

Report of the City Solicitor to the meeting of the
Miscellaneous Licences Panel to be held on Thursday 2nd
May 2013 at 10.00am in Committee Room 5

C

Subject:

AN APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN AT LAND AT BACK FIELD, LARCH HILL CRESCENT, ODSAL, BRADFORD VG22BD – COMMONS ACT 2006 s15(3)

Summary statement:

AN APPLICATION HAS BEEN RECEIVED FROM MRS L PEARSON FOR REGISTRATION OF LAND AT BACK FIELD, LARCH HILL CRESCENT, ODSAL, BRADFORD. THE COUNCIL AS REGISTRATION AUTHORITY MUST CONSIDER AND DETERMINE THE APPLICATION.

IT IS RECOMMENDED THAT THE APPLICATION BE REJECTED

City Solicitor

**Portfolio: LEADER OF COUNCIL &
STRATEGIC REGENERATION**

Report Contact: Frank Suadwa
Phone: (01274) 432183
E-mail: frank.suadwa@bradford.gov.uk

Overview and Scrutiny Area: CORPORATE

WARD:WYKE

1. **Summary**

- 1.1 The Council has received an application for the registration of land at Back Field, Larch Hill Crescent, Odsal, Bradford
- 1.2 The application is founded upon the use of land for lawful sport and pastimes, as of right, by the inhabitants of the locality or a neighbourhood within a locality for a period of at least 20 years counting back from the date when the application was submitted. A plan identifying the area concerned is attached to this report.
- 1.3 The Council is the Registration Authority responsible for the determination of such applications under the Commons Act 2006.

2. **Background**

- 2.1 The land is comprised of a green area enclosed by the rear gardens of Nos 1-71 Larch Hill Crescent, Odsal, Bradford. It is understood to be land left over by the developer of the surrounding houses in the late 1950's, originally intended for the construction of garages but left undeveloped when the developer went into receivership. The land is mainly unregistered and there is no recent planning application for the land, however, the planning history of the land is of no relevance to the determination of the subject village green application as the requirement is to satisfy a statutory test.
- 2.2 The application was advertised on site and in the local press inviting representations during a six week period expiring on the 26th April 2012. Four letters of objection were received all from residents of Larch Hill Crescent.

3. **Other considerations**

- 3.1 A Barrister was appointed by the Registration Authority to act as Inspector to hear and consider the conflicting evidence put forward. A Non Statutory Public Inquiry was held on 10th December 2012 to hear evidence from the Applicant and the Objectors. His recommendation following the Public Inquiry and site visit was that the Council as Registration Authority should reject the application for the reasons set out in the Report. A copy of the Inspector's Report will be made available on a restricted basis (in the interest of sustainability) to members of the Panel. A copy will be available for public inspection at the meeting.
- 3.4 The applicant describes the locality in which the site is situated as lying within the ecclesiastical parish of Bradford South and has provided a map from the Diocesan Office as evidence in support. This is sufficient in law to constitute a locality. The Applicant further describes the site as being within a neighbourhood within that locality known as Larch Hill Estate and on balance this was accepted by the Inspector.

4. **Options**

- 4.1 Members may confirm or reject the application for registration. However, full regard must be had of the Inspector's advice and factual reasons must be given if it is decided not to follow the recommendation of the Inspector.

5. **Financial and resource appraisal**

5.1 Financial provision has already been identified for the administrative and legal cost of determining the application.

6. **Legal appraisal**

6.1 The application has been processed in accordance with the regulations laid down by statute.

6.2 The applicant is required to show that the land has been used by a significant number of the inhabitants of the locality or a neighbourhood within a locality for lawful sports and pastimes as of right for a period of not less than 20 years. The 20 year period is calculated either back from the date of the application or from the date when use is stated to have ceased as in this case.

6.3 The Inspector concluded as follows:-

6.3.1 Evidence has been provided to the Registration Authority comprised of 4 main elements namely use by people to walk dogs, use by people as a shortcut, use for an annual bonfire and use by children. There was some very limited evidence of use for blackberry picking and nature watching. The first two activities cannot qualify as recreational use as it was clear from the evidence that both activities were confined to the short path running between the two access points and taking a "shortcut" is not of itself a recreational use. The use must in broad terms attach to the whole of the claimed site – use akin to a footpath cannot qualify.

6.3.2 Use for an annual bonfire appears to be in dispute with the objector stating the last community bonfire was approx 8 years ago while others state 3-4 years ago. It became apparent from the evidence however that a bonfire held about 3 years ago was one held by the Applicant primarily as a family occasion rather than a community event. Nonetheless an annual bonfire even held as a community event would only amount to sporadic use of the land.

6.3.3 The applicant was alone in claiming that children regularly played on the land until the access points were closed in 2011. Other witnesses called by the Applicant were clear that about 5 years ago use by children substantially fell away – whether that was because the site had become too overgrown or that lack of use allowed the site to become overgrown is not clear. However whilst some limited use over that last 5 years may have taken place it has been relatively sporadic and would not therefore qualify as continuing evidence of recreational use by the community. This is entirely consistent with the physical condition of the site at the time of the site visit.

6.3.4 The conclusion can only be that whilst historically bonfires have been held on the site and children have played on it in the past, it is clear that these activities fell away 4-5 years ago. Since then children may have occasionally ventured on the site but such random acts of trespass would not present the character or frequency of use associated with a community assertion of its right to use the land for recreational purposes.

6.4 The Council as Registration Authority is able to determine this application on its

merits based on the evidence which has been provided by the applicant and objector and paying due regard to the recommendations of the Inspector in his Report received by the Council on 18th December 2012.

7. **Other implications**

7.1 **Equal Rights**

7.1.1 There are no apparent equal rights implications.

Equality Act 2010 – Section 149 – In writing this report due regard has been taken of the need to eliminate unlawful discrimination, harassment and victimisation, advance quality of opportunity between different groups and foster good relations between different groups. It is not considered that any issues with regards thereto are raised in consideration of this application.

7.2 **Sustainability implications**

7.2.1 There are no apparent implications for sustainability.

7.3 **Community safety implications**

7.3.1 There are no apparent community safety implications.

7.4 **Human Rights Act**

7.4.1 The following right is applicable in respect of this application.

Article 6 a procedural right to a fair hearing. An opportunity has been given for objections to be made. The supporting evidence has been produced and human rights implications have been considered in the procedure established. If the decision is to confirm or reject the application reasons should be given.

7.5 **Trade Union**

7.5.1 There are no apparent Trade Union implications.

8. **Not for publication documents**

8.1 None

9. **Recommendations**

9.1 It is recommended that members reject the application to register the land at Back Field, Larch Hill Crescent, Odsal, Bradford as a town or village green for the reasons set out in the Inspectors' Report and Recommendation received by the Council on 18th December 2012

10. **Appendices**

10.1 Appendix 1 - Plans showing application site – Original copies of these documents are available for inspection in Room 213, City Hall, Bradford. Please contact Stephen Nelson 01274 432083.

10.2 Appendix 2 – Inspectors' Report and Recommendation

11. **Background documents**

11.1 Application form relating to land at Back Field, Larch Hill Crescent, Odsal, Bradford including supporting statements, documents and photographs.

11.2 Objection letters

APPENDIX 1



Google earth



2002





Google earth

feet
meters



2009





Northern Powergrid Holdings Company.

The position of our equipment is shown on this plan as accurately as possible. However, it may have changed since the plan was produced, therefore, the position of our equipment and those of service cables which may not be shown should be established on site. Electricity cables not owned by Northern Powergrid Holdings Company may be laid in this area and may not be shown on this plan. Where private cables are shown, the information should not be regarded as accurate and should be used for guidance purposes only.

Appendix 2

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND
KNOWN AS 'BACK FIELD' AS A NEW TOWN GREEN**

AND

**IN THE MATTER OF A NON-STATUTORY PUBLIC INQUIRY HELD
ON 10TH DECEMBER 2012**

REPORT

OF DAVID MANLEY QC

**TO BRADFORD METROPOLITAN DISTRICT COUNCIL
AS REGISTRATION AUTHORITY**

I By an amended Form 44 dated 6th February 2012 Mrs L Pearson of 57, Larch Hill Crescent, Odsal, Bradford applied to register land known as the “Back Field” as a Town Green pursuant to S15(3) of the Commons Act 2006. Use as of right was said to have ceased on 29/10/2011 when Mr Damon O’Brien erected obstacles to entry of the land. Mr O’Brien is currently seeking to pursue a claim of adverse possession in respect of the “Back Field”. The land is largely unregistered.

II The Form 44 claim was supported by letters from:

- Mr and Mrs Chapman of 67, Larch Hill Crescent;
- Mr and Mrs Holla from Halifax;
- Mr and Mrs Malone of 92, Larch Hill Crescent;
- Mr and Mrs Hemingway of 12, Larch Hill Crescent;
- E Dickinson from Halifax;
- Mrs Ineson of Wyke;
- Mr and Mrs Buchan of 55, Larch Hill Crescent;
- K Lone of 86, Larch Hill Crescent;
- J and T Hunt of 10, Larch Hill Crescent;
- Mr and Mrs Lambert of 63, Larch Hill Crescent;
- Mr and Mrs Pearson of 59, Larch Hill Crescent;
- Mr Mrs Robinson 53, Larch Hill Crescent;
- Mr and Mrs Hunkin of 51, Larch Hill Crescent;
- Mr and Mrs Moore of 49, Larch Hill Crescent;

- Mr Mrs Rice of 23, Larch Hill Crescent.
- Mr and Mrs Brooksbank of 18, Larch Hill Crescent
- Mr and Mrs Gregory of 15, Larch Hill Crescent
- L Green of 11, Larch Hill Crescent

III The above letters allege a variety of recreational uses of the land over the relevant period ie. 29/10/1991 - 29/10/2011. The principal use alleged was children's play including football, cricket, and hide and seek. Other claimed recreational uses were dog walking. Use of the land as a shortcut was also noted. Use of the land for an annual bonfire was claimed by most supporters.

IV Objection letters were lodged from Damon O'Brien of 42, Larch Hill Crescent; Kevin O'Brien and Deborah O'Brien of the same address and Vicki Thornton of 27, Larch Hill Crescent. The Objectors' claim in essence was that although the land had been used as a children's play area in the past that use had ceased circa 10 years ago and that since then the land had become overgrown so that children's play use was largely impractical and minimal. The principal use of the land was said to be as a dog toilet.

V Responses to the objections were filed by Mrs Pearson, Mrs Gregory, Natasha Close, Derek Lambert, M and A Buchan. Mrs Pearson's letter

acknowledged that the land had tended to become overgrown in recent years but nonetheless asserted that children's play was perfectly possible and did in fact take place.

VI **The Site**

The site is a green area enclosed by Nos 1 - 71 Larch Hill Crescent. I carried out an accompanied site visit at 9:15am on 11/12/2012. The northern and southern access points have been blocked off. A modest area to the rear of No. 59 and in the vicinity of the substation has been cleared and it would appear this took place in or about January 2012. The land is otherwise in a poor state being very uneven across its whole area and extensively fly-tipped with garden refuse. The site itself is extensively covered by scrub and shrubbery that has plainly been established over a number of years. A path between the scrub is still visible and runs directly between the 2 access points.

VII As part of my site visit I visited, in the company of Mrs Carol Barrott, a Legal Officer with the Registration Authority, the bedroom of Mr Kevin O'Brien at 42, Larch Hill Crescent. The purpose of the exercise was to seek to resolve a disputed claim by Mr O'Brien that he could see into the Back Field from his bedroom window. I was able to obtain a view into the site in the vicinity of the substation but this was due to the fact that the foliage around the site was not in leaf. I do not believe views into the site

would be available in the mid-spring to late summer period. Nonetheless I accept that Mr O'Brien has views into the site for part of the year; I further accept that in past years, when the foliage was less mature, clear views would have been obtainable.

VIII **The Law**

The law while simply stated is complex and has generated an unusual amount of judicial activity in recent years. S15(1) and (2) of the Commons Act 2006 so far as relevant provides as follows:

“15 Registration of Greens

- (1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.
- (2) This subsection applies where -
 - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application.”

S15(3) *ibid* incorporates the above but in cases where use has either ceased physically or otherwise ceased to be use as of right a 2 year window from cessation is given to make an application.

IX “Significant Number”

This criterion is inextricably bound up with the concept of “locality” or “neighbourhood” depending upon which concept is relied upon in any given case. In *R v. Staffordshire CC ex parte Alfred McAlpine Homes Ltd* [2002] AC 63, the Court rejected the notion that “significant number” necessarily implied a large number, but said that whether or not there had been use by a “significant number” of the inhabitants of a neighbourhood or locality was very much a matter of impression for the decision maker. The question is one that has to be addressed by reference to the size of the neighbourhood, ie. the bigger the neighbourhood, the greater the numbers of the inhabitants one would expect to use the land. Conversely the smaller the neighbourhood, then a lesser number of users will tend to satisfy the “significant number” criterion. There is moreover no requirement that all or even most of the users of the land should come from the “neighbourhood”; so long as a “significant number” of the inhabitants of the neighbourhood use the land, then that is sufficient (see *R (on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v. Oxfordshire CC* [2010] EWHC 530 (Admin)). Something markedly more than occasional trespass is required. In essence the use must reflect use by the relevant community of potential users, in this case the community that comprises a chosen neighbourhood.

X “The inhabitants of any locality, or of any neighbourhood within a locality”

It has been long settled that “locality” means a legally recognised administrative area. User by the inhabitants of a locality is not relied upon in this case but user by the inhabitants of a neighbourhood is. In *R (On the application of Cheltenham Builders Limited) v. South Gloucestershire CC* [2003] EWHC 2803, the Court noted that while “neighbourhood” was an imprecise concept, it nonetheless was not a meaningless concept that could be satisfied by the drawing of arbitrary lines on a plan but rather connoted an area with a degree of cohesiveness. The cohesiveness must pre-exist the period of use and should not be solely dependent upon the claimed use of the green (see *Oxford and Bucks Mental Health* case *ibid*). There is no need for a “neighbourhood” to have its own shops, community facilities or name (see *Leeds Group plc v. Leeds City Council* [2010] EWHC 810 (Ch)). The issue is essentially one for robust commonsense. The OED defines a neighbourhood, *inter alia*, as “A district or proportion of a town: a small but relatively self-contained sector of a larger urban area”. It is therefore not to be approached by reference to undue legalism. User by the inhabitants of more than one neighbourhood may be relied upon (see *Leeds Group plc* *ibid*).

XI “Indulged ... in lawful sports and pastimes”

It has been settled law for some time that there is no requirement for organised games but lawful and informal recreational activities such as

dog walking, fruit picking, children playing, will satisfy the criterion. A related issue concerns the extent of the area used for recreational purposes - must it be the whole of the land or will part use only do? It is clear that the use of land that is strictly confined to strict defined routes will not satisfy the criteria and in such circumstances the proper course would be to seek to register a footpath rather than a village green.

XII “As of Right”

In broad terms this means that the recreational use must not be by force, stealth or without the permission of the owner. Force does not confine itself to physical force eg. breaking down obstacles to entry or climbing locked gates but embraces circumstances in which the use is contentious eg. breach of prohibitory and unambiguous signage. It is also important to understand that in order to establish as of right it is not necessary for users to establish a subjective belief in the existence of such a right (see *R v. Oxfordshire CC ex p Sunningwell PC* for example). It is also necessary to make reference to the case of *R (Lewis) v. Redcar and Cleveland BC (No. 2)* [2010] UKSC 11. The *Redcar* case emphasises the importance of the character of the use as perceived by a landowner whether actual or theoretical. The use must be objectively assessed as the assertion of a right. An extract from the case headnote provides a useful reference:

“*Held*, allowing the appeal, that, although “sports and pastimes” in section 15 of the 2006 Act denoted a single composite class and land registered as a town or village green

could be used generally for sports and pastimes, registration neither enlarged the inhabitants' rights nor diminished those of the landowner, who retained the right to use the land as he had done before, and in practice it was possible for the respective rights of the owner and of the local inhabitants to coexist with give-and-take on both sides; that, although the English theory of prescription was concerned with how matters would have appeared to the landowner, the tripartite test of *nec vi, nec clam, nec precario* was sufficient to establish whether local inhabitants' use of land for lawful sports and pastimes was "as of right" for the purposes of section 15, and it was unnecessary to superimpose a further test as to whether it would appear to a reasonable landowner that they were asserting a right so to use the land or deferring to his rights; that, if the user by the local inhabitants for at least 20 years were of such amount and in such manner as would reasonably be regarded as the assertion of a public right so that it was reasonable to expect the landowner to resist or restrict the use if he wished to avoid the possibility of registration, the landowner would be taken to have acquiesced in it unless he could show that one of the three vitiating circumstances applied; that, in any event, a reasonably alert landowner could not have failed to recognise in the present case that the user by the local inhabitants, who had regularly and in large numbers continued to cross the area covered by the golf course in order to pursue their lawful sports and pastimes, was the assertion of a right to use the land which would mature into an established right unless he took action to stop it, and he would not have concluded that they were not doing so merely because they showed civility or deference towards members of the golf club when play was in progress; that, therefore, the inspector's assessment constituted an error of law in that he had misdirected himself as to the significance of perfectly natural behaviour by the local inhabitants; and that, accordingly, the local authority was required to register the disputed land as a town green."

The burden of proof lies with the Applicant. The standard of proof is the ordinary civil standard.

XIII The Evidence

I set out below my contemporaneous notes of the evidence given at the Inquiry held at the City Hall, Bradford on 10/12/2012. As the parties were unrepresented and unfamiliar with the process I adopted an inquisitorial role. An opportunity to cross-examine was offered in respect of each witness. I should add for the sake of completeness that an opportunity to make closing statements was offered but neither party, understandably, felt the need to make any such statement.

XIV Applicant's Case

(1) Mr A Buchan - 55, Larch Hill Crescent

2 letters (30/05/2012 and 07/11/12).

To DM

Moved in, in 1964 - one child born 1964 and the other child 1965 - they used the field until their teens - played hide and seek/ball games. The field is mainly grass - it wasn't cut. It was kept down by the bonfire - it was an annual event - it was organised by and run by people who live on the Crescent. They ceased using it at the back end of the 1970s. I have a view from the house over part of the field. I saw children using the field all the time. There were children from the Crescent - and my grandchildren but they do not live locally. I recall kids making a bike track in the 1990s. Football was played in the 80s and 90s and ball games. Adults used the

connecting path as a shortcut; that was the same route the dog walkers used. I accept in recent years it became overgrown through lack of use - it was 5 - 10 years ago. Children still do occasionally come down though.

XX by Objector

Q) I've never seen a cycle track.

A) I live looking over it.

Q) Football - how long ago was it?

A) It stopped 5 years ago.

Q) 10?

A) I don't think it was that long ago.

Q) When was the last bonfire?

A) It was about 3 years ago.

Q) When was the last time you saw the black ash?

A) 3 - 5 years ago.

Re-X

Q) You maintained the pathway for 35 years?

A) Yes.

(2) Mr Lambert - 63, Larch Hill Crescent

I moved in, in 1964 - I was married and my kids always used the field. The children were born 1964 and one in 1980 - both played in the field. For girls it was skipping - the boys climbed the

substation. By the time they were teenagers they had moved. It is true around 5 years ago or so it became overgrown from lack of use. But its attraction increased to others - I went on to it when it was overgrown - it was very occasional. I entered at the top and walked across to the bottom entrance. I saw others - dog walkers mainly. That is what they did. I accept that dog walkers used to let their dogs off to make a mess on the land but not these days - they are more hygienic.

XX

Q) When did you last see football on there?

A) 3 or 4 years ago.

Q) Is it overgrown?

A) It was until you stripped it - it supported wildlife.

Q) When was the bonfire?

A) Maybe 4 years ago.

(3) Mrs C Malone - 92, Larch Hill Crescent

We moved in, in 1974 - the children were born in 1978 and 1982. The children used the land until they were teenagers. The last time I went in, it was last year, I took my grandson in to look at wildlife. It was the summer. I do not overlook the site so I cannot say what has gone on, on a day-to-day basis. I can't say when the last bonfire was.

(4) Mrs Hunkin - 51, Larch Hill Crescent

Lived there since 83. The children were born in 1973; 1975 and 1980. They used it until they were teenagers. We overlook the field. The kids build dens; climbed trees; went blackberrying. They had parties in there but I didn't take any pictures. The dog walkers used the path between the snickets. I agree that by 5 years or so ago it had become overgrown and so use fell off. I have seen adults in there cutting hedges and maintaining fence.

XX

Q) You say in your letter you had nature walks in there?

A) I did.

To DM

I used to take my grandchildren in for nature walks - it could be every 6 weeks or so. I have collected blackberries in there. The last bonfire was about 3 years ago, I went.

(5) Mrs B Stenson - 33, Larch Hill Crescent

Moved in, in 1961. Had a daughter in 1966. She played there with her friends. It was safe. All the children from the Crescent got on well - they all played in there. She stopped when she was 14 or 15. I accept that play has fallen off in the last 5 years - but children still come on to the land and climb trees and make dens. Wildlife is abundant in there. The adult use was really for dog walkers - they

stayed on the path. People who border it will go in to cut their hedges and repair fences. Bonfires were great fun - I think they ceased about 4 years ago. I don't know why they ceased. I think the problem may have been outsiders coming and tipping rubbish allegedly for the fire - we were worried it could be a dumping ground.

XX

Q) Where did we play football in the 1990s?

A) On the street.

Q) Why?

A) I don't know why.

Q) It was impossible to play in the field.

A) Why?

Q) When was the last time you attended a bonfire in the field?

A) 6 years or so - I'm an old lady now.

(6) Mrs Ineson - 37 Larch Hill Crescent

I lived in Larch Hill Crescent 65 - 1980 - we lived at 34. We came back 10 years ago. Children - we had a 5 and 4 year old in 1965 and Martin was born in 1966. They played in the field as children - until they were teenagers. My daughter subsequently moved into Willow Drive and her children used it. From 37 you can see the field from upstairs - we moved back in 2001. 3 years ago my

grandchildren came to live next door for one year - the 2 boys played in it - lots of tree climbing after school and in the holidays. A couple of years ago I saw some of children playing in the field and building a den - it took 3 days and then it caved in. It was over the summer holidays. The path through was a shortcut to school or the shops. I have seen children take a ball in over the last 5 years - I suppose they must kick it around. The use I am talking about was over the summer holidays. I can't recall the last bonfire.

XX

Q) There aren't many children there now?

A) No there are not - there is a gang however who have nowhere to play down by the corner.

Q) It's unsafe?

A) It could do with a cleanup.

Q) If the fly-tipping went?

A) That's only been there over the last few years.

(7) Councillor Green - Leader of the Council

Everything in the letter is true. I've spoken to the Council's Environment Team - we received 3 requests to 2007 to clear the site up due to tipping - they then ceased because there were ownership issues and they had nobody to recharge it to. On one occasion they removed furniture and on another occasion it was

builders' material. I have experience of it since 1991 - it was a rough play area. I haven't got notes of my visits but I did a number of home visits to Larch Hill Crescent - ie. possibly seen it 12 - 20 times. The last time I walked the land was 2004/5 - we were looking at potential play areas. At that time it was clearly used for football - I saw people using it.

(8) Mrs Pearson - 59, Larch Hill Crescent

We have lived in Larch Hill Crescent since 1983 - 4 children: daughter born 1980; 83; 84 (boy) and 87 (boy). They all used the field - climbing, dens and playing football. They were safe. Our grandchildren live in the area - Larch Drive and Netherlands. They use it and have used it from about 1993 until the area being fenced off.

Last bonfire was 3 years ago.

Dog walkers do tend to have a route - ie. snicket to snicket. It is also a shortcut. It has been overgrown but it has always been used. Use of it did not fall off in the last 5 years - kids will play on anything - they make do. We have a clear view of the field from our property. They even use it in the winter - I've seen them make igloos in the winter. My kids used to go and pick me blackberries.

XX

- Q) So all the other people are wrong about use over the last few years?
- A) Not necessarily - I'm telling you what my grandchildren do.
- Q) When was the last bonfire?
- A) 3 years ago.
- Q) The last bonfire in the field was 8 years ago?
- A) How do you know?
- Q) I have a perfect view of that field.
- A) It was a family event - obviously the bonfire was smaller - it was using up garden refuse.

DM

- Q) Bonfire - was it a family one?
- A) Yes.
- Q) How big?
- A) About 6 feet high.

Mr Pearson

The only way I can maintain my fences is by going into the field.

(9) Damon O'Brien - 42, Larch Hill Crescent

October 2011 I took adverse possession of the site. I took legal advice. I saw a programme with Hugh Fearnley-Whittingstall in

which he takes neglected land and turns it into allotments. My dad said the back field could be used for that. The last bonfire was in 2003/or 4.

You can see the site from the front bedroom window - my parents' bedroom window. I have lived at 42 all my life. When I was a boy I played on the field - I played with Richard Pearson. Best friends. There were other children playing there. It isn't as visible as people make out - we used to smoke on it as kids - we wouldn't if we could easily be seen. It was impossible to play ball games - the grass was too long. We played on the road. I accept that there are goals on the side of the substation but those are very old. The ground was always uneven. We used it for dens, tig and hide and seek. The children built the bonfires - Mr Pearson lit it and held a party at his house. He let the fireworks off in his garden.

I accept if a kid is determined enough he can get into the site today. I never crossed paths with a dog walker - I'm not disputing that people did walk dogs in there.

I would say play on it ceased when I was around 16 - ie. 9 or 10 years ago. Around the time of the last bonfire. I didn't really take much interest in its condition or appearance since then. I can't say

kids never used. I pass the site regularly - several times per day - and I don't see kids going in or coming out of there.

XX

Q) You say you have lived there all your life - but your mum said to me you didn't live there.

A) I moved out for 4 weeks to my girlfriend's after a row with my Dad.

Q) How'd you know if kids are on the field?

A) I'm not saying I do see what's on the field.

Q) My grandchildren play on it.

A) It is dangerous - I stood on a nail on it.

Q) When you were at school did you see people maintaining the fences?

A) You didn't maintain them.

Q) Yes I did - I put 2 new ones up.

(10) Mr Kevin O'Brien - 42, Larch Hill Crescent

I have lived at 42, Larch Hill Crescent since 1985. I know children do not use it. I know. I see the children playing football in the street. They used to play and do play in front of Mrs Pearson's house. I can see the field from my house - I can see better than most - I don't see children playing on it. I'm not saying they never do - nothing like they used to. Where are the photographs? Why are

no people with children coming here to talk about their children using the field?

XX

Q) You live around the corner - I can see from my bedroom - you can't see over the fence.

A) I can see from my bedroom.

XV **Other Submitted Evidence**

The Applicant's bundle contained a set of photographs. One photograph was taken in 1984 and therefore prior to the start date for the 20 year period of relevance. The photograph is, in any event of poor quality, and neither reveals recreational use of the land or information concerning its condition. The rest of the Applicant's photographs post-date the closure of access to the site and therefore do not take the matters before me any further forward. Additional written statements submitted by the Applicant as part of the Inquiry Bundle are generalised and do not materially add to the oral evidence of the Applicant's witnesses. The Applicant's Petition does not engage with the S15 ibid criteria. Mr Damon O'Brien similarly submitted a series of photographs but they were all taken after access to Back Field had been closed off and therefore add little to the debate beyond emphasising the fairly extensive fly-tipping that has occurred across the site.

XVI **Analysis**

The “locality” chosen by the Applicant is “Bradford South Parish” and the neighbourhood is said to be the “Larch Hill Estate”. I pressed Mrs Pearson as to how the estate might be defined and she told me it was comprised of Larch Hill Crescent. Mrs Pearson said that people who lived on the Crescent tended to know each other and that in the past it had had its own Neighbourhood Watch. Mr O’Brien had no view on this issue one way or the other. It was clear to me on my site visit that Larch Hill Crescent is part of a wider estate in that proximate houses on Larch Hill for example were built in the same style and presumably at roughly the same time. Nonetheless Larch Hill Crescent does stand very much as a self-contained area centred on the Back Field. On balance therefore I accept that the Applicant has correctly identified a relevant locality and neighbourhood for the purposes of S15 *ibid*.

XVII Having noted the above I am nonetheless bound to indicate my very firm view that the Application should be rejected. The evidence of use broadly contained 4 elements:

- People using the site to walk dogs;
- People using the site as a shortcut;
- Use of the site for an annual bonfire;
- Use of the site by children.

There was additionally some very limited evidence of occasional use of the site for blackberry picking and nature watching. However the first 2 activities cannot qualify as recreational use for S15 *ibid* purposes. It was abundantly clear from the evidence that both activities were confined to the short path running between the 2 access points alone while taking a “shortcut” is not a recreational activity in any event. As noted in the legal commentary above in order to qualify as a recreational use the use must in broad terms attach to the whole of the claimed site; a use akin to a footpath use cannot qualify.

XVIII Insofar as use of the land for an annual bonfire is concerned there is a dispute: Damon O’Brien suggested that the last community bonfire was held about 8 years ago; others suggest it was 3 to 4 years ago. It is apparent however that the bonfire made on the land about 3 years ago was made by the Pearson family as primarily a family event. But even if it were the case that annual bonfires for community purposes had been held up to around 4 years ago that in itself would only amount to sporadic use which did not occur over the whole of the relevant 20 year period. In itself therefore it falls well short of continuous recreational use over the relevant 20 year period.

XIX What therefore is left? Mrs Pearson was alone in positively asserting that children regularly played on the land until the access points were closed. Other witnesses called by the Applicant whose houses overlook the site

were clear that about 5 years or so use of the site by children substantially fell away - whether it was because the site had become overgrown or whether the lack of use allowed the site to become overgrown is unclear. What is clear is that while some limited use of children may have occurred over the last 5 years or so it has been relatively sporadic and could not qualify as evidence of a continuing community wide recreational use. This is consistent with the physical condition of the site which is wholly unsuitable for the playing of football or cricket. Running in it would be all but impossible and any attempt would be dangerous due to the unevenness of the ground, the length of the grass and the presence of extensive lengths of brambles.

XX In summary I find that while annual bonfires have been historically held on the land and children from the neighbourhood have in the past played on the site regularly these activities ceased or substantially fell away 4 or 5 years ago. Since that time children have no doubt occasionally ventured on to the site but such occasional trespass would not have the character or quality of use one would associate with a community assertion of a right to use the land for recreational purposes. Use therefore has not been use by a significant number of the inhabitants for recreational purposes over the necessary qualifying period 20 years. I accordingly recommend that the Application should be rejected.

D E MANLEY QC