IN THE MATTER OF AN APPLICATION FOR THE REGISTRATION AS A TOWN OR VILLAGE GREEN OF LAND KNOWN AS "BELLE VUE PLAYING FIELDS" AT BELLE VUE, CONSETT, COUNTY DURHAM

RESPONSE OF THE APPLICANT TO THE INSPECTOR'S THIRD REPORT

1. I thank the inspector for his careful summary and consideration of the new arguments and materials placed before him.
2. I note one typographical error towards the end of paragraph 23 where I take 1924 to be intended to be read as 1964.
3. Regarding paragraph 20, I am convinced by the inspector's reasoning and conclusion that the minutes of the relevant committee referring to Belle Vue Grounds do show that the phrase "Belle Vue Grounds" was being used by the Committee in a wider sense than simply extending the site of Belle Vue Park.
4. With regard to paragraph 21 I do not accept the inspector's reasoning that the land on which the Dale Avenue estate was built in 1938 was not bought for the purpose of building housing. My argument is not that the land was "held" for the purpose of housing, but that it was purchased with the intention of building housing upon it rather than for the purpose of creating public walks and pleasure gardens and therefore it was **not** purchased under section 164 of the 1875 Public Health Act. The ordnance survey map of 1921 shows the area on which the Dale Avenue Housing Estate was built, together with land to the North West of it, was at that time being used for allotment gardens. The ordnance survey map of 1938/9, two years after the purchase, shows the estate having been built and the land to the North West of the estate in continuing use for allotments, so it is entirely probable that the land on which the estate

was built was purchased whilst still in continuing use as allotments, and subsequently appropriated for housing. If purchased as allotments it would still require appropriation for a different use. That would appear a much more likely interpretation than that it had been used as allotments, purchased by Consett UDC for the purpose of creating public walks and pleasure gardens, but then almost immediately appropriated for housing. I therefore continue to hold that the purpose for which this section of land was purchased was almost certainly not for public walks and pleasure gardens, but with the intention of using it for housing, and is therefore evidence that it is unsafe to assume that all the 44 acres was purchased and held for the purpose of public walks and pleasure gardens.

5. With regard to paragraph 23, I do not believe that the inspector has allowed sufficient, or even any, weight to the evidence I have provided that the council probably held parts of the land for a range of purposes for which it was entitled by statute to hold land. Councils may, and arguably must, hold lands under the allotments act, and the two ordnance survey maps quoted in paragraph 4 above clearly indicate that the land was used for that purpose both before and after the council's purchase of it. That land is within the 44 acres. The inspector took evidence from Gilbert Green at the public inquiry, and no doubt his notes will confirm this, to the effect that as a young employee of Consett Urban District Council Mr Green watched the tipping of household waste on this site, just down the slope from the then council offices. Land could be expected to have been purchased by the council for this purpose under either section 45 of the Public Health Act 1875, or, subject to dates, section 75(a) of the Public Health Act 1936, but not

under section 164 of that Act. Whilst it is true that paragraph 15 of the judgement inclined to the view that the filling of the land may have been explicable as purely preparatory to its use as recreational purposes, the court was not privy to the evidence of Gilbert Green that the inspector has heard regarding its use as a household rubbish tip.

6. The inspector appears to have accepted the assertion of Vivian Chapman Q.C. which the inspector summarised in paragraph 11. That assertion is that, the High Court having ruled that the 1964 deed could not act as an appropriation of land, “its purpose must therefore have been to record the fact that the Application Land was already held for public open space purposes.” This, however, ignores the fact that the deed refers to some of the areas included in its compass as being held “as public quarries”. If I am to accept the proposition that the deed is confirmatory of previously established evidence as to how the land was held, it begs the question of which portions of land were held as “public quarries”. It was clearly not the omnibus station, market square or Sherburn Park. Berry Edge Common Quarry had become Belle Vue Park by the time of the 1921 Ordnance Survey Map. Parts of Black Dike Common Quarry appear to have become Villa Real Park, but large expanses of it remain as shale heaps on both that map and the 1938/9 ordnance survey map. This could very well be land “confirmed” by the 1964 deed as having been held as Public Quarries. Importantly, that large expanse forms a significant part of the application land. Of West Carr House Quarry I have no further information. Far from “confirming” or proving that all the land comprising the 44 acres was held as public walks and pleasure gardens, therefore, the 1964 deed makes it likely that that was not the case.

7. In paragraph 23 the inspector is not justified in his assertion that the minute of September 1963 state that “Belle Vue Grounds are held as public walks and pleasure grounds.” The actual wording not so much a statement as part of an argument that “it would appear that the council is adequately covered in so far that the Sherburn Park and Belle Vue Grounds are held as public walks and pleasure grounds”. I do not know what is meant by “adequately covered”, but whatever protection or “cover” is provided is only provided “*in so far that*” the Sherburn Park and Belle Vue Grounds are held as public walks”. That may seem a fine distinction, but the modification “in so far that” implies “to the extent or degree that” and therefore the “cover” is only provided to the extent or degree that the land is held as public walks or pleasure gardens. It therefore serves as a neat summary or statement of the inspector’s dilemma in reaching his decision. The minute could have recorded that the council was covered “**because** the Sherburn Park and Belle Vue Grounds are held as public walks”, or “**in that** the Sherburn Park and Belle Vue Grounds are held as public walks”, but it did neither. Instead it chose the limited claim of “*in so far that*”. In my view this adds weight to my emboldening of the word “appears” in paragraph 23 of my submission. The language is uncertain and hesitant – as uncertain as the basis on which the land was held, and suggestive of limitations of the extent to which the land was held in the way that the council desired.

8. I recognise the quandary in which all this places the inspector. He has conscientiously sought to weigh the balance of probabilities and reached the conclusion in paragraph 23 that in the absence of sufficient evidence

suggesting that different parts of the land were held for distinct statutory purposes he is led to support the inference which the objector seeks him to make. The group which I represent, The Consett Green Spaces Group (CGSG), has made diligent efforts to find such evidence, and is disappointed that the county council with all its resources, its own archivists and the county records office housed in its own County Hall, has failed to produce any evidence about ownership from the public record, producing only such evidence as it has selected from its private archive of conveyances and appropriations. Even discovery of the minutes of the council from 1963 and 1964 on which it now places such reliance arose from research done by CGSG and presented by its member in *R (Malpass) v Durham County Council* [2012] EWHC 1934 (Admin), Judge Kaye QC.

9. It is only recently that CGSG became aware of the National Archive as a potential source of definitive information in this case, and I sought a short time extension whilst awaiting copies of information which a group member had sought just prior to receiving the inspector's third report. Unfortunately on this first occasion the material has proved unhelpful because the file entitled "Medomsley Road: purchase of recreation ground, proposed development of land for playing fields, etc. Consett Urban District Council (1002) LOCAL AUTHORITY, Date: 1928 – 1940" has proved to be solely concerned with Sherburn Park. It has, however, provided detailed documentation which proves definitively that that land was purchased for the purpose of public walks and pleasure gardens under the Public Health Act 1875. We have provided a CD of these papers to the CRA. Whilst of limited use in the case of the village

green application itself, it has encouraged us to believe that the evidence that the CRA needs to make a right judgement may very well be available at the national Archive.

10. I have since discovered that the National Archive holds two further sets of documents which might reasonably be expected to shed light on the provenance of the application land. One is entitled "Dale Avenue site Consett Urban District Council (1002) GENERAL PAPERS Ministry of Health and successors: Housing Department, later Division: Housing Proposals and Schemes, Registered Files Date: 1935 – 1942". This could provide the key to understanding the basis on which the Dale Avenue housing estate land was held, and the reason for its 1938 appropriation which is a central plank in my argument. The other is entitled "Playground - development scheme Consett Urban District Council (1002) LOCAL AUTHORITY PAPERS Ministry of Health and successors: Local Government Divisions and successors: Local Government Services, Registered Files (91, Date: 1937 – 1940". I am less confident of the relevance of this as the title is less specific. On January 31st, however, I did set in train the acquisition of both sets of files which I will provide to the CRA on receipt from the National Archives, and a member of CGSG will go to the National Archive on February 12th to examine the papers, and copy them if possible, with the purpose of sharing them with the CRA, objector and inspector so that the issue can be settled in an objective way.

11. I did seek agreement from the CRA to delay submission of my response to the inspector's third report until I had these papers in the hope that

they might conclusively settle the question of how the land was held from outset. Unfortunately the CRA felt unable to accept that request, but I contend that it is irresponsible to ignore such potentially valuable evidence.

12. Even in the absence of this additional paperwork, however, I contend that the case made in this response is sufficient to make unsafe the recommendation that the CRA should refuse the application because there is sufficient likelihood that the entire 44 acres was **not** held from the outset pursuant to section 164 of the 1875 Act since its acquisition in 1936. I therefore ask the inspector to await this further evidence, in addition to this response, in order to be confident that the recommendation he makes is based on the best possible available evidence.

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