WEST AUCKLAND: FLEECE & NURSERY

APPENDIX 5

Inspector's Report

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

REPORT

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1. INTRODUCTION

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

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

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

REPORT

of Miss Ruth Stockley

13 October 2013

Durham County Council

County Hall

Durham

DH1 5UL

Application Number: NL36

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

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

2. THE APPLICATION

2.1 The Application was made by West Auckland Parish Council c/o Sharon Hall, Clerk to the Council, 20, Loweswater Grove, West Auckland, Bishop Auckland DL14 9NA ("the Applicant") and is dated 08 August 2011.[1] It was received by the Registration Authority on 11 August 2011. Part 5 of the Application Form states that

[1] The Application is contained in AB section 3.

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

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

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

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

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[2] At AB section 4.
[3] At AB section 5.

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

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

3. THE APPLICATION LAND

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

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

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

[4] At AB section 4.

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

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

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

4. THE EVIDENCE

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

4.2 The evidence was not taken on oath.

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

CASE FOR THE APPLICANT

Oral Evidence in Support of the Application

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

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

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

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

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

[6] At AB section 16 photograph 10.

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

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

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

[7] His witness statement and evidence questionnaire are at AB section 19.
[8] As shown on the plan at AB section 14 where the fencing is identified as A-B and B-C and C-D. The pedestrian gap was left between points B and Y.

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

4.9 He has regularly cut the grass on the Land in front of his house since 1994 when the District Council stopped maintaining it as shown on the photograph of that part of the Land.[11] Between 1991 and 1994, the Land was fully grassed. There are horses on the Land at present. The entrance onto the Land from Front Street[12] via an alleyway is around 2.4 metres wide so a car is able to drive down it, although there is a sharp turn to get in or out. He has a vehicular private right of way along that alleyway.

[9] The area used is shown as a large grey area on the Google Map at AB section 12.
[10] The area enclosed is shown on the Google Map at AB section 12.
[11] At AB section 16 fifth photograph.
[12] As shown at AB section 16 first photograph.

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

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

[13] At AB section 6.

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

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

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

4.13 **Mrs Brenda Briggs**[14] has lived at 21 Front Street since 1954. Prior to then, she resided at 3 The Nursery from when she was born in 1938. She has two sons born in 1969 and 1971 who played on the Land daily until they were around 16 years of age. They played football, cricket and rugby on the Land. They left home around 1993 and 2003, and one of them continues to live in West Auckland. She has grandchildren aged 9 and 19 who come to visit. The youngest plays in her garden, but has never played on The Fleece as she is frightened of horses. She walked her dog on the Land up until around 6 years ago, and saw others walking their dogs on the Land regularly as it is "*a thoroughfare*" for them. They continue to do so. The route she took with her dog was across The Fleece to its north western corner and along the River. Since her dog walking ceased, she has only used The Fleece herself to walk through. As to The Nursery, she sat out under the large tree during the 1990's prior to the fencing being erected. Subsequently, she has only used The Nursery to walk across as a means of access to her Sister's. Family parties took place on The Fleece, the last one being around 5 years ago. She pointed out that The Fleece can no longer be used for such purposes as there is frequently traffic using it and horse dirt on it. The regular traffic use has been from around 2006. The last bonfire party on the Land she was aware of was before her sons left home and was during the last 20 years. The bonfires were annual. There was a fairground on the Land on one occasion and prior to the relevant 20 year period. There were no official organised sports on the Land. People who use the Land have used it from a wide area as many walk across it to gain

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

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

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

Written Evidence in Support of the Application

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

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

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

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

CASE FOR THE OBJECTORS

Oral Evidence Objecting to the Application

4.17 **Mr Abel Armstrong**[16] is one of the Objectors and he has lived at 27 Front Street with his Wife since March 2009. Prior to that, in 1989, they purchased 24 Front Street, living in a caravan in the rear garden whilst major renovation works were undertaken to the property. At the time of purchase, they were informed by Mrs Jane Laskey that they had a right of way across the Land.[17] He acknowledged that there were no deeds indicating where the access would lead to and from nor any document stating that they had access over all the Land. He regarded the right of way as being from the gate in his western wall across the Land in any direction, namely in and out via The Nursery or via The Fleece onto Front Street. They had a means of vehicular access across the Land which was otherwise unspecific. He accepted that he relied solely upon the letter from Mrs Laskey as evidence of that right of way.[18] In his view,

[16] His witness statement is at OB page 5 onwards.
[17] A letter from Mrs Laskey was produced to the Inquiry in which the right of way was referred to from an access gate on the "eastern" wall of the property and for "wheelbarrows and livestock vehicles". Mr Armstrong identified that gate as a reference to the gate on the western wall which appears to be the only logical interpretation and I regard the reference to the "eastern" wall as an error.
[18] The letter is at OB page 15.

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

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

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

[19] Photograph number 8 at OB page 13.

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

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

4.21 **Mrs Pauline Armstrong**[20] is also one of the Objectors and has lived at 27 Front Street with her Husband since 2009. Prior to that, in 1989, they purchased 24 Front Street, and she has always lived in West Auckland. In 1989, they erected double gates in the boundary of their land with The Fleece in place of the previous single

[20] Her witness statement is at OB page 16.

gate. The photograph of rolls of turf was taken in Spring 1990 when they had bought turf to create their lawn and shows the double gates in situ.[21] They always brought their vehicles onto their land via the double gates. They have always had a caravan stored inside the gates, which was brought in from The Nursery and through their double gates. From 1989, the defined tracks on the Land between The Nursery and their gates were used by their family for vehicular access on a daily basis. That resulted in complaints from the tenant of the Prince of Wales public house and residents who contended that the Land, together with that since acquired by Mr Robinson by adverse possession, was owned by the brewery. However, Mrs Jane Laskey from whom they had purchased their land had informed them that they could access their land via The Nursery and via Front Street as such access across the Land to their property had been paid for by her late Father, Mr Albert Wilson. They informed their Solicitors who wrote to the complainants and nothing further ensued. She acknowledged that there was nothing in the letter from Mrs Laskey[22] to indicate where the access was to or from.

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

[21] Photograph number 8 on page 13 of OB.
[22] At OB page 15.

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

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

[23] Her witness statement is at OB page 17.

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

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

Written Evidence Objecting to the Application

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

THIRD PARTY EVIDENCE

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

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

5. THE LEGAL FRAMEWORK

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

Commons Act 2006

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

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

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

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

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

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

(i) the Application Land comprises "land" within the meaning of the 2006 Act;

(ii) the Land has been used for lawful sports and pastimes;

(iii) such use has been for a period of not less than 20 years;

(iv) such use has been as of right;

(v) such use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality; and

(vi) such use continued at the time of the Application.

Burden and Standard of Proof

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

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

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

Lawful Sports and Pastimes

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

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

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

[26] [2006] 2 AC 674 per Lord Hoffmann at paragraphs 37 to 39.
[27] [2000] 1 AC 335 at 356F to 357E.
[28] [2003] EWHC 1578 (Admin).

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

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

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

Statutory Criteria

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

Land

[25] [2004] 1 AC 889.

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

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

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

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

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

[29] [2004] Ch. 253.

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

He went on area paragraph 103 to state:-

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

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

Continuity and Sufficiency of Use over 20 Year Period

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

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

Locality or Neighbourhood within a Locality

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

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

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[30] (1884) 13 QBD 304.
[31] [2010] UKSC 11 at paragraph 36.
[32] [1995] 4 All ER 931 at page 937b-e.
[33] [2003] EWHC 2803 (Admin) at paragraphs 72 to 84.
[34] [2003] EWHC 1578 (Admin) at paragraph 133.
[35] At paragraphs 41 to 48.
[36] [2006] 2 AC 674 at paragraph 27.

estate can be a neighbourhood: ***R. (McAlpine) v. Staffordshire County Council***.[37] Nonetheless, a neighbourhood cannot be any area drawn on a map. Instead, it must be an area which has a sufficient degree of cohesiveness: ***Cheltenham Builders*** case.[38]

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

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

Significant Number

[37] [2002] EWHC 76 (Admin).
[38] At paragraph 85.
[39] [2010] EWHC 530 (Admin) at paragraph 79.

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

As of Right

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

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

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

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[40] [2002] EWHC 76 (Admin) at paragraph 71.
[41] [2000] 1 AC 335.
[42] (1988) 56 P. & C.R. 8.
[43] At paragraphs 88-90.
[44] [2004] 1 AC 889.

6. APPLICATION OF THE LAW TO THE FACTS

Approach to the Evidence

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

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

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

The Land

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

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

Relevant 20 Year Period

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

Use of Land for Lawful Sports and Pastimes

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

[45] At AB section 4.

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

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

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

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

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

Locality or Neighbourhood within a Locality

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

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

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

Use as of Right

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

[46] At AB section 5.

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

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

Use by a Significant Number of the Inhabitants of the Locality

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Continuation of Use

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

Private Rights of Access and to Graze

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

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

7. CONCLUSIONS AND RECOMMENDATION

7.1 My overall conclusions are therefore as follows:-

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

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

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

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

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

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

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

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

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

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

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

8. ACKNOWLEDGEMENTS

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

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

RUTH A. STOCKLEY

13 October 2013

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