

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

D

Subject:

AN APPLICATION FOR THE REGISTRATION OF LAND AS A TOWN OR VILLAGE GREEN AT COTE LANE, ALLERTON, BRADFORD VG24BD – COMMONS ACT 2006 s15(2)

Summary statement:

AN APPLICATION HAS BEEN RECEIVED FROM MR D HEMSLEY FOR REGISTRATION OF LAND AT COTE LANE, ALLERTON, 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: Carole Barrott
Phone: (01274) 434751
E-mail: carole.barrott@bradford.gov.uk

Overview and Scrutiny Area: CORPORATE

WARD: THORNTON & ALLERTON

1. **Summary**

- 1.1 The Council has received an application for the registration of two irregular shaped areas of land at Cote Lane Allerton, 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 areas 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 two irregular shaped green areas which formed part of a much larger parcel of land acquired by the Council on 23rd July 1954 under powers conferred on the Council by the Housing Acts 1936-1952 for the purpose of housing. The larger part of the land was progressively developed for housing with the Cote Lane part being built in 1959.

The two areas of land forming the subject of the application were never built on, but as was common on such housing estates the land was laid out as open space and thereafter maintained by the Council. Maintenance records kept by the Council show that the grass was cut 13 times each year. On 24th February 2003 the application land was transferred to the Bradford Community Housing Trust as part of the housing stock transfer and the maintenance has since been carried out by the new owner. The land is currently within the ownership of Incommunities as successor to BCHT. 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 3rd May 2012. Two objections were received during the 6 week objection period: the Council on the basis that the land formed a part of the adopted public highway and Incommunities on the basis of an absence of significant recreational use by the local people. The Council supplemented its objection on 13th December 2012 by stating that the land had been laid out as open space as a part of the development of the housing estate under the powers contained in the Housing Acts 1936-1952

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 6th, 7th and 8th February 2013 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 St Peter, 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 which although had no specific name was bounded by Allerton Road to the north, Saffron Drive to the east, Cote Lane and Weymouth Avenue to the west and south. This boundary was amended slightly at the start of the inquiry by using Allerton Road to the north, Hill Top Lane to the east, Cote Lane to the south and no named boundary to the west but running north to south from the curtilage of 51 Allerton Road. There were no objections raised by the objectors to this amendment and the Objectors indicated they did not intend to pursue their objection on highway grounds and withdrew the evidence relating to this part of the objection

The Inspector reached three conclusions:-

- i. that the evidence did not establish a “neighbourhood”
- ii. that even if it did, use by a significant number of inhabitants over the requisite period of time was not established by the evidence
- iii. that regardless of the above any such use which had taken place was use “by right” not “as of right” by reason of the land being laid out and maintained as open space

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 that evidence regarding the neighbourhood failed to demonstrate any particular cohesiveness or sense of identity to the chosen area and appeared to be no more than an area with arbitrary boundaries. Even if the neighbourhood issue been proven, the evidence put forward failed to demonstrate use by the community within the chosen boundaries, indeed the witnesses in support of the applications are drawn from the houses adjacent or very close to the application site and speak of limited use by small children from a very narrow area which cannot be equated with use by the community. The only evidence of such community use was in fact the Jubilee celebrations which post-date the application.

Dog walkers seem to have followed a route around the edges of the land and again appear to have been drawn from houses in the immediate vicinity.

The Inspector further concluded that the objectors' evidence was mainly factual and was unchallenged by the Applicant. However it is a simple fact that the site was laid out as open space as part of the housing development, for recreational use pursuant to statutory powers. It follows therefore that any use of the land therefore until 2003 was by right and not as of right. The Applicant needed to show 20 years use from March 1992 and clearly that is not possible as any use prior to 2003 would not count.

- 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 objectors and paying due regard to the recommendations of the Inspector in his Report received by the Council on 12th February 2013.

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 Cote Lane, Allerton, Bradford as a town or village green for the reasons set out in the Inspectors' Report and Recommendation received by the Council on 12th February 2013

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 Cote Lane, Allerton, Bradford including supporting statements, documents and photographs.

11.2 Objections

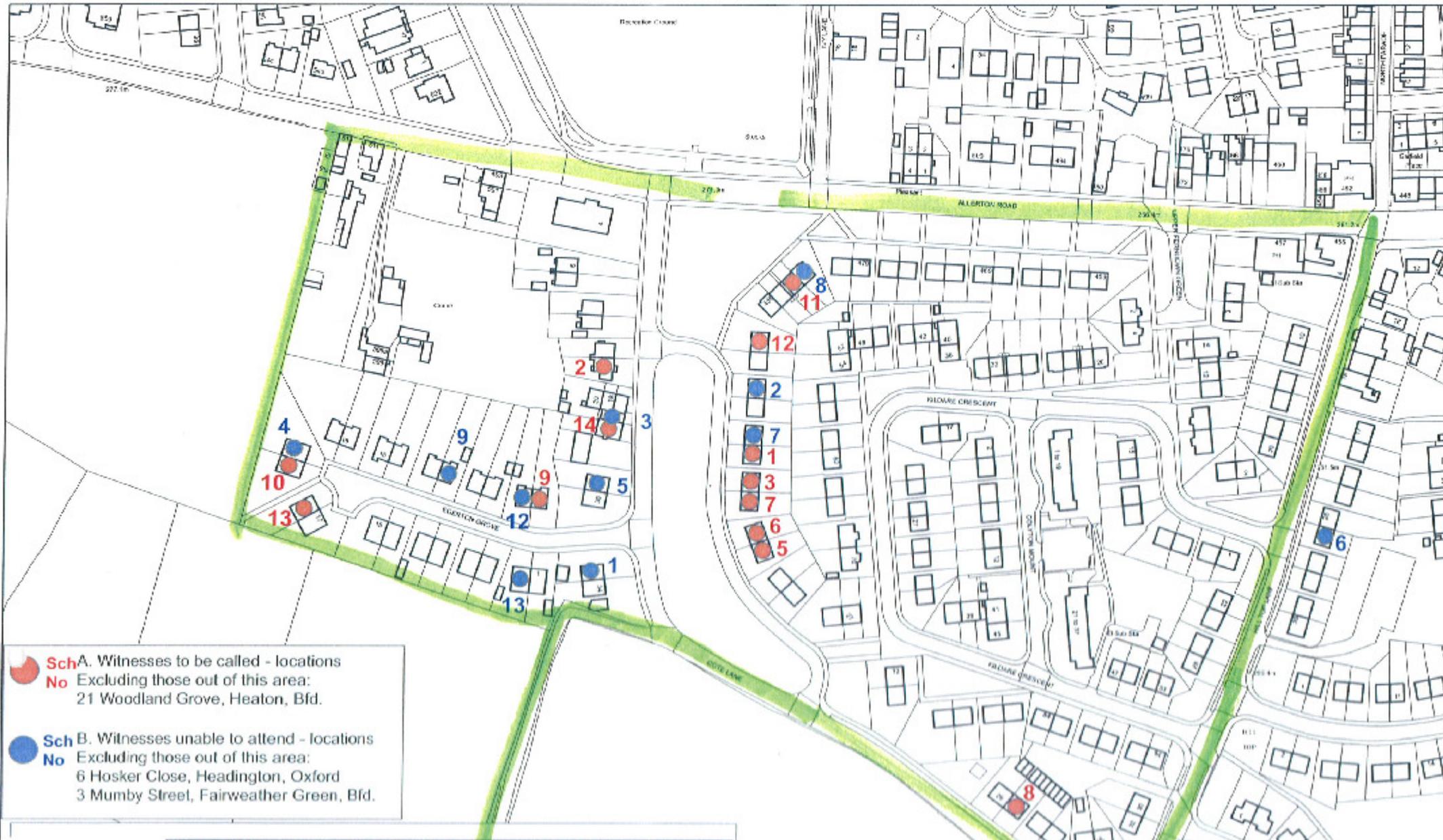
APPENDIX 1



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

EXHIBIT C. AREA IN QUESTION OUTLINED RED

0 5 10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 160 170 180 190 200 210 220 230 240 250 260 270 280 290 300
USE ONLY ON ORIGINAL PRINTED PAPER COPIES - ELECTRONICALLY TRANSMITTED COPIES FOR ID ONLY



-  **Sch A.** Witnesses to be called - locations
No Excluding those out of this area:
21 Woodland Grove, Heaton, Bfd.
-  **Sch B.** Witnesses unable to attend - locations
No Excluding those out of this area:
6 Hosker Close, Headington, Oxford
3 Mumby Street, Fairweather Green, Bfd.

Appendix 2

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND
KNOWN AS 'THE GREEN' COTE LANE, ALLERTON, BRADFORD
(VG24BD) MADE PURSUANT TO SECTION 15 OF THE COMMONS
ACT 2006**

REPORT

OF DAVID MANLEY QC

**To Bradford MDC
In their capacity as Registration Authority
In respect of a Public Inquiry
Held between 06/02/2013 and 8/02/2013
At City Hall, Bradford**

Introduction

I By an application received by Bradford MDC on 08/03/2012 Mr David Hemsley, “the Applicant” of 26, Cote Lane, Allerton, Bradford applied to register land described as “the Green”, Cote Lane as a village green pursuant to S15(2) of the Commons Act 2006 “the Act”. The chosen locality for the purposes of Question 6 of Form 44 was the Parish of St Peter, Allerton. The chosen neighbourhood was shown outlined in blue on Application Plan Exhibit A and embraced an area marked by Allerton Road to the north; Saffron Drive to the East; Cote Lane and Weymouth Avenue to the west and south. At the beginning of the Inquiry Mr Hemsley applied to amend the boundaries of his chosen neighbourhood as shown on the Document referenced “Bradford MDC1”. The revised neighbourhood was enclosed by Allerton Road in the north; Hill Top Lane in the east; Cote Lane in the south with no named boundary to the west but running north/south from the curtilage of 51, Allerton Road. No objection was raised to this amendment and I shall therefore write this report by reference to the “Bradford MDC1” neighbourhood boundary.

II Objections to the application were lodged by:

- Bradford MDC on the basis that the land formed part of the adopted highway and was used by pedestrians as such (see letter of 01/05/2012 from Martyn Baldwin Estate Surveyor); and

- Incommunities on the basis of an absence of significant recreational use of the land by local people (see letter of 02/05/2012 from Milena Falciano in-house solicitor at Incommunities).
- III On 13/12/2012 Mr Baldwin submitted a letter to the Registration Authority seeking to, “supplement” Bradford’s original objection. The principal proposition of the letter of the 13th ibid was that the claimed land had been laid out as open space as part of housing provision by the Council under the powers contained within the Housing Acts 1936 - 1952.
- IV At the outset of the Inquiry I raised concerns with Mr Partington, Counsel for Bradford MDC, concerning the evidence of Mr Rowley, Principal Engineer in the Highway Development Control Department of Bradford. In essence the evidence sought to substantiate the original objection lodged by Bradford by reference to a highway registry plan which showed the application land marked with an asterisk and annotated, “Land shown thus is adopted highway – BRB 10/4/1992” and which further suggested that the land had been adopted pursuant to intentions recorded in S17 of the Bradford Improvement Act of 1873. My concerns centred upon the absence of any evidence of the conditions in S17 ibid having been ever met and further scepticism about the evidential basis for the annotations on the said registry plan. Mr Partington considered the position and withdrew

Mr Rowley's evidence. I endorsed this as a sensible step and therefore proceed to deal with Bradford MDC's objection on a threefold basis:

- (1) That the evidence did not establish a "neighbourhood" for the purposes of S15 *ibid*;
- (2) That even if it did use by a "significant number" of the inhabitants over the requisite period had not been established by the evidence;
- (3) That regardless of (1) and (2) above such use as had occurred had been "by right" and not "as of right" by reason of the land having been laid out and maintained as open space pursuant to statutory powers.

V **Background**

In this section I shall record the history of the land so far as it is relevant to the application. Matters set out in this section were agreed as between the parties in the sense that Mr Baldwin's evidence on these issues was not challenged in any way.

- VI The application land formed part of a larger parcel of land acquired by the Council on 23/07/1954 (Deed ref 5443). The original acquisition record is contained in the Council's Progressive Terrier book that was made

available to the Inquiry. That document reveals that the property was acquired from one Fred Illingworth of Hill Top Farm under powers conferred by the Housing Acts 1936 – 1952 for the purpose of housing. The larger parcel was progressively developed by the Council to provide housing with Cote Lane itself being built out in 1959. It would appear that the application site was never built out but was, as is common on such estates, laid out as open space and maintained as such thereafter by the Council. The Council's maintenance records show that as at 2003 the application land was subject to cutting 13 times per annum (see Council's Bundle p28).

VII On 24/02/2003 the application land was sold as part of the Council's housing stock transfer to the Bradford Community Housing Trust ie. the predecessor to Incommunities. The disposals were advertised pursuant to S123 of the Local Government Act 1972 as open space disposals. The implications of this have not been addressed directly by any party to the Inquiry; it is important and I shall analyse it below.

VIII Since 2008 Incommunities have maintained the land by cutting it approximately 18 times per annum. In 2008 a licence was granted to 1 Cote Lane to construct an access over a peripheral sliver of the application land to enable direct vehicular access. On 17/09/2010 a site cabin and plant store were placed on the land together with earth spoil

(see Bradford's Bundle p35 re the location). The cabins were removed on 16/11/2010 and the spoil was removed on 13/01/2011. The photograph at p36 Bradford's Bundle reveals that only a very small parcel of land was affected by the siting of the cabins and the spoil.

IX The application land forms 2 parcels of land. The northernmost parcel is cut grassland lying between Allerton Road and Cote Lane. The southernmost parcel is contained within Cote Lane. Both parcels are irregular in shape

X **The Law**

Section 15(1) and (2) of the Commons Act 2006 provides that:

“Any person may apply to the commons registration authority to register land ... as a town or village green in a case where subsection (2) ... applies. ... This subsection applies where:
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
they continue to do so at the time of the application.”

XI These provisions, and those of the predecessor legislation, have been the subject of an unusual amount of judicial comment. I shall set out the key principles, as far as they are relevant to the circumstances of this case, below:

- “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)). In essence the use should be consistent with use by the community that comprise the neighbourhood/locality.

- “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*).

- “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 defined routes will not satisfy the criterion and in such circumstances the proper course would be to seek to register a footpath rather than a village green.

- “As of Right”

In broad terms this means that the recreational use must not be by force, stealth or with 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).

- In the present case Bradford MDC submit that such recreational use of the land as has occurred has occurred “by right” rather than “as of right”. The former category of use connotes circumstances in which the landowner has a legal duty, whether arising by statute or some form of trust, to make land available for recreational use so that user is by right rather than trespass. The latter category of use connotes circumstances in which no such duties exist and in which user is actually trespass but over time such use, in the absence of action by the landowner to prohibit or control it, may mature into a legally recognised right. In the case of *Barkas v. North Yorkshire County Council* [2012] EWCA Civ 1373 the Court of Appeal addressed the aforesaid concepts in the context of the Housing Act 1936.

- Ss79 and 80 of the Housing Act 1936 provided, inter-alia, as follows:

“Where a local authority have acquired or appropriated any land for the purposes of this part of this Act then without prejudice to any of their other powers under this Act the authority may (a) layout and construct public spits or roads and open spaces on the land.”
(See S79(1)(a) ibid)

“(1) The powers of a local authority under this Part of this Act to provide Housing accommodation, shall include a power to provide and maintain, with the consent of the Minister and if desired jointly with any other person, in connection with any such housing accommodation, any building adapted for use as a shop, any recreation grounds

or other buildings or land, which in the opinion of the Minister will serve a beneficial purpose in connection with the requirements of the persons for whom the housing accommodation is provided.”

It should be noted in passing that at first instance it had been argued that people who were not council tenants had no right to use the land and that as the land had been used by the general public and not just council tenants S80 *ibid* did not apply. The Court rejected such an argument noting that S80 *ibid* drew no distinctions between council house tenants and others when it came to use (see *R (Barkas) v. North Yorkshire CC* [2011] EWHC 3653 (Admin) per Langstaff J at paras 24 – 29). The argument was not advanced in the Court of Appeal.

- In the Court of Appeal, Lord Justice Sullivan, having noted that the land in question had been acquired pursuant to S80 *ibid* said, *inter alia*, as follows:

“Is the position any different when the recreation ground is provided under section 80 of the 1936 Act? Such land is not formally appropriated under section 122 of the 1972 Act from housing to open space purposes. It is acquired, and continues to be held by the local authority, for housing purposes, as are the shops or other buildings, eg community centres, which serve a beneficial purpose in connection with the requirements of those living in the housing: see section 80(1) (paragraph 6 above). Thus, unlike open space provided under section 10 of the 1906 Act or section 164 of the 1875 Act, there is no need to appropriate a recreation ground provided under section 80

to housing purposes if, as in the present case, the local authority wishes to build houses on the recreation ground.

In these circumstances, there is much force in Mr. Edwards' submission that the statutory framework under which the Field is provided is analogous to the "very wide powers" under the *New Towns Act 1965* under which the land was made available as a sports arena in *Beresford*. Unfortunately, there is no analysis in *Beresford* of the powers conferred by the New Towns Act. I confess that I find it difficult to understand why the statutory approval of the Corporation's New Town Plan 1973 by the Minister, which had the effect of granting planning permission for the development of the land as "parkland/open space/playing field", when coupled with the use of their land at will. A local authority holding land for a particular statutory purpose may not use it for any other purpose unless it has been formally appropriated to that purpose, and if it simply ceases to use land for the statutory purpose for which it is held it must be able to justify its decision to do so on public law grounds. Unlike a private landowner it may not lawfully close a recreation ground or prevent members of the public from using it for recreation, on a whim.

Conclusion

44. The Field was "appropriated for the purpose of public recreation" by the UDC and its successor the Borough Council under an express statutory power to provide and thereafter maintain it as a recreation ground. Throughout the 20 year period the local inhabitants indulged in lawful sports and pastimes on the Field by right and not as of right."

- S123 of the Local Government Act 1972 provides as follows:

"Disposal of land by principal councils

123 (1) Subject to the following provisions of this section, a principal council may dispose of land held by them in any manner they wish.

(2) Except with the consent of the Secretary of State, a council shall not dispose of land under this section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.

(2A) A principal council may not dispose under subs. (1) above of any land consisting or forming part of an open space unless before disposing of the land they cause notice of their intention to do so, specifying the land in question, to be advertised in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made to them.

(2B) Where by virtue of subs. (2A) above a council dispose of land which is held -

(a) for the purpose of s.164 of the Public Health Act 1875 (pleasure grounds); or

(b) in accordance with s.10 of the Open Spaces Act 1906 (duty of local authority to maintain open spaces and burial grounds),

the land shall by virtue of the disposal be freed from any trust arising solely by virtue of its being land held in trust for enjoyment by the public in accordance with the said s.164 or, as the case may be, the said s.10.]

...”

- The burden of proof in bringing the Application lies squarely with the Applicant who must prove that each and every one of the statutory criteria under S15 ibid is met. The standard of proof is the ordinary civil standard ie. proof on the balance of probabilities.

XII The Evidence

The Objector’s evidence was essentially factual and unchallenged insofar as it was relevant. I therefore do not repeat it in this section of the report.

I set out below the oral evidence given by the Applicant and his witnesses.

The narrative is taken directly from the notes I took at the Inquiry.

(1) **Mr Hemsley**

Reads his statement – item 14 in the Applicant’s Bundle. Two children: Scott (dob 10/05/1967) and Lee (21/04/1969). The lower half of the land was used for games; the top half was for kickabout and larking about.

Q) Why is the area on Bradford MDC1 a neighbourhood?

A) Neighbourhood – most people know each other and help each other as a community; I look in on Miss Bowler. There is a neighbourhood watch – I’m not in it – I think it covers the lower half of the estate. The area is not known by any local name – it is simply the upper part of Allerton.

DM Why aren’t the houses west of Hill Top Lane part of your neighbourhood?

DH The neighbourhood is the main area of communication.

DM Are there any shops in your neighbourhood?

DH There is a fish shop at 455 and a pub at 457. There are shops north of Allerton Road.

DM Are there any community facilities in the neighbourhood?

DH No – They are further down Allerton Lane.

Q) Why are there few statements from the eastern part of the neighbourhood?

- A) It is a question of accessibility – I believe that people from wide out use the land – I wouldn't recognise them – people have said children from that area use the land.

XX by Mr Partington

- Q) What is Allerton?
- A) It is a village; it is rural.
- Q) What makes the Bradford MDC1 area a definable community?
- A) People know each other.
- Q) Is it fair to say that the real neighbourhood is Allerton?
- A) No – a lot of the area to the north was built after the chosen neighbourhood area.
- Q) If Bradford MDC1 is right then it appears your supporters are all from very close to the sites.
- A) It would be physically impossible for me to visit all these people.
- Q) “Wet Wednesday Afternoon Test” – you wouldn't see anyone – the real use is occasional dog walkers and children kicking a ball about at the weekend.
- A) I disagree – it is used far more.
- Q) You haven't photographs of use pre-application.
- A) No.

DM

- Q) Re undated document soliciting support – where was it placed.
- A) I think I posted it around the area – I didn't post it in the whole area edged green – I don't know the number I posted.
- Q) The Petition Letter was placed in the newsagents on Allerton Road – opposite side to the fish shop. It was up for 2 or 3 weeks.
- Q) It attracted 26 signatories?
- A) Yes.
- Q) And only a handful came from within the claimed neighbourhood.
- A) Yes – that is fair – but it could be because a lot of the people in the neighbourhood had letters posted by me.

(2) **Mrs Mullaney** (Statement No. 4)

Mrs Mullaney confirms her statement is correct. 1992 I lived at 11 Grange Avenue which is at the bottom of Allerton Road – outside the green area on Bradford MDC1. I moved about 10 years ago to 21, Woodlands Grove in Heaton – it is a couple of miles away from the claimed land.

DM When you lived at Grange Avenue did you regard the green area as a separate neighbourhood?

A) No – the area around Cote Lane is very close. A lot of people have lived there a very long time. The people in the area are very close – its called “the top” of Allerton.

DM So you meant “yes” rather than “no”?

A) Yes.

DM Usage?

A) The land is used by the kids from Hill Top and Cote Lane regularly – Allerton Road is very busy and parents don’t let their children cross it. It is well used. Bigger events draw people from a wider area.

Mr Hemsley

Q) The photographs attached your statement?

A) The picture show my in-laws using the land for recreation in the 1970s and 1980s and there is a picture from 1998/9 – the lady is Sheila Simpson but I can’t recall what the event was – there were a lot of events. We called it “our green”. We had a Jubilee event on the land. There were a couple of hundred there – a lot of people came from Cote Lane and Hill Top but people came from further down Allerton.

XX Mr Partington

- Q) In 1992 where did you live?
- A) Grange Avenue – it isn't within the green line but my husband and extended family came from Cote Lane area.
- Q) How often did you visit your in-laws at 7 Cote Lane?
- A) Regularly – several times per week.
- Q) The chief use of the land was by the children of the households adjacent to the land?
- A) True – but kids from Downside Crescent play football on it.
- Q) Is that within the green line?
- A) No.
- Q) What makes the area within the green line a special distinct area within Allerton?
- A) The top end is posh; the bottom end is rough and the middle is its own area. Allerton is made up of different territories – it is known as “the top of Allerton”.
- Q) The top of Allerton is a wider area isn't it?
- A) No.
- Q) But don't the people who live north of Allerton Road – say at No. 500 – live in the “top of Allerton”?
- A) Yes – this green line is only drawn as it is because that is where the green is.
- Q) Where do the users come from?

- A) The whole of Allerton.
- Q) The estate is wider than the green line?
- A) Yes – Allerton is made up of private and council housing.
- Q) Where was the 1950s estate built?
- A) In the middle.

(3) **John Cummings** (Statement No. 9)

Confirms statement. Lived in 2 Egerton Grove for 44 years. We were first ones to move into Egerton Grove. There were a lot of children and they all grew up together – they played together and the safest place was the application site. It was mainly football and cricket. My eldest lad played golf on it.

DM Did adults use it?

A) It was mainly the children.

DM Over the last 20 years?

A) The pattern has been the same and the girls play rounders.

I am not sure where the children come from. A lot are small – they seem to be from the main Cote Lane area ie. the houses that front onto and back onto the green.

XX

Q) You can't therefore say if the children who use it are from within the green area?

- A) Correct.
- Q) But your belief is that the users come from the area adjoining the land?
- A) Yes – I assume so.
- Q) When is the use?
- A) After school; weekends and all day in the holidays.
- Q) You don't suggest adults really used it?
- A) No – they took children to it sometimes.
- Q) Why is the green line area a neighbourhood?
- A) It is the top of Allerton – the estate is lower down. Allerton is divided into areas – this is the top.
- Q) Does it have a name – this community?
- A) No.

Re-X

- Q) Use by adults?
- A) Dog walkers – they walk around the edges.

(4) **Janet Barrett** – Statement No. 51

9, Cote Lane. Confirms statement is correct. Lived at the address since 1988. I have 3 children: 11/07/1971; 09/04/1974; 01/11/1978. It is a wide community – it is a big estate. I see a neighbourhood as a place where people take ownership of where they live.

My immediate neighbourhood is the people I know so I see that as Cote Lane but when we did the street party we invited people as far as Hill Top.

DM - Why stop at Hill Top?

A) The green can only accommodate so many – and therefore that was the factor.

Children from Cote Lane and Kildare Crescent use it – obviously the children on Cote Lane have friends from other streets. The other green space is across Allerton Road – so it is dangerous to cross. Dog walking is a big aspect of use of the land – some people walk around it but some walk across it as well. People who came to the street party came from far and wide.

XX

Q) Usage?

A) People from Cote Lane and Egerton Grove.

Q) How do you define neighbourhood – you said, “it’s people I know”?

A) Yes – it is how I define it.

Q) The green line isn’t one council estate?

A) No – it is part of a council estate – it goes further east.

- Q) So the only defining characteristic is the big roads to the N, S and E?
- A) There are big roads.
- Q) Have there been any other street parties apart from the Jubilee in 2012?
- A) There was something way back – I can't recall what it was.
- Q) So the main use is children playing and dog walking?
- A) Yes.
- Q) And the users come from Cote Lane not the wider area?
- A) I don't agree.

12:45pm Councillor Sykes interposed

22/01/2012 Council resolved to continue to prioritise play [reads part of the resolution]. Councillor Sykes states it is necessary for me to be aware the Council's resolved position. [DM tells the Councillor that he is concerned with the statutory test only but thanks him for his attendance.]

(5) **Miss Alice Bowler** (Statement No. 2)

16, Cote Lane. Confirms statement. Lived at number 16 since 1947/8. The estate wasn't there then – it was all farmland. The Council CPO'd it. I only ever lived away for 12 months; I went to Stafford and when I got back the estate had just started to be built. Children play on the green – it isn't safe to cross Allerton

Road. Children like to play in front of their own house. The children kick balls about; they build snowmen. They play cricket and run about. I've walked on it with my dog in the past. Horseriders come along from the farm and sometimes they cross over the grass. I went to the 2012 Jubilee Celebrations; there were a lot of people.

XX

Q) How do you describe where you come from?

A) Allerton.

Q) Not "top Allerton"?

A) No.

Q) The Council built an estate in the 1950s?

A) Yes – late 1950s – around 1958.

Q) The area of the green was left grassed?

A) Yes.

Q) It has been mowed over the years?

A) Yes – it is done quite regularly.

Q) Can you recall any big celebrations other than the Jubilee on the green?

A) No – there may have been the odd family holding a get-together on the green.

Q) Have you seen rounders on the green?

- A) They might.
- Q) Is it small children who use the green?
- A) Yes.
- Q) Not teenagers?
- A) No.
- Q) Golf?
- A) I haven't seen it.
- Q) Kite flying?
- A) Not a lot.
- Q) Camping?
- A) No.
- Q) Dog walking?
- A) Yes.
- Q) Where are the dog walkers from?
- A) -?
- Q) Where are the riders from?
- A) I don't know.
- DM - Has the green always been mown and looked after – right
from when the estate was built?
- A) Yes.

(6) **Mr Alan Ward** (Statement No. 11)

485 Allerton Road. Confirms statement. Lived at address since 1988. It was (the green) well used by children. It was used largely by young children. It is still used. When it snowed recently there were snowmen and igloos all over.

DM

Q) Is the green line a neighbourhood?

A) Yes – it has its own identity – people like to stay in their own area.

Q) Why isn't the land to the east of Hill Top Lane part of the neighbourhood?

A) It is the other side of the road.

Q) Cote Lane runs through the middle of the neighbourhood – so a road can't be a defining characteristic or cut-off – can it?

A) In that case I have no idea.

(7) **Dianne Coulton** (Statement No. 7)

15 Cote Lane. Confirms statement. I have lived at 15 Cote Lane for 5 years. Children play on the green a lot. Dog walkers use it. I have only seen horses on the green when they are trying to get younger horses used to the road.

XX

Q) The land has been laid out and looked after by the Council?

A) Yes.

Q) Football?

A) That is the main use.

Q) Cricket?

A) Just the once.

Q) It is little children who use it – not the bigger ones?

A) Yes.

Q) Do you know the children?

A) Yes – they are my neighbours.

Q) So the children are from round the green itself?

A) Yes – sometimes they have friends but I don't know where the other children are from.

Q) When were your photographs taken?

A) 2012.

Q) Why is the area of green a neighbourhood?

A) I wouldn't say it is restricted – I think the net could be, "more widely cast".

Q) The estate is split into top, bottom and middle?

A) Yes.

Q) There are no clearly defined boundaries – is it a bit of a blur?

A) I agree.

XIII The above witnesses, who numbered 7 people were only half of those listed to speak at Tab C of the Applicant's bundle. I have treated the statements that were not spoken to in Tab C as written submissions. Similarly I have had full regard to the written submissions at the Applicant's Bundle Tab E. The Tab C and Tab E written submissions do not engage with the concept of "neighbourhood" and therefore provide me with little in the way of assistance. The deponents almost all come from within the green line on MDC1 ie. the chosen "neighbourhood" and tell a similar story to those who attended and gave evidence namely use of the land primarily by young children and dog walkers.

XIV I note the petition submitted by the Applicant but the document does not assist being a collection of signatories, many from beyond the chosen neighbourhood, which simply express support for the application. In short it does not in any way, shape or form engage with the statutory criteria.

Analysis

XV **"Neighbourhood"**

I say at the outset that this criterion is not satisfied. The reliance upon one area as a "neighbourhood" for application submission purposes and then the sudden amendment on day 1 of the Inquiry to indicate reliance upon a

smaller area was symptomatic of the Applicant's own unease with this issue. A similar uncertainty was apparent in some of the Applicant's witnesses: Janet Barrett felt that the green line had been drawn to reflect the bearing capacity of the green usage; Alice Bowler declined to describe herself as a resident of "top Allerton"; Mr Ward did not know why the housing east of Hill Top Lane was not part of the neighbourhood relied upon. Certainly my own visit to the area revealed that Hill Top Lane is a lightly trafficked estate road which does not present itself as any sort of barrier or dividing line.

XVI I must say that I found Mr Hemsley's approach to this whole issue to be confused. It is clear from MDC1 that those who have made oral or written submissions in support of the Application are drawn from an area that is very close to the Application land. I asked Mr Hemsley why there was almost a total absence of representations from the eastern part of the neighbourhood as chosen beyond Cote Lane. He suggested he only posted letters seeking support across a band of addresses close to the site saying it would be difficult to deliver letters to all of the houses within the neighbourhood. I struggle with this – there are no more than 200 addresses within a relatively small area contained within the chosen neighbourhood.

XVII From my own site visit I noted the neighbourhood to have a mixed character largely made up of post-war public and private sector housing.

I have not been provided with evidence of any particular cohesiveness or sense of identity in respect of the green line area and I am forced to conclude that the “neighbourhood” as chosen is little more than an area with arbitrary boundaries.

XVIII **“Significant Number”**

Even if the green line area could be considered to be a neighbourhood the evidence did not demonstrate use by the community contained by the green lines. As document MDC1 makes plain those who support the application are drawn from the houses adjacent or otherwise very close to the application land. These witnesses speak of their children using the land and no doubt those children had friends who lived in houses from further afield both within and without the green line boundary. But this limited use by small children from a primarily narrow area cannot be equated with community use. Apart from the Jubilee celebrations, which post-date the claim, there was no evidence of community use of the land. Insofar as dog walkers used the land many seemed to follow a route around its edges and in any event most seemed to be drawn from the areas immediately around the site. The overall impression is therefore one of use limited to successive generations of younger children who were drawn from the houses in the immediate vicinity of the application site. I cannot reconcile this with the notion of general community use over the claimed neighbourhood area.

XIX **“As of Right”**

It is quite clear that the Application land was acquired as part of a larger parcel of land purchased to provide housing in 1954. It is also clear that as part of the housing development the land was laid out as open space. Nothing turns upon whether this was done pursuant to the exercise of S79 ibid or S80 ibid powers. The simple fact is that the land was laid out as open space for recreational use pursuant to statutory powers. It follows that any use until 2003 would certainly have been by right and not as of right. Clearly to have suggested that users up to that point were technically trespassers would have been absurd.

XX The position post-2003 consequent upon the S123 ibid disposal was not directly addressed in submissions and such submissions were not strictly necessary ie. the Applicant has to establish use “as of right” from March 1992, in order to show the necessary 20 year period of use. As use was by right until 2003 he plainly cannot do that. The status of the land post-2003 vis-à-vis the “as of right” versus “by right” debate is unclear. Certainly the land was not held pursuant to the provisions noted under S123(2)(b) ibid and hence those provisions do not expressly bite. Nonetheless the logic of the provisions begs the question as to whether the statutory duties that arose under S79 ibid or S80 ibid carried over to Incommunities or whether the disposal freed the land from its previous statutory duties? Much may turn upon the terms of any agreement Incommunities was subject to in

purchasing the land. However as noted these matters need not detain me as, on any view, 20 years use, “as of right” cannot be achieved in this case.

XXI I thank Mr Hemsley and the advocates who attended the Inquiry for their assistance. Mr Hemsley’s task was far from easy but he discharged his duties with diligence and commendably plain dealing.

XXII For the reasons set out above I recommend that the application be rejected.

D E MANLEY QC