

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT
ROMALDKIRK, BARNARD CASTLE, COUNTY DURHAM
AS A TOWN OR VILLAGE GREEN**

REPORT

of Miss Ruth Stockley

08 August 2019

Durham County Council

County Hall

Durham

DH1 5UL

Ref: LA/015364

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT
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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 at Romalldkirk, Barnard Castle, County Durham (“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 submissions, 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 30 April and 1 May 2019. I also undertook an accompanied site visit on 1 May 2019, together with an unaccompanied visit around the village of Romalldkirk.

1.3 Prior to the Inquiry, I was invited to make directions as to the exchange of evidence and of other documents. Pursuant to my directions, those documents were duly provided to me by each of the Parties which significantly assisted my preparation for the Inquiry. The Applicants produced a bundle of documents containing the Application with supporting documents, a number of witness statements and letters in support, and other documentary evidence in support of the Application. I shall refer to that bundle as “AB *” with * representing the page number of the bundle. The Objectors also produced a bundle of documents containing witness statements and other documentary evidence in support of their Objection, which I shall refer to as “OB *” with * representing the relevant tab of the bundle together with, where appropriate, the page number. In addition, both Parties provided a skeleton argument setting out an outline of their respective cases. I have read all those documents 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 or any substantive matters relating thereto. Therefore, provided it acted lawfully, the Registration Authority would be free to accept or to reject any of my recommendations contained in this Report.

2. THE APPLICATION

2.1 The Application was made by Ms Lesley Cutting in her capacity as Chairwoman of Romaldkirk Parish Council (“the Applicants”) and is dated 11 September 2016.¹ It is

¹ The Application is contained at AB 1 onwards.

stamped by the Registration Authority as being validly received on 20 October 2016.

Part 5 of the Application Form describes the Land sought to be registered as follows:

“Area of land is within the registered village green known as Middle Green”

and its location is stated to be *“Romaldkirk, Barnard Castle”*. A map was submitted with the Application marked “EXHIBIT A” which shows the Land hatched in red.² In part 6 of the Application Form, the “locality or neighbourhood within a locality” in respect of which the Application is made is identified as *“Romaldkirk, Barnard Castle”*.

2.2 The Application was 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, and was supported by user evidence questionnaires, letters and plans.³

2.3 The Application was duly advertised by the Registration Authority as a result of which an objection was received from Mr and Mrs Webb (“the Objectors”) of Rose Stile Cottage,⁴ Romaldkirk. The Applicants were given an opportunity to respond to that objection which they duly did.⁵

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 8.

³ At AB 9 onwards.

⁴ I have noted various spellings of “Rose Stile Cottage”, but I have adopted the version shown in the Registered Romaldkirk Title Documents for the purposes of this Report.

⁵ The response is at AB 39 onwards.

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 Applicants were represented by Mr James Kemp of Counsel, and the Objectors appeared in person. Any third parties who were not being called as witnesses by the Applicants or the Objectors and wished to make any representations were invited to speak, but no additional persons chose to do so.

3. THE APPLICATION LAND

3.1 The Application Land is identified on the map marked “EXHIBIT A” submitted with the Application on which it is clearly outlined and hatched in red.⁶

3.2 The Land comprises a small, open, flat, triangular shaped, short cut grassed area within the village of Romaldkirk. It immediately adjoins the carriageway to the south which is a public highway with no separate footways. To the north are adjoining residential properties known as Rose Stile Cottage and Rose Stile bounded by a stone wall. There are gates leading out from the front garden areas of those properties directly onto the Land. To the west of the Land is Sennings Lane over which a public footpath runs that is part of the Teesdale Way. The Land is open to access. There are no benches, bins, signs or other equipment on the Land. There are a number of other open grassed areas in the village which are registered village greens. The main green is located across the road to the south west of the Land and is known as “Low Green”. The grassed area across the road to the south east of the Land is known as “Middle Green”.

⁶ At AB 8.

3.3 The ownership of the Land is not entirely clear. It is not within the Objectors' title relating to Rose Stile Cottage, but comprises unregistered land. It is understood by the Applicants to be owned by the Lord of the Manor of Romaldkirk and thus by the Church. That may well be, but in the absence of any clear evidence as to title, I am unable to make any findings in relation to ownership and I do not do so.

4. THE EVIDENCE

4.1 Turning to the evidence presented to the Inquiry, I record at the outset that, for the most part, each witness from both Parties presented their evidence in an open, straightforward and helpful way. Further, I regard each witness as having given credible evidence to the best of their individual recollections, taking into account the passage of time.

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 its contents herein. I shall refer to the oral evidence in the order in which each witness was called at the Inquiry for each Party.

CASE FOR THE APPLICANTS

Oral Evidence in Support of the Application

- 4.4 **Mrs Sarah Wall**⁷ lives at Low Green Farm, Romaldkirk where she was born and lived between 1978 and 1996 until she went to university, and then returned to live in 2010. Whilst away at university, she regularly returned to the village at weekends and during holidays to visit her parents, friends and her horses which remained at the Farm.
- 4.5 Growing up, she spent a lot of time in the village, often riding her ponies, and she would use the Land when riding from around 1988 onwards. At times she was accompanied by Lesley Cutting on her horse, and for a period Gillian Carter who also had horses. She saw various other residents of the village using the green areas and open spaces, including the Land. People walked their dogs on the Land and children played on it. It was used in the same way as all the other open areas in the village.
- 4.6 Since returning to the village in 2010, she has married and had three children born in 2012, 2014 and 2017. She regularly walks along the road adjacent to the Land with her children playing on both the Land and the open land on the other side of the road. She recalled various Fair Days held annually in the village which are primarily based on the Low Green. That included a fancy-dress parade starting from the Reading Rooms down to the Low Green, passing the Land. People would line each side of the road to spectate, including on the Land. There were no stalls or other activities on the Land. She expressed the view that there has been little change in how people have used the Land over the years she has known it. It is used alongside the other open areas by the villagers and occasionally by visitors. Her access to the Land has never been hindered until the planting which took place which stopped her using the Land, although her children would still wander onto it.

⁷ Her witness statement is at AB 76, and an earlier e-mail and statement at AB 93 and AB 116.

4.7 In cross examination, she acknowledged that various still images from CCTV footage produced by the Objectors⁸ show her walking down Sennings Lane and then turning right at the bottom towards her home and away from the Land. That is part of a regular circular dog walk she does. None of the stills produced show her using the Land, but she pointed out that the camera angle does not show the Land, which she has used with her children.

4.8 **Mrs Gillian Carter**⁹ has lived at Romaldkirk Hall, Romaldkirk since 1985 which has also been the location of her office since 1999. Her property is around 50 metres from the Land and from which she has views of the Land. She had always understood it to be part of Romaldkirk Village Green and had used it as such. From 1985 until 2014, she regularly walked her dog around the village greens and over the Land a number of times each week. In addition, between 1985 and 1992, she regularly rode over the Land and other areas of village green with her horse, often accompanied by Lesley Cutting and sometimes by Sarah Wall. Between 2004 and 2006, she employed a personal trainer for her Son, Ivan, who was recovering from Lyme Disease. The trainer set up various activities around the open spaces in Romaldkirk, including on the Land, for hourly sessions on a twice weekly basis, dependent on the weather.

4.9 She has also seen other local residents regularly using the Land for recreational purposes over the years since 1985, including for dog walking, children's play and horse riding. In terms of dog walking on the Land, "*it would have been uncommon for*

⁸ At OB B.

⁹ Her witness statement is at AB 57, and an earlier letter and statement at AB 86 and AB 103.

a week to pass without seeing at least one or two of the local inhabitants using the land".¹⁰ As to children's play, more use occurred in holiday times and in the summer, but she witnessed that activity on the Land "*on at least a fortnightly basis*".¹¹ In addition, people used the Land for spectating and socialising during the Village Fairs and the Beamish Rally.

4.10 She joined the Parish Council around 5 years ago. In May 2016, she instigated civil proceedings against Mr Webb for the obstruction of a public right of way, namely Sennings Lane, due to his planting extending over part of that right of way. She sought the removal of planting from along Sennings Lane bordering the Land.¹² A Court Order was made allowing the removal of a 1.3 metre strip of the vegetation from the side of Sennings Lane to the extent shown on Map B at OB C5, but not from the front of the Land.

4.11 **Mrs Alison Walton**¹³ has lived at The Shielling, Romaldkirk since 1999 with her husband and two children, having previously been a regular visitor to the village to visit her parents. Her children, born in 1990 and 1994, spent a lot of time playing on the greens in the village, including on the Land, together with other local children, particularly during the summer and in the holidays. She walked over the Land when walking her dog 3-5 times a week, and on most occasions saw others walking their dogs over the Land.

¹⁰ Witness Statement at paragraph 8.

¹¹ Witness Statement at paragraph 9.

¹² Various photographs of the planting at different times are at OB D.

¹³ Her witness statement is at AB 47, and an earlier e-mail and statement at AB 81 and AB 101.

4.12 She acknowledged in cross examination that CCTV stills produced by the Objectors showed her walking down Sennings Lane, pointing out that it was “*impossible to access*” the Land due to the planting which had been in place for at least 4 or 5 years. Since the planting, she had stopped crossing the Land. She had always assumed the Land to be owned by the Church, which had never restricted her use. She had assumed she had its permission to use the Land.

4.13 **Miss Dinah Needham**¹⁴ has lived at Rosedale, Romaldkirk since 1994. Her property is approximately 20 metres from the Land, diagonally across the road. She recalled a well-worn track across the Land leading from the road to Sennings Lane which she walked across herself to visit people in the village. She stated in cross examination: “*I use it as a footpath. I think most people do.*” She further pointed out that Mrs Webb had told her to get off the Land. She has regularly seen villagers walking over the Land, both with and without dogs. In addition, she has seen children playing on the Land, bouncing a football against the wall and cycling on it. The primary use of the Land has been for walking across and meeting friends in the village. She stated that the extensive planting in 2016 “*more or less stopped people walking across the Land*”. Prior to that, it was possible to still “*push through*” despite the planting. There was no footage of her on the CCTV images provided. However, she pointed out that they were taken over a very short period of time.

4.14 **Mr Martin Jewitt**¹⁵ has lived at Gracies Farm, Romaldkirk since 1987, having previously lived at Bunker Hill, Romaldkirk. He also farms a number of parcels of land

¹⁴ Her witness statement is at AB 55.

¹⁵ His witness statement is at AB 74, and an earlier statement is at AB 113.

in and around Romalldkirk, so he passes through the village up to 3 times per day. He has seen local people regularly using the Land from as long as he can remember, including for dog walking and for children playing. He saw “*one or two*” local people walking on the Land each week;¹⁶ and he saw children playing on the Land “*once every couple of weeks*”.¹⁷ Children played football on the main Low Green and not on the Land, but if the ball went onto the Land, they would go over to retrieve it. He recalled a bench on the Land at one time, but was unaware when it disappeared. It was used for spectating during events such as the Village Fair and the Beamish Rally. He had not used the Land himself, but has used the main Low Green. Since the planting, there had been a decline in the use of the Land.

4.15 **Lt Col Delius Singer**¹⁸ moved to Beckwath, Low Green, Romalldkirk in June 2015 with his Wife and their dogs since when he has walked over the Land as part of his regular dog walking routine. He was not on the Land for long as it was not used as a destination for him. In addition, he has seen other local people walking their dogs over the Land and children playing on the Land. He had no knowledge of the Land prior to June 2015. His recollection was that the extensive planting had been removed from the Land when he moved to the village in June 2015. In cross examination, he accepted that the photographs at OB D3 indicated that the planting was only removed in June 2016, but stated that did not preclude his use of the Land. As to the CCTV footage showing himself and his Wife on Sennings Lane but not on the Land, he pointed out that the Land could not be seen from the camera angle shown, and the lack of

¹⁶ Paragraph 4 of his witness statement.

¹⁷ Paragraph 5 of his witness statement.

¹⁸ His witness statement is at AB 51, and an earlier letter is at AB 84.

photographs of him using the Land did not demonstrate that he did not use it. He became a Parish Councillor in late 2017.

4.16 **Mr Neville Bond**¹⁹ has lived at Greenholme, Romaldkirk for 40 years. He walks through and around the village daily, both with and without dogs, taking different routes. He has walked his dogs over the Land and seen other villagers do the same. From 2000, he regularly led his granddaughter on her pony around the village for 2 or 3 years which included going over the Land. He recalled a handmade bench being on the Land, but was unaware of the dates. In cross examination, he stated that he had “*predominantly*” used the road rather than the Land, but had “*occasionally*” cut the corner off and walked across the Land. He estimated that he kept to the road 90% of the time. The recent planting prevented him from crossing the Land. He regarded the Land as owned by the Church. He has never seen any signs on the Land indicating that he could not use it.

4.17 **Mr Charles Goodall**²⁰ lived at Romaldkirk House, Romaldkirk as a child between 1982 to 1986, and was a regular visitor on at least a monthly basis for 2 to 3 days between 1986 and 2016 to visit his parents. From 2016 he became a part-time resident to care for his late mother. The Land is visible from the upstairs of his parents’ house.

4.18 As a child, he often used the Land and other areas of village green with other children to play and to ride bicycles. He recalled a bench on the Land which has since disappeared. There was never any indication that they should not be on the Land. As a

¹⁹ His witness statement is at AB 72, and an earlier letter is at AB 92.

²⁰ His witness statement is at AB 49, and an earlier e-mail at AB 82.

visitor between 1986 and 2016, he regularly walked around the village, including over the Land. Since being a part-time resident again from 2016, he uses the Land twice daily for walking his dog when he is in the area, which is around every fortnight for a couple of nights. He walks on the road whilst his dog, which is on an extended lead, goes on the Land foraging. He would only go on the Land if his dog had fouled. He has often seen others using the Land for recreational purposes, including dog walking over the Land, children playing and general socialising. He recalled local people and visitors using the Land to spectate at events such as the annual Village Fairs and the annual Beamish Rally. However, its use reduced from 2016 due to physical barriers on the Land, including parked vehicles, planting and waste bins. He has never seen any signs on the Land indicating that he could not use it.

4.19 **Mr Derek Nixon**²¹ has lived at The Rectory, Romalldkirk since December 2012. He has been a member of Romalldkirk Parish Council since 2013 and is the Chairman of the Committee for the annual Parish Fete. As a dog owner, he has walked past and over the Land on average between one and three times each week. Mr Webb has seen him on the Land. He walked across the Land with his Son when he was delivering newspapers for 6 months in 2013. He has seen many other local people and visitors using the Land for dog walking. He recalled a group of Duke of Edinburgh girls from Barnard Castle School having their lunch on the Land on one occasion. Local people stand on the Land to view the cars on the annual Beamish Rally in June and to watch the fancy dress parade on the Parish Fete day. In cross examination he acknowledged that the Objectors' photographs at OB D13 taken during the Beamish Rally only showed the Objectors' family using the Land, but pointed out it was only a snapshot in time.

²¹ His witness statement is at AB 50.

- 4.20 **Mrs Joanne Nixon**²² has lived at The Rectory, Romaldkirk since December 2012. Since May 2017, she has been Clerk to Romaldkirk Parish Council and is a member of the Reading Room Committee. She has walked past and over the Land around one to three times a week since moving into the village in 2012. Sometimes she would walk on the Land and sometimes she would walk on the road. It would depend on the weather conditions. She tended to walk on the road when walking her dog which would run onto the Land. Over that period, she has witnessed many local residents using the Land. She could only recall seeing children being on the Land over the last 3 years. It is used by people to spectate during the Beamish Rally and the Parish Fete day.
- 4.21 **Mrs Lesley Cutting**²³ has been the Chairwoman of Romaldkirk Parish Council for around 3 years and has lived at Balbaride, Romaldkirk since 1976. She has been a member of the Parish Council since 1998, of the Reading Rooms Management Committee since 1989, and of the Parish Fair Committee since 1987.
- 4.22 She has used the Land for recreational activities from 1980 onwards. In particular, she has regularly walked her dog around and over the Land, and between 1978 and 2010, she regularly rode in the area including over the Land. From 2013 until 2016, she also walked a horse around the open areas, including over the Land. The Land was used as part of Romaldkirk's Parish Fair held annually in August for people to spectate on and socialise. She has seen many local villagers using the Land for activities including dog walking, horse riding, children's play and spectating at events. She recalled a bench

²² Her witness statement is at AB 68 and an earlier letter at AB 88.

²³ Her witness statement is at AB 78, and an earlier letter and statement at AB 89 and AB 11.

being on the Land. The most regular and constant use she has witnessed on the Land is dog walking.²⁴ The population of Romaldkirk is approximately 150 inhabitants.

4.23 **Mr Ivan Carter-Becker**²⁵ has lived at Romaldkirk Hall, Romaldkirk since his birth in 1989. His company's office where he works is also located there. He recalls regularly using the Land with his friends as part of an informal bike track from around 1996 until 2000/2001 and being "told off" by the late Mr Bowen-Jones, the then owner of Rose Stile, for riding their bikes on the village green. Children's play generally took place on the larger Low Green,²⁶ but the Land would be used for certain games or when Low Green was being used by others and unavailable. The Land was also used as part of a dog walking route. Between 1999 and 2014, he regularly used the Land for dog walking. In addition, between 2004 and 2006 when he was recovering from Lyme Disease, his personal trainer set up circuit training around the open areas in the village, including on the Land. He also used the Land thereafter until around 2015 as part of a warm down or cool down circuit when running. He has witnessed the Land being used during village events for spectating. He has never been prevented from using the Land and there have been no signs on the Land indicating it should not be used.

Written Evidence in Support of the Application

4.24 In addition to the evidence of witnesses who appeared at the Inquiry, I have also considered and had regard to all the written evidence submitted in support of the Application in the form of additional witness statements, letters, e-mails, photographs and other documents. However, whilst the Registration Authority must also take into

²⁴ Paragraph 7 of witness statement.

²⁵ His witness statement is at AB 60, and an earlier statement at AB 105.

²⁶ Witness statement at paragraph 6.

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

4.25 **Mr Ian Bark**²⁷ resides in Sunderland where he has lived for 70 years, but he has family connections with Romaldkirk. His Wife's family have resided there since around 1958. They previously owned Hall Cottage, the property next door to Rosestile Cottage, and currently own The Gatehouse, Romaldkirk, which is at the opposite side of the village to the Land. He was married at Hall Cottage in 1973. Between 2005 and 2007, his Wife lived permanently at The Gatehouse with their Son while he attended Barnard Castle School. His Son is married to the Objectors' Daughter.

4.26 He visited Romaldkirk approximately weekly between 1996 and 2016, particularly at weekends and during school holidays, but never saw anyone on the Land. He had never seen anyone using the Land other than the families residing at Rose Stile and Rose Stile Cottage who also maintained the Land as part of the frontage to their property. It had always been regarded as part of those properties and was respected as such. He had a dog, but he never used the Land for dog walking as he respected other people's property. He had seen horses on Middle Green, but not on the Land. He had not seen children playing there. He attended the annual fireworks event every year, and went to see the Fairs and the Beamish Rally.

²⁷ His witness statement is at OB A12.

4.27 **Mrs Evangeline Bark**²⁸ was born in 1994 and currently resides in Durham. She is the Daughter of the Objectors. She lived at Rose Stile Cottage from March 1998 when her family moved to Romaldkirk until 2013 when she left the village and went to live in Durham. She often visits her parents with her Son.

4.28 As a child growing up, she would play with her cousins on the village greens, usually Low Green which was near to her house. They would also play on the Land when their gate was open. Although she had horses, she never rode them on the Land. There was a laburnum tree overhanging the Land for a considerable period of time which was too low to ride a horse. It is shown on the aerial photographs dated 1993²⁹ and 2010.³⁰ It was removed by Mr Bowen-Jones. She never saw anyone using the Land with horses. Mr Bowen-Jones would not have been happy if horses had used it causing ruts in the ground. There was no reason for people to use the Land for recreational activities given the two larger greens close by. Her Mother did not like a lot of people being on the Land given her mental health concerns.

4.29 She recalled the fireworks and bonfire on Low Green. Only their own family and friends stood on the Land during such events and during the Village Fairs. Only the main greens were used for the Fairs. There were no stalls or activity on the Land. The parade passed along the road in front of her parents' property, and she would watch from the Land if she was not participating in the parade. It was less than a 10 minute walk from the Reading Rooms to the Kirk Inn where the judging took place. Other

²⁸ Her witness statement is at OB A8.

²⁹ At OB C1

³⁰ At OB C3.

people did not stand on the Land. The annual Beamish Rally was another popular event for her family and friends. They would put seating out on the Land as shown on the 2016 photograph.³¹ No one else used the Land, as shown by the photographs. The area in front of houses was always respected by other villagers. There were no signs on the Land to state that people could not use it.

4.30 The Land was maintained by the gardener of the late Mr Bowen-Jones, who died around 2015, and her parents. It was always kept very neat and tidy. Mr Bowen-Jones always regarded it as private. He told children off when they rode on it. From around 2005, her Father started building work on Rose Stile Cottage, and for a number of years the Land was used to store a range of building supplies, including bags of sand and ballast, pallets of stone blocks, roofing slates, plasterboards and timber. No one walked over the Land. There was no issue over the Land until 2016.

4.31 **Mr Christopher Bark**³² was born in 1991 and currently resides in Durham. His parents live at The Gatehouse, Romalldkirk. He only lived permanently in Romalldkirk between late 2004 and 2007. Prior to then, he lived in Sunderland, and post then, he boarded at Barnard Castle School. He recalled playing with children from the village after school and at weekends on Low Green and Middle Green. Low Green was used quite a lot, especially during the summer months. It was fairly regularly used for dog walking. He never saw anyone using the Land other than the families of Rose Stile and Rose Stile Cottage. He came to know Mr Bowen-Jones. If he and his friends kicked a ball close to the Land, he would tell them off. He acknowledged in cross examination that post 2007,

³¹ At OB D13.

³² His witness statement is at OB A10.

his visits to Romaldekirk were sporadic. He would stay at The Gatehouse outside term times. The Land could only be seen from the kitchen of that property.

4.32 **Mrs Fay Ryves-Webb**³³ has resided at Rose Stile Cottage since moving to Romaldekirk in March 1998 with her Husband and Daughter. She is the joint owner. She did not recall the details of the area of land they purchased at the front of the property. In 2012, they took out further finance on the property. She now accepts that they do not own the Land, but its ownership was never an issue. She only became aware that they did not own the Land when the Application was made.

4.33 When the children were younger, they played on the Land, but she could not cope with the noise from other children due to her mental health problems. Other than family members, she did not like other children in the house or in the garden or on the Land. She was at home daily, and has always spent a considerable amount of time in the garden. She is outside the majority of the time. She was constantly going backward and forward between the front and back parts of the house and was in and out of the front garden. She loves gardening and it forms part of her therapy. She has always maintained the Land and has planted on the Land, often making changes, as shown on the photographs.³⁴ She has done so openly and without challenge until recently. There had never been an issue with the planting or with anyone coming onto the Land. It was simply not used. She often observed people using the road, but not the Land. Until recently, she had not seen any other resident of Romaldekirk on the Land. Recently, they have become involved in a personal dispute with Romaldekirk Parish Council which is

³³ Her witness statement is at OB A4.

³⁴ At OB D.

when the Land became an issue. The police have been involved. Once the planting was removed in 2016, people started to use the Land.

4.34 The family attended every Romaldkirk Fair until 2013. They watched the parades go by from the Land. Her children were often participating. There were no activities on the Land or use of the Land by anyone during those Fair Days other than themselves. Between 2005 and 2014, they embarked on extensive building renovations. It was necessary to store building materials on the Land due to insufficient storage and the need for access for larger vehicles to the rear of the house. They never had issues with dog fouling on the Land, in contrast to Sennings Lane where it is a major problem.

4.35 **Mr Murray Webb**³⁵ has resided at Rose Stile Cottage since 1998 when he moved to Romaldkirk with his family. When he purchased the property with his Wife in 1998, the Land was not included on the title deeds, and he was unaware who it belonged to. He remains unaware of the identity of the current owner. It is unregistered land. At that time, he was informed by his neighbour, the late Professor Howard Bowen-Jones, the past Chairman of Romaldkirk Parish Council, that he had maintained the Land and he was happy to share its maintenance with them. They have maintained the Land ever since and have never been challenged by the Church or the Parish Council.

4.36 In maintaining the Land since 1998, they have weeded, fed and mown the grass, treating the Land as their own. Around 2006, he and his Wife planted along the border of the Land with Sennings Lane. He was not approached by the Church or the Parish Council.

³⁵ His witness statement is at OB A1.

He produced a number of photographs³⁶ showing the extent of the planting at different times up until June 2016 when it was removed by Mrs Carter. From around 2009, planting along the border with Sennings Lane ran from the wall to the public right of way. It was some 1.3 metres in width. He installed CCTV upon advice from the Police after the poisoning of their plants in March 2012. There is one camera at the side over Sennings Lane and one at the front just below the gutter. The one at the front does not show the grassed area on the Land itself, but it does show individuals walking in that area. He acknowledged in cross examination that he had not disclosed the tapes in their entirety, and that the CCTV evidence produced did not show his Wife on the Land. Moreover, many of the stills produced relate to a date outside the relevant 20 year period.

4.37 From 2005, he started building work on the property. The Land was used to store different building materials at different times including packs of blocks, pallets of stone, large bags of sand and ballast, packs of insulation, roofing slates and plasterboard for a number of years due to the lack of storage space. It would have been difficult to use during that time. He referred to a photograph obtained from a Google image dated approximately 2006 showing some pallets stored on the Land.³⁷ Whilst undertaking those works, he never saw anyone on the Land. He never saw anyone on the Land when he was at home and the CCTV footage did not show anyone using the Land. In contrast, since 2016, they have started to see people using the Land.

³⁶ At OB D.

³⁷ At OB D5.

4.38 He referred to a Deed dated 4 September 1930³⁸ by which the Lord of the Manor of Romalldkirk gave permission to the public to have access over a number of parcels of land, including the Land. As that permission had never been revoked, he expressed the view that it still exists and so the public's use of the Land has been with permission and so not "as of right".

Written Evidence Objecting to the Application

4.39 In addition to the evidence of witnesses who appeared at the Inquiry, I have also considered and had regard to all the written evidence submitted in support of the Objection to the Application in the form of additional written statements, photographs and other documents which are contained in the Objectors' Bundle. In relation to such written evidence, I refer to and repeat my observations in paragraph 4.24 above that whilst such written evidence must be taken into account, I and the Registration Authority must bear in mind that it has not been tested by cross examination. Hence, particularly where it is in conflict with any oral evidence given to the Inquiry, I have attributed such evidence less weight as it was not subject to cross examination.

THIRD PARTY EVIDENCE

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

5. THE LEGAL FRAMEWORK

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

³⁸ At OB E1.

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 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 by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;
- (v) such use has been as of right; 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 Applicants. The standard of proof is the balance of probabilities. That is the approach I have used.

5.6 Further, when considering whether or not the Applicants have 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***³⁹ 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.

³⁹ [2004] 1 AC 889. Although ***Beresford*** was overruled by ***R. (on the application of Barkas) v. North Yorkshire County Council Barkas*** [2014] 3 All ER 178, it was not done so on this point which remains good law.

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

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*⁴⁰ 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*⁴¹ 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)*

⁴⁰ [2006] 2 AC 674 per Lord Hoffmann at paragraphs 37 to 39.

⁴¹ [2000] 1 AC 335 at 356F to 357E.

v. Buckinghamshire County Council⁴², 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 that they were exercising a right to indulge in lawful sports and pastimes across the whole of his fields.”

5.12 Moreover, Lightman J. at first instance in **Oxfordshire County Council v. Oxford City Council**⁴³ stated 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

⁴² [2003] EWHC 1578 (Admin).

⁴³ [2004] Ch. 253.

should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green)."

He went on at 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*.⁴⁴

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*.⁴⁵

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*;⁴⁶ *R. (on the application of Cheltenham Builders Limited) v. South Gloucestershire DC*;⁴⁷ and *R. (Laing Homes Limited) v. Buckinghamshire CC*.⁴⁸ A locality cannot be created simply by drawing a line on a plan: *Cheltenham Builders* case.⁴⁹

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*⁵⁰ 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

⁴⁴ (1884) 13 QBD 304.

⁴⁵ [2010] UKSC 11 at paragraph 36.

⁴⁶ [1995] 4 All ER 931 at page 937b-e.

⁴⁷ [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.

⁴⁸ [2003] EWHC 1578 (Admin) at paragraph 133.

⁴⁹ At paragraphs 41 to 48.

⁵⁰ [2006] 2 AC 674 at paragraph 27.

locality defined by legally significant boundaries". Hence, a housing estate can be a neighbourhood: **R. (McAlpine) v. Staffordshire County Council**.⁵¹ 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.⁵²

5.17 Further clarity was provided on that element by HHJ Waksman QC in **R. (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v. Oxfordshire County Council**⁵³ 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

⁵¹ [2002] EWHC 76 (Admin).

⁵² At paragraph 85.

⁵³ [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***.⁵⁴

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***⁵⁵ 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***.⁵⁶ 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*”.⁵⁷

5.21 “Permission” can be expressly given or can be implied from the landowner’s conduct.

⁵⁴ [2002] EWHC 76 (Admin) at paragraph 71.

⁵⁵ [2000] 1 AC 335.

⁵⁶ (1988) 56 P. & C.R. 8.

⁵⁷ At paragraphs 88-90.

5.22 Further, land that is used “by right” is being used with permission and so is not being used “as of right”: *R. (on the application of Barkas) v. North Yorkshire County Council*.⁵⁸

6. APPLICATION OF THE LAW TO THE FACTS

Approach to the Evidence

6.1 I have considered all the evidence put before the Inquiry, both orally and in writing. 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.

6.2 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 general legal framework set out above and to other specific legal principles where relevant. The facts and findings 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 Applicants on the evidence adduced on the balance of probabilities.

The Land

6.3 The relevant land sought to be registered is clear. The Application Land is identified on the map marked “EXHIBIT A” submitted with the Application on which it is outlined

⁵⁸ [2014] 3 All ER 178.

and hatched in red.⁵⁹ 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

6.4 As 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 the period of 20 years which ends at the date of the Application. The Application Form is dated 11 September 2016, the accompanying statutory declaration is dated 12 September 2016, and the date of receipt of the Application by the Registration Authority is 20 October 2016. It follows that the relevant 20 year period for the purposes of section 15(2) is October 1996 until October 2016.

Locality or Neighbourhood within a Locality

6.5 Turning next to the identity of the relevant locality or neighbourhood within a locality for the purposes of section 15(2), the Application Form in part 6 refers to the locality or neighbourhood within a locality relied upon as “Romaldkirk, Barnard Castle”. A plan of the village of Romaldkirk was provided by the Applicants.⁶⁰ At the Inquiry, it was confirmed that the Applicants relied upon the locality of Romaldkirk, rather than on a neighbourhood.

⁵⁹ At AB 8.

⁶⁰ At AB 44.

6.6 Romaldkirk is a village and a parish. As such, it is a recognised and established administrative area with fixed and identifiable boundaries, namely the Parish Council boundaries, and is an area known to the law. There was no dispute at the Inquiry that Romaldkirk amounts to a locality. Consequently, I find that Romaldkirk is a qualifying locality for the purposes of section 15(2) of the 2006 Act.

Use of Land for Lawful Sports and Pastimes

6.7 The next issue I turn to is whether the Land has been used for lawful sports and pastimes during the relevant 20 year period. I shall subsequently address the extent of any such use found, which is the primary disputed issue between the Parties and upon which the evidence at the Inquiry focused.

6.8 I heard evidence from each of the witnesses called in support of the Application of their own and their family's recreational use of the Land and of seeing others using the Land for recreational purposes to varying extents and over varying periods of time. Such is supported by the written evidence in support of the Application. References were made in particular to using the Land for dog walking, general walking, horse riding, children's play, spectating during community events and general socialising. As against that, I heard evidence from each of the witnesses called in support of the Objection that they had not seen anyone using the Land for any recreational purposes other than their own family and friends until the removal of the planting in June 2016.

6.9 Having considered all the evidence, it is my view that the Land has been used for some recreational activities by local inhabitants of Romaldkirk during the relevant 20 year period. I so find for the following reasons.

6.10 Firstly, although people's recollections may fade over time, particularly in relation to details, I accept the evidence of witnesses that they did in fact use the Land to some extent, and saw it being used, for the stated recreational purposes. Having heard the witnesses give evidence, which was subject to cross examination, I do not find that they were being untruthful or mistaken over the very fact that they had used the Land.

6.11 Equally, I accept the evidence of witnesses on behalf of the Objectors that they had not seen the Land being so used. However, those witnesses could only give evidence of times when they were in the vicinity and aware of what was taking place on the Land. It may well have been used at other times. I shall return to that evidence, though, in relation to the extent of the use. Similarly, I have taken account of the CCTV evidence produced by Mr Webb which does not show any use of the Land. However, the same point applies that those particular images are, and can only be, snapshots in time. That is demonstrated by the lack of any images of Mrs Webb being on the Land when her evidence is that she often was, and by the lack of any images of people using the Land from June 2016 onwards, which the Objectors acknowledge occurred.

6.12 Further, the very nature and location of the Land is such that it is unsurprising that it has been used for some recreational purposes by local residents. It comprises a flat, open, grassed and well maintained area located within the residential area comprising the village of Romaldkirk. Further, it immediately bounds the public highway on two sides, namely the road to the south and the public footpath along Sennings Lane to the west. There has been easy and unrestricted pedestrian access to it, save at times when it has been heavily planted which I shall return to later. Given such circumstances, I

would expect the Land to have been used for some recreational purposes by local people.

6.13 Moreover, I note the evidence in support of the Objection that the Objectors and their family and friends have used the Land for recreational activities from time to time. As they are not the owners of the Land and are local inhabitants of Romaldekirk, their use is properly regarded as part of the qualifying use. Further, it is acknowledged that the Land has been used post June 2016 by local residents, which is within the relevant 20 year period.

6.14 All such activities referred to in paragraph 6.8 above are lawful recreational pursuits in principle. There was no evidence of any formal activities or community events taking place on the Land. Nonetheless, the use of the Land for informal activities of the nature described are sufficient to demonstrate that some lawful sports and pastimes have taken place on the Land in the relevant 20 year period within the meaning of section 15(2) of the 2006 Act, and I so find.

Use of Land for Lawful Sports and Pastimes by a Significant Number of the Inhabitants of the Locality for at least 20 Years

6.15 The next issue I turn to is whether the Land has been used by a significant number of the inhabitants of the locality for lawful sports and pastimes throughout the relevant 20 year period from October 1996 until October 2016. The fundamental question to determine is whether the qualifying recreational use has been carried out to a sufficient extent and frequency throughout that relevant 20 year period to demonstrate to a

reasonable landowner the assertion of recreational rights over the Land by the local community.

6.16 In order to address that issue and ascertain the extent of the use, it is necessary to discount any non-qualifying uses. Hence, I have discounted specific uses which have taken place outside the relevant 20 year period, either prior to October 1996 or post October 2016. In doing so, I acknowledge that such uses are nonetheless relevant to the overall context of the determination and to whether or not the use is likely to have continued, or to have been previously carried out, within that period. I have taken that approach to my consideration of the evidence.

6.17 In addition, I have discounted the use from those who lived outside the locality of Romaldkirk. Although individuals may have used the Land whilst visiting family or friends, their use cannot be taken into account if they themselves lived outside Romaldkirk at the time of such use.

6.18 Turning to the evidence, it seems to me from the evidence in support of the Application that the primary use of the Land has been for dog walking. That was the most frequent use referred to by those witnesses, both as having been undertaken by themselves and as having seen others so use the Land. Further, Mrs Cutting, the Chairwoman of the Parish Council who completed the Application Form on the Applicants' behalf and who has lived in Romaldkirk since 1976, confirmed that dog walking was the most regular and constant use she has witnessed on the Land. I also note that the Applicants' Closing Submissions identified dog walking as being the predominant use of the Land.

6.19 Moreover, it seems to me from the evidence in support of the Application that the nature of the use of the Land for dog walking was very similar by the various users, namely to simply walk across it as part of a longer walking route. Hence, for example, Mrs Carter walked with her dog “*over*” the Land in contrast to walking around the village greens;⁶¹ and Mrs Walton similarly walked her dog “*over*” the Land whereas she walked around the village greens.⁶² Indeed, all the evidence of dog walking on the Land consistently indicated that the Land was walked over as part of a longer dog walking route. Significantly, no witness gave evidence that they had used the Land as a destination for dog walking. There was no evidence of anyone going to the Land to walk their dog round the edge of it a few times, or of throwing a ball for their dog on the Land, or otherwise exercising their dog on the Land for any period of time other than to walk across it to continue their walk. Lt Col Singer’s use reflected that of others, who stated that he walked over the Land as part of his regular dog walking routine. He was not on the Land for long as it was not used as a destination. That seems to me to have been the pattern of use of the Land by dog walkers. Indeed, it would be surprising if the position was otherwise given the size of the Land which is too small for any extensive dog walking to take place on it.

6.20 Further, the impression I gained from the evidence of witnesses in relation to dog walking on the Land was that in a number of instances the user walked on the road whilst the dog wandered off onto the Land in the course of the walk. In that regard, it is necessary to treat with some caution the written evidence that the Land has been used for dog walking. Mr Goodall in his oral evidence explained that he walked on the road

⁶¹ Witness statement at paragraph 4 at AB57.

⁶² Witness statement at paragraph 4 at AB47.

whilst his dog, on an extended lead, went on the Land foraging. Mr Goodall would only go on the Land himself if his dog had fouled. Similarly, Mrs Nixon confirmed in her oral evidence that she tended to walk on the road when walking her dog which would run onto the Land. Mr Bond, having stated that he used the Land for walking, both with and without dogs, pointed out in cross examination that he “*predominantly*” walked on the road rather than the Land itself, but he “*occasionally*” cut the corner off and walked across the Land. He estimated that he kept to the road 90% of the time.

6.21 In addition, it seems to me from the evidence that the use of the Land for dog walking, despite being the primary recreational use of the Land, was nonetheless relatively limited. Firstly, it was limited in terms of the very short period of time users would spend on the Land in the course of crossing it as referred to above.

6.22 Secondly, I note the evidence of Mr Jewitt, who passes through the village a number of times a day and has lived in Romaldkirk throughout, and indeed for much longer than, the relevant 20 year period, that he saw “*one or two*” local people walking on the Land each week. Similarly, Mrs Carter, who has lived in close proximity to the Land since 1985, pointed out that in terms of dog walking on the Land, “*it would have been uncommon for a week to pass without seeing at least one or two of the local inhabitants using the land*”.

6.23 Thirdly, such evidence of the extent of the primary use of the Land being in the order of one or two individuals each week being seen who, from the evidence, would have generally been on the Land for no more than a minute whilst they crossed it, is consistent with the evidence in support of the Objection that such use was not apparent.

The Objector, Mrs Webb, whom I found to be a particularly credible witness and whose evidence I accept, indicated that she spends a considerable amount of her time at home and particularly outside in the garden given her love of gardening. Indeed, her pride in her garden and in her maintenance of the Land was apparent and supported by the various photographs of the planting produced. She was adamant that she had not seen anyone use the Land for recreational purposes until the planting was removed in 2016. That further suggests that even the primary use of the Land was very limited.

6.24 Moreover, many of the above matters are reflected in the evidence in relation to the use of the Land for walking without dogs. It is apparent to me from such evidence that the Land was walked across from time to time as a short cut and/or as part of a longer route. There was a distinct lack of any evidence that the Land was used as a destination by any walkers to walk around or to spend time experiencing its amenity. Indeed, Miss Needham's evidence, which I accept, was particularly notable. She recalled a worn track across the Land leading from the road to Sennings Lane which she walked across herself to visit people in the village stating: "*I use it as a footpath. I think most people do.*" No such track was apparent on the Land during my site visit. Nonetheless, that use of the Land, effectively as a short cut to "cut the corner", was also expressly referred to by Mr Bond, who stated he occasionally walked across the Land to cut the corner. Again, the very nature of the Land and its location in relation to Sennings Lane is such that it would be expected that people would walk over it from time to time simply to cut that corner.

6.25 In the light of the above, it is my view that some of the use of the Land for walking and dog walking was more akin to the exercise of a right of way than the exercise of a right

to recreate over the Land. I have referred in paragraphs 5.11 and 5.12 above to the legal framework as set out in the *Laing Homes* and *Oxfordshire* cases. That issue was considered more recently in *Allaway v. Oxfordshire County Council*,⁶³ referred to in the Applicants' Skeleton Argument,⁶⁴ in which Patterson J. rejected a challenge to the decision of a village green inspector who had discounted the use of a circular path running broadly around the perimeter of a claimed green but only to the extent that that route was used by walkers as part of a route from one point outside the land to another. The inspector in that case otherwise treated use of the circular route as referable to the exercise of the right to a green. It is also relevant to note *TW Logistics Ltd v. Essex County Council*,⁶⁵ referred to and relied upon by the Applicants, in which the Court found that the general walking and wandering over land in that case, with or without dogs, not on a fixed route, represented "lawful sports and pastimes" rather than an activity akin to use of a public right of way.

6.26 Applying the approach set out in the above caselaw, the overarching test is, as Lightman J. pointed out, how the matter would have appeared to the owner of the Land. I acknowledge that recreational walking, both with and without dogs, is capable of being a lawful sport and pastime. However, it seems to me from the evidence that, insofar as the Land was used **merely** to walk across along a linear route in order to go from one point to another as part of a longer route, such use would appear to a reasonable landowner as being more akin to the exercise of a right of way than a right to recreate over the Land. In circumstances where the user did not stop, wander, deviate, walk around, or otherwise linger on the Land, whether to take in a view or to enjoy the

⁶³ [2016] EWHC 2677 (Admin).

⁶⁴ At paragraph 18.

⁶⁵ [2017] EWHC 185 (Ch).

amenity of the area or to wander around the Land generally or to exercise their dog or for any other recreational reason, then it is my view that such use would suggest to a reasonable landowner that a right of way was being asserted and not a right to recreate over the Land as a whole. That position is similar to the element of use discounted in *Allaway*, where the Inspector distinguished between those who came to the land specifically to walk around it and those who merely used it to get from one point to another as part of a longer route. In relation to the latter use he stated:

*“Of course there may be some using a path along the edge of an open space, or possibly across the middle, simply as part of a route from one point outside the land to another. And that occurred in this case – and I have discounted such use.”*⁶⁶

That approach was upheld by the Court.

6.27 Therefore, I find that the extent to which the Land was used for walking, with or without dogs, in the sense referred to above, such use ought to be discounted from the qualifying use. From the evidence, it seems to me that the majority of such use ought to be discounted accordingly.

6.28 However, even if none of such use is so discounted, it is my opinion from the evidence that the use of the Land for walking, whether with or without dogs, was very limited both in frequency and the amount of time users were on the Land for the reasons set out above.

⁶⁶ See paragraph 33 of the Judgment.

6.29 Another issue arises in relation to such use, namely the effect of the planting. Mr Webb indicated that planting along the border with Sennings Lane commenced around 2009/2010. The thickness of such planting over time is illustrated in various photographs in OB D. It extended to 1.3 meters when the Court Order was made. It is apparent to me from those photographs that certainly from around September 2015 onwards until the planting was removed in June 2016, it would have been difficult to access or egress the Land from or to Sennings Lane. That period of time all falls within the relevant 20 year period.

6.30 In relation to that period, I note the following evidence. Mrs Wall stated that the planting stopped her using the Land, although her children still wandered onto it. Mrs Walton pointed out that it was “*impossible to access*” the Land due to the planting, and that since the planting had taken place, she had stopped crossing the Land. Mr Bond also stated that the recent planting prevented him from crossing the Land. Miss Needham said that the extensive planting in 2016 “*more or less stopped people walking across the Land*”. Prior to that, it was possible to still “*push through*” it. That period in 2016 referred to was within the relevant 20 year period. Mr Jewitt expressed the view that since the planting, there had been a decline in the use of the Land. From such evidence, it appears to me that although it may still have been physically possible to access the Land, the use of the Land for walking significantly declined for a material period of time during the relevant 20 year period.

6.31 Turning to other uses of the Land, a number of similar matters arise in relation to horse riding. As is apparent from the evidence set out above, the various users simply referred to riding “over” the Land and not around it or spending any material time on the Land.

It was not used as a destination. Again, that is largely inevitable given the relatively small area of the Land. Accordingly, it is my view that, from the evidence, such use would have appeared to a reasonable landowner as being more akin to the assertion of the exercise of a right of way, namely a bridleway, rather than the assertion of recreational rights over the Land generally.

6.32 Nonetheless, even if such use was not discounted on that basis, it is my opinion from the evidence that it did not occur with any material degree of regularity in any event. I base that finding in particular on the following. Firstly, references to horse riding over the Land were limited to a few named individuals. Secondly, I note the evidence of Mrs Evangeline Bark, whom I also found to be a particularly credible witness, that there was a laburnum tree overhanging the Land for a considerable period of time which was too low to ride a horse under. That was confirmed by aerial photographs dated 1993 and 2010, both showing the tree. Thirdly, it seems to me that it would have been apparent to the Objectors, and particularly to Mrs Webb who spent so much time in her garden, that horse riders were using the Land if such occurred with any material degree of frequency. Fourthly, from the evidence given of Mr Bowen-Jones, both on behalf of the Applicants and the Objectors, I find it difficult to accept that he would have been content for horse riders to use the Land had he been aware that it was taking place due to the likely ruts in the ground that would have resulted. Fifthly, the planting would have had the effect of deterring horse riders for at least a 9 month period between September 2015 and June 2016.

6.33 As to children's play, I have already indicated my acceptance of the evidence in support of the Application that such use occurred. However, in terms of its extent, I find that it

occurred infrequently. Firstly, the evidence in support of the Application was limited in relation to children's play. The primary points made by those witnesses were as follows. Mrs Wall referred to regularly walking along the road adjacent to the Land whilst her children played on both the Land and the open land on the other side of the road. The impression I gained was that as she walked along, her children diverted off the road onto the adjoining open areas as part of the walk rather than spending any material period of time specifically on the Land. Mr Jewitt, who passed through the village a number of times each day, indicated that he saw children playing on the Land around "*once every couple of weeks*". He pointed out that children played football on the Low Green rather than on the Land, but if the ball went onto the Land, they would go over to retrieve it. Mrs Nixon's evidence was that, although she has lived in Romaldkirk since the end of 2012, she only recalled seeing children on the Land over the last 3 years. Further, Ivan Carter-Becker's evidence was that children's play generally took place on the larger Low Green rather than on the Land. Moreover, such use seemed from the evidence to be largely limited to weekends and holiday periods.

6.34 Secondly, the evidence in support of the Objection indicated that such use did not occur with any degree of frequency. Although I accept that no one could have been aware of what was taking place on the Land when they were not present, I would have expected Mrs Webb, in particular, to have been aware of the use of the Land for children's play, or any other use, had it occurred regularly. I accept her evidence that she was outside in her garden frequently over the relevant 20 year period and was unaware of any such use.

6.35 Thirdly, the nature of the Land is inconsistent with it having been used regularly for children's play. It is relatively small and unsuitable for such use. Fourthly, there are a number of open areas in the immediate vicinity much more suitable for children's play than the Land and there is no apparent reason why the Land would be used for such purpose in such circumstances. Fifthly, Mr Bowen-Jones would have been unlikely to tolerate such use had it occurred on the Land for the reasons referred to above. Sixthly, I accept the evidence of Mr Webb, supported by Mrs Webb and Mrs Evangeline Bark, that building materials were stored on the Land from time to time between 2005 and 2014. Indeed, that is further supported by a wholly independent Google photograph produced dated approximately 2006 showing pallets stored on the Land.⁶⁷ Such building materials being stored on the Land would have made it even more unsuitable for children's play.

6.36 A number of witnesses also referred to the Land being used for spectating during annual events such as the Village Fair Day and the Beamish Rally. However, I am not satisfied that such qualifying use occurred on the Land to any extent other than by the Objectors. None of the witnesses who gave evidence in support of the Application indicated that they had personally used the Land on any of those occasions. Although they referred to others having so used the Land, I am unaware from the evidence whether any such persons were local inhabitants of Romalldkirk. The Beamish Rally in particular was attended by many visitors from outside the village. Further, I accept the evidence of the Objectors that on the occasions when they or their family spectated from their Land, no other persons did so other than their friends, and the friends and family of Mr Bowen-

⁶⁷ At OB D5.

Jones. That is supported by the photographic evidence produced. In any event, such events were, by their nature, occasional.

6.37 Other recreational uses of the Land referred to were minor elements of the claimed local activities on the Land. The evidence was disputed as to whether Mr Ivan Carter-Becker had used the Land for his personal training sessions between 2004 and 2006. However, such use was by one individual for a limited period and whilst using the other open spaces in the area. There is no evidence of the Land being used regularly by the local community for such form of recreational activity. The evidence was also disputed as to whether a group of Duke of Edinburgh youngsters used the Land to have their lunch on, as referred to by Mr Nixon and contested by Mrs Webb. However, that was one occasion only. There was no evidence that the Land was regularly used for picnicking. Moreover, there is no evidence that the youngsters from Barnard Castle School were inhabitants of Romaldkirk, and I am unable to make that assumption.

6.38 Taking all the evidence in its totality, both oral and written, in relation to all the claimed recreational uses of the Land during the relevant 20 year period, it is my firm view that the qualifying use over the 20 year period was, at its highest, irregular and sporadic rather than of such a nature that would indicate to a landowner that recreational rights were being asserted over the Land. Consequently, I find that it has not been demonstrated that the qualifying use was by a significant number of the inhabitants of the locality of Romaldkirk throughout the relevant 20 year period, and so conclude that that element of the statutory criteria has not been established.

Use as of Right

6.39 The next issue I turn to is whether the use of the Land has been “as of right” during the relevant 20 year period, namely without stealth, without force and without permission.

Nec clam

6.40 There was no suggestion in any of the evidence that any of the use was by stealth. On the contrary, the use which occurred was carried out openly during daylight hours and without any element of secrecy. I therefore find that the use of the Land relied upon in support of the Application has been *nec clam*.

Nec vi

6.29 As to whether the use was carried out with force, the Objectors contended in their closing submissions that the use was by force due to Mrs Carter having forcibly removed the planting on the Land contrary to the Court Order made in the separate civil proceedings. It is not open to myself, or the Registration Authority, to make any rulings in relation to those separate proceedings. Moreover, the relevant issue is whether the qualifying recreational use of the Land was carried out with force rather than whether the planting was removed with force. In relation to that relevant issue, I find that there is no evidence that the qualifying use itself which took place was carried out with force, such as by climbing over a fence or being contrary to a sign or being contrary to challenges. I therefore find that the use of the Land relied upon in support of the Application has been *nec vi*.

Nec precario

6.30 There is a dispute between the Parties over whether the use was carried out with permission. The Objectors contend that express permission was conferred by the Deed

dated 4 September 1930⁶⁸ by which the Lord of the Manor of Romalldkirk gave permission to the public to have access over a number of parcels of land, including the Land. As that permission has never been revoked, the public's use of the Land has accordingly been with permission. In response, the Applicants contend that, as a matter of law, the Commons Registration Act 1965 had the effect of extinguishing that permission.

6.31 The 1930 Deed conferred rights of common on the villagers of Romalldkirk over a number of parcels of land, including the Land, comprising waste land of the Manor of Romalldkirk. It also conferred a right of access to the villagers to all such land. The Deed expressly provided that section 193 of the Law of Property Act 1925 applied to it. The rights of access to the Land under the Deed were enshrined in that provision. Section 193(1)(d)(i) provides that such rights of access shall cease to apply to any land over which the commonable rights are extinguished under any statutory provision. The commonable rights over the Land referred to in that Deed, and hence the rights of access, were extinguished on 31 July 1970 by virtue of section 1 of the Commons Registration Act 1965 as they were not registered by that date. Consequently, I find that the express permission for villagers to access the Land was extinguished by operation of the law on that date.

6.32 There was no suggestion in the evidence or submissions of any other express or implied permission being given for the use of the Land for recreational purposes. Therefore, I find that the use of the Land relied upon in support of the Application has been *nec precario*.

⁶⁸ At OB E1.

Continuation of Use

6.33 The remaining issue is whether the qualifying use continued up until the date of the Application, namely 20 October 2016. The Land remains open to public access as evidenced on my site visit and the evidence indicated that it continues to be used for some recreational purposes. Therefore, subject to all the matters set out above, I find that the qualifying use was continuing as at the date of the Application.

7. CONCLUSIONS AND RECOMMENDATION

7.1 My overall conclusions are 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 October 1996 until October 2016;
- 7.1.3 That the locality of Romaldkirk amounts to a qualifying locality;
- 7.1.4 That the Application Land has been used for some lawful sports and pastimes during the relevant 20 year period;
- 7.1.5 That the use of the Application Land for lawful sports and pastimes has been carried out as of right;
- 7.1.6 That the Application Land has not been used for lawful sports and pastimes by a significant number of the inhabitants of the claimed qualifying neighbourhood 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 or any part of it to its register of town and village greens for the reasons contained in this Report, and on the specific ground that the Applicants have failed to establish that the Application Land has been used for lawful sports and pastimes as of right by a significant number of the inhabitants of a locality or neighbourhood within a locality throughout the relevant 20 year period.

8. ACKNOWLEDGEMENTS

8.1 Finally, I would like to thank the Applicants, the Objectors, and the representatives of the Applicants for the very helpful manner in which the respective cases were presented to the Inquiry. 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

08 August 2019

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