidence” of such use taking place on the Land during the relevant period by the local inhabitants: 6.24. She noted the evidence of 3 people that children no longer play on the Land since traffic started to use it in around 2006: 6.24. She found that such use was “extremely limited” during the last 5 years of the relevant 20 year period, since 2006 when the Land has been used regularly by traffic: 6.26.
- 40 The Inspector noted evidence that such use had not “entirely” ceased: 6.26. She also considered that other recreational uses of the Land had been “relatively limited” in nature: 6.27, although had “inevitably decreased” since 2006 due to the regular use of the Land for traffic. She concluded that, in her view, that the qualifying use of the Land during the relevant 20 year period had been sporadic and insufficient to demonstrate the assertion of recreational rights over the Land, consequently she found as follows;
it has not been established on the balance of probabilities that the qualifying use of the Land has taken place to such an extent and with such a degree of frequency throughout the entire relevant 20 year period to demonstrate to a reasonable landowner that recreational rights were being asserted over the Land.
- 41 The inspector accordingly found that the Land had not been used by a significant number of the inhabitants of West Auckland for lawful sports and pastimes throughout the relevant 20 year period: 6.28.

Continuation of Use

- 42 Although the Inspector did not find that the Land had been used to a sufficient extent and continuity to have created a village green, she concluded that such recreational use as did exist continued up until the date of the Application: 6.29.

Inspector's Conclusions and Recommendation

- 43 The Inspector therefore concluded that the Land ought not to be registered as a village green. She so recommended, on the specific grounds that:
- (i) the Applicant has failed to establish that the Application Land has been used for lawful sports and pastimes to a sufficient extent and continuity throughout the relevant 20 year period to have created a town or village green; and
 - (ii) the Applicant has accordingly failed to establish that the use of the Application Land has been by a significant number of the inhabitants of any qualifying locality or neighbourhood within a locality throughout the relevant 20 year period.

Post-Inquiry Correspondence

- 44 A copy of the Inspector's Report was sent to the Applicant and to the objectors. The Applicant responded by letter dated 17 November 2013 (**Appendix 6**). The letter made a number of points, not all of which are relevant to the committee's determination of the Application. In relation to the Inspector's findings about insufficient extent and continuity of use, the letter stated:

[The Inspector] acknowledges that the PC had demonstrated that the land was well used for decades from the 1970s, when it was maintained by the local authority, up to 1994, that is for the first three years of the relevant period (1991 – 2011).

After 1994 maintenance stopped and the communal use inevitably declined slightly. Matters got far worse in 2006, when the objectors began to take unauthorised access through The Nursery (later fenced off) and Fleece land, and also using the land as if they owned it for the transfer of scrap from lorry to lorry, etc, and general car parking. This activity understandably hugely reduced the community use in the Nursery and also severely restricting it on the Fleece land – but just for the last five years of the relevant period.

The level of use of the Fleece during that period still included occasional communal bonfires, children playing football, trampolining and children's parties, besides those that walk across and dog-walk the area. Whilst not intensively used, because of the objectors' activities, it is a level of activity not dissimilar from that to be found today on many registered village greens in County Durham villages.

- 45 Further correspondence from the Applicant was received in February 2014 and is attached to this report at **Appendix 6**. It makes no assertion of continued recreational use of the Land, but details a number of obstacles to that use. A further representation from the Objectors (**Appendix 7**) adds nothing of note.

Officer Advice

- 46 The contentious question is therefore whether the use has been sufficiently extensive or continuous over the relevant period to qualify for registration, or if it has been too trivial and sporadic. The Inspector, having discounted

the 'walking' use, concluded that the use for children's recreation and other recreational uses was not sufficient to amount to the assertion of a right: 6.28. The Applicant concedes that the Land 'is not intensively used' (letter of 17 November 2013 at **Appendix 6**) but contends that the use has not 'entirely ceased' (oral evidence of Martin Roberts to the Inspector: **Appendix 5** at paragraph 4.11) and that registration ought therefore to follow. The Applicant's more recent correspondence explains in detail how recreational uses are being discouraged and that in their view the use of the Land by others has "prevented its long-established community use continuing" (**Appendix 6**). However the question for this Committee is not why the use may or may not have taken place, but whether the use did in fact continue for the 20 year qualifying period in question.

- 47 This is a matter of fact and degree in the circumstances of any given case. The nature and degree of user needs to bring home to a reasonable (and in this case, hypothetical) landowner, throughout the relevant 20 year period, that local inhabitants are carrying out activities on the land that are capable of being resisted, or permitted, by the landowner. The Inspector concluded on the evidence before her that they had not.

Overall Conclusions

- 48 Officers concur with the Inspector and that greater weight ought to be given to the evidence that was tested on cross-examination at the Inquiry. The evidence was of generally diminishing use throughout the qualifying period, and which was "extremely limited" (Inspector: 6.26) for the final 5 years. Although the Applicant has since contended (letter of 17 November 2013: **Appendix 6**) that the level of use of the Land in those 5 years was not dissimilar from that on many registered village greens, that is not the appropriate test (because, once a green is registered, there is no requirement on local inhabitants to persist in regular recreational activities as the land is protected anyway.) The Applicant's more recent submission (of 4 February 2014: **Appendix 6**), by setting out how the recreational use has been "prevented", lends support to the Inspector's conclusions that such use did not continue to a sufficient degree for the relevant period.
- 49 It is for Members to come to a determination on this matter. However in your officers' view the Applicant has failed to discharge the burden of proof to demonstrate on the balance of probabilities that the Land has been used for lawful sports and pastimes to a sufficient extent by local inhabitants over the relevant period.

Recommendation:

- 50 That the Application be **REFUSED** for the reasons recommended by the Inspector in paragraph **43** above.

Contact: Patricia Holding Tel: 03000 269726

This page is intentionally left blank

WEST AUCKLAND: FLEECE & NURSERY

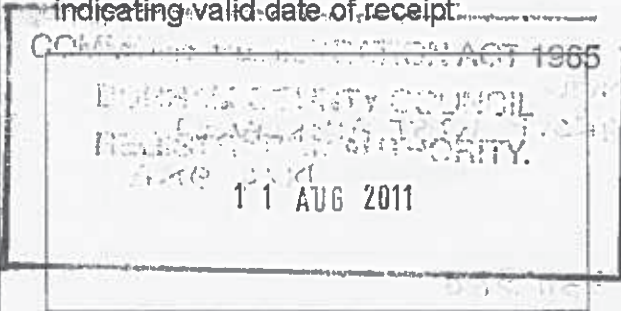
APPENDIX 1

Application Form and supporting submissions

Commons Act 2006: Section 15

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

Official stamp of registration authority indicating valid date of receipt



Application number: NL36

Register unit No(s):

VG number allocated at registration:

Empty box for VG number allocated at registration.

(CRA to complete only if application is successful)

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

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

1. Registration Authority

To the

DURHAM COUNTY COUNCIL
COUNTY HAU
DURHAM CITY

Note 1
Insert name of registration authority.

Note 2

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

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

Note 3

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

2. Name and address of the applicant

Name:

Full postal address:

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4

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

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

4. Basis of application for registration and qualifying criteria

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

Application made under section 15(8):

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

Section 15(2) applies: SEE SUPPORTING STATEMENT

Section 15(3) applies:

Section 15(4) applies:

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

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

Note 5

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

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

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

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

Name by which usually known:

THE FUEECE AND NURSERY LAND

Location:

LAND BETWEEN FRONT STREET AND THE NURSERY, NORTH OF THE GREEN, WEST AUCKLAND

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

Common land register unit number (if relevant) *

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

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

WEST AUCKLAND VILLAGE, NOW CENTRAL TO THE WEST AUCKLAND PARISH COUNCIL ADMINISTRATIVE AREA

Tick here if map attached:



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

Note 7

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

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

THE LAND SUBJECT OF THIS APPLICATION HAS BEEN USED FOR LAWFUL RECREATION AND SPORTING ACTIVITIES FROM 1973, AT LEAST, AT WHICH TIME IT WAS LANDSCAPED AND MAINTAINED FOR THAT PURPOSE BY THE LOCAL AUTHORITY. RECREATIONAL USE BEFORE THEN GOES BACK INTO THE 1950'S AND POSSIBLY AS FAR BACK AS 1920'S.

THE LAND HAS NO KNOWN OWNER, HAS ALWAYS BEEN OPEN AND UNFENCED (UNTIL PARTIAL ENCLASURE IN MAY 2010) AND NO CONSENT HAS EVER BEEN SOUGHT FROM ANYONE TO UNDERTAKE RECREATIONAL ACTIVITIES.

PLEASE SEE ATTACHED BACKGROUND HISTORY, FULLER JUSTIFICATION FOR REGISTRATION, AND 23 WITNESS STATEMENTS IN SUPPORT OF THE PARISH COUNCIL'S APPLICATION

Note 8

Please use a separate sheet if necessary.

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

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

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

Note 9

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

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

Note 10

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

Please use a separate sheet if necessary.

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

LAND UNOCCUPIED (SEE QUESTION 11)
OWNER(S) UNKNOWN

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

—

10. Supporting documentation

1. COVERING LETTER
2. PARISH COUNCIL RESOLUTION
3. APPLICATION FORM
4. MAP OF AREA PROPOSED FOR REGISTRATION
5. MAP OF PARISH COUNCIL AREA
6. BACKGROUND HISTORY
7. CASE FOR REGISTRATION
8. PARISH COUNCIL 'CAUTION' LAND
9. WITNESS STATEMENTS LIST
10. WITNESS STATEMENTS

Note 11

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

11. Any other information relating to the application

SEE ALL ATTACHED DOCUMENTS

POSSIBLE OBJECTOR:

MA ABEL ARMSTRONG
27 FRONT STREET
WEST AUCKLAND
DL14 9HW

Note 12

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

Date:

8th August 2011

Signatures:

Sharon Hall

REMINDER TO APPLICANT

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

Data Protection Act 1998

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

Statutory Declaration In Support

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

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

I.....¹ solemnly and sincerely declare as follows:—

² *Delete and adapt as necessary.*

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

³ *Insert name if Applicable*

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

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

⁴ *Complete only in the case of voluntary registration (strike through if this is not relevant)*

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

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


Cont/

4 Continued

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

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

Declared by the said SHARON HALL)
at BISHOP AUCKLAND)
this 8th day of August)
2011)


Signature of Declarant

Before me *

Signature: 

Address: SMITHSONIAN SOLICITORS.
SANDYBAY SQUARE
BISHOP AUCKLAND

Qualification: SOLICITOR.

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

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

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

West Auckland Parish Council

Sharon Hall, Clerk to the Council
20 Loweswater Grove, West Auckland
BISHOP AUCKLAND

County Durham DL14 9NA

☎ 01388 834360 ✉ sharon.home@btopenworld.com

1

10 August 2011

Ms Jill Errington
Senior Committee Services Officer
Durham County Council
County Hall
Durham City

Dear Ms Errington

**APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN,
UNDER SECTION 15 OF THE COMMONS ACT 2006
THE FLEECE AND NURSERY LAND, WEST AUCKLAND**

Following earlier discussions between Durham County Council officers and the Parish Council, on behalf of West Auckland Parish Council I now enclose with this letter an application for village green registration at The Fleece and Nursery Land, West Auckland. This includes my sworn statutory declaration.

Should you wish clarification on any points in the document please do not hesitate to contact me.

On one specific point, the erection of fencing, this matter is detailed in the Background History, and clearly distinguishes between the 1993/4 closed fencing which established adverse possession rights for Mr Steven Robinson (land excluded from this application), and the fencing erected in early May 2010 in The Nursery which has never been fully closed and, though a troublesome nuisance, has been erected for less than two years and has never denied physical access to the open space (included in this application).

Yours sincerely



Sharon Hall
Parish Clerk

West Auckland Parish Council



Minutes of Meeting held Monday, 7th March 2011 at 7.00 pm,
Parish Community Room, Monteith Close, West Auckland

2

Present: Cllr J Bell
Cllr E Farrer
Cllr P Fenwick
Cllr J Ferguson
Cllr C Mairs, vice-Chairman
Cllr V Raine
Cllr L Kieny
Cllr W Robinson
Cllr A Turner
Cllr N Tweadie
PC Andy Hucker
PC Jessica Walker
JEFF KACE, DCC

11.18 TO ACCEPT APOLOGIES FOR ABSENCE.

Apoloiges were received from Cllr Charlton and Cllr Roberts

11.19 DECLARATION OF INTEREST IN ITEMS ON THE AGENDA.

There were no declarations of interest received

11.20 TO CONFIRM MINUTES OF PREVIOUS MEETING

The minutes were agreed to be a true account of the previous meeting and signed accordingly.

11.21 AN UNDETAILED COMPLAINT FROM MEMBERS OF THE PUBLIC

Chris McCale attended the meeting to request that the Parish Council consider allowing a club group to use the parish community rooms premises once the Village Centre closes. This was agreed in principle and it was resolved that any financial implications such as heating and lighting costs would be considered by the Parish Council for all groups holding sessions in the Community Parish rooms. Chris stated that the wii and television purchased by the Parish Council for the Village Centre would be returned. The Parish Council will then decide where the equipment can be used. The Parish Council thanked Chris for her commitment to the Village Centre

Residents were asked to make the Parish Council aware of their planning permission request to have an unadopted access made to their 2010 Park Street house. The Parish Council were fully supportive of this closure and emphasised that the residents have the authority to grant permission

11.22 TO RECEIVE POLICE REPORT.

PC Hucker introduced PC Walker and provided details of the crime statistics for the previous month. He also advised that a speed watch initiative will be taking place in schools and throughout the village in coming months. He emphasised the volunteers to man the speed guns would be welcome.

11.23 CLERK'S TABLING OF CORRESPONDENCE/ENDORISING INVOICE CHEQUES.

CHEQUE No	DETAILS	AMOUNT	PREVIOUSLY AGREED
100310	DCC Christmas lights	£996.40	Y
100311	Parish Rooms keys and cleaning materials	£57.61	Y
100312	DCC Car Park Contribution	£5000.00	Y
100313	CDALC Subscriptions	£257.34	Y
100314	DCC Monteith buildings insurance	£60.00	Y

The Clerk tabled all correspondence received and any cheques endorsed for invoices as detailed above.

The Clerk also advised that the PC laptop was not working and was in need of repair/replacement. It was resolved that a replacement should be purchased if required (this isn't necessary at present as a free repair was obtained).

11.24 TO RECEIVE FINANCE WORKING GROUP UPDATE.

The finance working group are due to meet on the 21st March 2011.

11.25 TO RECEIVE ENVIRONMENT/PLANNING WORKING GROUP UPDATE.

i To discuss Parish Plan Project

The Nursery West Auckland Parish Council resolved to apply to Durham County Council for the registration of the public open space between Front Street and The Nursery in West Auckland (marked red on Plan A circulated at the meeting) as a Village Green, under Section 15 of the Commons Act 2006. Plan attached.

ii To discuss snow clearing contingency plan

Jeff Race, DCC attended the meeting and provided a presentation on how winter weather conditions are managed by DCC on a budget of £2.75 million per annum. He explained how roads are prioritised and why all roads cannot be cleared due to cost implications. They have purchased 42000 tonnes of salt this year and 1800 salt bins are supplied across the county.

Jeff advised that DCC can provide insurance cover for volunteers clearing snow and that snow shovels and ploughs for use by volunteers can be provided by DCC.

iii Oaklev Cross Community Hall

To be carried to next agenda due to time restrictions.

Chairman's Signature..... Date.....

iv Royal Wedding

It was resolved that a maximum of £500 could be given to the Workingmen's Club and Memorial Hall providing they are willing to hold an event and cater for the residents who wish to celebrate the forthcoming Royal Wedding. It was also resolved that £300 would be given to the youth club if they are in a position to hold such an event for the youths of the village. Cllr Rielly agreed to contact all three organisations.

v Westlife

To be carried to next agenda due to time restrictions.

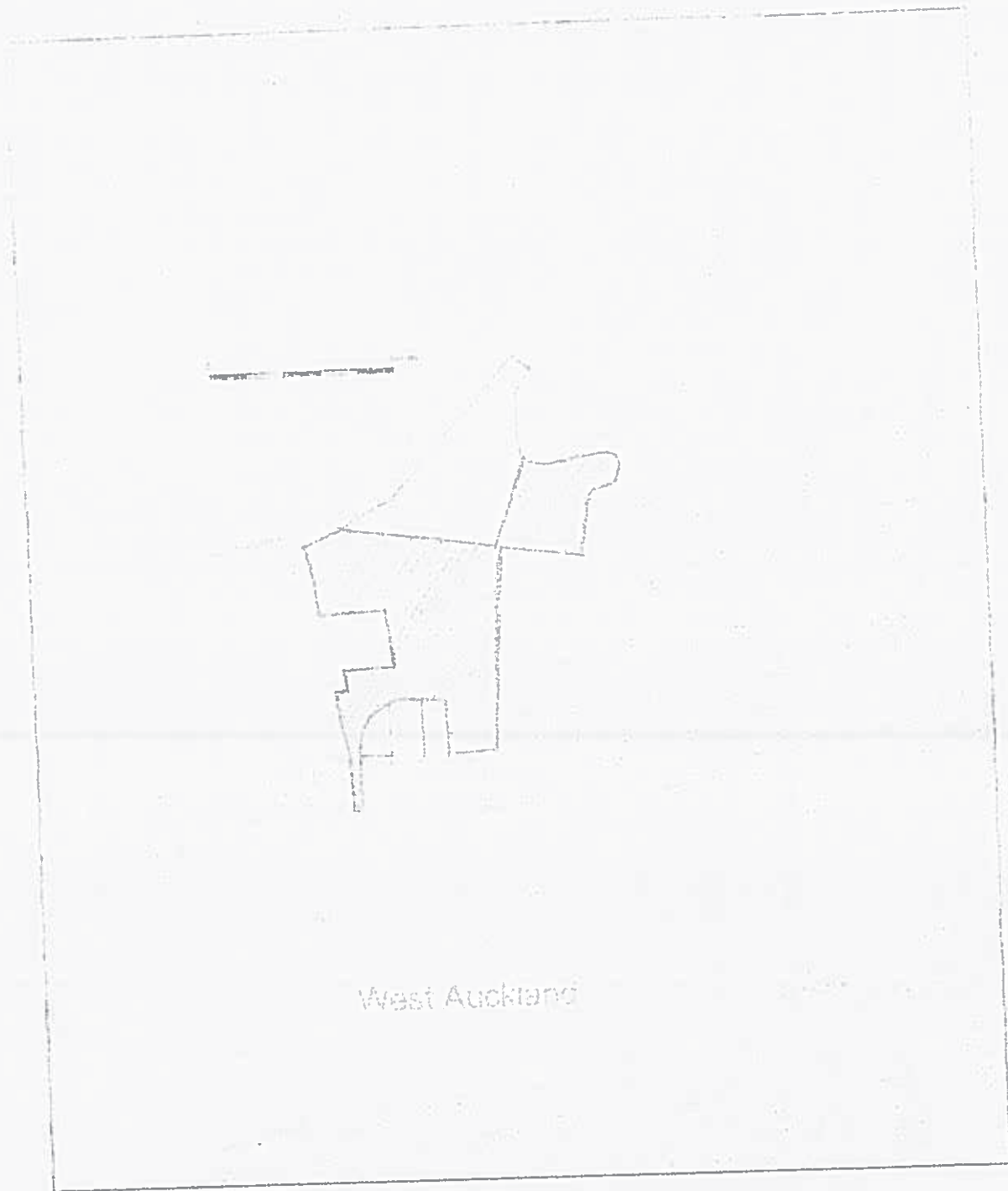
vi Bottle Banks

To be carried to next agenda due to time restrictions.

11.26 TO RECEIVE ITEMS FOR MONDAY, 11TH APRIL 2011 MEETING (INTERIM MEETING 21/03/11)

- To consider purchase of carpet and desk for Community Parish Rooms
- To consider running cost contributions from local groups for use of premises
- To discuss Oakley Cross Community Hall
- To discuss Westlife
- To discuss bottle banks

Chairman's Signature..... *H. Rielly* Date *11/4/11*

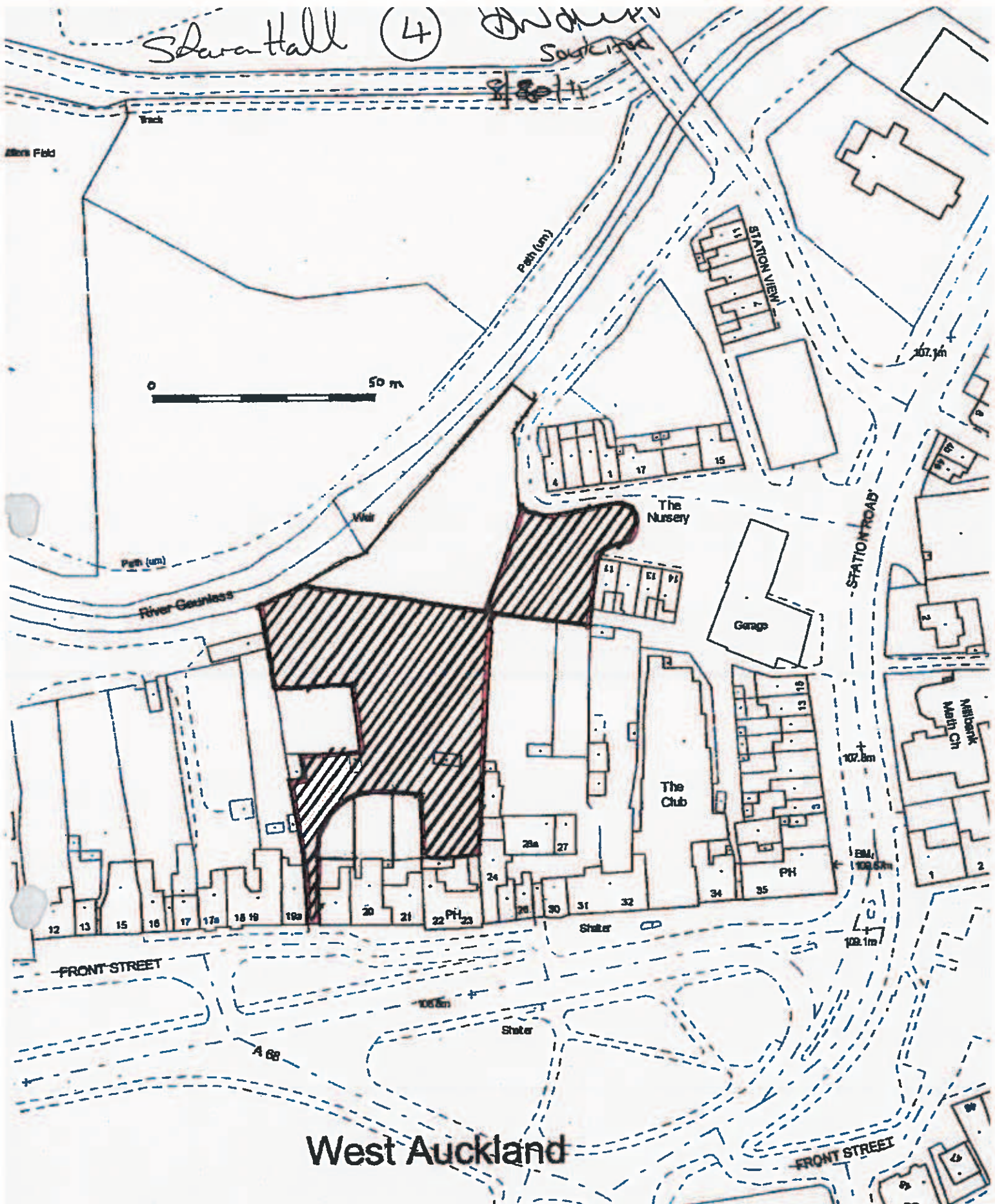


Proposed area for village green registration between
Front Street and The Nursery, West Auckland, County Durham

PLAN A

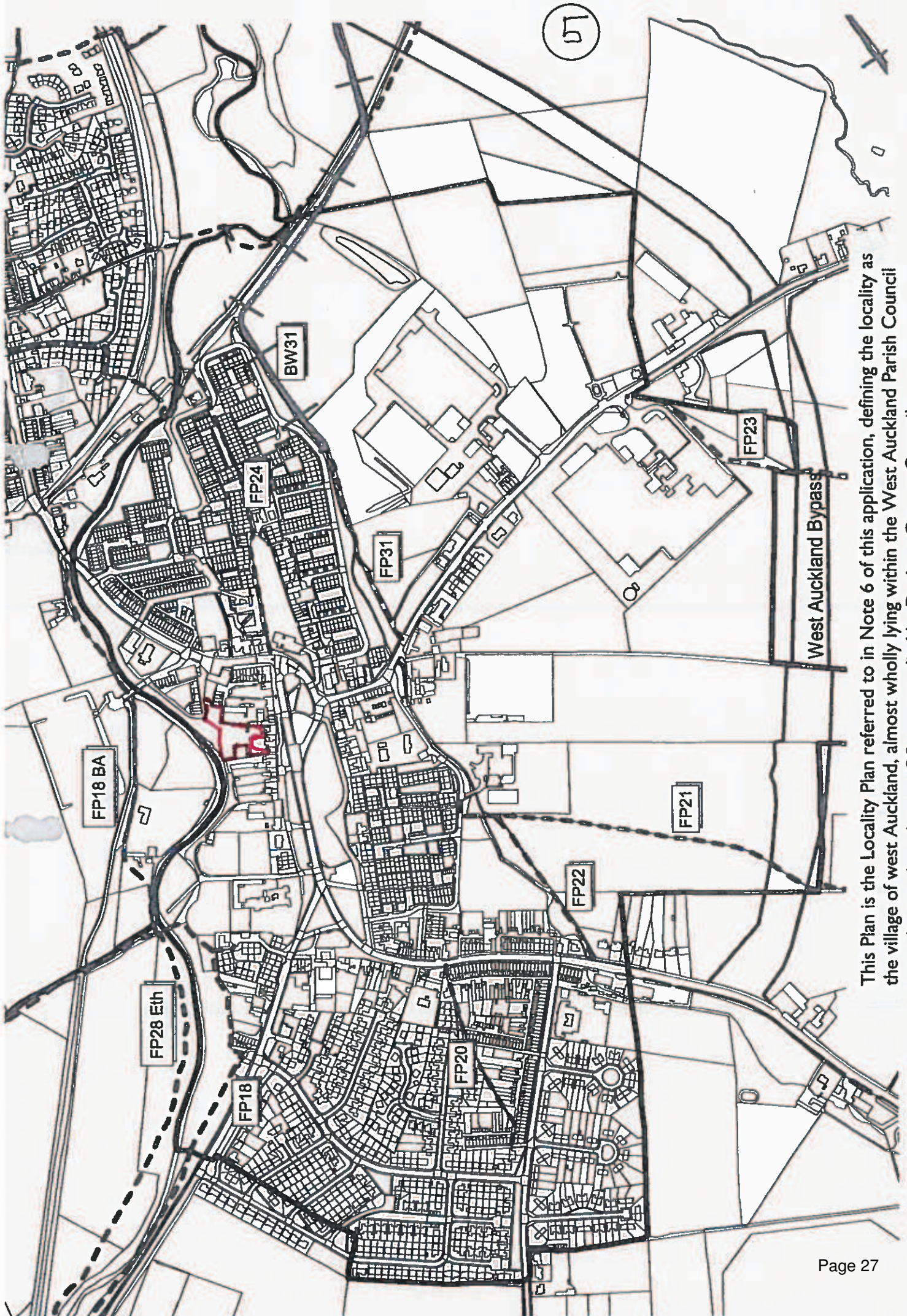
The gap between the two areas of land is defined by the original corner of the stone garden wall and the original timber corner post of the land enclosed by Mr Steven Robinson, and subsequently acquired by adverse possession by him. The gap was sufficient to provide pedestrian access only between the two spaces, and is one metre in width.

Sharon Hall (4) [Signature]



West Auckland

This Plan is the Plan A referred to both in Note 5 of this application and in the Statutory Declaration of Sharon Hall, Clerk to West Auckland Parish Council, made this day of August 2011... before me... see above..., and also in Witness Statements, all maps being based on OS 1:1250, provided by the former Wear Valley District Council, enlarged where necessary, but always provided with a scale bar.



This Plan is the Locality Plan referred to in Note 6 of this application, defining the locality as the village of west Auckland, almost wholly lying within the West Auckland Parish Council area, the map based on an OS map supplied by Durham County Council.

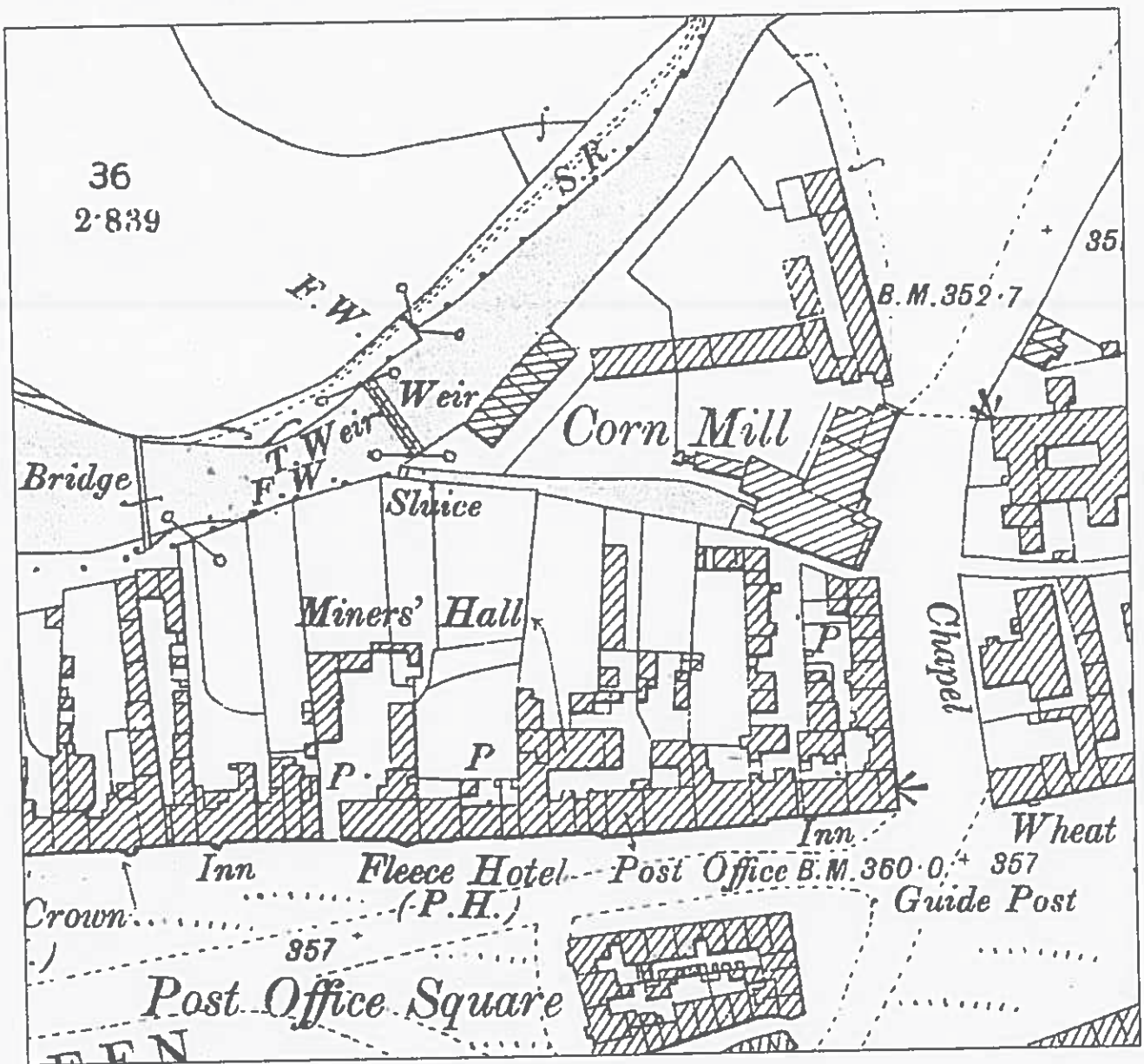
WEST AUCKLAND PARISH COUNCIL

PROPOSED 'FLEECE AND NURSERY' VILLAGE GREEN REGISTRATION OF LAND BETWEEN FRONT STREET AND THE NURSERY, WEST AUCKLAND, COUNTY DURHAM

BACKGROUND HISTORY

1897

These notes trace the history of the open space to the north of the village green between The Nursery, the River Gaunless and Front Street, land that is the subject of this application for village green registration. The land lies within West Auckland Conservation Area and its historical development, particularly the separate histories of the 'Fleece' area behind Front Street and the 'Nursery' area to its NE, is very relevant to this application.

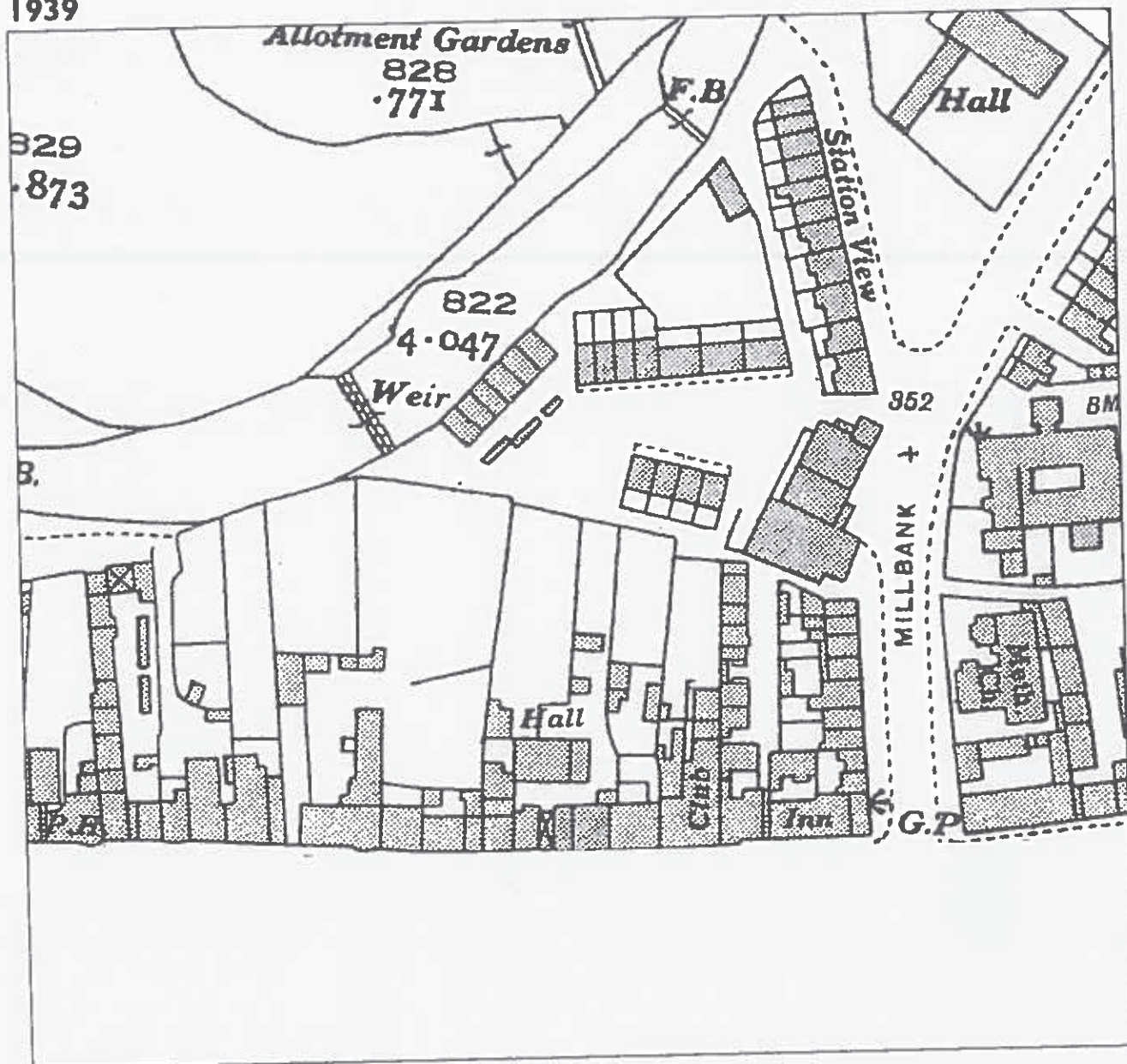


Second edition OS Map (1897)

The second edition OS map (1897) shown above, shows the Corn Mill with its then recently built stone cottages (now The Nursery), north of the Mill Race. This Mill Race comes off the River Gaunless to the west, and is a feature probably centuries old and certainly present in 1857 (1st ed OS map). It has long been the boundary between the Corn Mill area and the rear gardens of the north side of Front Street. At this time the Mill Race prevented any physical link between the two areas; no Front Street properties enjoyed any access from the north, because the Mill Race was in the way.

On Front Street in 1897, the Fleece Hotel (now nos 20,20A and 20B), together with No 21 (private house now) and Nos 22/23 (Prince of Wales PH) occupied the village frontage with yards and gardens stretching back to the River Gaunless (western part of northern boundary) and the Mill Race (eastern part). It is highly likely that all this block of land was formerly owned by West Auckland Brewery, who owned both pubs. In due course Camerons owned both pubs (but not No 21), until sale of the Fleece Hotel c.1973 and Prince of Wales c.2000.

1939



Fourth Edition OS map (1939)

The Mill Race has been filled in by 1919 (3rd ed OS), so presumably the Mill had ceased to function. The brick Nursery cottages were built part over the old Mill Race between 1897 and 1919. In 1939 (4th edition OS map), see above, the two areas were still distinct with no sign of any form of linkage. Witness statements attached to this application suggest that by as early as 1926 there was recreational use established on both areas, now known as the Fleece and Nursery land, and that at some point the two areas were joined by a breach in the wall for pedestrian access across the infilled millrace. From the date of this breach in the wall, there developed a through pedestrian route, across the land in question, from the alley beside 19 Front Street, to The Nursery and along the riverside to the west. It became an established 'cherished' footpath route, i.e. not a formal right of way. There was no vehicular access at all between the two areas at this time.

1950-60s

In the 1950s and 60s the narrow pedestrian gap that existed in the stone wall that formed the boundary between the former mill race and the open land behind the Prince of Wales and Fleece public houses, and the Nursery land to the north, continued to be used as a through pedestrian route across the open land, all still in communal recreational use.. There was still no vehicular route at all between the Fleece and Nursery areas.

1971-74

In 1971 the six Mill cottages against the river, together with their privies, etc, were demolished and in the following years the area was landscaped as an extension to the open space between the Nursery terraces. By this time the stone wall that formed the boundary between the Front Street properties and the Mill Race had been demolished and the whole area was open space. It is from this date that the local planning authority, Wear Valley District Council from 1974, began the maintenance of the open amenity space with regular grass mowing. With the loss of the wall, there was now no impediment to vehicular use between the two areas, and there may have been occasional vehicular movements, though no recognisable track or route was ever defined in the grass, suggesting use was only very intermittent.

c.1994

In late 1993 or early 1994 Mr Abel Armstrong, then owner of 24 Front Street and the derelict Chapel behind it – both properties with only Front Street vehicular access – began to use a vehicular opening he had created in the stone wall beside his land, which formed the eastern boundary of the 'Fleece' land, thus facing onto that open space. He began to take both private and commercial vehicles both north, through the Nursery and southwest onto Front Street via the alley besides 19 Front Street. The access was opposed by local residents and in an effort to stop him the landlord of the Prince of Wales erected fencing on the Fleece land open space.

Considerable local action, involving local residents and the local district councillor, the late Cllr Mrs Betty Harker, ensued. Ownership of the open land could not be established and, after the dust had settled, only the area formerly occupied by the six Mill houses down by the river remained fenced. This fencing was undertaken by Mr Stephen Robinson, who began to claim adverse possession on the land, although he only owned the site of one cottage at the time. This claim was allegedly made with the tacit private approval of Cllr Harker, because it effectively blocked Mr Armstrong's vehicular access through The Nursery, but maintained a narrow (approx one metre wide) pedestrian route between the two areas of open space. Mr Armstrong's vehicular access north through The Nursery was thus blocked by fencing and he now limited his vehicular access to the Front Street alley only.

In view of the ownership uncertainty, Wear Valley DC ceased maintaining the land south of the line of the Mill Race, the 'Fleece' Land, but did continue to cut the grass in front of the remaining Nursery houses, the 'Nursery' land, though both areas, now separated by the land of Mr Robinson's adverse possession claim, have remained public open space in recreational use throughout the period.

At this time, Cameron Breweries, as successors in title to the West Auckland Brewery, investigated their possible ownership of the open land between the river, the Nursery and Front Street as they then owned the Prince Of Wales PH and had formerly owned the Fleece Hotel PH too, whose land originally stretched back to the river (as detailed in sale particulars in 1857). This legal search of adjacent properties deeds, etc, was probably prompted by the increasing unprofitability of the Prince of Wales PH, and ownership would have allowed them to extend their buildings or develop a beer garden to the rear. They could not prove ownership but, as the most likely claimant to ownership, placed a legal Caution on the land right through to the Nursery, with The Land Registry. Later this Caution was reduced up to the line of the Mill Race, excluding Steve Robinson's land claim and the Nursery land, reflecting the separation of the two areas and the likely limit of West Auckland Brewery's historical ownership (Mr Robinson's fenced land actually included a sliver of land south of the line of the mill race). Cameron's sold the Prince of Wales PH to Wolverhampton and Dudley Breweries, with no land behind it, who then maintained the Caution for a period. When, in turn, they sold the Prince of Wales, the Caution lapsed.

It should be noted that in the fencing 'free-for-all' that ensued in 1994, Mr and Mrs Briggs of 21 Front Street felt compelled to fence the external amenity space they had enjoyed for decades, in part legally secured in an agreement with Cameron's Breweries. This land has remained continuously fenced and thus is, *de facto*, now the private land of Mrs Briggs, achieved by adverse possession.

It should be further noted that for brief periods during the 1990's and running up to the mid 2000's, the land east of Mrs Briggs garden, immediately behind the Prince of Wales, and ending in line with her northern garden fence, has been fenced and gated, fenced and not gated, and now fully open, each fencing being undertaken by tenants of the public house, with the occasional unauthorised use of a small part of that land for refuse and empty bottle storage.

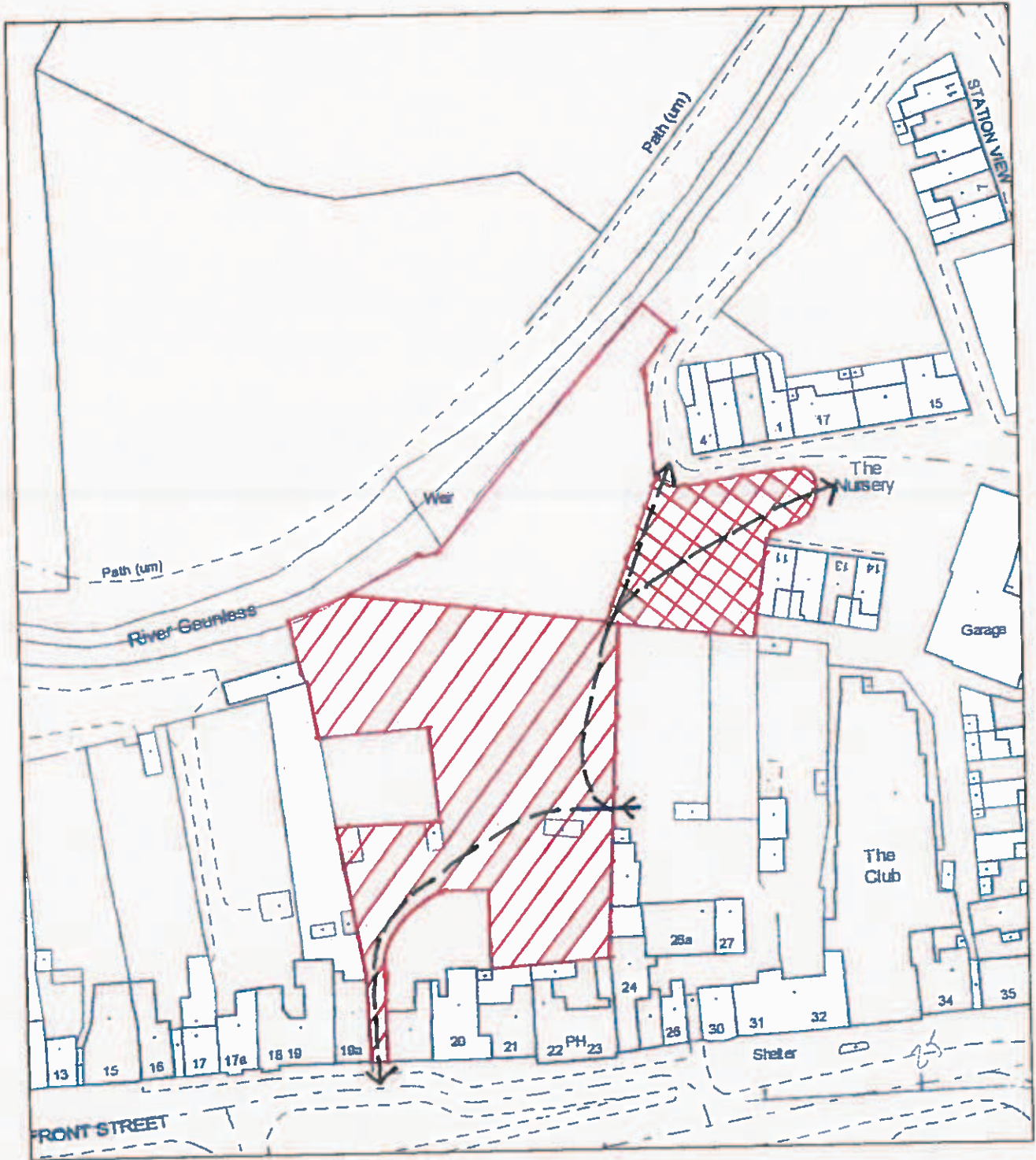
2006

In 2006, as the deadline for the twelve year occupation of Steve Robinson's adverse possession land approached, the fencing was torn down by relatives of the original owners of one of the six Mill cottages (joined by relatives of Mr Armstrong), who then formally opposed his claim. The claim was finally settled in 2008-9 at a Land Registry Tribunal which awarded Mr Robinson his fenced land.

Since the removal of the fencing in 2006 Mr Armstrong, his son-in-law Mr John-Paul Cliff (who lives in one of the two converted houses in the old Chapel) as well as their family, friends and acquaintances, have taken vehicular access through The Nursery with private and commercial vehicles on a regular basis with many vehicle movements a day. The vehicles include commercial vans, trucks, horseboxes, a lorry with a fixed crane, several caravans at a time, and on one occasion a double-decker bus! These vehicles destroyed the grass surfacing and a mudded track developed through the open area to the detriment of local residents, and other residents in the village, who regularly enjoy the riverside walk and recreational use of the land, further degrading the appearance and amenity of these public open spaces.

2008-11

In Feb 2008 West Auckland Parish Council placed a Caution on the two parcels of open space land, in an effort to demonstrate the community's intention to retain these spaces as open public amenity spaces. In a further effort to limit access in The Nursery, the Parish Council placed bollards around the Nursery land, only for two bollards to be removed by Mr Armstrong and Mr Cliff, to maintain their vehicular access. In April 2008 Mr Armstrong placed a Caution on the Nursery land.



- (1) West Auckland Parish Council 'Caution' land behind Front Street hatched in red
- (2) West Auckland Parish Council and Abel Armstrong 'Caution land' in The Nursery, cross-hatched in red
- (3) Steven Robinson land between these two parcels of land, subject of planning permission for two houses
- (4) Current vehicular access routes from Mr Armstrong/Mr Cliff's land

In 2009 the Parish Council asked Mr Armstrong to cease vehicular access through The Nursery, only to be told he held documents that proved he had legal rights to the route. The Parish Council then requested sight of these documents within fourteen days, but received no reply.

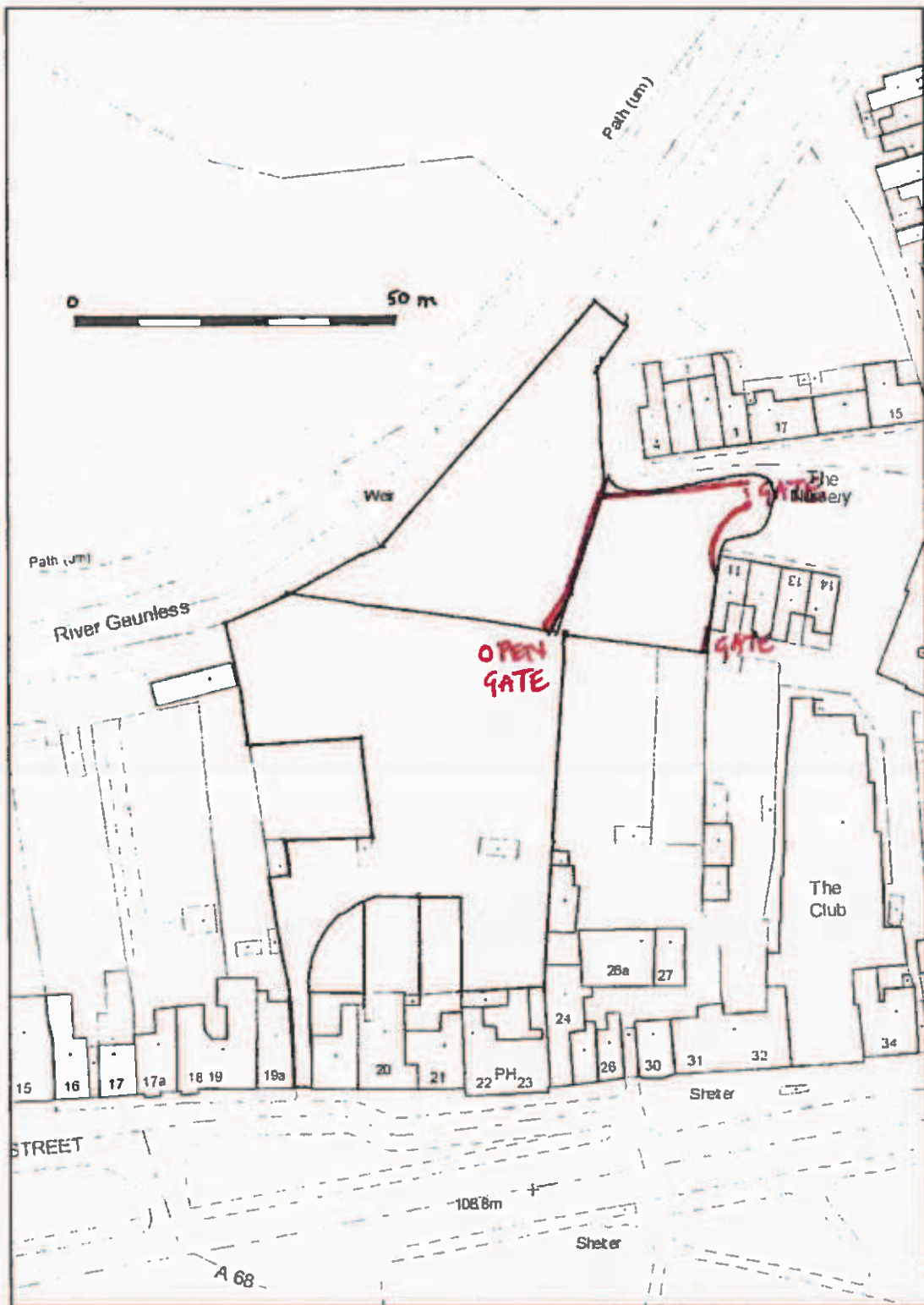
In early May 2010 Mr Armstrong and Mr Cliff erected a fence around the Nursery land, establishing a gated vehicular access of approximately two metres at its junction with the 'Fleece' land, thus including a portion of Mr Robinson's land, so denying local Nursery residents direct access to their cherished open space. Access was however not completely denied as two gates were always left open, except for when they were very occasionally closed for a day or so when horses were impounded, when even a small pedestrian gate allowed access. In any event, one of the gates quickly became damaged and was left permanently open, thus the land has never been fully enclosed.

During 2010 and 2011 Mr Robinson, having secured planning permission for two houses on his land, has brought in substantial rubble stonework to erect a high stone wall along his southern boundary, in compliance with his approval, i.e. leaving only a one metre pedestrian gap between his land and Mr Armstrong's. He has so far laid the foundation for that wall to almost within a metre of his corner boundary, thus allowing Mr Armstrong and his family to take vehicular access through the two metre wide access. Mr Armstrong's response has been to partially remove stonework from the corner of his boundary wall to widen the access.

During 2010 and 2011 Mr Armstrong has periodically 'improved' his vehicular access by laying down broken brick hardcore in the tracks and latterly road planings. These operations were noted by the Durham County Council enforcement officers.

This creation of a through route and its accompanying fencing is a major blemish on the area, a hindrance to the easy access of local residents who are now prevented, in some cases, from walking round to the back of their own houses, without going through gates. It is also a huge disincentive to the recreational use of the land. But that use has not entirely ceased as it is still used for public access, dog walking and sitting out, etc as the gates have never enclosed the land, thus, in theory, recreational use remains an option.

2-8-11

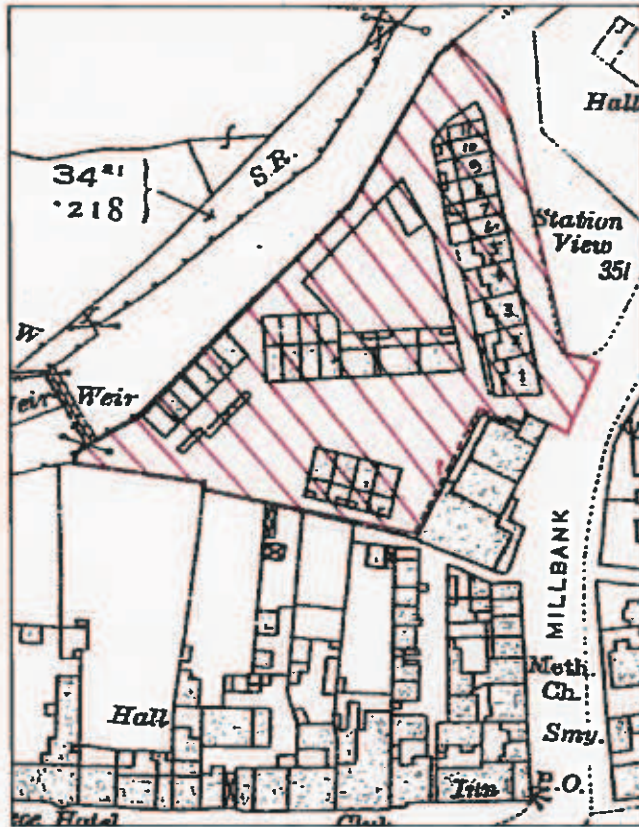


Plan of proposed Fleece+Nursery village green area, also the land held under Caution by West Auckland Parish Council.

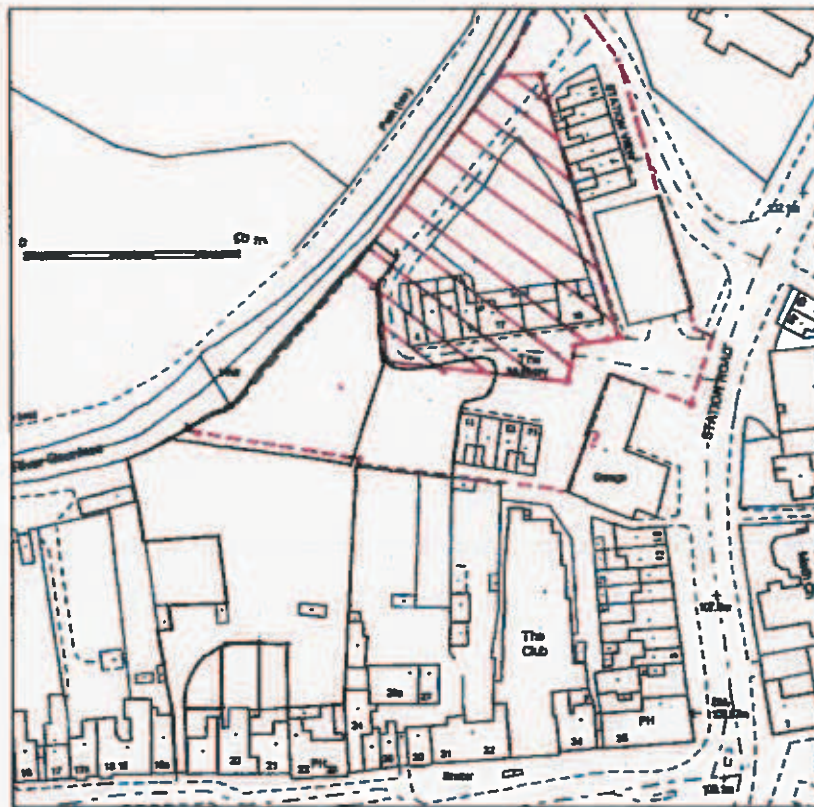
Showing, in red, the area of land in The Nursery fenced by Mr A Armstrong in May 2010

LANDOWNERSHIP IN THE NURSERY IN 1934 AND 1945

7



Boundary of 1934 mortgage land as defined in text (no map) between Joseph Vart (borrower) and EJTG Bagshawe (mortgagee)



Boundary of 1945 land sale, as defined on map, between Joseph Vart (vendor) and Herbert Mairs (purchaser)

Evidence based on a 1955 Abstract of Title

**THE FLEECE AND NURSERY LAND, WEST AUCKLAND
THE CASE FOR VILLAGE GREEN REGISTRATION**

The land proposed for registration comprises two distinct areas – the Fleece land and the Nursery land - that were once historically and physically separate (probably up to c.1971-4, were then wholly joined (from mid 1970s to 1994), and are now linked by a narrow one metre wide strip of land (1994-2011). Throughout this time, and possibly as far back as 1926, both areas have been open land enjoyed by local residents for community uses. The complex history of the area is fully set out in an accompanying document.

The area lies within the West Auckland Conservation Area and in 2009 the Parish Council designated this land, and adjacent areas to the NE as an Action Area as a focus for its future work, such were the issues of environmental degradation, loss of amenity, dereliction and vandalism.

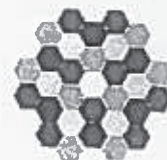
The whole area has been, and still is, used for a range of informal recreational activities including fishing, football, cricket, parties, picnics, dog walking, Guy Fawkes bonfires, general play, sunbathing, kite-flying, etc, etc. It is used by residents whose houses are close to the land, and also used by much of the village who use the River Gaunless route and the path from Front Street as a regular amenity walk within the village.

Those activities have been constant during this time and only the recent partial fencing of the land, and excessive vehicular traffic, around the Nursery, by Mr Abel Armstrong and his family, have limited, but not stopped, the recreational use of that part of the area. Mr Armstrong's fencing, erected May 2010, has never been fully enclosed. The occasional use of the land by travellers and grazing by horses has also, inevitably, restricted, but not curtailed, the easy recreational use of the land by local residents.

During much of this period, and certainly in the past forty years, there has never been a known owner of any part of the land and consequently no consent was ever sought to use the land for recreational purposes. Ownership of The Nursery area is likely to be held originally by the builders of the Nursery houses, and on the Fleece land the owners once were likely to have been West Auckland Brewery, though proof of the latter has since disappeared. From 1974 up to 1994 the whole of the area was maintained by Wear Valley District Council, only the Nursery area being maintained post-1994 until recently.

Village Green registration would enable to Parish Council, working with Durham County Council, to ensure that the land is well-maintained, that unauthorised activities and access are controlled and that the recreational and amenity use of the land is retained and developed, for benefit of local residents.

If registration is successful, the Parish Council, would wish to work with Durham County Council and local residents to protect recreational uses, control inappropriate activities, remove unauthorised fencing, prepare a landscape improvement scheme and develop a regular maintenance regime for grass-cutting.



Official copy of register of caution title

Title number DU311368

Edition date 30.05.2008

- In accordance with r.134(7) of the Land Registration Rules 2003, this official copy is issued without reference to any application or matter which may affect the caution's subsistence.
- The date at the beginning of the caution details is the date on which the caution was originally delivered for registration.
- Issued on 30 May 2008 at 12:58:36.
- 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 Land Registry website www.landregistry.gov.uk or Land Registry Public Guide 1 - *A guide to the information we keep and how you can obtain it.*
- This title is dealt with by Land Registry Durham Office.

Caution register kept under section 19 of the Land Registration Act 2002.

A: Caution property register

Containing a description of the legal estate to which the caution relates.

DURHAM : WEAR VALLEY

1 (30.05.2008) Caution against first registration of the freehold estate in land relating to the land shown edged with red on the caution plan of the above title filed at the Registry and being land to the south west of The Nursery, West Auckland.

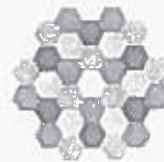
2 (30.05.2008) The statutory declaration accompanying the caution states the cautioner claims the following interest in the estate:

"as 'PARISH COUNCIL'. Under the 'Open Spaces Act 1906' any Local Authority (which for the purposes of the Act includes (Section 1) The Council of any County, of any Municipal Borough, or of any District The Common Council of the City of London and any Parish Council has the power to acquire open space or "undertake the entire or partial care, management, and control of any open space whether any interest in the soil is transferred to the Local Authority or not (Section 9(b)).

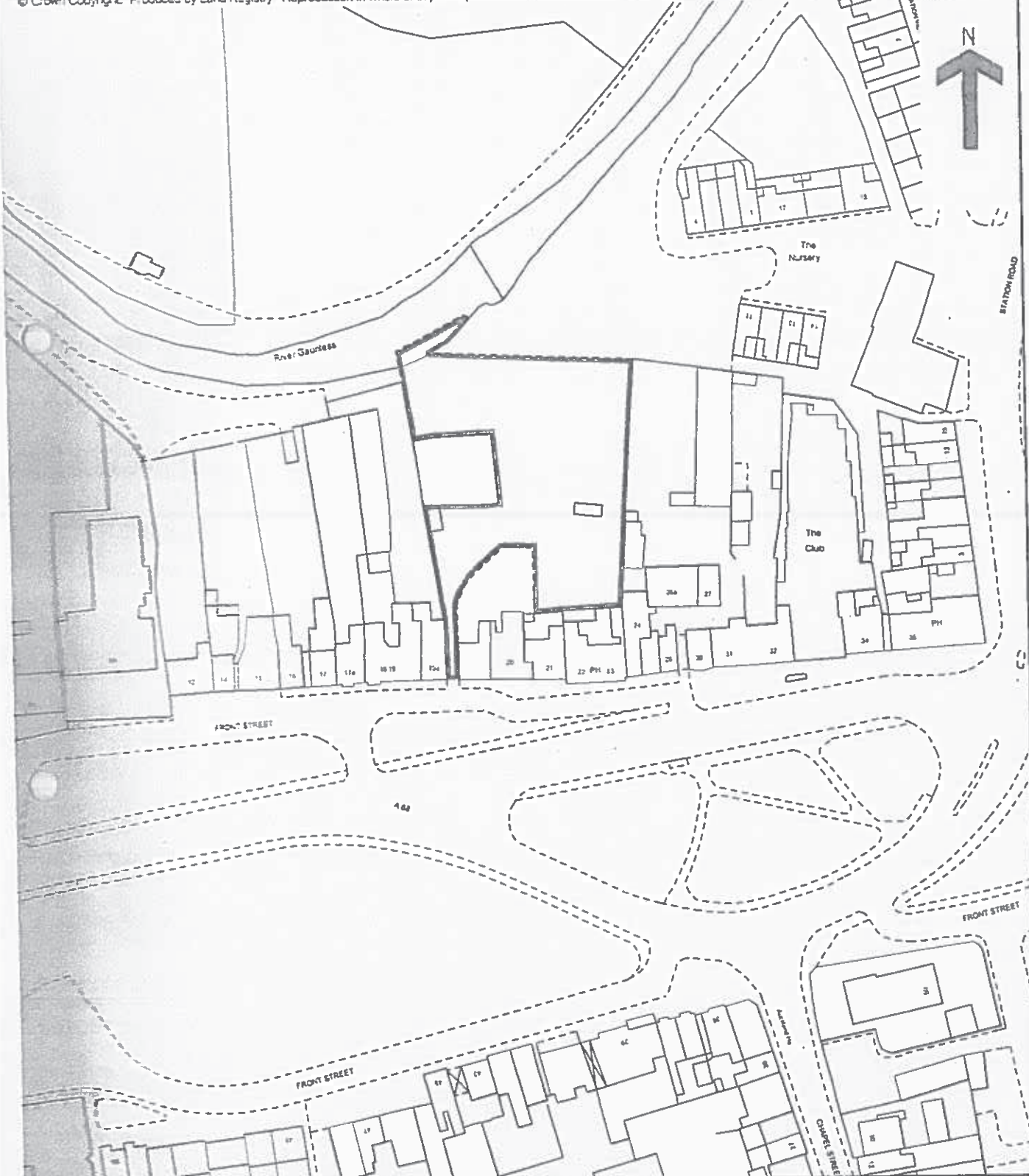
"By virtue of the fact that the area in question constitutes 'open space' in the Parish of West Auckland adjoining an unadopted access known as 'The Nursery' and the Parish Council is extremely concerned that heavy vehicles and lorries have recently been driving over the land for which the Parish Council is responsible".

Land Registry Official copy of caution plan

Title number DU311368
Ordnance Survey map reference NZ1826SW
Scale 1:1250
Administrative area Durham: Wear Valley



© Crown Copyright. Produced by Land Registry. Reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number 100026316.



In accordance with r.134(7) of the Land Registration Rules 2003, this official copy issued on 30 May 2008 at 12:58:36 is issued without reference to any application or matter which may affect the caution's subsistence. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).
This caution 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. See Land Registry Public Guide 19 - Title Plans and Boundaries.
This caution is dealt with by Land Registry, Durham Office.

Official copy of register of caution title

Title number DU308793

Edition date 15.02.2008

- In accordance with r.134(7) of the Land Registration Rules 2003, this official copy is issued without reference to any application or matter which may affect the caution's subsistence.
- The date at the beginning of the caution details is the date on which the caution was originally delivered for registration.
- Issued on 18 February 2008 at 11:21:08.
- 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 Land Registry website www.landregistry.gov.uk or Land Registry Public Guide 1 - *A guide to the information we keep and how you can obtain it.*
- This title is dealt with by Land Registry Durham (Southfield) Office

Caution register kept under section 19 of the Land Registration Act 2002.

A: Caution property register

Containing a description of the legal estate to which the caution relates.

DURHAM : WEAR VALLEY

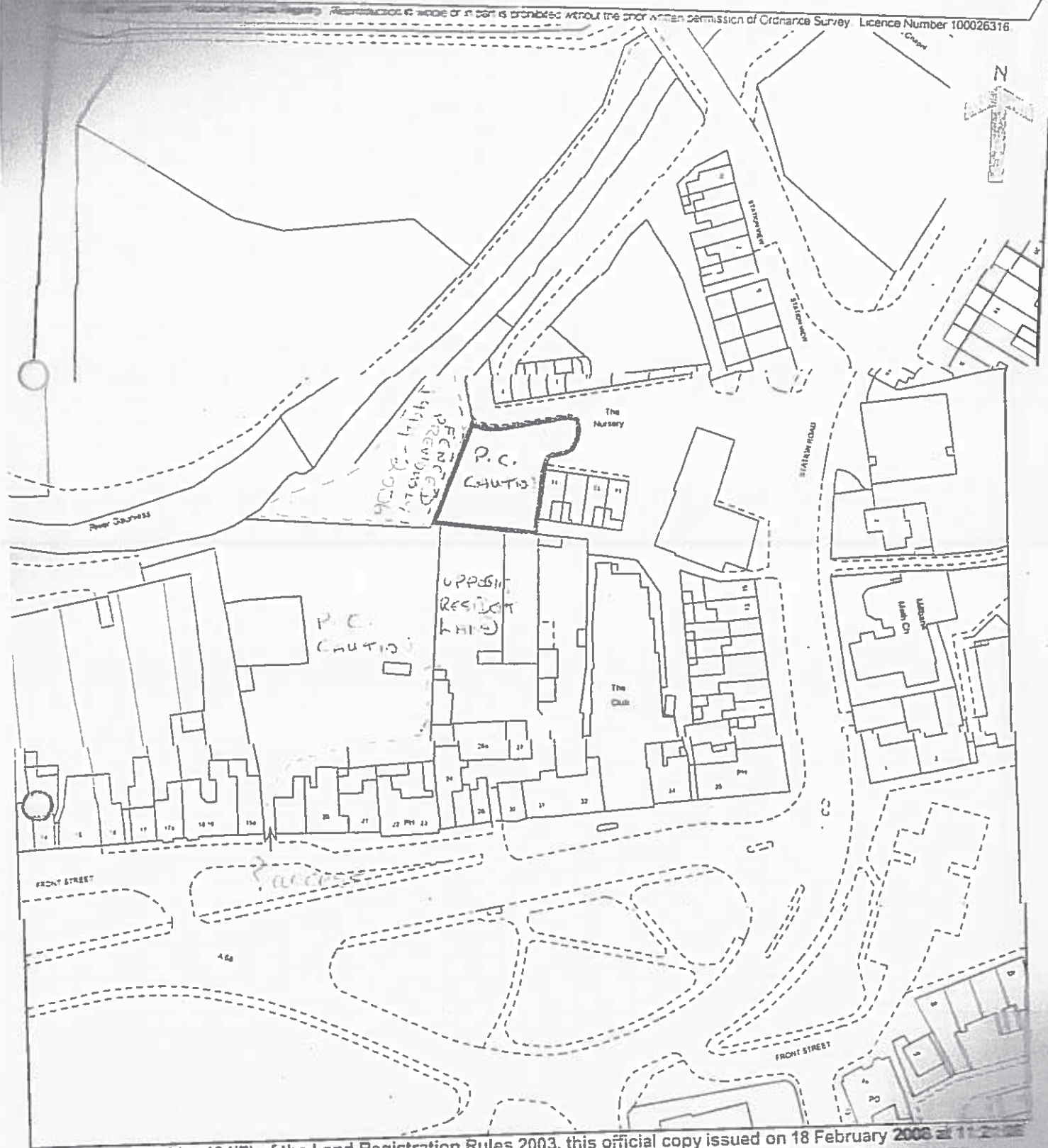
1 (15.02.2008) Caution against first registration of the freehold estate in land relating to the land shown edged with red on the caution plan of the above title filed at the Registry and being land at The Nursery, West Auckland.

2 (15.02.2008) The statutory declaration accompanying the caution states the cautioner claims the following interest in the estate:

as 'PARISH COUNCIL'. Under the 'Open Spaces Act 1906' any Local Authority (which for the purposes of the Act includes (Section 1) The Council of any County, of any Municipal Borough, or of any District The Common Council of the City of London and any Parish Council has the power to acquire open space or "undertake the entire or partial care, management, and control of any open space whether any interest in the soil is transferred to the Local Authority or not (Section 9(b)).

"by virtue of the fact that the area in question constitutes 'open space' in the Parish of West Auckland adjoining an unadopted access known as 'The Nursery' and the Parish Council is extremely concerned that heavy vehicles and lorries have recently been driving over the land for which the Parish Council is responsible".

Plan Number 00302753
Domestic Survey map reference NZ1826SW
Scale 1:1250
Administrative area Durham: Wear Valley



In accordance with r.134(7) of the Land Registration Rules 2003, this official copy issued on 18 February 2008 at 11:23 AM is issued without reference to any application or matter which may affect the caution's subsistence. It is admissible as evidence to the same extent as the original (s.67 Land Registration Act 2002).
This caution 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. See Land Registry Public Guide 19 - Title Plans and Boundaries.
This caution is dealt with by Land Registry, Durham (Southfield) Office.

LR

TITLE NUMBER
DU185431



DURHAM : DURHAM

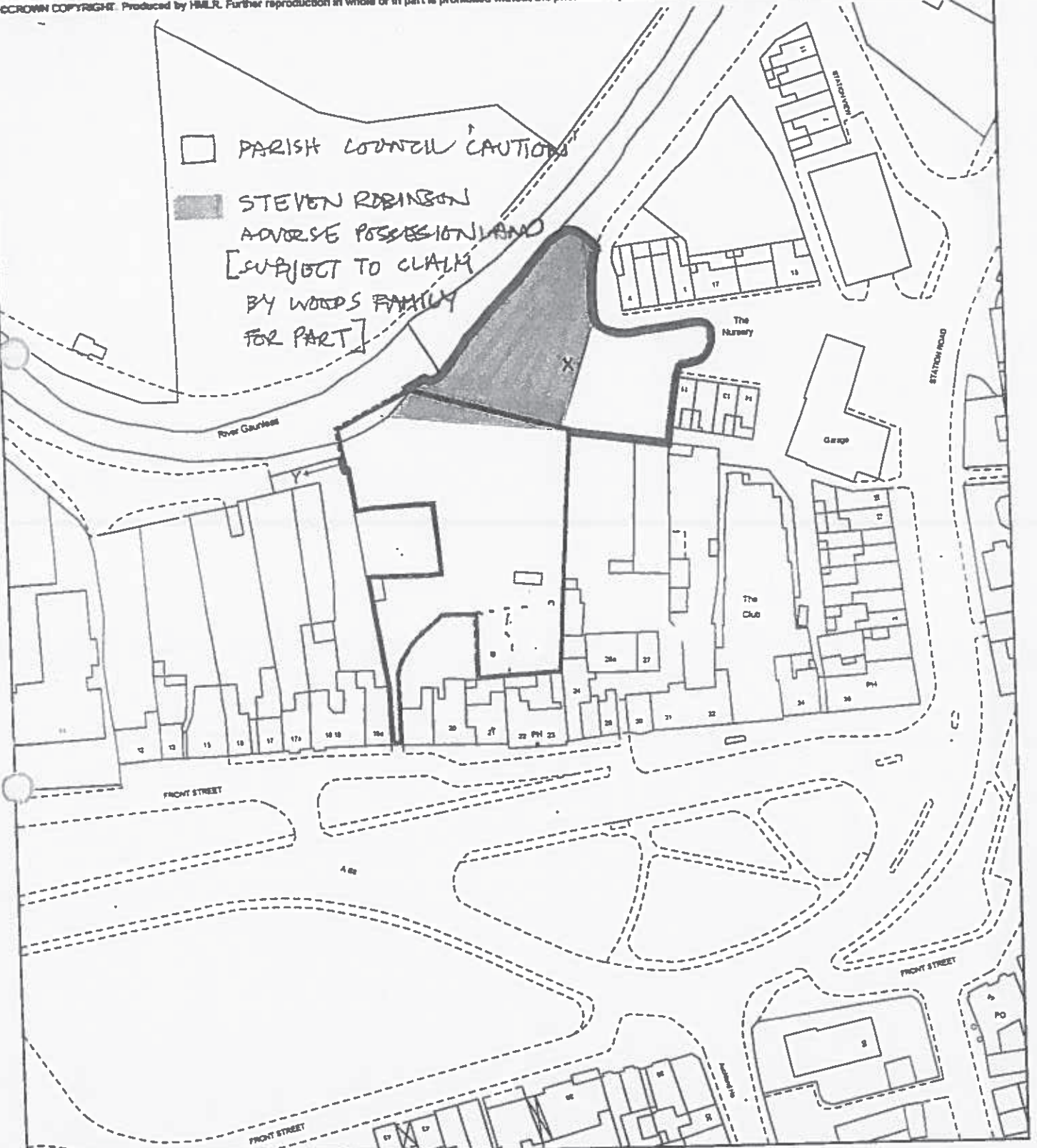
ORDNANCE SURVEY MAP REFERENCE:

NZ1826SW

SCALE 1:1250

©CROWN COPYRIGHT. Produced by HMLR. Further reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey. Licence Number GD 272728.

□ PARISH COUNCIL CAUTIONS
■ STEVEN ROBINSON
ADVORSE POSSESSION LAND
[SUBJECT TO CLAIM
BY WOODS FAMILY
FOR PART]



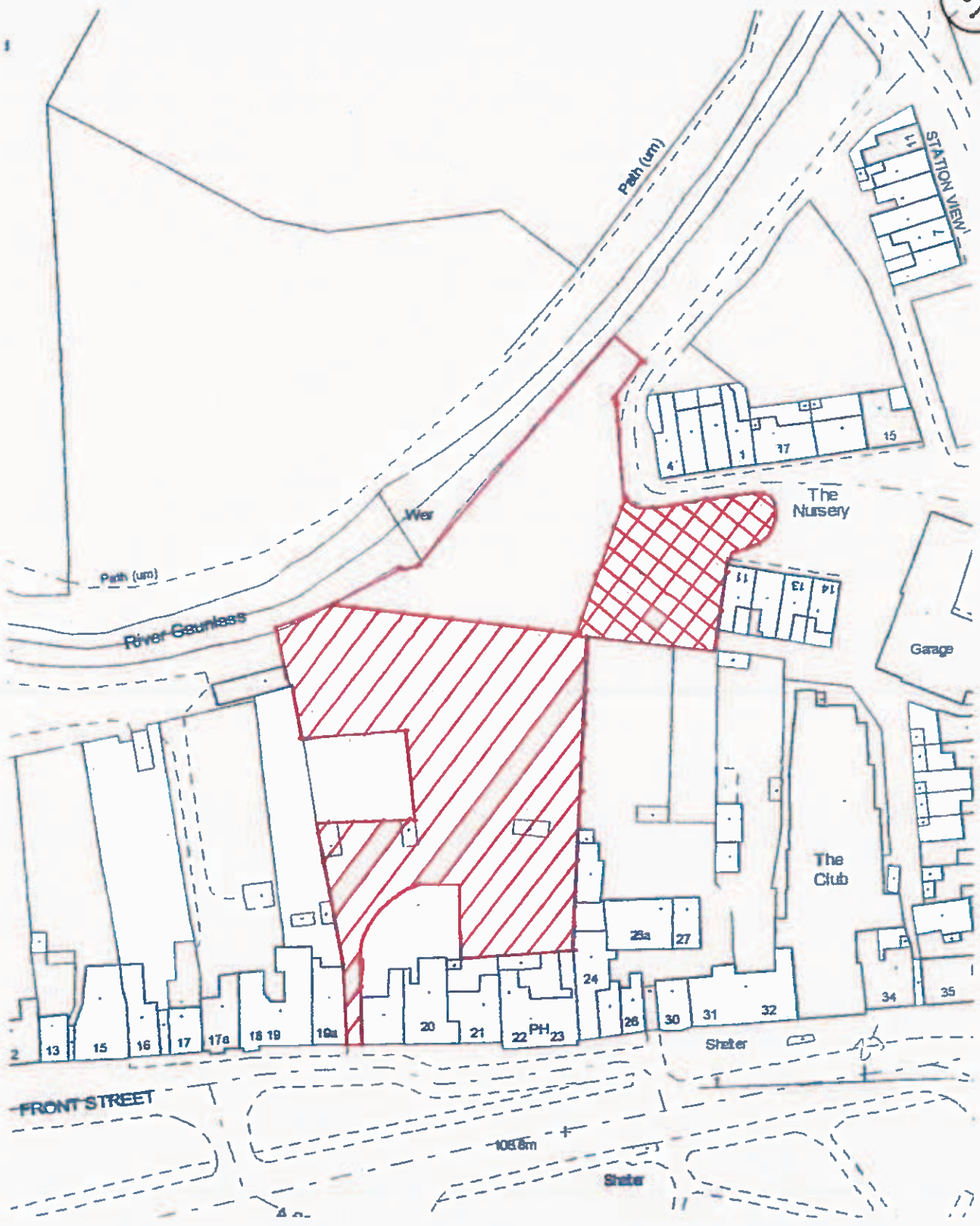
This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground. For more information see Land Registry Public Guide 7 - Title Plans.

In accordance with r.134(7) of the Land Registration Rules 2003, this official copy is issued without reference to any application or matter which may affect the caution's subsistence.

This copy may be subject to distortions in scale.
Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
Issued on 10 February 2006 at 16:34:19.

+ This title is dealt with by the Durham (Southfield House) District Land Registry.





LAND BETWEEN FRONT STREET AND THE NURSERY, WEST AUCKLAND

- (1) West Auckland Parish Council 'Caution' land behind Front Street hatched in red
- (2) West Auckland Parish Council and Abel Armstrong 'Caution land' in The Nursery, cross-hatched in red
- (3) Steven Robinson land between these two parcels of land, subject of planning permission for two houses

WEST AUCKLAND PARISH COUNCIL
**PROPOSED 'FLEECE AND NURSERY' VILLAGE GREEN REGISTRATION
 OF LAND BETWEEN FRONT STREET AND THE NURSERY,
 WEST AUCKLAND COUNTY DURHAM**

10

WITNESS STATEMENTS FROM WEST AUCKLAND RESIDENTS

Name	Address	Knowledge of land	Current address, if not local
THE NURSERY			
Mr Gordon Beecham	4 The Nursery	1960-2011	31 Waterson Crescent, Witton Gilbert, DH7 6SH
Mrs Janet Clark	5 The Nursery	1960-1970	12 Fairfield, Evenwood, Co Durham DL14 9SE
Mrs Joan Woodward	11 The Nursery	1961-2011	Still there
Mrs Diane Donohue (daughter)*	11 The Nursery	1963-2011	2 Hillside Court, North Bitchburn, Crook DL15 8FD
Mrs Lynne Byers (daughter)	11 The Nursery	1962-2011	2 Mills Close, Compton Lane, Horsham, West Sussex RH13 5QA
Mrs Susan Brydon (daughter)	11 The Nursery	1965-2011	Cooper House, Woodland, DL13 5RH
Mrs Doreen Garfoot	13 The Nursery	1926-2011	Still there
Mr Jeff Garfoot	13 The Nursery	1966-2011	6 Rush Park, Bishop Auckland DL14 6NR
FRONT STREET			
Mr Colin Tutin	20A Front Street	1954-2011	23 The Square, St Helen Auckland DL14 9EE
Mr Martin Roberts	20B Front Street	1979-2011	Still there
Mr David Roberts (son)	20B Front Street	1979-2011	18 Eastmount Road, Darlington DL1 1JY
Mr William Roberts (son)	20B Front Street	1982-2011	18 George Street, Darlington DL1 5DW
Mrs Brenda Briggs	21 Front Street	1938-2011	Still there
Mr Stanley Fielding (nephew)	21 Front Street	1973-2011	16 Coniston Avenue, West Auckland DL14 9LL
Mrs Jill Wheeler	31 Front Street	1979-2011	75 Front Street, West Auckland DL14 9HL
Ms Helen Renwick	32 Front Street	1979-2011	Still there

REST OF VILLAGE

Mr William Robinson	3 Esthwaite Grove	1960-2011	Still there
Mr Keith Tweddle	16 Copeland Road	1943-2011	Still there
Mrs Laurel King	5 Rydal Grove	1940-2011	Still there
Mrs Hazel Charlton	5 Rydal Grove	1969-2011	Still there
Mrs Lynn Rielly	15 Staindrop Road	1959-2011	Still there
Mr Colin Howson	18 Front Street	1954-2011	20 Berkeley Grove, Bishop Auckland
Mrs Valerie Blower	17 Arnold Street	1946-1993	17 Palairt Close, Bradford on Avon, Wilts BA15 1US

WEST AUCKLAND: FLEECE & NURSERY

APPENDIX 2

Summary Table of User Evidence

APPENDIX 2: USERS

Name	Years' knowledge/user	Property (when using Land)	User	Frequency
Mr. G W Beecham	The Nursery K: 1960 to present U: 1960 – 78; 1985 – present	4 The Nursery	<ul style="list-style-type: none"> To relax Family activities 	<ul style="list-style-type: none"> Daily 'not possible any more'
Janet Clark	1960 – 70	5 The Nursery	<ul style="list-style-type: none"> Playing games Bonfire nights 	<ul style="list-style-type: none"> Every day
Joan Woodward	1961 – present	11 The Nursery	<ul style="list-style-type: none"> Sunbathe Children playing Bonfire parties 	<ul style="list-style-type: none"> Daily
Diane Donohue	1963 – present; infrequent after 1988	11 The Nursery	<ul style="list-style-type: none"> To play Take shortcut Birthday & bonfire parties 	<ul style="list-style-type: none"> Daily as a child, less frequently as an adult
Lynne Byers	1962 – present; infrequent after 1981	11 The Nursery	<ul style="list-style-type: none"> Play Sunbathe Walk (across land to river) 	<ul style="list-style-type: none"> Now – monthly when I visit my mother
Susan Brydon	1965 – present; infrequent after 1995	11 The Nursery	<ul style="list-style-type: none"> Children playing Sunbathe Ball games 	<ul style="list-style-type: none"> About 3 times a week in summer

APPENDIX 2: USERS

Doreen Garfoot	1926 – present	13 The Nursery	<ul style="list-style-type: none"> • Hanging washing • Walk to river • Children’s recreation 	<ul style="list-style-type: none"> • Weekly
Jeff Garfoot	K: 1966 – present U: 1970 – 1985	13 The Nursery	<ul style="list-style-type: none"> • Recreation • Meet friends • Access to river 	<ul style="list-style-type: none"> • Frequently – during school holidays I would say daily
	Front Street			
Colin Tutin	1954 – present	20A Front Street	<ul style="list-style-type: none"> • Children playing • Short cut to river 	<ul style="list-style-type: none"> • Between 1980 – 2009 every day to access my property
Martin Roberts	1979 – present	20B Front Street	<ul style="list-style-type: none"> • Recreation • Access to allotment • Walking • Children playing 	<ul style="list-style-type: none"> • weekly
David Roberts	K: 1979 – present U: 1979 – 2001	20B Front Street	<ul style="list-style-type: none"> • Football • Cricket • Fishing • Riding bikes 	<ul style="list-style-type: none"> • Very regularly – every weekend and holidays as a child
William Roberts	K: 1982 – 2010 U: 1982 – 2000	20B Front Street	<ul style="list-style-type: none"> • Walking • Football 	<ul style="list-style-type: none"> • weekly

APPENDIX 2: USERS

Brenda Briggs	K: 1954 – present U: 1938-53; 1954-2010	21 Front Street	<ul style="list-style-type: none"> • Sports • Walking the dog • One-off fairground 	<ul style="list-style-type: none"> • Does not say
Stanley Fielding	K:1973 – present U: 1973 – 1992	21 Front Street	<ul style="list-style-type: none"> • Sports • Walking dog 	<ul style="list-style-type: none"> • Does not say
Will Wheeler	1974 – present	31 Front Street (1974 – 1981)	<ul style="list-style-type: none"> • Walking and watching along the river 	<ul style="list-style-type: none"> • 3 or 4 times a month
Helen Renwick	1974 – 2010	32 Front Street	<ul style="list-style-type: none"> • Access to public rights of way • Playing with children 	<ul style="list-style-type: none"> • Daily access to bridleways
	Rest of Village			
William Robinson	1960 – 2011	14 Simpson Road 65 Front Street	<ul style="list-style-type: none"> • Walk the dog • Football 1960 – 1970 	<ul style="list-style-type: none"> • Every day
Keith Tweddle	1943 – 2011	Station Road Meadow View Copeland Road	<ul style="list-style-type: none"> • As a means of going to various locations • Sporting 	<ul style="list-style-type: none"> • At least twice per week
Laurel Smith	K: 1946 – 2010 U: 1946 – 63; occasional use 1970 – present	20 Station Road 7 Station Road	<ul style="list-style-type: none"> • Recreation • Play area • Playing ball games etc. 	<ul style="list-style-type: none"> • Regularly as a child
Hazel Charlton	1969 – 2011	37 Windermere Drive	<ul style="list-style-type: none"> • Recreation • Walking 	<ul style="list-style-type: none"> • Regularly with the children and family pet

APPENDIX 2: USERS

Lynn Anne Rielly	K: 1959 – present U: 1959 – 65 then 1967 – 72	59 Staindrop Road 31 Oakley Street	<ul style="list-style-type: none"> • Fishing • Picnics • Swimming • Ball games 	<ul style="list-style-type: none"> • Most days, especially weekends and school holidays
Colin Howson	K:1948 – present U: 1952 – present	18 Front Street 137 Oakley Green	<ul style="list-style-type: none"> • Playing • Walking 	<ul style="list-style-type: none"> • Most days as a boy
Valerie Blower	K: 1946 – 2010 U: 1946 – 1963	17 Arnold Street	<ul style="list-style-type: none"> • Playing • Walking 	<ul style="list-style-type: none"> • Several times weekly

This page is intentionally left blank

WEST AUCKLAND: FLEECE & NURSERY

APPENDIX 3

Summary Table of User Interruptions

THE UNIVERSITY OF CHICAGO

RECEIVED

APPENDIX 3: USER INTERRUPTION

Name	Years' knowledge or user (K = knowledge; U = user)	Property Address (when using Land)	User Interruption
	The Nursery		
Mr. G W Beecham	K: 1960 to present U: 1960 – 78; 1985 – present	4 The Nursery	<ul style="list-style-type: none"> • Erection of fencing and terrible condition after motor vehicle access • Beginning in approx. 1992
Janet Clark	1960 – 70	5 The Nursery	<ul style="list-style-type: none"> • Never prevented from using land
Joan Woodward	1961 – present	11 The Nursery	<ul style="list-style-type: none"> • In 1993 someone fenced off the land for a few months trying to claim it
Diane Donohue	1963 – present; infrequent after 1988	11 The Nursery	<ul style="list-style-type: none"> • In May 2010 the land was fenced off
Lynne Byers	1962 – present; infrequent after 1981	11 The Nursery	<ul style="list-style-type: none"> • Prevented from using the land by the fence • The land was partially fenced off 1 – 2 years ago – horses are often in the field
Susan Brydon	1965 – present; infrequent after 1995	11 The Nursery	<ul style="list-style-type: none"> • In 1993 an individual attempted to fence off and claim the land. The fence was only up for a few months in 1993.
Doreen Garfoot	1926 – present	13 The Nursery	<ul style="list-style-type: none"> • At the moment it is fenced

APPENDIX 3: USER INTERRUPTION

			<p>off and cannot be accessed</p> <ul style="list-style-type: none"> • In recent years the land has been fenced off
Jeff Garfoot	<p>K: 1966 – present</p> <p>U: 1970 – 1985</p>	13 The Nursery	<ul style="list-style-type: none"> • The land has been fenced off without permission in recent months/years
	Front Street		
Colin Tutin	1954 – present	20A Front Street	<ul style="list-style-type: none"> • Access could not be gained during 1950s 1960s and early 1970s • Breach of way by owner of no. 26A to gain access
Martin Roberts	1979 – present	20B Front Street	<ul style="list-style-type: none"> • Nursery land was fenced off by owner of 26A in May 2010 • Rear of Prince of Wales was fenced off 2004 - 2009
David Roberts	<p>K: 1979 – present</p> <p>U: 1979 – 2001</p>	20B Front Street	<ul style="list-style-type: none"> • Have never been prevented from using the land
William Roberts	<p>K: 1982 – 2010</p> <p>U: 1982 – 2000</p>	20B Front Street	<ul style="list-style-type: none"> • Have never been prevented from using the land • Series of fences erected in Nursery 2010
Brenda Briggs	<p>K: 1954 – present</p> <p>U: 1938-53; 1954-2010</p>	21 Front Street	<ul style="list-style-type: none"> • Fencing in the Nursery early 2010 • And at back of Prince of Wales late 2010
Stanley Fielding	<p>K:1973 – present</p> <p>U: 1973 – 1992</p>	21 Front Street	<ul style="list-style-type: none"> • Fencing in Nursery early 2010

APPENDIX 3: USER INTERRUPTION

			<ul style="list-style-type: none"> • And at back of Prince of Wales late 2010
Will Wheeler	1974 – present	31 Front Street (1974 – 1981)	<ul style="list-style-type: none"> • Did not answer questions
Helen Renwick	1974 – 2010	32 Front Street	<ul style="list-style-type: none"> • Had permission to use the land to graze pony 1979 – 1983 • 2009 access blocked by fence
	Rest of Village		
William Robinson	1960 – 2011	14 Simpson Road 65 Front Street	<ul style="list-style-type: none"> • Prevented from using the land • Fence 1 year ago
Keith Tweddle	1943 – 2011	Station Road Meadow View Copeland Road	<ul style="list-style-type: none"> • Have never been prevented from using the land
Laurel Smith	K: 1946 – 2010 U: 1946 – 63; occasional use 1970 – present	20 Station Road 7 Station Road	<ul style="list-style-type: none"> • Not prevented/discouraged from using the land until recently erected fencing
Hazel Charlton	1969 – 2011	37 Windermere Drive	<ul style="list-style-type: none"> • 2009 – 2010 fencing has been erected with a gate • Horses sometimes put on to graze
Lynn Anne Rielly	K: 1959 – present U: 1959 – 65 then 1967 – 72	59 Staindrop Road 31 Oakley Street	<ul style="list-style-type: none"> • 2009-10 fences now prevent access

APPENDIX 3: USER INTERRUPTION

<p>Colin Howson</p>	<p>K:1948 – present U: 1952 – present</p>	<p>18 Front Street 137 Oakley Green</p>	<ul style="list-style-type: none"> • Prevented from using the land by fences - recently
<p>Valerie Blower</p>	<p>K: 1946 – 2010 U: 1946 – 1963</p>	<p>17 Arnold Street</p>	<ul style="list-style-type: none"> • Use prevented or discouraged – it is now fenced

Appendix 4.

WEST AUCKLAND: FLEECE & NURSERY

APPENDIX 4

Pre-Inquiry Objections and correspondence

OBJECTION TO REGISTER LAND AS VILLAGE GREEN FLEECE AND NURSERY LAND

THE RESPONSE OF MRS JOANNE CLIFF 26a, FRONT STREET, WEST AUCKLAND DL14 9HW TO THE LETTER OF WEST AUCKLAND PARISH COUNCIL

I would like to make my comments regarding the letter submitted by the Parish Council.

The Prince of Wales pub burnt all there rubbish behind the pub as they would not pay for to have it taken away.

I would occasionally burn household stuff but my Father always cleared this away.

In my opinion whatever happened on this land my Father got the blame and the real culprits just laughed because they knew my fathers' name was always linked to whatever happened but they didn't care what happened to the land BUT my Father did and that's why he has always cleaned up the land cut the grass and generally tried to maintain it.

I have been here since I was 12 years old and I have always used the back way in to our properties I have played on the land with my friends, we have, as others also, paddled in the river by the waterfall and I have also driven over this route since I was 17 years old.

Any documents you require regarding my property are readily available from the Land Registry.

Yours Sincerely



Mrs Joanne Cliff

25/05/2012

Dear Ms Errington,

Please find enclosed our response letter for the objection of Application
to Register Land as Village Green - Land at West Auckland

Yours Faithfully

[Redacted signature]

[Redacted signature]

Mr A & Mrs P Armstrong

27, Front Street, West Auckland. DL14 9HW

25/05/2012

OBJECTION TO REGISTER LAND AS VILLAGE GREEN FLEECE AND NURSERY LAND.

THE RESPONSE OF MR & MRS A ARMSTRONG, 27, FRONT STREET WEST AUCKLAND DL14 9HW.

TO THE LETTER OF WEST AUCKLAND PARISH COUNCIL

Addressing point C.1994

Stated by Parish Council late 1993 or early 1994 we began to use an opening in the wall... we were actually using this since 1989 - 4 years previously to this statement.

March 1989 - Purchased 27, Front Street, West Auckland

September 1989 - Purchased 24, Front Street West Auckland

1994 - Purchased The Old Wesleyan Chapel now known as 26a Front Street, West Auckland

Our Answer:-

The caravan we resided in for a short time while 24 Front Street was modernised was delivered by Barrons Caravans in September 1989 and brought in through the nursery to the rear of the property, Mrs Jenny Laskey, informed us that access was paid in the sum of 2s 6d by her father, to the then Monk Brewery (West Auckland Brewery) in 1951, and to this end she wrote a statement to this effect. The reason for the fee was that on our property there were pig stys, slaughter houses and stables and vehicles came to the rear to take livestock to market.

Addressing point 2006

We have no say who uses the land as at this time Mr Robinsons fence was down and the land was totally open and so in response to the Caravans parked outside our boundary these had NOTHING to do with us it is an unfortunate situation that a landlord of the Prince of Wales happened to be related is as I say unfortunate he was the one that had all these caravans parked on the land not us he was also responsible for the Bus and wagons with a crane on and the burning of copper wire scrap etc I repeat nothing to do with us and nothing to do with our using land as access to our property.

25/05/2012

Addressing point 2008 - 2011

When the bollards were erected we did agree to meet with Mrs Margaret Charlton and the Parish Council, Mrs Charlton said she would arrange a meeting to show all documentation to support our claim and she would call at our house with details of said meeting , but instead of an expected visit from Mrs Charlton we got a visit from PC Andy Hucker the local beat policeman of which he promptly told us that the Parish Council had informed him that they *owned* the land, we showed our evidence to PC Hucker and he actually said in his opinion we had more rights than the Parish Council had to this land.

We have never refused to meet with the Parish Council.

We also have to say our wall has not been partially removed it was made safe and straight as there were old bricks jutting out and this was smoothed with concrete and we have photographs to show the wall before and after concreting because we anticipated this exact response from Parish Council

The fence in the nursery was erected and on the advice of our solicitor, he said the gates could be left open as long as we controlled the land by locking the gates, which as Parish Council stated we have done when grazing horses and we also lock them to keep unwanted travellers from camping on the land around travelling time to Appleby Fair.

The laying of road planings were inspected by DCC and approved as eventually the grass would grow through.

In support of our claim for access to Land Registry measurements and photographs were submitted that clearly show a gap between the corner of our wall and Mr Robinsons fence of nearly 2.5meters (7ft 6ins) which was more than enough for our car.

Yours Faithfully



Mr Abel & Mrs Pauline Armstrong

25/05/2012

West Auckland Parish Council

Sharon Wootton, Clerk to the Council
20 Loweswater Grove, West Auckland
BISHOP AUCKLAND
County Durham DL14 9NA
☎ 01388 834360 ✉ sharon.home@btopenworld.com



25th November 2011

Head of Legal Services
Durham County Council
County Hall
Durham DH1 5UQ

Dear Sir/Madam

**RE: APPLICATION TO REGISTER LAND AS VILLAGE GREEN
FLEECE AND NURSERY LAND, WEST AUCKLAND**

I refer to the letter sent to the Parish Council by Jill Errington (Senior Committee Services Officer, Corporate Services) on 7 November 2011, enclosing copies of the two objection letters received against the proposed designation of the Fleece and Nursery Land in West Auckland as village green. The letter invited our comments on the objections and these are attached to this letter. From that response you will note that we take issue with the objectors on a number of points.

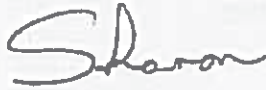
In essence we wholly challenge Mr and Mrs Armstrong's and Mr and Mrs Cliff's access (Route 2), occupation and fencing of the Nursery land, noting their trespassing on private land to achieve that access. We also challenge their cavalier occasional occupation of the Fleece land. His access across the Fleece land (Route 1) is also challenged in the absence of documentation.

The Parish Council is aware that, in their consideration of these proposals and objections, and in reaching a recommendation to its members, County Council officers have the option of recommending a public inquiry. Before such options are considered, the Parish Council would be keen to sit down in more informal surroundings than an inquiry, with officers and objectors, to discuss the proposal, in particular to establish what all parties agree on and precisely where they differ.

Should this proposal ultimately end up in a public inquiry, it would be one of the first tasks of all parties, usually before the inquiry, to agree 'common ground' so that the inspector can be clear about the issues in dispute. Such a meeting now would usefully clarify what is quite a complicated land issue.

To that end, before the Parish Council attended such a meeting, it would be good to know the objectors' view of the Background History report we prepared to accompany our submission. Specifically we would wish to know what aspects they disagree with in the report. That could usefully form the basis of our discussions

Yours sincerely



Sharon Wootton
Clerk to the Council

West Auckland Parish Council

25/11/11



APPLICATION TO REGISTER LAND AS VILLAGE GREEN FLEECE AND NURSERY LAND, WEST AUCKLAND

THE RESPONSE OF WEST AUCKLAND PARISH COUNCIL TO THE OBJECTION LETTERS OF (1)MR & MRS A ARMSTRONG AND (2) MRS JOANNE CLIFF

1 LETTER OF MR & MRS A ARMSTRONG

General comments

- 1.1 Mr Armstrong's letter mentions a 1990 letter from a Jane Laskey, as being attached to his objection letter. West Auckland Parish Council (PC) has not received a copy of this letter.
- 1.2 The map accompanying the letter is inaccurate and has not reproduced colours faithfully and sometimes not at all. For example on the plan the 'Fleece' proposed green land (coloured bluey-green on our copy) excludes the land behind the Prince of Wales PH and includes the fenced and walled private gardens behind nos 20, 20A, 20B and 21 Front Street. Furthermore, the house 24 Front Street (brown, but actually pink on our plan) does not have its rear garden demarcated in colour at all. The 'Nursery' proposed green land is a slightly greener version of the Fleece land – are they meant to be the same colour? Can we suggest that Mr and Mrs Armstrong resubmit this plan on the basis of the plan we have submitted which we believe to have accurate boundaries.

Specific Comments

- 1.3 Addressing the statement by Mr Abel Armstrong, we would respond to his eight points in turn.
Point 1
 - 1.4 The PC would welcome a copy of evidence of purchase of 24 Front Street in 1989 together with a plan showing the house and land attached.
Point 2
 - 1.5 Vehicular access to Mr Armstrong's rear garden at the time of his purchase was solely through a pedestrian gate in his side wall, which still survives. So he could not get a caravan onto his own land from the rear. Did he get it through the Front Street arch? At some time after purchase and before 1994 he breached the rear garden wall to make the new vehicular opening now used. It would be helpful to know precisely when this was done.
Point 3
 - 1.6 This is where the colour problem is important. When Mr Armstrong speaks of access over the 'green land' is he talking about both Fleece and Nursery land?

- 1.7 As a general point, the matter of caravans both on 'green' land and taking access across it, extends beyond Mr Armstrong's ownership and that of his daughter and son-in-law, Mr John-Paul and Mrs Joanne Cliff, to their wider family and friends. At times there have been upwards of six to eight caravans on the Fleece land. In addition friends and family visiting Mr and Mrs Armstrong and/or Mr and Mrs Cliff, routinely park their cars or trucks on the Fleece land rather than enter his parking area within his garden.
- 1.8 Specifically, Mr Armstrong and his family had no *vehicular* access between 1994 and 2006 through the Nursery (his route No.2) because the adjacent land was fenced off by Mr Steven Robinson, during an *adverse possession* claim. The gap left by Mr Robinson between his claimed land, and the Fleece and Nursery land, was approximately one metre – only a *pedestrian* width. Vehicular access was thus impossible along Route No.2 and only became possible again when Mr Robinson's fence was removed by members of the Wood family in 2006, assisted by members of Mr Armstrong's family.
- 1.9 The current *vehicular* gap, of approximately two metres, in width was created post-2006 by Mr Armstrong and his family repositioning Mr Robinson's corner post further west, so that the vehicular route now used by Mr Armstrong, his family, friends and business colleagues is actually trespassing on Mr Robinson's land.
- 1.10 Mr Robinson has planning permission to erect two dwellings on his land, with the boundary defined by a high stone wall, thus restoring the one metre pedestrian gap at the corner. The precise boundaries of Mr Robinson's land, fully surveyed and dimensioned, with the pedestrian gap evident, are fully documented in the Land Registry. The construction of the stone wall along Mr Robinson's boundary will deny vehicular access from the Fleece land to the Nursery land, although it should be noted that in an attempt to slightly widen the gap, Mr Armstrong has shaved off some of the stonework from the corner of his own wall.
- Point 4*
- 1.11 The PC has not had sight of this letter. Our understanding from local residents is that historically the narrow side gate accessing (via Route 1) this rear garden land was used once a year by the owner of 24 Front Street to removed garden produce. It was very much a secondary access, rarely used. Certainly it was impossible to get a vehicle *into* the rear garden before Mr Armstrong breached the wall sometime between 1989 and 1994.
- 1.12 The extent of Mr Armstrong's vehicular access to Front Street (Route 1), if it still exists, has not been proven as the PC have seen no documentation. It may have applied to his occupation of 24 Front Street, from which he has now moved. It certainly does not extend to his neighbours, who coincidentally, are members of his family.
- 1.13 Other local residents have vehicular access across the Fleece green land (Nos 19, 20B, 21, 22/3 Front Street). Their use of their accesses is very occasional and secondary to their Front street frontage.

Point 5

- 1.14 This is a highly inaccurate statement. The land coloured green – which we take to be the Fleece and Nursery land – has not be used on a daily basis for

the grazing of horses by Mr Armstrong and his family. Grazing is at best intermittent and at all times both areas of land have been available for public recreation by all local residents. This intermittent grazing has, by tree rubbing, killed at least one of the trees planted by the community twenty years ago. We would accept that intermittently Mr Armstrong and his family have placed or allowed caravans on this land (with power cables back to their house), as well as undertaking the burning of industrial waste and scrap, matters taken up by DCC enforcement officers.

1.15 Route 1 (to the south) is at best a secondary, domestic access for the very occasional use of a single piece of land, formerly belonging to 24 Front Street, and now, we understand attached to Mr Armstrong's new property at 27 Front Street. It would be helpful to see the ownership curtilages of both 26a and 27 Front Street in this respect. Route 2, as stated above, was not used for twelve years between 1994 and 2006. We would assume that no vehicular access rights from the rear garden of 27 Front Street can therefore attach to No 26a Front Street?

1.16 Two aspects add some complexity to this issue of access and land use. Firstly the matter of who has access, if at all. If the owner of 24 Front Street did once have very occasional (once a year) access to the pedestrian gate in his wall, to whom does that right now pass? 24 Front Street is now owned by local dentists but its land was retained by Mr Armstrong when he and his wife moved to 27 Front Street in 2009. The greatest vehicular use of the land (cars, transit vans, horseboxes, etc) is made by Mr and Mrs Cliff of 26a Front Street, whose property, we suspect, enjoys no established vehicular rights across these public spaces.

1.17 The second matter is the nature and degree of that access. Access once a year to a pedestrian gate is a world away from vehicular access on a daily basis, upwards of 20 times a day at times, by commercial vans, horseboxes and private cars, sometimes lorries, once a double-decker bus, by the objectors, their family and friends.

Point 6

1.18 Photograph 6 cannot be taken in 2004-5, as Mr Robinson's land was fully fenced off at that time, allowing no access to the Nursery land. Our guess is that this is likely to be taken in late 2006 or 2007, after the fence had been taken down and Mr Armstrong and family had begun driving north through The Nursery (Route 2).

1.19 Responding to the photographs at this point, we would only note that the vehicular gates shown in Photo 6, as dated 1989/90, were vehicular gates put in by Mr Armstrong after purchase. They were not there already. The PC believed these were put in some time after purchase in 1989, because it was the development of Route 2 through the Nursery by Mr Armstrong that led to a confrontation with residents, police and local councillors that resulted in the 1994 fences being erected (see Background History).

Point 7

1.20 This is an inaccurate and inflammatory statement. The green land – we take this to be both Fleece and Nursery land – is common public land for the enjoyment of all – our submission demonstrates that over much of the twentieth century. As a local resident, Mr Armstrong and his family are entitled to enjoy that land for public recreation as much as anyone in the village. But

their excessive vehicular access has been challenged by residents and the parish council. Their use of the land for caravans and for industrial bonfires has been dealt with by WVDC and DCC enforcement officers, and their failure to remove their own property and litter from these public spaces has been a continuing irritant to local residents. (A trampoline and chairs belonging to Mr and Mrs Cliff still litter the Fleece land). This is public land belonging to all of the residents, not for the exclusive use of Mr Armstrong and his family.

- 1.21 The families' use of this land and access was challenged by the Parish Council in 2008 and 2009, with written requests to see what documentation they had to support their access rights producing no response whatsoever. This is summarised in our Background History report (p5-6), but enlarged with further details here.
 - 1.22 In February 2008, the Parish Council placed a legal Caution on both areas of land. Subsequently in an effort to improve the area within the Nursery the PC asked Sones Landscaping to create amenity planting areas within the Nursery land, but Sones were stopped by Mr Armstrong and his son-in-law parking a lorry across the site. Later in 2008 the PC erected bollards around the Nursery green area to prevent vehicular access. Some of these bollards were removed, after which a site meeting occurred with parish councillors and the police present at which the PC agreed, temporarily, to one bollard being removed by Armstrong, without conceding any right of access. The police advised they had no role as this was a civil matter.
 - 1.23 In 2009, the PC's solicitor wrote to Mr Armstrong about his vehicular access, followed by a PC letter. In response Mr Armstrong claimed he had documents claiming access through the Nursery, though his solicitor's letter, actually refers to an old access on Route 1 (to Front Street), not through the Nursery (Route 2). A further letter from the PC requesting sight of the access claim never elicited a response from Mr Armstrong.
 - 1.24 The above paragraphs, reflecting our Background History report, confirm that Mr Armstrong's occupation of the Nursery land did not go unchallenged.
 - 1.25 Maintenance of the Fleece and Nursery land does not convey ownership or access rights. At least three other owners have routinely cut the grass outside their own gardens, one for as long as 32 years, without ever claiming ownership. It is done simply to improve the appearance of the area for the benefit of all. Mr Armstrong and his family have only recently begun maintaining this land in the past year or two. Historically the land was maintained by WVDC but after 1994 only the Nursery land was maintained by them, and since Mr Armstrong erected his fences DCC (as successors to WVDC), have not carried out any work. Had Mr Armstrong and his family not created new vehicular routes where none previously existed, the fences would not have been erected and local authority maintenance of the entire area might well still be in place. It was Mr Armstrong's actions over the past twenty two years that caused the abandonment of WVDC/DCC around maintenance.
- Point 8*
- 1.26 We would welcome sight of the conveyancing document relating to the house and land at 27 Front Street.

Conclusion

- 1.2/ This is a totally inaccurate and untrue statement, as the very substantive submission made by the Parish Council, supported by a great many witness statements, makes abundantly clear. This land has a long tradition of recreational use by many people for the benefit of the whole village.

2 LETTER OF MRS JOANNE CLIFF

- 2.1 The Parish Council will respond to the letter, taking each paragraph in turn.

First paragraph

- 2.2 No comment.

Second paragraph

- 2.3 The actions of Mr Robinson are not in dispute, although children continued to play alongside the river as they could access the land behind the fence line.

Third paragraph

- 2.4 The remaining land (the Fleece and Nursery land) is still used for recreational enjoyment although the actions of Mr Armstrong's and Mrs Cliff's families in intermittently parking cars, vans, horse boxes and equipment on the land, grazing horses and burning industrial waste do not encourage community activity. Nevertheless that community activity has never ceased. One specific activity, the communal sitting out of Nursery residents around their small green area and tree, has been temporarily stopped by the post-2006 vehicular access and more recent fencing of the land undertaken by Mr Armstrong. This simple recreational activity within their communal area was much enjoyed by elderly residents particularly, and Mr Armstrong's actions have stopped it.

- 2.5 The PC would reiterate that it is both the vehicular routes taken and the level of activity that they oppose. This is not a minor occasional use by one or two domestic cars, but a very significant semi-commercial use by several private cars (not just two), many open Transit vans with scrap metal, horse boxes, etc, all to the detriment of the residential amenities of local houses and the communal activities on the open land. Frequently these vehicles are parked on the green areas while business is transacted.

Fourth paragraph

- 2.6 The PC accepts that during the tenancy period of the adjacent Prince of Wales PH by a relation (brother-in-law) of Mrs Cliff, the distinction between whose vehicles were using the open land were blurred. But some of the caravans on this land had power cables linked back through the vehicular access used by Mr and Mrs Armstrong and Mr and Mrs Cliff, and so must have been there with their blessing.

Fifth paragraph

- 2.7 Mr Armstrong erected his fence in the Nursery for the simple purpose of protecting his vehicular Route 2, and annexing the land to the exclusive use of his family, all to the huge detriment of Nursery residents, who have enjoyed its open amenity character for almost a century at least, certainly as far back as the 1920s. If Mr Armstrong had respected the narrow pedestrian gate between the Fleece and Nursery open areas and not widened it to create a vehicular route, then travellers would not be able to gain access to the Fleece

land, except by the narrow alley onto Front Street, which generally prevents caravan access. By his own actions he caused the travellers to come onto the land.

- 2.8 There was a caravan on the Fleece land pre-Appleby Fair this year, clearly there with the agreement of Mr and Mrs Armstrong and or Mr and Mrs Cliff.
- 2.9 The self-congratulatory tone of the end of this paragraph stating that 'we even mow the grass to keep it tidy, etc' is a little rich, to put it mildly. The PC reiterates, it was Mr Armstrong's fencing of this land that caused the local authority to stop cutting the grass. Had he not done so, the Nursery land would still be well maintained. We believe the family is maintaining the land solely in the mistaken believe that maintenance of land somehow bestows ownership, which, of course, it does not.

Final paragraph

- 2.10 This paragraph is a frank admission that both families acknowledge - 'we now have control over this land' – that they have taken over and fenced land over which they have absolutely no claim to access or ownership.

STATEMENT OF ABEL ARMSTRONG

I Abel Armstrong of 27 Front Street West Auckland in the County of Durham DL14
9HW, will say as follows:

1. I, with my wife Pauline Armstrong, purchased our property ("our property") at 24 Front Street West Auckland in October 1989. This property is marked brown on the attached plan.

2. At the time of the purchase of our property we could not take up immediate occupation as major renovation works were required. We purchased a large caravan to live in and this was sited on the rear garden to our property (marked yellow on the attached plan).

3. In order to site the caravan it had to be driven to our property over the land coloured green on the attached plan. We have owned caravans for over 21 years and these have been stored on our garden (the yellow land). We have used access over the green land to get them to our garden and to store and park our other vehicles. The approximate position of the access roads ("the access roads") are coloured red on the attached plan.

4. When we purchased our property one of the previous owners, Jane Laskey stated that access to our property had been exercised openly over the green land and that she had knowledge that this had taken place since 1951. She also stated that access had taken place without any challenge or payment save that her father had paid a sum of 2s 6d on one occasion. I attach a copy of a letter she provided me with in 1990 before she died.

5. Since our purchase in 1989 we have continued to use the land coloured green on a daily basis for grazing our horses and for vehicular access to and from our property to the south to the public highway (access road no.1 on the plan) and to the north to The Nursery (access road no.2 on the plan).

6. I exhibit herewith a Google Map photograph (numbered 1) recently obtained from the internet which I believe shows the property in 2004/5 which clearly shows our caravan returning and the access roads. I also exhibit further photographs (numbered 2-7) that confirm the regular and constant use of the access roads and the rear garden gates. The photograph numbered 8 shows the gates in place that have been used daily since 1989. I have made explanatory notes on the reverse of the photographs.

7. Over the period of time of our ownership of our property we have cut down nettles and ragwort on the green land and used it as our own openly and freely at all different times without let hindrance or challenge by any third party. And we have not made any payment to any third party.

8. We sold 24 Front Street in March of 2009 (retaining our garden-the yellow land) and moved into 27 Front Street (coloured pink). We have continued to use the green land and the access roads over the green land in the same way.

We wish to register our objection to the registration of the land coloured green as Village Green as we do not believe that it has been used for that purpose at anytime. Apart from ourselves the land has been only used by dog-walkers and people using it as a short cut to the Front Street and back. The only piece of land that was ever used for recreational purposes was near to the river and this is now owned by Mr S D Robinson.

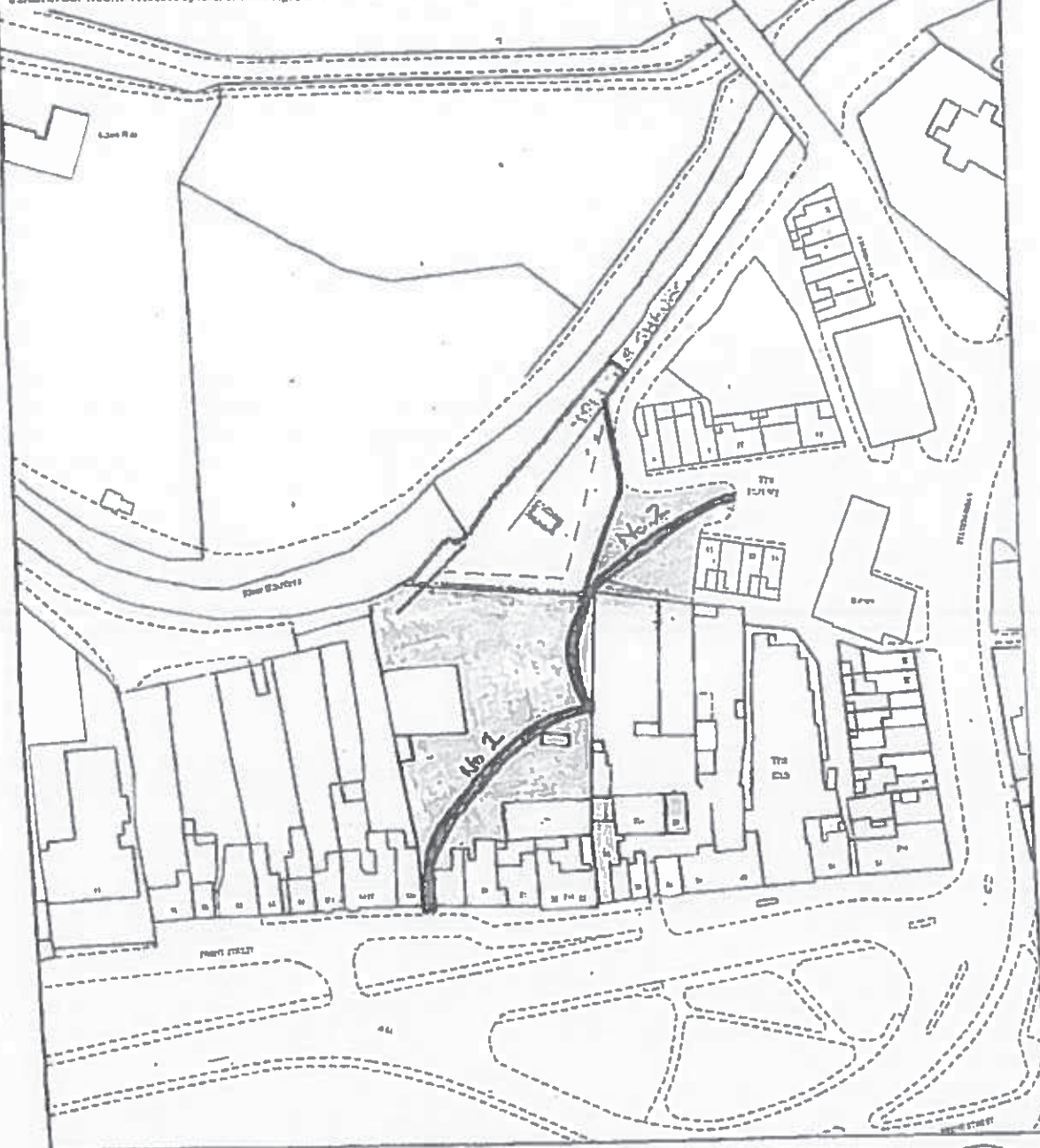
LR**ILLUSTRATIVE PLAN****DURHAM: WEAR VALLEY**

ORDNANCE SURVEY MAP REFERENCE:

IC1825V

SCALE 1:250

© 2000 LR COPYRIGHT Produced by LR. Any reproduction in whole or in part is prohibited without the prior written permission of Ordnance Survey, United Kingdom G3 7DZT12.



This plan shows the general position of the boundaries. It does not show the exact line of boundaries.
Measurements scaled from this plan may not match measurements taken on the ground.

M.L.A.

AERIAL PHOTO OF VEHICLE ENTERING PROPERTY
APPROX 2004/5

①

TRACKS TO FRONT STREET

① N°1 ON PLAN

②

①

Google maps 27 near Bishop Auckland, DL14 9 HW, UK

To see all the details that are visible on the screen, use the Print link next to the map.

[Get Directions](#) [My Maps](#)

[Print](#) [Send](#) [Link](#)



②

TRACKS FROM GATE TO
NURSERY N°2 ON PLAN

3

PICTURE OF ACCESS GATES 2010

4

VIEW FROM GARDEN ONTO LAND.

5



3



4



5

VIEW FROM GARDEN SHOWING GATES, STABLES
CARAVANS AND CAR

6

VIEW FROM LAND INTO GARDEN

7

PICTURE OF ACCESS GATES

1989/90 when property purchased.

8



6



7



8

I make this Statement believing the contents to be true.

Signed [REDACTED]

Dated 27/10/2011

Dear Ms Errington

Please find enclosed my response to
the Objection to Register Land - West Auckland

Yours faithfully

A black rectangular redaction box covers the signature area. Below the box, the initials 'JY' are handwritten in ink.

26a Front Street
West Auckland
Bishop Auckland
Co. Durham
DL14 9HW

30/10/2011

Dear Sirs,

My name is Mrs Joanne Cliff and I am writing to you with my objection to the granting of village green status to the land known as The Nursery and The Fleece land in West Auckland.

I have lived here with my parents since 1989, I was 12 years old, and as kids we all used to play down by the waterfall which was a local attraction, we used to have picnics there and with our fishing nets catch fish, but in 1994 Mr Robinson erected a fence to claim adverse possession around the area where the waterfall is and all that activity stopped as no-one could get near the waterfall anymore.

The only uses for this land since then has been for people to walk their dogs and to get from the Nursery to Front Street and back and we have used this since 1989 for grazing our horses and access to the rear of my parents land, for our caravan, which is only out occasionally in the summer and for our horsebox to occasionally transport our horses to the vets etc, other than that we do use it daily for our car.

Whenever anyone came up the back my father was mentioned, but at the time we were not the only people using this land as access as there has been a mention of a double-decker bus and a large wagon with a crane a wagons loaded with scrap, and I must admit this made a real mess of the land, Travellers parked on the land and we actually asked these to move off this land which they did, once again my father was mentioned, when in actual fact all this activity was down to Mr Micheal Cliff who had the tenancy of the Prince of Wales pub at the time.

This however has all ceased and we are the only ones travelling over this land and to make sure there is no more ploughing of the land and to stop wagons and caravans parking here my father erected a fence around the area in the Nursery 2 years ago, within this fence there is a large gate that can be locked and sometimes it is especially around Appleby time, but there are two small gates in so that people can still walk through to get from the Nursery to Front Street and back, there is one vehicle track clearly marked, so therefore the green is left untouched we even mow the grass to keep it tidy and have even planted some flowers around the fence.

I would finally like to add that where we now have control over this land regarding travellers parking etc, the residents of the Nursery still have travellers parking behind their houses on council ground .

Yours Sincerely



Mrs Joanne Cliff

This page is intentionally left blank

WEST AUCKLAND: FLEECE & NURSERY

APPENDIX 5

Inspector's Report

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND KNOWN
AS THE FLEECE AND NURSERY LAND, WEST AUCKLAND
AS A TOWN OR VILLAGE GREEN**

REPORT

1. INTRODUCTION

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

1.2 I held such an Inquiry over 2 days, namely on 26 and 27 June 2013. I also undertook an accompanied site visit on 27 June 2013, together with an unaccompanied visit around and within the locality.

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND KNOWN
AS THE FLEECE AND NURSERY LAND, WEST AUCKLAND
AS A TOWN OR VILLAGE GREEN**

REPORT

of Miss Ruth Stockley

13 October 2013

Durham County Council

County Hall

Durham

DH1 5UL

Application Number: NL36

1.3 Prior to the Inquiry, I was invited to make directions as to the exchange of evidence and of other documents. Those documents were duly provided to me by both Parties which significantly assisted my preparation for the Inquiry. The Applicant produced a bundle of documents containing its supporting evidence questionnaires, witness statements, photographs and other documentary evidence in support of the Application and upon which it wished to rely, which I shall refer to in this Report as “AB”. The Objectors produced a bundle of documents containing their witness statements, photographs and other documentary evidence in support of their Objection and upon which they wished to rely, which I shall refer to as “OB”. In addition, each Party provided a skeleton argument setting out an outline of their case. I have read all the documents contained in the bundles and each of the skeleton arguments and taken their contents into account in this Report.

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

2. THE APPLICATION

2.1 The Application was made by West Auckland Parish Council c/o Sharon Hall, Clerk to the Council, 20, Loweswater Grove, West Auckland, Bishop Auckland DL14 9NA (“the Applicant”) and is dated 08 August 2011.¹ It was received by the Registration Authority on 11 August 2011. Part 5 of the Application Form states that

¹ The Application is contained in AB section 3.

the Land sought to be registered is usually known as "*The Fleece and Nursery Land*", and its location is described as "*Land between Front Street and The Nursery, North of The Green, West Auckland*". A map was submitted with the Application which shows the Land subject to the Application outlined and hatched in bold.² In part 6 of the Application Form, the "locality or neighbourhood within a locality" in respect of which the Application is made is stated to be "*West Auckland Village, now central to the West Auckland Parish Council Administrative Area*", and a map of the West Auckland Parish Council Area was submitted with the Application.³

2.2 The Application is made on the basis that section 15(2) of the 2006 Act applies, which provision contains the relevant qualifying criteria. The justification for the registration of the Land is set out in Part 7 of the Form. The Application is verified by a statutory declaration in support made on 08 August 2011. As to supporting documentation, evidence questionnaires, a background history and other documents in support as identified in Part 10 were submitted with the Application.

2.3 The Application was duly advertised by the Registration Authority as a result of which an objection ("the Objection") was received from Mrs Joanne Cliff of 26a Front Street, West Auckland and from Mr and Mrs Armstrong of 27 Front Street, West Auckland ("the Objectors").

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

² At AB section 4.

³ At AB section 5.

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

2.6 At the Inquiry, the Applicant was represented by Mr James of Counsel and the Objectors were represented by Mr Hood of Anthony Walters & Co Solicitors. Any third parties who were not being called as witnesses by the Applicant or the Objectors and wished to make any representations were invited to speak, and one additional person did so.

3. THE APPLICATION LAND

3.1 The Application Land is identified on the map submitted with the Application on which it is outlined and hatched in bold.⁴

3.2 It comprises two linked but distinct parcels of land known as The Fleece and The Nursery respectively. They were separate parcels until the mid 1970's, were then joined until 1994, and have subsequently been linked by a narrow strip of land. They comprise flat, open and undeveloped areas of grassed open space.

3.3 The Fleece is located to the north of Front Street. Access to it is unrestricted from Front Street via an alleyway to the east of 19a Front Street which is not adopted highway according to Durham County Council's highway records. The Fleece is also accessed from The Nursery. To the north lies an area of land owned by one Mr

⁴ At AB section 4.

Robinson pursuant to an adverse possession claim and beyond that the River Gaunless. The Fleece also directly abuts the River at its north western edge. To the east is the boundary wall to Mr Armstrong's land. To the south are properties along Front Street, including the Prince of Wales public house. To the west are allotments.

3.4 The Nursery is located to the west of Station Road and is accessed via a Garage on the corner of an unadopted highway at its junction with Station Road as well as from The Fleece. It is a roughly square shaped area of land. It is bound by residential properties to the north and the east, by Mr Armstrong's land to the south, and by Mr Robinson's land to the west.

3.5 The Land is reasonably well maintained. There is a defined vehicular route on the ground running across both parcels of the Land. Horses were tethered on The Fleece at the time of the site visit. There are no signs nor furniture on the Land.

4. THE EVIDENCE

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

4.2 The evidence was not taken on oath.

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

CASE FOR THE APPLICANT

Oral Evidence in Support of the Application

4.4 **Mr Jeff Garfoot**⁵ currently lives at 6 Rush Park, Bishop Auckland, which is approximately 3 miles away from the Land and outside the locality of West Auckland. However, he lived at 13 The Nursery from 1966 until 1991. His Mother continues to reside there whom he visits on a weekly basis every Sunday, and he lived there with his Mother for 1 year in 2005.

4.5 His own personal use of the Land was prior to 1991, namely from 1970 until 1985, when he used it as a child. Since then, during his weekly visits to his Mother as an adult, and whilst he lived there in 2005, he has played on The Nursery with his own Daughter, who was born on 5 November 1997 and lived with him at weekends, and with his cousin's three children who are now in their early twenties and live in West Auckland. Such use has taken place during the last 10 years. There was free and open access to The Nursery. He did not use The Fleece to play with the children as there were often horses tethered on there and so horse droppings were on The Fleece.

⁵ His witness statement, evidence questionnaire and an e-mail are at AB section 23.

He confirmed that he had not seen children playing on The Fleece during the last 20 years. He has two dogs which are 7 years old and which he walks along the River and through the Land, and he has done such dog walking up until 2011 and thereafter as he sometimes brings his dogs when he visits his Mother. He has also played football and cricket on The Nursery during the last 20 years. He has ridden his bicycle on the cycle track along the River and then across the Land in the last 20 years to get to his Mother's house on a Sunday morning. He has not cycled around the Land generally, though, nor has he seen others doing so. He went kite flying with his Daughter on The Nursery on one occasion in 2005.

4.6 As to other uses of the Land referred to in section 23 of his evidence questionnaire, the team games he saw played on the Land, the blackberry picking he saw on the Land and the bonfires were all prior to 1991. He has seen his Mother and her friend picnicking on The Nursery under the tree shown in the Applicant's photograph dated 11 June 2013,⁶ but he last saw that use around 10 or 11 years ago. It would be dangerous to do that on the Land now as a track from Station Road through the middle of The Nursery has been formed which vehicles use. As to general walking, people have always used the route down the River, through the Land and onto Front Street. That route was used as a short cut. There was previously a worn path across the centre of The Fleece and the District Council used to maintain it. Other than seeing The Fleece used as a right of way, he has not himself seen it being used in the last 20 years, although he has not been living in the area over that period. Similarly, in the last 20 years, he has only seen people using The Nursery as a right of way and not generally for other uses. There are not many children living in The

⁶ At AB section 16 photograph 10.

Nursery at present. He never sought any permission for his use of the Land, never used the Land by stealth and never used any force to access the Land.

4.7 **Mr Martin Roberts**⁷ has lived at 20B Front Street, formerly a public house called "The Fleece", since 1979. He is also a member of West Auckland Parish Council, namely the Applicant.

4.8 He has seen various activities on the part of the Land known as The Fleece. He has 3 children born in 1978, 1980 and 1982 who played on The Fleece until around 2001. They played rounders, football, cricket and general games. They have flown kites on the Land until around 2000. They did not go to The Nursery which was "*very much the domain*" of residents of The Nursery. When children lived at the houses at The Nursery, they played on that part of the Land. In terms of his own use of the Land, he has not used it for dog walking, but he has used it during the last 2 years to pick elderflowers. His main use of the Land was as a short cut from his house to various local facilities, such as the Spa shop on Station Road and the doctor's surgery. He walked along the diagonal route through The Nursery. That was a frequently used route. Others walked through the Land from the River. Fishing took place on the Land, but that was constrained by fencing that was erected in 1994 by Mr Robinson along the northern boundary of The Fleece and the western boundary of The Nursery.⁸ However, access to the Land remained open via a pedestrian gap between the south eastern corner of the fencing and the north western corner of Mr Armstrong's land and it was possible to get behind the fencing in order to fish. The Weir is located behind Mr Robinson's land. Dog walkers and general walkers have constantly used

⁷ His witness statement and evidence questionnaire are at AB section 19.

⁸ As shown on the plan at AB section 14 where the fencing is identified as A-B and B-C and C-D. The pedestrian gap was left between points B and Y.

the Land. Since the fencing in 1994, they invariably cut through it along a diagonal route. People have picked elderberries along the River bank. Children's parties have spilled out from their house onto the Land, which he organised until around 2000. Bonfires have been regularly held by the public house on the Land,⁹ including in the last 20 years, the last one being around 4 or 5 years ago. He acknowledged that more recently, the Land has been used mostly by those surrounding it. Previously, until around 1994 when it was regularly maintained by the District Council, it was regularly used by children. The public house, namely the Prince of Wales, closed in December 2012. Between around 2004 and 2009, a square area at the rear of that public house was unlawfully fenced off, but it is now open.¹⁰ The owners of the pub did not own that land and were not entitled to fence it off. None of the activities on the Land were done by force, in secret or with permission.

4.9 He has regularly cut the grass on the Land in front of his house since 1994 when the District Council stopped maintaining it as shown on the photograph of that part of the Land.¹¹ Between 1991 and 1994, the Land was fully grassed. There are horses on the Land at present. The entrance onto the Land from Front Street¹² via an alleyway is around 2.4 metres wide so a car is able to drive down it, although there is a sharp turn to get in or out. He has a vehicular private right of way along that alleyway.

⁹ The area used is shown as a large grey area on the Google Map at AB section 12.

¹⁰ The area enclosed is shown on the Google Map at AB section 12.

¹¹ At AB section 16 fifth photograph.

¹² As shown at AB section 16 first photograph.

4.10 He had compiled a detailed background history of the Land which was before the Inquiry and which he helpfully went through at the Inquiry.¹³ Historically, The Fleece and The Nursery were separate and were accessed via Front Street and Station Road respectively. In relation to the relevant 20 year period, he pointed out that in late 1993 or early 1994, Mr Armstrong, the owner of 24 Front Street, began to use a vehicular opening he had created in the stone wall forming the eastern boundary of The Fleece. Vehicles were taken to and from that entrance north east through The Nursery and south west onto Front Street via the alley beside 19 Front Street. The landlord of the Prince of Wales erected fencing on The Fleece at that time to seek to stop Mr Armstrong's use of the Land as a vehicular route. Considerable concerns were voiced by local residents against such use of the Land and ownership issues over the Land arose. Ultimately, that led to only an area of land formerly occupied by 6 Mill houses by the River remaining fenced by Mr Robinson who has subsequently acquired adverse possession of such land. Such fencing maintained a pedestrian route only between The Fleece and The Nursery, so Mr Armstrong's vehicular access was then limited to via Front Street, as vehicular access to The Nursery from The Fleece was thereby prevented. The Nursery was then in pristine condition as a result. That fencing was removed in 2006, whereafter the Armstrong family have again taken vehicular access through The Nursery on a regular basis including large commercial vehicles. Wear Valley District Council ceased maintaining The Fleece around 1994.

4.11 In addition, for brief periods during the 1990's and up until the mid 2000's, the area of the Land immediately behind the Prince of Wales public house has been fenced and/or gated by tenants of the public house. It is currently fully open. The

¹³ At AB section 6.

Land has never been fully enclosed and open access to it has always remained. Moreover, although the creation of a vehicular track through the Land is “*a huge disincentive to the recreational use*” of it, that recreational use has not entirely ceased as the Land is still used for activities including public access, dog walking and sitting out. There remained quite a large area available for use, including near to the allotments and at the rear of his house. Therefore, although more recently the use of the Land has been constrained by the Objectors’ use, including tethering horses on the Land and parking vehicles on it, they have not prevented its recreational use. One, two or three horses have been on the Land approximately 30% to 40% of the time over the relevant 20 year period. The greatest change in the use of the Land in terms of its vehicular use has been since 2006 when the number of vehicles using the Land increased and the nature of the vehicles changed to more commercial vehicles. They affected the Land’s recreational use, but did not extinguish it. It affected, for example, football games taking place on the Land.

4.12 He referred to various Google photographs he had acquired. The one from 1945 shows that The Fleece and The Nursery were then separated by a solid wall with no linkage between them. The only access to The Fleece was via Front Street. The 2001 photograph shows the fencing erected by Mr Robinson around the area of land that he adversely possessed. It also shows a beaten track of the route taken by pedestrians walking diagonally through The Fleece. The 2006 Google photograph is taken after Mr Robinson’s fencing was removed. The previously narrow pedestrian access has been opened up and vehicles are using the through route. There are vehicles shown on the Land, including caravans. On the 2009 photograph, the public

house is seen as using the part of the Land to its rear, and in the May 2010 photograph, the fencing erected by Mr Robinson is shown.

4.13 Mrs Brenda Briggs¹⁴ has lived at 21 Front Street since 1954. Prior to then, she resided at 3 The Nursery from when she was born in 1938. She has two sons born in 1969 and 1971 who played on the Land daily until they were around 16 years of age. They played football, cricket and rugby on the Land. They left home around 1993 and 2003, and one of them continues to live in West Auckland. She has grandchildren aged 9 and 19 who come to visit. The youngest plays in her garden, but has never played on The Fleece as she is frightened of horses. She walked her dog on the Land up until around 6 years ago, and saw others walking their dogs on the Land regularly as it is “a thoroughfare” for them. They continue to do so. The route she took with her dog was across The Fleece to its north western corner and along the River. Since her dog walking ceased, she has only used The Fleece herself to walk through. As to The Nursery, she sat out under the large tree during the 1990’s prior to the fencing being erected. Subsequently, she has only used The Nursery to walk across as a means of access to her Sister’s. Family parties took place on The Fleece, the last one being around 5 years ago. She pointed out that The Fleece can no longer be used for such purposes as there is frequently traffic using it and horse dirt on it. The regular traffic use has been from around 2006. The last bonfire party on the Land she was aware of was before her sons left home and was during the last 20 years. The bonfires were annual. There was a fairground on the Land on one occasion and prior to the relevant 20 year period. There were no official organised sports on the Land. People who use the Land have used it from a wide area as many walk across it to gain

¹⁴ Her witness statement, evidence questionnaire and photographs are at AB section 18.

access to the River. She fenced off the area of land to the rear of her house in the 1990's when other fencing was erected in the area. Prior to then, it was open and activities overflowed onto the Land from her garden. She never sought any permission for her use of the Land, never used it secretly and never used any force. She referred to her three photographs of the Land taken prior to the relevant 20 year period. The main use of the Land over the relevant 20 year period has been walking through it along a diagonal route, namely from Front Street to Station Road and vice versa. Children no longer play on the Land as much since traffic started to use it.

4.14 **Mr John Forbes**¹⁵ has lived at 16 The Nursery since 2007. He expressed particular concern over the speed of traffic using The Nursery and the consequent safety implications. He referred to cars, vans, trailers, caravans, pickups, horseboxes and other vehicles, including commercial ones, passing through The Nursery in order to gain access to the rear of the properties on Front Street at dangerous speeds. He would not allow children to play out on The Nursery at the moment due to the traffic which has become gradually worse since 2007. During that period, he has walked his dog on the Land, crossing The Nursery and going to the River. He has seen many people walking their dogs along the same route across the Land to get to the River. He also walks across The Fleece himself to go to the shops and back. He has no personal knowledge of the use of the Land prior to 2007.

Written Evidence in Support of the Application

4.15 In addition to the evidence of the witnesses who appeared at the Inquiry, I have also considered and had regard to all the written evidence submitted in support

¹⁵ His witness statement and letter are at AB section 20.

of the Application in the form of additional witness statements, evidence questionnaires and other documents which are contained in the Applicant's Bundle.

4.16 However, whilst the Registration Authority must also take into account all such written evidence, I and the Authority must bear in mind that it has not been tested by cross examination. Hence, particularly where it is in conflict with oral evidence given to the Inquiry, I have attributed such evidence less weight as it was not subject to such cross examination.

CASE FOR THE OBJECTORS

Oral Evidence Objecting to the Application

4.17 Mr Abel Armstrong¹⁶ is one of the Objectors and he has lived at 27 Front Street with his Wife since March 2009. Prior to that, in 1989, they purchased 24 Front Street, living in a caravan in the rear garden whilst major renovation works were undertaken to the property. At the time of purchase, they were informed by Mrs Jane Laskey that they had a right of way across the Land.¹⁷ He acknowledged that there were no deeds indicating where the access would lead to and from nor any document stating that they had access over all the Land. He regarded the right of way as being from the gate in his western wall across the Land in any direction, namely in and out via The Nursery or via The Fleece onto Front Street. They had a means of vehicular access across the Land which was otherwise unspecified. He accepted that he relied solely upon the letter from Mrs Laskey as evidence of that right of way.¹⁸ In his view,

¹⁶ His witness statement is at OB page 5 onwards.

¹⁷ A letter from Mrs Laskey was produced to the Inquiry in which the right of way was referred to from an access gate on the "eastern" wall of the property and for "wheelbarrows and livestock vehicles". Mr Armstrong identified that gate as a reference to the gate on the western wall which appears to be the only logical interpretation and I regard the reference to the "eastern" wall as an error.

¹⁸ The letter is at OB page 15.

the reference to “livestock vehicles” in that letter was sufficient to give him a general right of access to the gate in his property with vehicles across any part of the Land. All they requested from Mrs Laskey was whether they had vehicular access to their property across the Land and she indicated they had such a general right of access.

4.18 In 1989, they duly breached the western wall forming the boundary with The Fleece in order to move their caravan in and replaced the single gate in the wall with a double gate. They received a complaint from the brewery over breaching the wall in relation to which they took legal advice. The caravan was brought onto their land via The Nursery. Since then, there has been vehicular access to their property from Front Street and from The Nursery via the double gates in their wall. The double gates are shown in a 1989 photograph taken when they had brought turf onto their land to renovate the garden.¹⁹

4.19 As to the use of the Land, since 1989 he has seen no use of the Land apart from people walking across it, both with and without dogs, either going out onto Front Street or onto Station Road. He acknowledged that he had seen people regularly walking dogs on the Land, mainly in the early mornings and in the evenings. They mainly took the route straight through the Land. People and children could no longer access the River to fish when it had been fenced off by Mr Robinson in 1994, save a small section of it that could be accessed by jumping over a wall. There have been no organised sports on the Land to his knowledge, save that someone asked if they could put a bouncy castle on it approximately 2 years ago. He has not seen any kite flying, football games, cricket or other recreational activities on the Land. He had never seen

¹⁹ Photograph number 8 at OB page 13.

the two young children who lived at 20 Front Street for over a year until 2011 playing on The Fleece nor Mr Garfoot's children nor Mr Roberts' children nor any other children playing on the Land, despite being at his property daily and driving over The Fleece daily, sometimes once a day and sometimes 4 or 5 times a day. He never saw children playing on the Land even prior to 2006, despite children living on Front Street and at The Nursery. There has been one bonfire on the Land, around 2 years ago, which he organised for his children. Although he did not own the Land, he did not ask anyone's permission to light the bonfire on the Land nor did he use force or do it in secret.

4.20 Since 1989, he and his family have cut the grass on the Land and grazed up to 5 horses at any one time on it. The horses were tethered all over the Land on both The Fleece and The Nursery. Both The Fleece and The Nursery were open when they came to live at Front Street. When Mr Robinson erected the fencing in 1994, the gap between the two parcels was too small for larger vehicles such as horseboxes to pass through. However, since that fencing came down around 2006, large vehicles were again able to pass between the two areas, including horseboxes, trailers and caravans. It is the heavier vehicles which made the defined tracks on the Land. Many were their vehicles, but also other people's.

4.21 Mrs Pauline Armstrong²⁰ is also one of the Objectors and has lived at 27 Front Street with her Husband since 2009. Prior to that, in 1989, they purchased 24 Front Street, and she has always lived in West Auckland. In 1989, they erected double gates in the boundary of their land with The Fleece in place of the previous single

²⁰ Her witness statement is at OB page 16.

gate. The photograph of rolls of turf was taken in Spring 1990 when they had bought turf to create their lawn and shows the double gates in situ.²¹ They always brought their vehicles onto their land via the double gates. They have always had a caravan stored inside the gates, which was brought in from The Nursery and through their double gates. From 1989, the defined tracks on the Land between The Nursery and their gates were used by their family for vehicular access on a daily basis. That resulted in complaints from the tenant of the Prince of Wales public house and residents who contended that the Land, together with that since acquired by Mr Robinson by adverse possession, was owned by the brewery. However, Mrs Jane Laskey from whom they had purchased their land had informed them that they could access their land via The Nursery and via Front Street as such access across the Land to their property had been paid for by her late Father, Mr Albert Wilson. They informed their Solicitors who wrote to the complainants and nothing further ensued. She acknowledged that there was nothing in the letter from Mrs Laskey²² to indicate where the access was to or from.

4.22 Their youngest daughter was 12 years of age when they moved to 24 Front Street in 1989. She played near to the waterfall with her friends, and she had also seen other children playing there. That area is now enclosed within Mr Robinson's land. Part of The Fleece, namely the north western corner, abuts the River, but there is currently a steep drop at that point and it is overgrown. She has not seen kite flying, children's parties or other recreational activities on the Land. Their children and grandchildren have played on the Land with their friends. Their children played on a trampoline on The Fleece which was on the Land for a few weeks over one summer

²¹ Photograph number 8 on page 13 of OB.

²² At OB page 15.

holidays around 3 or 4 years ago. She has seen other children playing on the Land, but mainly on The Nursery rather than The Fleece. Children mainly cut across The Fleece to go to play near to the River. The only bonfire on the Land she was aware of was their own. People use the Land as a short cut between The Nursery and Front Street, including dog walkers. Numerous people walk their dogs along the River and through The Nursery. She had never seen anyone exercising their dog on the Land. She has been retired since 2001. Prior to then, she worked full time, but she did shift work and so was often at home during the afternoons.

4.23 **Mrs Joanne Cliff**²³ is also one of the Objectors and is the Daughter of Mr and Mrs Armstrong. She moved to 24 Front Street with her parents in 1989 when she was 12 years of age (DOB: 06/02/77), and then to 27 Front Street when she was 17 years old. She currently resides at 26A Front Street, the next door property to her Parents'. As a 12 year old, and until she was around 14 years of age, she played at the River with her friends where they fished and played at the waterfall, but she never played on The Fleece or The Nursery. They merely walked over the Land in order to get to the River. There were no other children living in the immediate area at that time. Since 1989, children have never played on the Land itself; they merely walked across it to go to the River. There was nothing on the Land for children. It was merely a piece of rough land. She did not recall anyone playing cricket, rounders or football or flying kites on the Land, nor did she see any organised games on the Land. It was not a well known piece of land save by dog walkers. People regularly walk their dogs on the Land at all times of the day. There are numerous people from the area who walk their dogs on the Land, but she has not seen people exercising their dogs on the Land.

²³ Her witness statement is at OB page 17.

People also walked across the Land as a short cut from The Nursery to Front Street and vice versa. Only they had a bonfire on the Land. She recalled putting her trampoline on The Fleece during one summer whilst her Parents' yard was being cleared out. The children who played on it were related to her and asked permission to use it. She also recalled a bouncy castle being on The Nursery under the large tree on one occasion when her Parents were asked by the parish council not to use their vehicles on the Land for that day. It was a 50th birthday party which she attended. There was no request for permission to use the Land on that occasion nor was it then used by force or in secret. It never crossed her mind that people were not entitled to use the Land.

4.24 Her parents, and subsequent herself and her Husband, always drove into the rear of her Parents' property through the double gates via either The Nursery or Front Street. They used both accesses dependent upon which direction they were going to or coming from. Horseboxes, cars, pick-ups and wagons were brought through the Land and caravans were towed over it. She and her Husband also stored their vehicles and caravans on her Parents' land. She and her Husband have also regularly kept horses on both The Fleece and The Nursery. There are up to five horses on the Land at any time. She has always had horses since the age of 14. In addition, the local police often bring stray horses and tether them on the Land. The horses were not affected by dog walkers using the Land.

Written Evidence Objecting to the Application

4.25 There was no additional written evidence submitted in objection to the Application.

THIRD PARTY EVIDENCE

4.26 During the Inquiry, I invited any other persons who wished to give evidence to do so. One individual did so, and her evidence was made available to be subject to cross examination.

4.27 **Mrs Hazel Forbes**²⁴ is the Wife of Mr John Forbes who gave oral evidence in support of the Application. She has also lived at 16 The Nursery since 2007. She pointed out that people could not let their dogs off the lead on the Land due to the large amount of traffic using it. Similarly, children do not play on the Land due to the traffic. That was not the position when she came to the area in 2007, but it became the circumstances from around 2008 onwards from the time when Mr Robinson made a planning application for houses on his land.

5. THE LEGAL FRAMEWORK

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

Commons Act 2006

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

²⁴ Her letter, written jointly with her Husband and Son, is at AB section 20.

within its area. Section 15 provides for the registration of land as a town or village green where the relevant statutory criteria are established in relation to such land.

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

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

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

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

Burden and Standard of Proof

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

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

5.9 However, it was stated by way of *obiter dictum* by the majority of the House of Lords in *Oxfordshire County Council v. Oxford City Council*²⁶ that there is no requirement that a piece of land must have any particular characteristics consistent with the concept of a village green in order to be registered.

Lawful Sports and Pastimes

5.10 It was made clear in *R. v. Oxfordshire County Council ex parte Sunningwell Parish Council*²⁷ that “*lawful sports and pastimes*” is a composite expression and so it is sufficient for a use to be either a lawful sport or a lawful pastime. Moreover, it includes present day sports and pastimes and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and children’s play.

5.11 However, that element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way. In *R. (Laing Homes Limited) v. Buckinghamshire County Council*²⁸, Sullivan J. (as he then was) noted at paragraph 102 that:-

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

²⁶ [2006] 2 AC 674 per Lord Hoffmann at paragraphs 37 to 39.

²⁷ [2000] 1 AC 335 at 356F to 357E.

²⁸ [2003] EWHC 1578 (Admin).

5.6 Further, when considering whether or not the Applicant has discharged the evidential burden of proving that the Land has become a town or village green, it is important to have regard to the guidance given by Lord Bingham in *R. v Sunderland City Council ex parte Beresford*²⁵ where, at paragraph 2, he noted as follows:-

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

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

Statutory Criteria

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

Land

²⁵ [2004] 1 AC 889.

that they were exercising a right to indulge in lawful sports and pastimes across the whole of his fields.”

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

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

5.12 More recently, Lightman J. stated at first instance in *Oxfordshire County Council v. Oxford City Council*²⁹ at paragraph 102:-

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

²⁹ [2004] Ch. 253.

(the public right of way) rather than the more onerous (the right to use as a green)."

He went on in paragraph 103 to state:-

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

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

Continuity and Sufficiency of Use over 20 Year Period

5.13 The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period: *Hollins v. Verney*.³⁰

5.14 Further, the use has to be of such a nature and frequency as to show the landowner that a right is being asserted and it must be more than sporadic intrusion onto the land. It must give the landowner the appearance that rights of a continuous nature are being asserted. The fundamental issue is to assess how the matters would have appeared to the landowner: *R. (on the application of Lewis) v. Redcar and Cleveland Borough Council*.³¹

Locality or Neighbourhood within a Locality

5.15 A “locality” must be a division of the County known to the law, such as a borough, parish or manor: *MoD v Wiltshire CC*,³² *R. (on the application of Cheltenham Builders Limited) v. South Gloucestershire DC*,³³ and *R. (Laing Homes Limited) v. Buckinghamshire CC*.³⁴ A locality cannot be created simply by drawing a line on a plan: *Cheltenham Builders* case.³⁵

5.16 In contrast, a “neighbourhood” need not be a recognised administrative unit. Lord Hoffmann pointed out in *Oxfordshire County Council v. Oxford City Council*³⁶ that the statutory criteria of “any neighbourhood within a locality” is “obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries”. Hence, a housing

³⁰ (1884) 13 QBD 304.

³¹ [2010] UKSC 11 at paragraph 36.

³² [1995] 4 All ER 931 at page 937b-c.

³³ [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.

³⁴ [2003] EWHC 1578 (Admin) at paragraph 133.

³⁵ At paragraphs 41 to 48.

³⁶ [2006] 2 AC 674 at paragraph 27.

estate can be a neighbourhood: *R. (McAlpine) v. Staffordshire County Council*.³⁷

Nonetheless, a neighbourhood cannot be any area drawn on a map. Instead, it must be an area which has a sufficient degree of cohesiveness: *Cheltenham Builders* case.³⁸

5.17 Further clarity was provided on that element recently by HHJ Waksman QC in *R. (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v. Oxfordshire County Council*³⁹ who stated:-

“While Lord Hoffmann said that the expression was drafted with “deliberate imprecision”, that was to be contrasted with the locality whose boundaries had to be “legally significant”. See paragraph 27 of his judgment in Oxfordshire (supra). He was not there saying that a neighbourhood need have no boundaries at all. The factors to be considered when determining whether a purported neighbourhood qualifies are undoubtedly looser and more varied than those relating to locality... but, as Sullivan J stated in R (Cheltenham Builders) Ltd v South Gloucestershire Council [2004] JPL 975 at paragraph 85, a neighbourhood must have a sufficient degree of (pre-existing) cohesiveness. To qualify therefore, it must be capable of meaningful description in some way. This is now emphasised by the fact that under the Commons Registration (England) Regulations 2008 the entry on the register of a new TVG will specify the locality or neighbourhood referred to in the application.”

Significant Number

³⁷ [2002] EWHC 76 (Admin).

³⁸ At paragraph 85.

³⁹ [2010] EWHC 530 (Admin) at paragraph 79.

5.18 “*Significant*” does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers: *R. (McAlpine) v. Staffordshire County Council*.⁴⁰

As of Right

5.19 Use of land “*as of right*” is a use without force, without secrecy and without permission, namely *nec vi nec clam nec precario*. It was made clear in *R. v. Oxfordshire County Council ex parte Sunningwell Parish Council*⁴¹ that the issue does not turn on the subjective intention, knowledge or belief of users of the land.

5.20 “Force” does not merely refer to physical force. User is *vi* and so not “*as of right*” if it involves climbing or breaking down fences or gates or if it is under protest from the landowner: *Newnham v. Willison*.⁴² Further, Lord Rodger in *Lewis v. Redcar* stated that “*If the use continues despite the neighbour’s protests and attempts to interrupt it, it is treated as being vi...user is only peaceable (nec vi) if it is neither violent nor contentious*”.⁴³

5.21 “Permission” can be expressly given or be implied from the landowner’s conduct, but it cannot be implied from the mere inaction or acts of encouragement of the landowner: *R. v. Sunderland City Council ex parte Beresford*.⁴⁴

⁴⁰ [2002] EWHC 76 (Admin) at paragraph 71.

⁴¹ [2000] 1 AC 335.

⁴² (1988) 56 P. & C.R. 8.

⁴³ At paragraphs 88-90.

⁴⁴ [2004] 1 AC 889.

6. APPLICATION OF THE LAW TO THE FACTS

Approach to the Evidence

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

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

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

The Land

6.4 There is no difficulty in identifying the relevant land sought to be registered. A map was submitted with the Application attached to the Statutory Declaration which

shows the Land subject to the Application outlined and hatched in bold,⁴⁵ and that is the definitive document on which the Land that is the subject of the Application is marked. The Land has clearly defined and fixed boundaries, and there was no dispute at the Inquiry nor in any of the evidence adduced that that area of land comprises “land” within the meaning of section 15(2) of the 2006 Act and is capable of registration as a town or village green in principle and I so find.

Relevant 20 Year Period

6.5 Turning next to the identification of the relevant 20 year period for the purposes of section 15(2) of the 2006 Act, the qualifying use must continue up until the date of the Application. Hence, the relevant 20 year period is generally the period of 20 years which ends at the date of the Application. The Application Form and the accompanying statutory declaration are dated 08 August 2011, and the Application was received by the Registration Authority on 11 August 2011. In my view, the relevant date of the Application is the date when the Application is received by the Registration Authority. It follows that the relevant 20 year period for the purposes of section 15(2) is August 1991 until August 2011.

Use of Land for Lawful Sports and Pastimes

6.6 Turning next to whether the Land has been used for lawful sports and pastimes in principle during the relevant 20 year period, it is contended by the Applicant that the Land has been used for various recreational activities during that period. References were made in both the oral and the written evidence in support of the Application to recreational activities such as dog walking, general walking, children’s

⁴⁵ At AB section 4.

play, football, cricket, fishing, cycling, kite flying, picnicking, berry picking, bonfires and children's parties having been carried out on the Land. Each of the witnesses who gave oral evidence in support of the Application referred to their own and/or their family's and/or other people's varying recreational uses of the Land over different periods of time. Such evidence is supported by a material amount of written evidence. Although people's recollections may fade over time, particularly in relation to details, I accept the evidence of each of those witnesses that they did in fact use the Land for the stated purposes.

6.7 In so finding, I also take into account the following. The Land is located close to a number of residential properties with built up areas to the east, south and west. There is easy and unrestricted pedestrian access to it from Station Road to the east and from Front Street to the south. It can also be accessed from the area of the River. The Land is flat and comprises open grassland. It was regularly maintained by the District Council until 1994, and local residents have continued to maintain those parts near to their homes. I saw from my site visit that it remains a pleasant area of open space. In such circumstances, I would expect the Land to be used by local residents for recreational purposes to a degree.

6.8 Further, I note that it is no part of the Objectors' case to contend that no recreational activities whatsoever have taken place on the Land. Instead, the main matter in dispute between the Parties relates to the *extent* of any qualifying recreational use on the Land which I address below. Each of the three Objectors acknowledged that people regularly walked on the Land, both with and without dogs, and Mr Armstrong himself had organised a bonfire on the Land. Mrs Armstrong,

whom I regarded as a particularly fair and honest witness, also pointed out that their Children and Grandchildren had played on the Land with their friends, and that she had seen other children playing on the Land.

6.9 Moreover, all such activities referred to in paragraph 6.6 above are lawful, and they are all capable of being recreational pursuits in principle. Although there was no evidence of any organised sports or other recreational activities having taken place on the Land other than bonfires and children's parties, as noted in paragraph 5.10 above, informal activities such as walking with and without dogs and children's play amount to lawful sports and pastimes within the meaning of section 15(2) of the 2006 Act. Therefore, I find that some lawful sports and pastimes have been carried out on the Land during the relevant 20 year period. I shall address below the extent and degree to which they have been carried out as of right throughout the entirety of the relevant period by the inhabitants of the claimed locality.

Locality or Neighbourhood within a Locality

6.10 I turn next to the identity of the relevant locality or neighbourhood within a locality for the purposes of section 15(2). The Applicant confirmed at the outset of the Inquiry that the area relied upon for the purposes of the Application was as stated in section 6 of the Application Form, namely the locality of West Auckland Village which is within the West Auckland Parish Council administrative area. It was further confirmed by the Applicant that the boundaries of the Village and of the Parish Council area are the same and are as identified on the Map of the locality submitted

with the Application.⁴⁶ The Objectors did not dispute that the identified locality was a qualifying locality.

6.11 In my view, the Parish Council area of West Auckland is capable of being a locality within the meaning of section 15(2) of the 2006 Act. It is a recognised and established administrative area, namely the administrative area of the Parish Council, with fixed and identifiable boundaries and is an area known to the law. I therefore find that it amounts to a locality within the meaning of the statutory criteria.

Use as of Right

6.12 Before turning to the extent of the qualifying user by the inhabitants of the locality throughout the relevant 20 year period, I shall consider next whether the use of the Land has been “as of right” during that period. There was no suggestion in any of the evidence that any of the use was by stealth. On the contrary, it was carried out openly during daylight hours and without any element of secrecy. The use of the Land has thus been *nec clam*. Similarly, none of the use was carried out with force. Although use need not involve physical force to be *vi*, such as accessing land by breaking down fences, there was no evidence of anyone having been challenged by the Landowners or having been requested to leave the Land or using the Land contrary to any signs. Instead, the consistent and unchallenged evidence of each of the witnesses in support of the Application was that they had never been prevented from using the Land nor been requested to leave the Land nor been informed that they should not be on the Land. Therefore, I find that the use of the Land was *nec vi*.

⁴⁶ At AB section 5.

6.13 As to whether the Land has been used *nec precario* during the relevant 20 year period, the only evidence of any express permission having been given was for a bouncy castle to be placed on the Land for a party around 2011 for which Mr Armstrong's permission was sought and duly granted. Such permission related to a specific and single event on the Land and I find that it applied solely to that event and was not a general permission being granted. There was no evidence of any other express permission having been given more generally or at all. Further, there was no evidence adduced to suggest that the use was carried out pursuant to an implied permission, which could arise from overt conduct on the part of the Landowner making it clear to local inhabitants that their use was pursuant to his permission as stated in *Beresford*. Indeed, the Objectors did not dispute that the recreational use of the Land which had taken place was "as of right", as was confirmed in the Closing Submissions made on their behalf.

6.14 Consequently, with the exception of the bouncy castle event, I find that the recreational use of the Land which took place during the relevant 20 year period did so "as of right" within the meaning of section 15(2) of the 2006 Act.

Use by a Significant Number of the Inhabitants of the Locality

6.15 Turning next to the fundamental issue of whether there has been a sufficiency of use of the Land for lawful sports and pastimes throughout the relevant 20 year period by a significant number of the inhabitants of the locality to establish village green rights over the Land, it is necessary to identify the relevant qualifying use and, in doing so, to identify the elements of the use of the Land which must be discounted. As indicated above, the question for determination is whether the qualifying use of the

Land for lawful sports and pastimes has been of such a nature and frequency throughout the relevant 20 year period to demonstrate to the Landowner that recreational rights were being asserted over the Land by the local community.

6.16 In terms of the elements of the recreational use which must be discounted from the qualifying use, I firstly exclude any use of the Land carried out outside the relevant 20 year period. Although such use may be relevant as an indicator as to the extent of the use within that period, and I have taken that factor into account, I am unable to regard such use as part of the qualifying use itself. Thus, I have excluded the recreational uses of the Land referred to in the evidence above that was undertaken prior to August 1991 and post August 2011. I have also taken the same approach with the written evidence.

6.17 Secondly, I have excluded such use by persons who were not inhabitants of the locality of West Auckland, such as the use by visiting family and children who themselves lived outside that area and the use of those seen on the Land whose residency was unknown.

6.18 Thirdly, and of particular significance, it is necessary to discount the use of the Land that was more akin to the exercise of a public right of way than to the exercise of recreational rights over a village green for the detailed reasons set out in paragraphs 5.11 and 5.12 above. That includes walking, both with and without dogs, where the walk was of such a nature that it would suggest that the user was exercising a right of way over specific routes rather than exercising a recreational right over the land generally.

6.19 From the evidence, it is my impression that a significant amount of walking and dog walking on the Land took place along a specific linear route and as a means of access from one point to another, often using the Land as part of a short cut, rather than recreating over the Land generally. Hence, in terms of each of the witnesses who gave oral evidence in support of the Application, Mr Garfoot referred to people walking along the River and then crossing the Land as a short cut onto Front Street. Indeed, although he has not lived in the area for the vast majority of the relevant 20 year period, he had only seen the Land, namely both The Fleece and The Nursery, being used as rights of way during the relevant 20 year period and not for any other recreational purposes. Mr Roberts stated that his main use of the Land was as a short cut from his house to various local facilities along the diagonal route through the Land, which was a frequently used route by others. Indeed, he noted that since the fencing was erected in 1994, dog walkers and general walkers have “*invariably cut through along a diagonal route*”. Similarly, Mrs Briggs’ personal use of the Land was primarily to walk her dog across The Fleece to access the area of the River and then subsequently to walk through it herself. She has also walked across The Nursery as a means of access to her Sister’s. She confirmed that the main use of the Land during the relevant period was by people walking through it along a diagonal route between Front Street and Station Road and vice versa. Mr Forbes’ use of the Land primarily involved walking across The Nursery to gain access to the River and walking across The Fleece to go to the shops and back. He had seen many dog walkers walking along the same route to access the River.

6.20 I accept such evidence. Indeed, it is apparent from the photographic evidence produced that a beaten track was formed along that diagonal route which pedestrians used. I also note the consistent evidence of each of the Objectors that they had seen walkers, both with and without dogs, walking across the Land and using it as a short cut. Significantly, no evidence was given by any of the witnesses who gave oral evidence of people exercising their dogs on the Land generally or walking over the Land generally rather than along the specific diagonal route as a short cut or as a means of access.

6.21 I find that such use of the Land was more akin to the exercise of a right of way rather than of recreational rights over the Land generally. Accordingly, such use must also be discounted from the qualifying use.

6.22 Having discounted such elements of use from the qualifying use, it is next necessary to assess whether the evidence has demonstrated that that qualifying use was carried out to a sufficient extent and frequency throughout the relevant 20 year period to establish town or village green rights over the Land. In doing so, the impression I gained from the evidence was that the primary recreational uses of the Land were for dog walking and general walking together with an element of children's play. There was no specific evidence of any community events or formal events or sports having been regularly organised on the Land during the relevant 20 year period save for a few bonfire and other parties.

6.23 In terms of walking and dog walking, it is necessary to discount that which was more akin to the exercise of a public right of way. For the reasons given above, I

find from the oral evidence that the vast majority of such uses over the relevant period were of such a nature, and there was no oral evidence of any regular dog walking and general walking use of the Land which was not of such a nature. Further, insofar as it is sufficiently detailed to enable a view to be reached on that issue, the written evidence tends to support that finding. There are various references to people using the Land as a short cut, as a thoroughfare, and as a means of gaining access to the River. In contrast, it is not possible to ascertain from the less detailed written evidence which particular routes were used by walkers and how they used the Land. Given that the burden of proof lies upon the Applicant, I am unable to assume that the Land was used by such walkers and dog walkers more generally. Indeed, that would be inconsistent with the oral evidence to which I give more weight in any event.

6.24 As to children's play, there is a limited amount of evidence of such use taking place on the Land during the relevant period by the inhabitants of West Auckland. Mr Garfoot's daughter's use and his cousin's children's use took place on The Nursery, but he pointed out that there were no longer many children living at The Nursery and that he had not seen children playing on The Fleece during the relevant 20 year period at all. Mr Roberts stated that The Nursery was "*very much the domain*" of residents of The Nursery, and it was when children lived in those particular houses that they played on the Land. As to The Fleece, that had been regularly used for children's play until around 1994 when the District Council regularly maintained it. Mrs Briggs noted that children no longer play on the Land since traffic started to use it, which view was confirmed by both Mr and Mrs Forbes. Indeed, since 2006 when heavier traffic has been using the Land, it does not seem to me that the Land would be a particularly safe or attractive area for children's play. The written evidence is insufficiently detailed to

assist as to whether the children's play referred to took place throughout the entirety of the 20 year period.

6.25 I also take into account the Objectors' evidence in relation to this issue. Mrs Armstrong fairly acknowledged that she had seen children playing on the Land, including her own children, grandchildren and their friends. However, she pointed out that most children merely cut across the Land to gain access to the River which was where they preferred to play.

6.26 Having considered all the evidence, it seems to me that the use of the Land for children's play has been relatively limited during the relevant 20 year period. Moreover, since 2006 when the Land has been used regularly by traffic, namely for the final 5 years of the relevant 20 year period, I find that such use has been extremely limited. I note in that regard that Mr Roberts fairly and, in my view, justifiably, stated that the creation of a vehicular track was "*a huge disincentive*" to the Land's recreational use, albeit he emphasised that such use had not "*entirely*" ceased.

6.27 As to other recreational uses of the Land, the evidence indicated that they were relatively limited in nature. Moreover, again since 2006, such uses have inevitably decreased due to the regular use of the Land for traffic, as confirmed by the oral evidence. Further, Mr Garfoot, Mr Roberts and Mrs Briggs each pointed to the use of the Land for tethering horses and the resulting horse droppings which have made the Land generally less attractive to recreational uses.

6.28 Taking all the evidence into account, I find that the *qualifying* use of the Land during the relevant 20 year period has been sporadic and insufficient to demonstrate the assertion of recreational rights over the Land. Consequently, I find that it has not been established on the balance of probabilities that the qualifying use of the Land has taken place to such an extent and with such a degree of frequency throughout the entire relevant 20 year period to demonstrate to a reasonable landowner that recreational rights were being asserted over the Land. I accordingly find that the Land has not been used by a significant number of the inhabitants of West Auckland for lawful sports and pastimes throughout the relevant 20 year period.

Continuation of Use

6.29 The final issue in terms of the statutory criteria is whether the qualifying use continued up until the date of the Application, namely 11 August 2011. The Land remains unfenced and open and no signs have been erected restricting its use to date. Witnesses gave evidence that they continue to use the Land. Therefore, subject to the other elements of the statutory criteria, I find that the qualifying use was continuing as at the date of the Application and that that particular element of the statutory criteria has accordingly been satisfied.

Private Rights of Access and to Graze

6.30 The Objectors also raised issues over their alleged private rights of access and private rights to graze horses on the Land. I agree with the submissions made on the Applicant's behalf that neither I nor, more significantly, the Registration Authority, have any jurisdiction to determine whether or not such rights over the Land exist. In any event, it does not seem to me to be necessary for such issues to be resolved in

order for myself to recommend, and for the Registration Authority to determine, whether the statutory criteria contained in section 15(2) of the 2006 Act have been established. For both those reasons, I do not address those issues further and I recommend the Registration Authority to adopt the same approach.

7. CONCLUSIONS AND RECOMMENDATION

7.1 My overall conclusions are therefore as follows:-

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

7.1.2 That the relevant 20 year period is August 1991 until August 2011;

7.1.3 That the Parish of West Auckland is a qualifying locality;

7.1.4 That the use of the Application Land for lawful sports and pastimes has been as of right throughout the relevant 20 year period;

7.1.5 That the Application Land has not been used for lawful sports and pastimes throughout the relevant 20 year period to a sufficient extent and continuity to have created a town or village green;

7.1.6 That the use of the Application Land for lawful sports and pastimes has accordingly not been carried out by a significant number of the inhabitants of any qualifying locality or neighbourhood within a locality throughout the relevant 20 year period; and

7.1.7 That the use of the Application Land for lawful sports and pastimes continued up until the date of the Application.

7.2 In view of those conclusions, it is my recommendation that the Registration Authority should reject the Application and should not add the Application Land to its

register of town and village greens for the reasons contained in this Report and on the specific grounds that:-

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

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

8. ACKNOWLEDGEMENTS

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

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

RUTH A. STOCKLEY

13 October 2013

Kings Chambers
36 Young Street Manchester M3 3FT
5 Park Square East Leeds LS1 2NE
and
Embassy House, 60 Church Street, Birmingham B3 2DJ

This page is intentionally left blank

WEST AUCKLAND: FLEECE & NURSERY

APPENDIX 6

Post-Inquiry correspondence from the Applicant

West Auckland Parish Council

Sharon Wootton, Clerk to the Council
20 Loweswater Grove, West Auckland
BISHOP AUCKLAND
County Durham DL14 9NA
☎ 01388 834360 ✉ sharon.home@btopenworld.com



17th November 2013

Dear Ms Holding

RE: Response to the Public Inquiry Inspector's report -Fleece and Nursery Land, West Auckland, Application to register land as Village Green

We embarked on this application about six years ago, on the specific recommendation of Durham County Council's legal department (Richard Langdon), following a meeting to discuss access and misuse issues on the land. Thank you now for the opportunity to comment on the Inspector's report and specifically, her conclusion, that the land not be registered. We would offer the following comments:

Extent and continuity of use

The inspector places great stress on the fact that there was not, in her view, 'a sufficient extent and continuity' of community use of the land. She acknowledges that the PC had demonstrated that the land was well used for decades from the 1970s, when it was maintained by the local authority, up to 1994, that is for the first three years of the relevant period (1991-2011).

After 1994 maintenance stopped and the communal use inevitably declined slightly. Matters got far worse in 2006, when the objectors began to take unauthorised access through The Nursery (later fenced off) and Fleece land, and also using the land as if they owned it for the transfer of scrap from lorry to lorry, etc, and general car parking. This activity understandably hugely reduced the community use in the Nursery and also severely restricting it on the Fleece land – but just for the last five years of the relevant period.

The level of use of the Fleece during that period still included occasional communal bonfires, children playing football, trampolining and children's parties, besides those that walk across and dog-walk the area. Whilst not intensively used, because of the objectors' activities, it is a level of activity not dissimilar from that to be found today on many registered village greens in County Durham villages. Indeed West Auckland's official village green never hosts a bonfire and only the occasional game of football.

The community use in The Nursery was once very real and delightful to see, elderly neighbours sitting out in deckchairs under its central tree to enjoy summer afternoons. Now it has been destroyed by the unauthorised access and fencing. Life for residents there is becoming unbearable and a number of owners already have plans to sell up. If registration, or some similar form of preventative action to stop the access is not forthcoming very quickly, the area will be blighted and fall into vacancy, abandonment and vandalism.

In an earlier effort to reach an accord with the objectors, the Parish Council drew up a draft agreement whereby their Fleece access would be acknowledged for domestic use only, while their Nursery access would be closed. This agreement was accepted in principle by the objectors, but never signed.

If the committee endorse the Inspector's view they will be rewarding the objectors for their last seven years of unauthorised vehicular access, unauthorised fencing of public open space, and a generally antisocial attitude towards local residents and the wider village community.

The need for this land to be taken into some degree of community 'ownership' or control, has never been greater than now. The following agencies have had a close involvement with the area and would endorse our view.

Police

The police have had a long involvement with incidents on this land, most stemming from the new vehicular access created through The Nursery. This includes the unauthorised parking of caravans on the land, joy-riding cars racing through The Nursery and churning up the Fleece land, and in one recent incident (prompted by the objectors), a full police armed-response unit arriving on the Fleece land. The police would welcome closure of unauthorised accesses and a responsible body to whom they could talk and act, when this land is being misused.

Highways

The DCC Highways engineers about five years ago sought to refuse a planning application for two extra houses in The Nursery on the grounds that the vehicular movements would be excessive for this small cul-de-sac of houses. In the event members approved the scheme, yet DCC now seems powerless to prevent far greater unauthorised vehicular access taking place through exactly the same area (about 15-20 car/lorry movement per day). DCC engineers would surely welcome the cessation of this access.

Enforcement

Former Wear Valley District Council and Durham County Council enforcement officers know this area of land well. They have frequently had recourse to follow up reports of scrap metal dealing and the creation of bonfires of industrial waste (including old fridges) taking place on the Fleece land. An 'owner' of the land who could act against such antisocial uses, in conjunction with enforcement officers would be welcomed.

Conservation

The Fleece and Nursery Land lies within West Auckland Conservation Area, a village which has benefitted hugely recently from DCC investment – the bypass, two major floorscaping schemes, property restoration grants (in conjunction with English Heritage) and the planned surfacing of the unmade access road on the north side of the green. The parish council has supported some of these schemes financially and also planted semi-mature trees on the green. Add to the recent parish council-led War Memorial scheme at the Pant and the new World Cup sculpture and many people say the centre of the village has never looked so good. But...the Fleece and Nursery land, behind the village's facade, tells a very different story of neglect and misuse. If vehicular access was stopped through the Nursery, if the land was maintained (as the Parish Council have agreed to do with a proposed landscaping scheme), if antisocial behaviour was stopped, it would lead to an improvement in the appearance of the area, an increased investment by owners in their houses, as well as the

completion of the Nursery cul-de-sac with the construction of the two new approved stone dwellings. All this would enhance the conservation area and restore the reasonable amenities that local residents have a right to enjoy.

Conclusion

1 The parish council considers that the level of community use of the land for much of the relevant period was significant, and commensurate with that taking place on many existing traditional village greens in the county. Therefore registration should follow.

2 We would ask the committee, or a relevant number of its members, to make a site visit before the committee meeting, so they can meet with all parties, including local residents.

3 We would urge Durham County Council not to reward the antisocial behaviour that has taken place here, which has prevented full enjoyment of the open space, by failing to register this land as village green. Please give back this land to the community that wishes to care for it and once again actively use it.

4 Ensure this land is in the responsible hands of a body that will improve and maintain it, and be able to act to prevent unauthorised uses and accesses.

5 By so doing the work of the police, and your own County Council highways, enforcement and conservation officers would benefit, in making this village a better place for its residents.

6 Should, despite this letter, Members wish to endorse the Inspector's recommendation not to register, we would urge that DCC legal and highways officers be instructed to work, as a matter of urgency, with the Parish Council to implement alternative legal means whereby The Nursery access can be closed and the Fleece and Nursery land restored, through some form of community ownership, to full community use again.

7 We would hope that the Parish Council will be given time at the committee meeting to summarise this letter in a short read statement.

Many thanks for your assistance with this.

Yours sincerely



Sharon Wootton
Clerk to the Council

Dear Committee Member

PROPOSED REGISTRATION OF THE FLEECE AND NURSERY LAND, WEST AUCKLAND AS A REGISTERED VILLAGE GREEN

A CONCLUDING STATEMENT BY WEST AUCKLAND PARISH COUNCIL

The Parish Council welcomes the opportunity to offer a concluding statement to Members ahead of your site visit and subsequent meeting on March 12. We would hope to make a short statement at the meeting too.

West Auckland Parish Council feels very strongly that this is simply a matter of right and wrong. For almost eight years we have been fighting to defend the rights of local homeowners to enjoy the basic residential amenities they once had – peace, quiet and an attractive green environment. Due to the selfish and antisocial behaviour of one family, those amenities have been destroyed, lives have been damaged and a once attractive part of our village conservation area has been badly blighted. Failing to register this land as village green would, quite simply, be to reward the objectors for their antisocial behaviour. We are proud of our village and work hard to improve it. We are hugely grateful for the highway and environmental improvements Durham County Council has invested here in recent years. We ask Members for one more act of support for West Auckland – register the Fleece and Nursery land as village green.

The Fleece and Nursery land lies just to the north of the main village green, historically the two areas were quite separate and accessed independently, divided by a high wall and the mill race. The Fleece land was historically owned by West Auckland Brewery, The Nursery land was once owned by the colliery owners and, for the greater part, all of it remains 'un-owned' open space. Housing demolition and landscaping in The Nursery in the late 1960s and early 1970s created a large open space that linked both areas, all maintained by Wear Valley DC. Community recreational use, always present before, flourished.

1994-2006

In 1994 one of the objectors to registration, whose land lies adjacent to both areas, and who has a vehicular access (for domestic vehicles) directly onto Front Street from his property, tried to create a vehicular access through The Nursery for domestic, caravans and commercial (scrap metal) vehicles. The matter was resolved after local protest and police action by fences being erected, one of which enclosed an area of Nursery land which a local builder, Steven Robinson (who owned a small part of the land there) sought to claim by adverse possession. Mr Robinson's fence left a narrow pedestrian gap between the two areas but prevented vehicular access to The Nursery. Recreational use of The Nursery and Fleece land continued. (see Google Earth image 2001 below). In 2006, close to the expiry of the adverse possession claim, Mr Robinson's fence was torn down by objectors to the claim, assisted by one of the current objectors. A Land Tribunal subsequently awarded the land to Mr Robinson, who then gained planning permission for two houses.

2006-2013

With Mr Robinson's fence down, the objectors to registration created a vehicular access through The Nursery from their land, actually cutting across the corner of Mr Robinson's land. (see Google Earth image 2006 below) In an attempt to establish some recognition of community ownership and use of the Fleece and Nursery land, and the Cameron's Caution having lapsed, the West Auckland Parish Council (WAPC) placed a Caution on both areas with the Land Registry. In 2009 matters were made worse when the objectors fenced off The Nursery land in an attempt to claim some sort of 'ownership' – an elderly resident was even prevented from getting to her own back yard. Mr Armstrong also placed a Caution on The Nursery land. Since 2006 unauthorised vehicular use of The Nursery access by the objectors has been extensive, with the Fleece access also used, but limited by narrow entry onto Front Street. **Usual vehicle movement by the objectors, their family and friends, are in the region of at least 15-20 a day. The Nursery access has allowed cars, vans, lorries, even a double-decker bus(!) to gain access to the Fleece land and the objectors' property. The objectors have used the Fleece and Nursery land as an extension of their own rear yard area for the transfer of scrap vehicles (on one occasion, three lorries and three vans exchanging old cars), horse grazing, industrial waste bonfires (including fridges) and recently an assembly of their cars, prior to undertaking antisocial activity, prompted an armed police response unit on the Fleece land, all in front of local children. Local joy riders use the Fleece land for spinning their cars on, before racing through The Nursery. Residential caravans have been brought onto the land (by others) for months at a time. Police and DCC enforcement officers have been regularly involved in incidents.**

The Village Green application

Following all this antisocial activity on community land, local resident protests led to a 2010 meeting with DCC legal officers, that concluded with them recommending that the Parish Council pursue village green registration. The WAPC application for village green registration was submitted in 2011 with over 20 witness statements from local residents attesting recreational use of the land from as far back as 1926. Before the Inquiry, in an effort to establish common ground with the Objectors, after a joint meeting with solicitors, the Parish Council drew up a draft deed by which the objectors would relinquish their claim to The Nursery access if they could maintain the Fleece access to Front Street for domestic vehicles only. This was provisionally agreed by both parties but put 'on hold' pending the Inquiry.

The Inquiry Inspector's recommendation

The Inquiry Inspector was required to examine the extent to which the land was used for community purposes over the past twenty years (1991-2011) and whether that use was still continuing. Her report concluded that the level of community activity

was not that intense to be able to recommend registration, noting that since 1994 (when grass cutting ceased on Fleece land) and especially since 2006 (when commercial and domestic vehicles were cutting through and using both areas) the land was hardly conducive to community use, i.e. by implication, the objectors use had prevented recreational activity by others.

Since the Inspector's report was received the Parish Council has met with County Council officers representing planning, conservation and enforcement as well as the local police (who have logged significant numbers of incidents on this land). Their comments and support left us in no doubt that all of them would welcome the prospect of the land being taken into the hands of a responsible body who would restore the landscaping, improve the conservation area, re-establish residents' amenities and allow community use to take place again.

If the Inspector's view is upheld, it will reward the objectors for their antisocial use of the land, which has prevented its long-established community use continuing. The Parish Council feels very strongly that this is simply a matter of right and wrong. We urge members to register this land.

West Auckland Parish Council, 4 February 2014



2001
Little vehicular movement, good green space.



2006
Fence removed, vehicles and caravans on land



2009
High traffic movement, grass loss, industrial bonfire



Proposed landscaping scheme

WEST AUCKLAND: FLEECE & NURSERY

APPENDIX 7

Post-Inquiry correspondence from Objectors

Laura Renaudon

From: P ARMSTRONG <[REDACTED]>
Sent: 25 February 2014 15:55
To: Laura Renaudon
Subject: ref:LR/NL36

Application to register the Fleece and the Nursery as a Town or Village Green

In conclusion to our objection, that was fully heard by the Inspector who ruled to reject for village green as it states in her report the criteria was not met by the Parish Council, we wish for our objection to stand against granting village green status for the following points:-

1. We were successful in our application to put a Caution on the Nursery piece of land that we have travelled over now for 25 years, by providing all relevant information to prove our claim of use to the Land Registry (1989 - present) This route is from the rear of our garden through the nursery leading out onto Station Road.
2. The road through the nursery is over 60feet wide, and to our knowledge there has never been any incidents / accidents.
3. The other access we use that leads out from the rear of our garden to Front Street and is used by ourselves and the other residents in the Street.
This while reading the Parish case does not seem to be an issue only the fact that we also use the Nursery end and we have used both for the same length of time.

I would conclude by saying that we will attend the meeting if you could please advise of Venue, time and date.

Yours Sincerely

Abel & Pauline Armstrong
Joanne & JohnPaul Cliff

27 & 26a Front Street (Respectively)
West Auckland
Co. Durham DL14 9HW

WEST AUCKLAND: FLEECE & NURSERY

APPENDIX 8

Correspondence from the local MP and Lord Foster



HELEN GOODMAN MP

Standing up for all in the Bishop Auckland Constituency



Laura Renaudon
Planning & Development
Durham County Council
County Hall
Durham
DH1 5UL

11 February 2014

Dear Ms Renaudon

I am writing in support of the application for village green status for land in West Auckland known locally as 'The Nursery'.

The land in question is undoubtedly a community asset and as such should be afforded the status of a village green.

I have met with Parish Councillors from West Auckland and it is clear that there is widespread local support for this application which will allow a much loved part of the village to be brought back into a fitting condition and give back rightful public access.

Not only is it a very nice spot it has been completely spoilt in recent years by some residents who have illegally occupied it and used it for business and other activities. Since 2006, 23 incidents of anti-social behaviour have been recorded here. Indeed on one occasion the armed response unit of the police had to be called out.

This is why I think the criticism made by the "independent panel" that it hadn't been in continuous use was completely unreasonable. No-one in their right mind would let their children play where they might be at risk or in danger. Moreover I think it's important that the council support law abiding members of the community and do not inadvertently incentivise anti-social activities.

Yours sincerely

Helen Goodman
Member of Parliament for Bishop Auckland
Shadow Minister for Culture, Creative Industries and Communication



Councillor Geraldine Bleasdale
Chairman of Highways Committee
Durham County Council
County Hall
Durham
DH1 5UL
5th. February 2014

Dear Councillor Bleasdale

**PROPOSED REGISTRATION OF THE FLEECE AND NURSERY LAND,
WEST AUCKLAND AS VILLAGE GREEN**

I am writing to lend my support to West Auckland Parish Council in their application to register the Fleece and Nursery land as village green.

This area of open land has been, until recently, in constant use for decades as a recreational space for local residents. Regrettably over the past eight years the actions of a minority seeking to take ownership of this land have so blighted the land that such communal use has been severely restricted, and it was this decline in use that clearly influenced the Inquiry inspector in her recommendation.

It seems quite obvious that to deny registration simply rewards those who have sought to extinguish the community use of the land. The Parish Council are keen to establish registration and have funds reserved to undertake a community-based restoration of the land. I welcome their initiative and perseverance in this matter, and would urge your committee to support registration.

Yours sincerely

A handwritten signature in black ink, appearing to be "R. Foster".

The Rt. Hon the Lord Foster of Bishop Auckland DL

COPIES TO:

Ms Laura Renaudon, Solicitor, Planning & Development, Durham County Council,
1-135, County Hall, Durham DH1 5UL laura.renaudon@durham.gov.uk

Ms Sharon Wootton, Clerk to West Auckland Parish Council, 20 Loweswater Grove,
West Auckland, Bishop Auckland, Co Durham DL14 9NA sharon.home@btinternet.com

This page is intentionally left blank