REPORT FOR DECISION

Bury COUNCIL

Agenda Item	8

MEETING:	**PLANNING CONTROL COMMITTEE**
DATE:	**24th JUNE 2014**
SUBJECT:	**VILLAGE GREEN APPLICATION AT CHURCH FIELDS, RAMSBOTTOM**
REPORT FROM:	**HEAD OF PLANNING POLICY AND PROJECTS (RESOURCES AND REGULATION)**
CONTACT OFFICER:	**CHRIS WILKINSON**
TYPE OF DECISION:	**COUNCIL**
FREEDOM OF INFORMATION/STATUS:	This report is within the public domain

SUMMARY: Bury Council is the Registration Authority for Town or Village Greens in the Borough. In April 2013 it received an application to register land known as 'Church Fields', east of Bolton Street in Ramsbottom as a Town or Village Green. Following a formal consultation period a Public Inquiry into the application was held in March 2014 by an independent Inspector. The Inquiry Inspector's report has now been received. Committee is requested to consider the Inspector's findings and determine the application.

OPTIONS & RECOMMENDED OPTION

Option 1 (Recommended)
Accept the Inspector's recommendation and reject the application to register Church Fields, Ramsbottom as a Town or Village Green.

Option 2 (Not recommended)
Reject the Inspector's recommendation and approve the application to register the land at Church Fields, Ramsbottom as a Town or Village Green.

IMPLICATIONS:

Corporate Aims/Policy Framework:	N/A
Statement by the S151 Officer: Financial Implications and Risk Considerations:	The land in question is in private ownership; there are no financial implications for the Council.
Statement by Executive Director of Resources and Regulation:	There are no wider resource implications arising from the report.
Equality/Diversity implications:	None.
Considered by Monitoring Officer:	'Village Green' is a legal status for land and Metropolitan Boroughs are Registration Authorities for processing applications for this status. There are regulations on procedures for dealing with applications.
Wards Affected:	North Manor
Scrutiny Interest:	N/A

TRACKING/PROCESS **DIRECTOR: Graham Atkinson**

Chief Executive/ Management Board	Cabinet Member/Chair	Ward Members	Partners
Scrutiny Commission	Committee	Council	
	24.6.14		

1.0 BACKGROUND

1.1 Town and village greens are defined as areas of land where local people have for many years indulged in lawful sports and pastimes, which might include organised or informal games, picnics, fêtes, dog walking and similar activities. A Green can be in private ownership and maintained by the landowner but many Greens are owned or maintained by Councils.

1.2 Section 15 of the 2006 Commons Act enables anyone to apply for land to be registered as a Green if it has been used by a significant number of local people 'as of right' (i.e. without permission, force or secrecy) for lawful sports and pastimes for at least twenty years. Applications are made to the commons Registration Authority. If registered, Greens are

then protected through the 1857 Inclosure Act and the 1876 Commons Act. A Registration Authority is required to keep a register of Town or Village Greens in its area. At present there are none registered within the Council's area.

2.0 THE APPLICATION FOR CHURCH FIELDS, RAMSBOTTOM

2.1 Bury Council is the Commons Registration Authority for Town or Village Greens in the Borough. In April 2013 it received an application to register land known as Church Fields, off Bolton Street in Ramsbottom, as a Town or Village Green. The land is shown edged in red on the plan at Appendix 1 and is in private ownership.

2.2 Following a formal consultation period, the landowner objected to the registration on the basis that the statutory criteria had not been met. A Public Inquiry into the application was held on 4-6 March 2014 at Ramsbottom Civic Hall and concluded on 31 March at Bury Town Hall by an independent Inspector. The Inquiry Inspector's report has now been received and is attached at Appendix 2.

2.3 Registration Authorities have to assess whether a *significant number….of inhabitants of a locality….have indulged in lawful sports or pastimes…as of right….on the application land….for at least twenty years*. It also has to consider any date of cessation, periods of interruption and relevant planning permissions.

Inspector's findings

2.4 The Inquiry Inspector's report on the application and evidence runs to fifty pages. His overall conclusion and recommendation is that the application doesn't adequately identify a qualifying neighbourhood and doesn't sufficiently demonstrate use of the application land by people of the neighbourhood other than of the public footpath and permissive path across it. He therefore recommends that the application be rejected by the Registration Authority.

2.5 In arriving at this position he looked at written and oral evidence of use of the site over time and attempts by the landowner to manage or prevent use. His two main findings were firstly that he didn't think the town of Ramsbottom could be defined as a neighbourhood, being instead, a collection of neighbourhoods. Secondly, apart from sledging, a very occasional or transitory use, he didn't think there was much evidence of people using a substantial proportion of the application land.

3.0 CONCLUSION

3.1 'Town or Village Green' is a legal status for land and the Council is the Registration Authority for this purpose. Having received an application, carried out consultation, convened a Public Inquiry and received the Inquiry Inspector's report and recommendation, the Council must now determine the application.

List of Background Papers:-

Evans, A (1.6.2014) Report on application to register Church Fields, Ramsbottom, as a Town or Village Green - Attached

Further information

DEFRA (2006) Commons Act 2006 Factsheet 5: Town and Village Greens
DEFRA (2013) Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green outside the pioneer implementation areas
DEFRA (2013) Interim Guidance to Commons Registration Authorities on Section 15C of the Commons Act 2006

Website:-
https://www.gov.uk/town-and-village-greens-how-to-register

Contact Details:-

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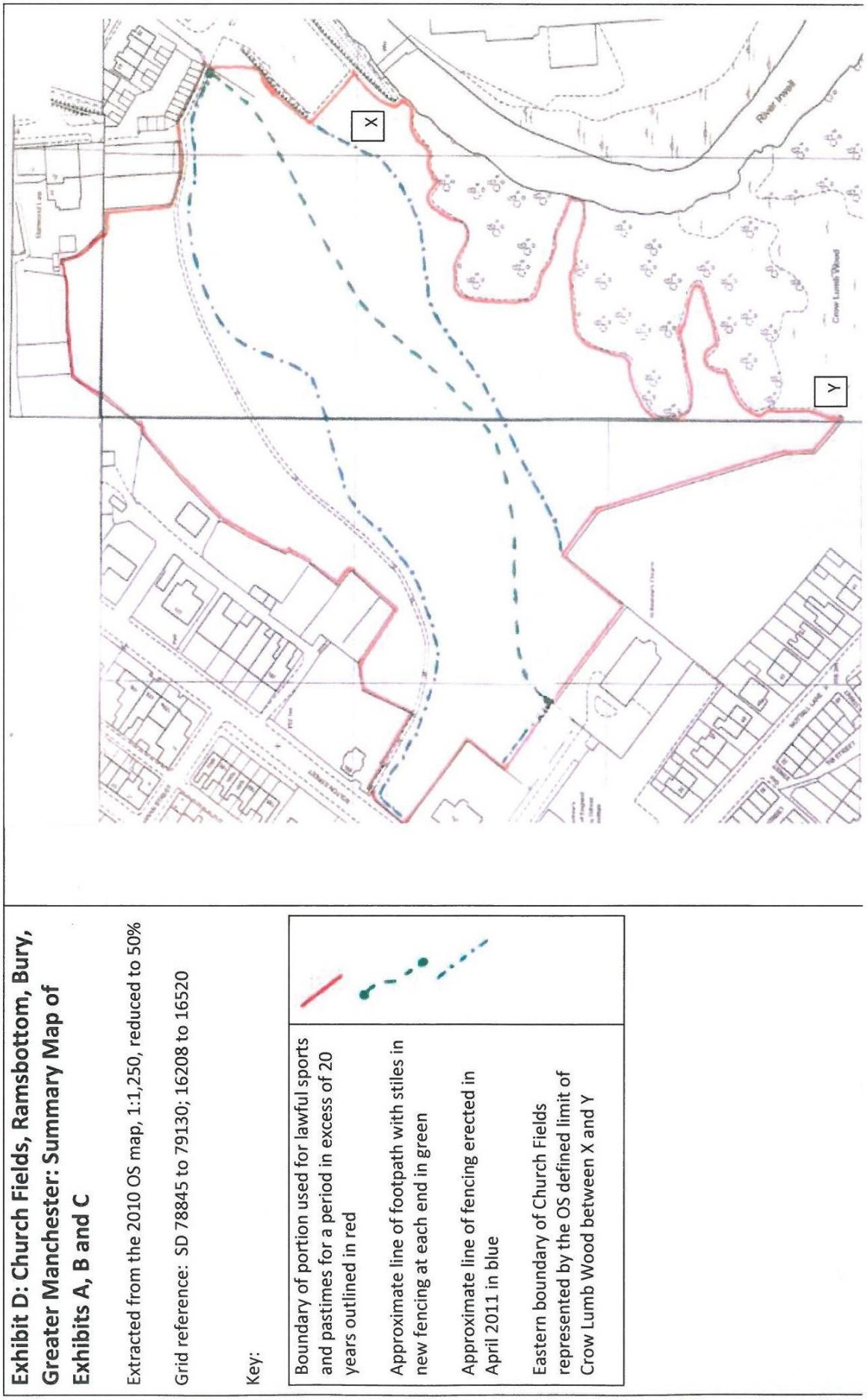
Appendix 1 – VILLAGE GREEN APPLICATION SITE PLAN.



APPLICATION TO REGISTER CHURCH FIELDS, RAMSBOTTOM AS A TOWN OR VILLAGE GREEN

REPORT

By
Alan Evans
Kings Chambers
36 Young Street
Manchester
M3 3FT

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Recommendation: the Application should be rejected.

(1) INTRODUCTION

1. I am instructed in this case by Bury Metropolitan Borough Council in its capacity as registration authority for town or village greens ("the Registration Authority") in order to assist it in determining an application to register land known as Church Fields, Ramsbottom ("the Application Land") as a town or village green ("the Application").

2. The Application was made by the Ramsbottom Heritage Society ("the Applicant") on 12th March 2013.

3. My instructions were to hold a public inquiry to hear the evidence and submissions both for and against the Application and, after holding the inquiry, to prepare a written report to the Registration Authority containing my recommendation for the determination of the Application.

4. The inquiry was held at Ramsbottom Civic Hall on 4th-6th March 2014 and at the Town Hall, Bury on 31st March 2014.

5. At the inquiry the Applicant was represented by Mr Andrew Todd and the objector, Peel Investments (North) Limited ("Peel"), by Mr Giles Cannock of counsel. I thank Mr Todd and Mr Cannock for their assistance at the inquiry. I also thank the Registration Authority and, in particular, Mrs Vivienne Walker, for arranging the inquiry and providing all necessary administrative support.

6. I visited the Application Land and walked over it before the inquiry began and made further visits to it during the course of the inquiry. I have also walked extensively around the vicinity of the Application Land and have driven more widely around the area relied upon as the qualifying neighbourhood. With the agreement of the parties I did not hold an accompanied site visit.

(2) THE APPLICATION

7. In this section of the report I provide a broad overview of the Application and the course taken by the process up until the inquiry. I do not seek to summarise here in any detail the contents of the material generated at the various stages but have read it all, carefully considered it and had regard thereto in coming to my conclusions.

8. The Application sought the Registration of the Application Land under section 15(1) of the Commons Act 2006 ("the 2006 Act") on the basis that section 15(3) applied.

9. Section 15(3) of the 2006 Act applies where –
   (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
   (b) they ceased to do so before the time of the application but after the commencement of this section; and
   (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).[1]

10. The cessation of qualifying use was identified to have taken place on or about 25th April 2011 at which point post and wire fencing was erected on the Application Land.

11. In answer to the question on the application form (form 44) which sought details of the locality or neighbourhood within a locality in respect of which the application was made the answer originally given was that *"Church Fields relates to Ramsbottom Electoral Ward, and particularly to the nucleus of terraced streets within, and to the south west of, the town centre, which before 1974 was in Central Ward."* A map supplied in an appendix identified the 1864-1974 boundary of Central Ward.

[1] The "grace" period of two years was reduced to one year by section 14 of the Growth and Infrastructure Act 2013 by an amendment which became effective on 1st October 2013: see article 6 of the Growth and Infrastructure Act 2013 (Commencement No. 2 and Transitional and Saving Provisions) Order 2013/1488. Under article 8(2) the coming into force of section 14 of the 2013 Act has no effect in relation to any cessation which occured before 1st October 2013.

12. The Application was supported by 29 completed evidence questionnaires gathered in 2012 (and addendum questionnaires gathered in early 2013 from 16 of the respondents in relation to the issue of signage), an additional 8 letters (each from a person who had completed an evidence questionnaire), an analysis of the evidence questionnaires and letters in support and a justification for the Application.

13. As landowner, Peel objected to the Application through its solicitors, Gordons, on 6th June 2013 ("the Objection"). The Objection relied on a number of grounds and was accompanied by several appendices which included various plans and a witness statement from James Linton of 217 Nuttall Lane which spoke, amongst other things, of horses having been grazed on the Application Land up until 2004 in a rotational fashion controlled by the roping off of particular areas and the placement of signs indicating "please do not feed the horses" and "no trespassing". The Objection also pointed out that a small part of the Application Land (south east of St Andrew's Church) was owned by Bury Council and that the Ramsbottom Electoral Ward had only come into existence in 2004 and had not therefore been in existence for the whole of a 20 year period pre-dating the Application.

14. On 14th January 2014 the Registration Authority issued directions for the holding of the inquiry.

15. By a document dated 31st January 2014 the Applicant replied to the Objection in a detailed submission document ("the Submission") which was then served on Peel to comply with the Registration Authority's direction in respect of the service of any further documentation. The Submission was accompanied by a number of exhibits and appendices which included some 118 further evidence questionnaires gathered in 2013 after the Objection as well as more than 20 letters of support (some supplementing questionnaires and some freestanding).

16. The Submission also put forward two amendments to the Application as it had been originally submitted. First, the area of the Application Land was revised by the exclusion of an area occupied by woodland (part of Crow Lumb Wood) which had formed (broadly speaking) the south eastern part of the Application Land as originally shown on the Application plans. By this revision the south eastern boundary of the

Application Land was made to lie coterminous with the southern fence line erected in April 2011 and to correspond effectively with the woodland edge. It was explained that the intention had always been to register only the grassland area of the Application Land and that the original sinuous south eastern boundary of the Application Land had been sourced from the woodland edge shown on a 2010 Ordnance Survey map which, it was now considered, did not reflect the reality on the ground. The revision also had the effect of removing from the Application Land the small part in Bury Council's ownership. Secondly, the Submission amended the case made in respect of locality/neighbourhood and explained that the Application was to be considered as one made on the basis of "limb (ii)" (that is, a neighbourhood within a locality as opposed to simply a locality), the neighbourhood being an area identified as the Ramsbottom Town Centre neighbourhood ("the Claimed Neighbourhood") within the locality of the Ramsbottom Electoral Ward. It was also mooted that there might be a case for regarding the Broad Hey Estate as a separate neighbourhood. Mr Cannock did not object to the amendments and I am satisfied that there is no reason why the Application should not be considered as so amended. I approach it on that basis and recommend that the Registration Authority do likewise.

17. In preparation for the inquiry Peel submitted a ring binder of evidence containing, inter alia, a number of further witness statements additional to the one from Mr Linton which had formed part of the Objection.

(3) PROCEDURAL ISSUES

18. Mr Todd complained in his opening remarks that he considered that the conduct of Gordons in the build up to the inquiry, including late service of further witness statements on 28th February 2014 (and, in particular, a third witness statement from Mr Linton), had occasioned prejudice to the Applicant's case. Mr Cannock explained that Peel had been confronted in the Submission with a case which was different in significant respects from that originally made and a large body of fresh evidence not previously seen. The decision could simply have been made to deal with the matters which Mr Linton had raised in his third witness statement by way of oral examination of Mr Linton without any advance notice of what he was to say. It was considered fairer to the Applicant to put something in writing first. I think that it is important to

note that, beyond raising the complaint, Mr Todd did not request me to do anything in response thereto, whether by way of granting him more time, an adjournment or dealing with the matter in some other way. It does not seem to me therefore that this complaint leads anywhere. In his closing submission Mr Todd also complained that there had been inadequate time to cross-examine Mr Linton with the consequence that the cross-examination had had to be rushed and was not able to test significant elements of Mr Linton's evidence. I am not able to accept this. Mr Linton was cross-examined for some three hours by Mr Todd in great detail, with considerable thoroughness and no little skill. At the point at which Mr Todd indicated that he would conclude his questioning I specifically invited him to continue further if he wished. Time was available to do so. Mr Todd declined. I do not consider that there are any justifiable grounds to complain of procedural unfairness.

(4) THE APPLICATION LAND

19. The Application Land is an area of about 6.5 acres in extent[2] which lies to the south of the town centre of Ramsbottom. On its south western side it is bounded by St Andrew's Church (from which is derived the name Church Fields) and the access drive to the Church from Bolton Street (although a narrow plot of Church owned land lies immediately between the access drive and the Application Land). Further to the south west is Nuttall Lane. To the north west of the Application Land lies Bolton Street. Grants Lane runs in from the north off Kay Brow towards the eastern end of the Application Land which, at its easternmost point, extends to the westernmost continuation of the road from Railway Street. To the south east of the Application Land lies Crow Lumb Wood which slopes down to the east to the River Irwell. The Application Land is quite steeply sloping with a general direction of fall towards the bottom of the Irwell Valley from south west to north east.

20. The present and former access points to the Application Land are and were as follows. First, there is access from the access drive to the Church across a plot of hardstanding (in the Church's ownership) to a post and wire fence on the boundary of the Application Land in which there is a stile. The post and wire fence and the stile were

[2] Measurement sourced from the plan accompanying Mr Cannock's closing submissions.

erected in April 2011 and did not exist prior thereto. Previously access at this point was across a trampled down chain link fence on the boundary of the Church's land (as referred to subsequently in the account of the evidence given at the inquiry).

21. Secondly, there is access from a narrow frontage strip of the Application Land on Bolton Street where a paved footpath which is a definitive public right of way – Footpath 81 – leaves Bolton Street via some steps to run across the Application Land. The only access point here at present is on Footpath 81 because a fence (again erected in April 2011) prevents access from the rest of the frontage strip. Previously it was possible to enter the Application Land not just via Footpath 81 but also by stepping across the remains of a former wall running along the back of the Bolton Street footway. (Again this point is referred to subsequently in the account of the evidence given at the inquiry). Footpath 81 runs in a generally easterly direction, downhill to the eastern extremity of the Application Land to meet the road coming in from Railway Street. In its western section Footpath 81 runs in a marked valley feature with quite steep slopes down from land to the north and to the south. Before the erection of a fence in 2011 Footpath 81 was not segregated from the rest of the Application Land at all. The present position is that so much of the Application Land as is to the north of Footpath 81 remains undivided from Footpath 81 but the greater part of the Application Land to its south is separated therefrom by a fence which runs across the top of the cross fall down to Footpath 81 and, further east, directly alongside Footpath 81 itself.

22. Thirdly, there is access to the Application Land via an unmade path which leads off the footpath from Rose Hill (which is located of Bolton Street) to Grants Lane.

23. Fourthly, there is access to Footpath 81 on the Application Land directly off the southern end of Grants Lane. Presently the fence immediately alongside Footpath 81 prevents further access on to the Application Land beyond Footpath 81. Before the fence was erected in April 2011 there was unimpeded access across Footpath 81 to the rest of the Application Land at this point.

24. Fifthly, at the eastern most extremity of the Application Land where it meets the road running in from Railway Street, there is a post and wire fence with a stile providing

access. Before the fence was erected in April 2011 there was unrestricted access to the Application Land from this point.

25. A trodden route exists between the stile at the top of the Application Land near St Andrew's Church described in paragraph 20 above and the stile at the bottom described in the preceding paragraph. In December 2012[3] signs were erected next to the stiles indicating that the route was a permissive path only and that access to any other land was prohibited. It is convenient to call this route the Permissive Path to give it a shorthand title and distinguish it from Footpath 81.

26. There is now a good deal of tree and vegetation cover on the Application Land although there are also more open grassy slopes, particularly in its higher reaches. It does not appear to be in dispute that it has been more open in the past. It is common ground that some grazing has taken place on the Application Land in the area enclosed by the fences since their erection in 2011.

(5) THE EVIDENCE IN SUPPORT OF THE APPLICATION

27. This section of the report contains a summary of the oral evidence which I heard at the inquiry in support of the Application. I do not consider it necessary to summarise the written evidence, all of which is available to the Registration Authority and all of which I have taken into account. The summary of the oral evidence is precisely that. It does not purport to be a verbatim or full record of everything which was said.

28. **Linda de Ruitjer** of 5 Earl Road, Ramsbottom said that she had lived at that address since 1998 but, from 1994-1998, had lived at 40 Nuttall Lane. Mrs de Ruitjer particularly gave evidence in respect of the period 1994-1998 saying that she walked on the Application Land daily during that period with her dog, entering the Application Land from the access drive to St Andrew's Church where she was able to stride over the trodden down remains of a green chain link fence. She said she followed her dog down the slope all over the grass but agreed that her evidence questionnaire referred to her having marked on the accompanying map the path she

[3] The date is taken from paragraph 2.8 of the Objection.

had always used (the Permissive Path). She saw other walkers and dogs and the Application Land was used as a through route from one part of the town to another. She had not seen any horses, or evidence of them, on the Application Land. She was an active member of the Ramsbottom Heritage Society. Ramsbottom had a close sense of community. Prior to the inquiry she had not seen the boundaries of the claimed neighbourhood identified on any plan.

29. **David Carroll** of 14 Bolton Road West, Ramsbottom said that he had lived at that address since 2001 and had lived at 27 Grants Lane from 1987-1994. Until the 1970s/1980s there had been kissing gates at the Bolton Street and Grants Lane entries to the Application Land and, at this time, there had been the odd horse on the Application Land but there were never any horses after that or any ropes. The wall at Bolton Street had been damaged by a vehicle over 20 years ago and was never properly rebuilt. When he lived at Grants Lane, he walked a dog on the Application Land between 1989 and 1993. There was no fencing preventing access from Grants Lane. He also walked a dog on the Application Land from 2001-2004 when living at Bolton Street West, accessing it over a trampled down chain link fence alongside the access drive to St Andrew's Church. There had been nothing to stop access here in the period 1991-2011. He followed his dog everywhere on the Application Land but had not regularly gone on the area to the north of the paved path. When he lived at Grants Lane the residents there had had a bonfire and fireworks on the Application Land on bonfire night. He could also remember sledging on the Application Land from this time. He had trained on the Application Land when he had played for Ramsbottom United up until about 1991.

30. **Michael Bray** of 17 Barwood Lea, Grants Lane, Ramsbottom said that he had lived at that address since 2003. He had walked a dog on the Application Land since then, there never having been anything to stop access before April 2011, following the dog all over the Application Land. There were lots of small paths on the Application Land between the two main paths (which were visible from aerial photographs). He had seen walkers, dog walkers and cyclists on the Application Land but had never seen any horses there (or evidence of them) or areas roped off for grazing. People generally followed trodden paths but dogs did not. He had satisfied himself that there were no horses on the Application Land before buying his house because one of his

reasons for purchasing it was for its access to a dog walking area. There had been an extensive area of Japanese knotweed infestation on the Application Land next to his house which had been removed about a year to 18 months before the fences went up.

31. **Carole Crompton** said that she had lived at 62 Stanley Street, Ramsbottom since 1981 and that from the late 1980s until about 2003 she had frequently gone on to the Application Land, via the steps from Bolton Street, with her three sons when they were younger and before they old enough to go out on their own. They had all gone to St Andrew's Primary School, the eldest having started there in 1988 and the youngest having finished there in 2004. The Application Land was a great place for running, cycling and roly-polying. They had also sledged there on many occasions. There had not been any fences, ropes or signs. There had not been any horses either. Mrs Crompton was scared of horses, would have noticed their presence and would have stayed clear. She, and her sons, would have obeyed any signs. The neighbourhood was bound together by the people she knew, the people she worked with, the school and the skating events she had organised to raise money for a skate board ramp in Ramsbottom. The people of Ramsbottom, and Ramsbottom, were her neighbourhood. She had not seen a map of the Claimed Neighbourhood before.

32. **Kenneth Alan Crompton** (the husband of the previous witness) said that he had lived at 62 Stanley Street since 1981. He had gone on to the Application Land daily with his children from after his first son was born in 1983 to the late 1990s, accessing it by stepping over the low wall (which was only a foot or so high) at Bolton Street alongside the steps. The children played roly-poly on the grass slopes. They flew kites at the top of the Application Land. As his sons got older Mr Crompton took them to the Application Land to ride their BMX bikes on the Permissive Path. Paths made by walkers, dog walkers and cyclists led down to the paved path and there were other side tracks as well. Mr Crompton often saw dog walkers all over the Application Land. He had also seen blackberry picking there. The area was very popular for sledging. Mr Crompton also used the Application Land as a route to the town centre. He had gone off the two paths. He had never seen horses on the Application Land, roped off grazing plots or "no trespassing" signs. There used to be a public footpath sign at the end of Railway Street but this was taken down at the same time as the fences went up in 2011.

33. **Marcia Fletcher** of 91 Bolton Street, Ramsbottom said that she had lived at that address since 1976, had been a dog owner for most of the time from then (but had not had a dog in the period 1997-2004) and had walked very frequently and regularly on the Application Land with or without dogs over the whole period. She could roam freely there or follow the wanderings of her dogs or grandchildren. She would walk everywhere. Lots of people used the Application Land as a short cut and others went on the field. People sledged on the slopes when there was snow. Until 2011 she had never seen any fences, stiles or gates and there had been no prohibitory notices. The wall at Bolton Street had been partly demolished by a vehicle some 25-30 years ago. There was nothing to block entry from the access drive to St Andrew's Church where there had been a chain link fence which was down so low it could be stepped over. In the past the Application Land had been more open than it was now. For a while, she thought in the early 1980s, there had been 3 horses tethered on the Application Land but they were not there long. There had been no horses after that until recently following the erection of the fences in 2011. There had been no evidence of horses and she would not have gone on the Application Land with a dog had there been horses. She never saw any roped enclosures. When the fences were erected in 2011 a public footpath sign which had stood where Footpath 81 and the Permissive Path meet and which had pointed, wrongly, up the Permissive Path, was lowered on to the grass before later disappearing. There had been some fly tipping on the lower part of the Application Land. There had been Japanese knotweed near Mr Bray's house. It had been there in 2004 and might have gone by 2008. Mrs Fletcher agreed that, when she had completed her evidence questionnaire in June 2012, she had had in mind something very much smaller than the neighbourhood now relied on by the Applicant. When it was put to her that her evidence on the extent of use of the Application Land was inconsistent with her e-mailed letter to Mr Todd of 1st March 2013 in which she had said that her walking on the Application Land had been "a very pleasant short cut to the shops from the upper part of Bolton Street", that "almost always there would be other people using the paths, both the flagged one and the unmade one" and that "she had never been asked to leave the unmade path, nor had anyone told me I ought not to be using it" Mrs Fletcher said that it was not a case of inconsistency but that she should have said more in her e-mail. She was concerned that regular use of the Permissive Path would stop and that the potential for a right of way to be established would be lost with consequent loss of access to the Application Land.

34. **Martin Kay** of 76 Nuttall Lane, Ramsbottom said that he had lived at that address for 27 years. His wife had played on the Application Land as a child in the 1970s and his family had walked dogs on the Application Land for over 40 years, utilising a number of entrances. Very rarely did they stick to any paths. There was a well-defined line along the Permissive Path route but there were many other offshoots from it. There was a great deal of dog walking on the Application Land. Children's war games had been played to the north of Footpath 81 and, in this area at the bottom of the Application Land, tadpoling had taken place. The condition of the part of the Application Land to the north of the Footpath 81 had remained broadly the same over the last 20 years. He had not seen horses grazing on the Application Land or any signs requesting that the horses be not fed or indicating "no trespassing". A neighbourhood was based on a number of factors such as community, social connection and common institutions (including churches, schools and sports clubs). The Ramsbottom neighbourhood was separate from surrounding neighbourhoods. Mr Kay had had no input into the boundary of the neighbourhood relied on by the Applicant.

35. **Andrew Todd** said that he had lived at 2 Major Street, Ramsbottom since 2007 and, prior to that, at three other town centre addresses. He had moved to Ramsbottom in 1977 and had walked down the path or across the Application Land very occasionally at this time. In 1987, after the East Lancashire Railway opened, Mr Todd went to the Application Land more often to take photographs of trains and landscape views. He used the Application Land particularly regularly after his family moved to 183 Bolton Street in 1993. He regularly took his children sledging there. As they got older his children used the Application Land on their own. Mr Todd had also often walked down Footpath 81 to the station. His evidence questionnaire referred to use of the Application Land several times a year. He could never recall having seen horses or roped off grazing plots on the Application Land but had seen horses on the land near Mr Linton's house.

36. Mr Todd said that he was the President of the Ramsbottom Heritage Society, which had a constitution and membership. He did not think there was any formally minuted decision in relation to the Application but he, Mr Todd, acted under the authority of a letter from the Chairman. The law in relation to locality and neighbourhood had not been understood initially. The Ramsbottom Electoral Ward had been chosen because

the locality had to be an administrative area. The red line boundary of the Application Land had been chosen before witness evidence was gathered but had later been revised. Initially it did include some land in the ownership of Bury Council. It was not possible with the original evidence questionnaires to separate out pre-1991 use. The answer he had given to question 6 ("what locality or neighbourhood within the locality do you believe the right to use Church Fields belongs (eg a particular housing estate or a particular Parish or District)?) in his evidence questionnaire – "the people of Ramsbottom" – had not identified a locality or neighbourhood. He had not understood the subtleties nor had others. Some had not identified any geographical area in answering the question. The neighbourhood was fluid and dynamic, changing year by year. It was fair to say that Mr Kelsey must have had a smaller area in mind than the neighbourhood now relied on because he had only ticked boxes for two facilities in answer to question 7 (asking about the identification of recognisable facilities available to inhabitants of the locality) on the evidence questionnaire he had filled in. Newer development south west of Dundee Lane and Nuttall Lane had not been included in the original qualifying area when the Application was made as part of what was then referred to as the Town Centre (page 5 of the justification for the Application). It was, however, now included as part of the Ramsbottom Town Centre neighbourhood which was relied on. A large number of people from the area now included used the Application Land. It was an element of the approach adopted to draw a line to encompass the addresses of respondents to the 2013 evidence questionnaires. The boundary of the neighbourhood on Bolton Road West went across a line of terraces. The boundary on Chapel Lane and the Rake marked the distinction between Tanners and the village of Holcombe. At Stubbins Lane the boundary followed the local authority boundary. To the east the river was followed as the boundary.

37. In response to further questions about the 2012 evidence questionnaires, Mr Todd agreed that, in answer to question 8, Neville Greenhalgh had said in his evidence questionnaire that there were no public rights of way crossing the Application Land. Gwenda Newton had said that it was not known whether there public rights of way. Mr Todd conceded that there were holes in the original evidence questionnaires which was why there was a second evidence gathering exercise. Question 10 on the evidence questionnaire ("how often did you use the land (apart from any public rights of

way)?") was asked in an open fashion and allowed particularisation of uses at different periods. James Isherwood's reference in his evidence questionnaire to playing school football had been to a part of Church Fields which had later been sold off and was not included in the Application. Christine Brennan had likewise referred to an area outside the Application Land in her evidence questionnaire when mentioning the St Andrew's sports day which was where there was now a football pitch for juniors. This had not been included in the analysis and there had been many activities on the Application Land. Doris Hibbert in her evidence questionnaire had not answered question 10 in terms of specifying how often she had used the Application Land. Mr Todd accepted that there were problems and limitations with the 2012 evidence questionnaires but he did not agree that they were entitled to no weight.

38. The later evidence in 2013 was a response to Peel's objection and tailored to its evidence. Mr Todd considered that the 2013 evidence questionnaire was unbiased. People were not given an opportunity to mark or say what the neighbourhood was. So far as concerned the cover sheet for the 2013 evidence questionnaires, someone reading that might think that, unless he replied, some form of development of the Application Land might take place but the cover sheet required the answers to be honest and independent. It was not until the Objection that it had been realised that evidence of walking off the paths was needed.

(6) THE EVIDENCE IN SUPPORT OF PEEL'S OBJECTION

39. This section of the report seeks to provide a summary of the oral evidence I heard at the inquiry in support of Peel's objection to the Application.

40. **Agnes Mary Price** said that she lived at 69 Meadow Way, Tottington, Bury. She had worked, four days a week, at Horse Bits in Bridge Street, Ramsbottom for a period of 12 years from 1993 to 2005. She recalled when driving to and from work along Bolton Street seeing one or two horses on the Application Land and people sometimes feeding them over the wall. The wall was not very high. There was a bit of post and rail fencing in place but it had a gap and did not go all the way. She had not referred to a wall in her statement because she had not recalled it at the time. The horses could

have been tethered which she was not able to see. She had been on the Application Land with her husband in about 2003 when he had visited to take a photograph of the mill which he wanted for the purposes of making a model. She had seen two horses on that occasion. Her husband had stood in horse droppings. The ground was muddy where people fed the horses near the wall. She did not know the Linton family.

41. **Mark David Trippier** of 36 Brandlesholme Road, Greenmount, Bury said that he had always lived in and around Ramsbottom, including at Tanners Barn on Tanner Croft from 1994-2000. He had often driven past the Application Land on Bolton Street in the period 1994-2001 as part of his job and had seen horses, he would say two, with (according to his witness statement) their heads hanging over the wall there. He agreed, however, that the wall was deteriorating and that it was only approximately 18 inches high. There might have been makeshift fencing, which would have been needed if horses were to be kept there, but he had no clear recollection of this. He did not think his witness statement conveyed the impression of a substantial wall. He had seen the horses being fed in this location by the public. He had also seen a notice here over the period 1991-2004 saying "please don't feed the horses" but could not otherwise describe it in terms of size or colour. If there was no other land available, there was no choice about where to graze. He was, and had been from 1994-2001, a horse owner himself and knew that the Lintons had grazing rights on the Application Land. He had inquired of Margaret Evans (a land agent for Peel) about the availability of the Application Land for grazing but had always been told that it was already let. He had had no need for grazing in 2004 because he had let his horses go at this time and did not now have horses in Ramsbottom any more. The Application Land was all right for grazing. When he lived at Tanners Barn he would often walk along Footpath 81 on the Application Land and frequently went to the Major public house. He later agreed that this path would not be used to go to the Major from his house but could be used to go to the Railway public house. He recalled seeing horses on a couple of occasions on such walks. He had seen water buckets at the top and bottom of the Application Land and bits of white tape. Mr Trippier said that he would not say that he had any connections with Peel.

42. **James Linton** of 217 Nuttall Lane, Ramsbottom (who provided three witness statements) said that his parents purchased that property in 1981 (when Mr Linton

was four) from John Whittaker, the chairman of the Peel Group. Prior thereto in 1979 his parents had had an oral agreement with Mr Whittaker to graze the Application Land and look after other land including that neighbouring the Application Land. His father was a friend of Mr Whittaker's but Mr Linton had no relationship with him. He was not giving evidence because of any close relationship with Peel. In 1988 the agreement was effectively formalised as a grazing licence. He had never had the agreement but rent had been paid on a yearly basis. The Application Land was used for grazing purposes as part of these arrangements from 1997-2004. From around 2004 onwards, when stock numbers were lower, 6 acres only (to the rear of 217 Nuttall Lane) were taken on licence and grazing on the Application Land ceased. That part of the Application Land north of Footpath 81 was not part of Mr Linton's responsibility.

43. The grazing of horses and ponies on the Application Land took place in the spring and summer, from March to October, from 1977-2004. Grazing was not confined to the top corner and was not periodic only. The grazing was carried out rotationally by roping areas off from posts or pins and/or forming corrals in this fashion. Someone using the Permissive Path could walk round a corral. Tethering was also used. An electric fence had been used at one point. The horses were not mistreated. Over different periods different methods were used. Tethering was in the earlier period, roping in the later. A horse could get over ropes but most did not want to. The animals were brought back to the stables at 217 Nuttall Lane every evening at about 6-7pm but, later on, at 3-4pm and the posts/pins and ropes removed. The posts/pins were driven in with a sledgehammer and waggled out. The horses were brought on to and taken off the Application Land at the bottom along Nuttall Lane, Nuttall Road, via Nuttall Park, through a low tunnel under the railway, which some horses did not like, and across the river. Up to nine horses were grazed on the Application Land but it would not be normal to take all nine up there rather than three or four. It depended on how much help was available. The reference in his first witness statement to 12 horses being on the Application Land at one point would have included some belonging to his mother's friends. Water was brought to the Application Land and put in troughs and, later, buckets. Riding lessons took place on the Application Land. Signs were placed next to Footpath 81 and, in later years, on the corrals stating "please do not feed the horses" and "no trespassing" or "private keep out". If damaged or stolen, the

signs would be replaced. The Application Land was regularly inspected and litter removed. Both the Application Land and the land next to 217 Nuttall Lane were used for grazing. The grazing location was varied according to which areas of grass were most suitable and the Application Land was used whenever it could be in the spring and summer. 150 days' use of the Application Land in a year for grazing sounded too high but Mr Linton did not like to put a figure on it. The horses kept the vegetation down on the Application Land. Paths on the Application Land had been formed by horses. The Applicant's photographs did not show any horses because horses were not there when the photographs were taken.

44. Mr Linton recalled helping his father repair the Bolton Street wall when it was damaged by traffic accidents but this was when he was a small child in the 1980s. This was before the damage caused by the accident described by Mr Carroll when the wall was almost completely knocked down although it was not as low in 1991 as it is now. Sometimes horses had been taken on to the Application Land in that way. There had been a small piece of dilapidated fence here when he was very young. Tethering had been used to stop the horses getting out but they would be kept well back from Bolton Street, 5-10 metres. If horses had been hanging their heads over the wall here that would have been in the very early days outside the relevant period. There was not really any fencing at the Railway Street end of the Application Land in 1991, being at most a dilapidated line which was trodden into the ground. It did not impede access at all. He recalled a hole having been cut in the chain link fence on the boundary with St Andrew's Church and (even though it was the Church's fence) putting barbed wire there, which was removed. The repairs took place a couple of times which he could not really date but he thought would have been in his late childhood to early teenage years. It was not worth the time and effort to continue to attend to it. The fence became trampled into the ground. Mr Linton had not seen people straying off the public footpath on to the Application Land more generally. Friends of his family and people he knew from school were given permission to use the Application Land. He objected to damage being caused to the Application Land such as digging a hole for a bike jump. This was an infrequent occurrence and he had ejected maybe 20 people for causing damage in the whole of his life.

45. Mr Linton had had bonfires on the bottom part of the Application Land. People knew that it had been organised by him and his family. His father had done this before 1991.

(7) EVIDENCE GIVEN BY MEMBERS OF THE PUBLIC

46. **Heather Davenport** of 39 Garnett Street, Ramsbottom said she had lived away from Ramsbottom from 1990-2010 but that she had used the Application Land for sledging in the past as had her father.

47. **Michelle Bajda** of 16 Ada Street, Ramsbottom said that she had played on the Application Land as a child with friends but they knew they were trespassing and should not have been on there. She could recollect a trampled down fence and, when she was younger, of having crawled through a gap. She could not recollect horses on the Application Land but did have some recollection of having seen a horse's head near Bolton Street.

48. **Richard Hall** of 30 Garnett Street, Ramsbottom said that he had lived at that address since 1964 and, before that, at 28 Garnett Street from 1956-1964. He had walked across the Application Land to Peel Brow County Secondary School when a boy, taking access down the steps from Bolton Street. He had left school in 1960. He had also walked down Footpath 81 to Nuttall Park and, sometimes, over the Application Land into the woods at the back coming out by the bridge. There had also always been a stile allowing entry on to the Application Land from the access drive to St Andrew's Church. There had certainly been horses on the Application Land because he had frequently seen three or four congregate at the top end near Bolton Street. This had been in the last 20 years if not the last 10. There had been a fence here which later disappeared. This had been within the 20 year period relevant to the Application and had not been at an earlier time.

49. **Laurence Phelan** of 12 Marlborough Close, Ramsbottom said that he had previously lived off St Andrew's Close and that there had always been horses behind there but he could not recall any on the Application Land. He had played there, had cycled from the top to the bottom, had camped at the bottom and had been to the Grants Lane

bonfire. His wife used to gallop a horse up the Application Land over 15 years ago. She possibly knew the Lintons. From 1986-2002 he used to walk across the Application Land to work, accessing it via the school football field and then climbing through a little hole on to the Application Land.

50. **Lorna McIntosh** of 45 Grants Lane, Ramsbottom said that she had lived there since 1975. All the Grants Lane residents had for many years held a bonfire on the Application Land around every 5th November until about 1991-1992. No permission was obtained. The residents had once cleared up the Application Land using a skip for rubbish. Her husband had cleared up aluminium cans there. The knotweed which had been referred to was removed in 2008 but children had played in it when it was there. From 1975-1995 Mrs McIntosh had gone brambling on the Application Land. There were brambles near Crow Lumb Wood and some on the Bolton Street side.

51. **Ian Ashworth** of 31 Whittingham Drive, Ramsbottom said that he had used the Application Land for a variety of activities, including dog walking, cycling and sledging. He had served as church warden at St Andrew's Church (which he had started attending in 1991) from 2004-2010. The green chain link fence along the access drive to the church was on the Church's land and did not mark the boundary with Peel's land. That was where the new fence was with the stile in it. There had been no fence on that line before 2011. No repairs had been made to the green chain link fence in his tenure. There was a gateway at the Church end of the chain link fence which had served former tennis courts which had existed well before his time. He could never remember a gate. He had become concerned about access being taken across the Church's land by quad bikes, motor bikes and horses. Some horse riders had gone through the churchyard. To try to stop access across the Church's land he had put a wooden sign on the gate post which said "private no public access". At the top of the access drive there were three signs saying "private road no access". He had not seen horses or ponies on the Application Land. The Jennifer Ashworth who had filled in an evidence questionnaire in 2013 which had stated that she had "seen ponies grazing on land" and listed as an activity "walking on path as short cut to centre" was his daughter.

(8) THE SUBMISSIONS ON BEHALF OF PEEL

52. A detailed written closing submission was made by Mr Cannock on behalf of Peel. It would burden this report disproportionately to set this out at length here and I intend therefore simply to summarise its main lines of argument. As a matter of general approach Mr Cannock submitted that the relevant period for consideration was 25th April 1991 to 25th April 2011 and that evidence of use of the Application Land before 25th April 1991 was irrelevant.

53. As to uses of the Application Land, Mr Cannock submitted that, as a matter of principle, use of Footpath 81 was by right and not as of right and that any use of the Application Land by people using Footpath 81 had to be discounted from the evidence of qualifying use. Moreover, transitory and infrequent uses, in which he included blackberry picking and sledging, would not suggest to a landowner that a right was being asserted.

54. In relation to the 2012 evidence questionnaires submitted in support of the Application, Mr Cannock submitted that, while the questions had been posed in an open fashion, other failings in the questionnaire and in the responses thereto meant that this tranche of evidence could, in fact, command no weight. The issues identified by Mr Cannock included an inability to discern the periods during which use took place, the absence of adequate identification of a locality or neighbourhood, lack of clarity in relation to public rights of way and absence of detail as to where uses took place on the Application Land. Mr Cannock reminded me that Mr Todd had accepted that there were "holes" in the original evidence questionnaires.

55. In relation to the 2013 evidence questionnaires Mr Cannock submitted that these too should be given no weight because their format and content had been tailored to the Objection and because they had been accompanied by a cover sheet which had introduced an unacceptable bias into the process by alerting respondents to the answers needed to defeat the Objection and raising the possibility that this might be the last chance to protect against future development. He also submitted that question 6 on the 2013 evidence questionnaire was biased because it did not simply ask the respondent to identify lawful sports and pastimes but to include walking the two paths

and to specify if he ever went off the path. Moreover, given that the cover sheet had referred throughout to "Ramsbottom", it was hardly surprising that many respondents gave "Ramsbottom" as an answer to question 11 in respect of the locality or neighbourhood which it was believed had the right to use the Application Land.

56. Mr Cannock next made a number of submissions in relation to the live evidence at the inquiry in support of the Application. These included the following. First, the evidence of some witnesses had specifically changed from the evidence provided by their 2012 evidence questionnaires in order to support the case that needed to be made. This was exemplified by the evidence of Mrs de Ruijter and Mrs Fletcher. Mrs de Ruijter's evidence to the inquiry about following her dog around down the slope all over the grass was inconsistent with her 2012 evidence questionnaire which had referred to having always used the Permissive Path. Mrs Fletcher's evidence at the inquiry about waking everywhere was likewise inconsistent with what she had said in her e-mail to Mr Todd of 1st March 2013.

57. Secondly, the live witnesses had only used the Application Land for limited periods during the relevant 20 year period.

58. Thirdly, Mr Linton's evidence as to the grazing of horses on the Application Land, the management of that grazing by ropes and the erection of associated signs was to be accepted and therefore rendered unreliable evidence in support of the Application which was inconsistent with it. If users of the Application Land had not seen horses, ropes and signs they must have either stuck to Footpath 81 and/or had not used the Application Land with a degree of regularity which allowed them to see the tenant's activities and which would therefore suggest to the reasonable landowner (or the reasonable tenant on his behalf) that a right was being asserted. It was further submitted that any access to the roped off areas would be forcible, that their presence would interrupt use and that use in contravention of the signs would also be contentious and not as of right and/or not continuous.

59. Fourthly, the live evidence in support of the Application and the 2013 questionnaires were contradicted by other evidence in relation to the issue of use as of right. In this respect Mr Cannock submitted that the evidence of Michelle Bajda and Laurence

Phelan cast doubt on whether claimed use took place as of right. He also submitted that, in the light of the evidence of Mr Ashworth, there had been some forcible entry from the access drive to St Andrew's Church which could not be disaggregated from the other evidence.

60. Fifthly, the bonfire which had been referred to in the live evidence took place with the permission of Mr Linton's family and, according to Mrs McIntosh, it had ceased to be held by 1992 in any event.

61. Sixthly, the live evidence barely touched on some parts of the Application Land, in particular that area north of Footpath 81 and, on the opposite side, the slopes down to that footpath from the rest of the Application Land.

62. In relation to the issue of locality/neighbourhood, Mr Cannock argued that the Applicant's case had changed beyond all recognition which, in itself, significantly undermined the credibility of the case presented. Part 6 of the Application form had stated that "*Church Fields relates to Ramsbottom Electoral Ward, and particularly to the nucleus of terraced streets within, and to the south west of, the town centre, which before 1974 was in Central Ward.*" This was further explained in the justification for the application (exhibit E of the supporting material) under the heading "community" in the following terms: *"the Community which has used Church Fields is primarily an area of stone terraced houses, built in the late 19th Century. Local people refer to this core area as the Town Centre to distinguish it from the newer development to the south-west of Dundee Lane and Nuttall Lane. From the formation of Ramsbottom Local Board in 1864 until the abolition of Ramsbottom Urban District Council in 1974, this core area was largely in Central Ward (Appendix A). Very few of these Victorian terraced houses had any garden, and the presence of a large open space within 5 minutes walk at most has made Church Fields an attraction to residents of all ages."*

63. It was submitted that it was clear from the above: that the Applicant was relying on the "community" as the relevant locality/neighbourhood; that the community was geographically small - an area of stone terraced houses; that the area was known as the town centre; that the area could and should be distinguished from the area of

newer development off Dundee Lane and Nuttall Lane; and that the area of the community was not Ramsbottom. The respondents to the 2012 evidence questionnaires had been given the opportunity to set out for themselves what they considered their community to be but their answers had varied dramatically, suggesting that they did not have a clear understanding of what their community comprised, either geographically or in terms of facilities. In the Objection Peel pointed out that this locality/neighbourhood had not existed for the relevant 20 year period. There was no answer to this point and the Applicant had therefore contrived a totally different case.

64. There were, however, six reasons why the Claimed Neighbourhood could not be considered to be a qualifying neighbourhood for the purposes of the legislation. First, the variety of the 2012 evidence questionnaire responses did not support the contention that there was a distinct and identifiable community which could be a neighbourhood.

65. Secondly, those responses did not support the contention that the relevant community/neighbourhood was the Claimed Neighbourhood now relied upon. No single respondent identified the Claimed Neighbourhood.

66. Thirdly, the Application had referred quite clearly to a distinct community in terms of the area of stone terraces (the Town Centre). That area specifically excluded the areas of newer housing now included in the Claimed Neighbourhood boundary. The Applicant's current case was irreconcilably different from the earlier case. Given such a conflict, it could not be concluded that there was a neighbourhood with the required degree of cohesiveness otherwise local residents and the Applicant would have been able to identify it in the Application.

67. Fourthly, no witness who gave oral evidence had ever before seen the boundary of the Claimed Neighbourhood identified anywhere as such.

68. Fifthly, Mr Todd had repeatedly said that the concept of neighbourhood was flexible and fluid and one on which people would not be able to agree. As such the Claimed

Neighbourhood could not conceivably be *"a distinct and identifiable community, such as might reasonably lay claim to a town or village green".*[4] On Mr Todd's analysis, the Claimed Neighbourhood was not distinct and identifiable otherwise local residents could agree on it and recognise it.

69. Sixthly, the boundary of the Claimed Neighbourhood was arbitrary. It excluded Peel Brow and land to the east of the town centre, when this was reasonably considered to be part of Ramsbottom Town Centre (up to the motorway). The boundary also cut arbitrarily through a row of terraced houses in the area between Bolton Street and Bolton Road West.

70. In all the circumstances therefore the evidence, as distinct from the submissions of Mr Todd, did not support the Applicant's revised case. The Claimed Neighbourhood (i) had an arbitrary boundary, (ii) failed, on the basis of the evidence, to reflect a distinct and identifiable community and (iii) had been drawn simply to include the respondents to the evidence questionnaires.

(9) THE APPLICANT'S SUBMISSIONS

71. A detailed written closing submission was also made by Mr Todd on behalf of the Applicant. Again, it would add unnecessarily to this report were I to set this out in great detail here so, as with Mr Cannock's submission, I aim simply to summarise its main lines of argument. Mr Todd submitted that there was nothing untoward in the fact that the Applicant's witnesses had had sight of Mr Linton's first witness statement. Given the novelty of the claims in that statement, sight of it simply focused the witnesses on the key issues which had dominated the inquiry. The approach was precisely the same as that adopted by Peel with regard to the Applicant's evidence. Further, Mr Linton had produced a witness statement after sight of the Submission which shifted his position in a number of ways. The evidence of the

[4] Per Carnwath J in *R v Suffolk County Council, ex p Steed* (1996) 71 P & CR 463 at 477.

Applicant's witnesses was not a reflection of the words and sentiments of Mr Todd but was given in their own words and embodied their own sentiments. Evidence of the absence of any "whipping" came in the shape of the contribution from Mr Hall, the membership secretary of the Applicant, although it was suggested that the content of the contribution was mistaken. The probity of the Applicant's witness statements was apparent in the fact that all presented themselves to give oral evidence and to be cross-examined. Each witness spoke with conviction and sincerity. The contrast with the non-appearance of most of Peel's witnesses could not have been greater. Peel's witness statements were formulaic and not written in the witness's own words. There had been no opportunity to cross-examine most of the witnesses.

72. The three witnesses that did actually appear were unconvincing. Mr Todd made a number of detailed points in relation to each witness. Again, I do not seek to rehearse all of these here but try to give a flavour of matters. In relation to Mr Trippier, Mr Todd argued, for example, that: the witness's account in his witness statement of seeing horses with their heads hanging over the wall at Bolton Street did not match his oral evidence which had accepted that the wall was low; he was unable to describe the sign he had seen; and his choice of route to the public houses he frequented was implausible. In relation to Mrs Price Mr Todd argued, for example, that: the account in her witness statement of fencing at Bolton Street changed in evidence to a low wall; and her claim to have seen horses close to the road was at odds with Mr Linton's subsequent oral evidence that his alleged tethering and corralling kept his horses at least 5-10 metres away from Bolton Street.

73. In relation to Mr Linton, his evidence contained notable inconsistencies and shifts of position. Some of the matters relied on by Mr Todd in this connection were:
    - horse restraint arrangements – a shift from roped off enclosures to roping, tethering and corrals with a change from three specific roped off plots to variably sized enclosures; Mr Linton's claim in his oral evidence that one system evolved into the other was not consistent with the specificity of his first witness statement;
    - watering arrangements – a shift from two troughs to buckets

- signage – a shift from the locations specified in his first witness statement to often being attached to the corral ropes
- the Bolton Street Wall – a shift from a portrait in his first witness statement of fixing this on several occasions to a concession that it was later almost completely knocked down.

74. The most glaring point was the inconsistency of Mr Linton's evidence that there had been an extensive grazing use of the Application Land with the fact that this had furnished virtually no evidence visible to the surrounding community. Crucially, there was virtually no local recollection of horses on the Application Land in the period relevant to the Application. There was also absent from local memory recollection of, inter alia, the horse movements Mr Linton had described to and from the Application Land, the use of roped off grazing plots, corrals or tethers, watering facilities, horse manure, signs (whether in permanent positions or hanging off ropes) and Linton family bonfires. Mr Linton had been the mouthpiece for an improbable set of claims. It was suggested that Peel had leverage over the family. The absence of Mr Linton's parents to give oral evidence to the inquiry was mystifying given their centrality to Peel's case. The details of the elusive 1979 agreement with Mr Whittaker had not been able to be explored. There was an absence of any relevant documentation. Mrs Linton's written statement was, in any event, inconsistent in many respects with the Applicant's evidence such as her account of placing straw based horse manure on the Application Land, her evidence that she asked people to leave, her claim that sledging took place with the Lintons' permission and her statement that Linton family bonfires were held on the Application Land near Railway Street up until 2005.

75. Mr Todd then addressed the ingredients of the statutory test. He submitted that the requirement for a significant number of inhabitants had been made out in that the Application Land had been *"in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers"* as referred to in *Alfred McAlpine Homes Ltd v Staffordshire County Council*.[5]

[5] [2002] EWHC 76 (Admin) at paragraph 71.

76. In respect of the requirement to demonstrate a locality or neighbourhood within a locality, the case was put as one under limb (ii) (a neighbourhood within a locality) and the Ramsbottom Electoral Ward was an appropriate locality. Its reduced area after 2004 still contained the whole of the Claimed Neighbourhood. *Leeds Group plc v Leeds City Council*[6] was relied on to support the Claimed Neighbourhood. Sullivan J's approach to the issue of neighbourhood in *Cheltenham Builders Ltd v South Gloucestershire District Council*[7] was restrictive but the Claimed Neighbourhood in any event had a *"sufficient degree of cohesiveness"*[8] to satisfy the test there set out. It was amply capable of meaningful description, had a pre-existing cohesiveness and was anything other than arbitrary in topographical terms. It was suggested that Sullivan J's restrictive approach had been rejected by Lord Hoffman in *Oxfordshire County Council v Oxford City Council*[9] in his observation that *'"any neighbourhood within a locality' is obviously drafted with a deliberate degree of imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries."*[10] This had been cited by Judge Behrens in *Leeds Group plc*[11] while Judge Waksman QC in *Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust v Oxfordshire County Council*[12] had noted that neighbourhood was *"on any view a more fluid concept"* than locality.[13] The statutory definition could also be satisfied if there was more than one neighbourhood as confirmed in *Leeds Group plc* by Judge Behrens and upheld in the Court of Appeal.[14] In relation to the fact that the Claimed Neighbourhood boundary with Hazelhurst passed through a terrace of houses on Bolton Road West, a similar situation in which two houses in the qualifying neighbourhood lay outside the relevant locality was accepted as de minimis in *Leeds Group plc*.

[6] [2010] EWHC 810 (Ch).
[7] [2003] EWHC 2803 (Admin).
[8] At paragraph 85.
[9] [2006] UKHL 25.
[10] At paragraph 27.
[11] At paragraph 103.
[12] [2010] EWHC 530 Admin.
[13] At paragraph 69.
[14] *Leeds Group plc v Leeds City Council* [2010] EWCA Civ 1438.

77. The strength, cohesiveness and community spirit of the Claimed Neighbourhood was well illustrated by the campaign to secure the Application Land for future generations as a facility which had been freely accessible to past generations. The evidence showed that local residents' perception of their neighbourhood (referred to by Mr Todd as their "cognitive neighbourhood") varied with age and lifestyle.

78. Use of the Application Land was without force, without secrecy and without permission. As to signs, Mr Linton's evidence had had difficulty in specifying the locations of the various signs of which nobody other than his fellow Peel witnesses could claim any recollection. Mr Trippier, Kieran Flatley and Daniel Phelan each claimed to have seen signs at the top and bottom ends of Footpath 81 but these locations for signs were inconsistent with where Mr Linton had said they were. Witnesses such as Mrs Crompton had said that they would not have felt it right to be on the Application Land had there been prohibitory signs. Mr Linton's claim in his first witness statement to have maintained a chain link fence on the boundary of St Andrew's Church with barbed wire up until 2004 was mistaken as to the boundary of the Peel land as Mr Ashworth had pointed out. Mr Ashworth's sign had not resulted in the prevention of walkers gaining access to the Application Land. Given the repeated references to the green chain link fence, walkers had probably cut a corner rather than gone as far as the gate opening as they approached from Bolton Street. Mr Linton eventually admitted that there had been no impediment to access to the Application Land at the Railway Street end despite the implication in his first witness statement to the contrary.

79. As to lawful sports and pastimes on the Application Land, there had been demonstrated a wide range of qualifying uses. Topography and vegetation had not impeded recreational use. It was not the case that only the paths were used for walking and dog walking. The whole area had been used with different parts used for different activities. Mr Linton's account was the only substantive evidence of grazing of the Application Land that Peel had produced and was unreliable. His evidence simply did not tally with communal memory. The transfer of horses to the Application Land and their maintenance there was impracticable. It was not contended that absolutely no grazing ever occurred on the Application Land but that rather it was so infrequent that it failed to register with the local community. Such grazing was

compatible with village green rights as demonstrated by *Laing Homes Ltd v Buckinghamshire County Council*.[15] The qualifying uses had gone on for at least 20 years and the Application was made within the necessary two year period from cessation of qualifying use.

(10) ANALYSIS AND FACT FINDING

(a) Neighbourhood within a locality

80. I turn first to deal with the issue of neighbourhood within a locality. The Application is advanced on this limb (ii) basis with the relevant qualifying area – the Claimed Neighbourhood as I have styled it - being the Ramsbottom Town Centre neighbourhood within the locality of the Ramsbottom Electoral Ward. I do not see why the Ramsbottom Electoral Ward should not be an appropriate locality for the purposes of the limb (ii) case which is now put forward. There was no argument to the contrary by Mr Cannock. The Submission explains that the Ramsbottom Electoral Ward in its present form did not come into being until 2004, as the Objection had suggested. Prior to that date the ward had been larger and had extended further south. In 2004 a new ward (North Manor) was created which was an amalgamation of the southern portion of the 1974 Ramsbottom Electoral Ward and the northern portion of the 1974 Tottington Ward. There is no material to contradict this and I accept it. The Claimed Neighbourhood is contained entirely within the post-2004 Ramsbottom Electoral Ward and was therefore entirely within the pre-2004 Ramsbottom Electoral Ward as well. The Claimed Neighbourhood has thus always been wholly in Ramsbottom Electoral Ward. The fact that that ward has reduced in size within the last 20 years appears to me to be of no significance for the purposes of the limb (ii) case which is now pursued. Again, Mr Cannock did not seek to argue otherwise.

81. I turn therefore to consider the Claimed Neighbourhood. "Neighbourhood" is undefined in the 2006 Act as was also the case under section 22 of the Commons Registration Act 1965 as amended by section 98 of the Countryside and Rights of Way Act 2000. There is, however, a body of relevant case law. In a well-known

[15] [2003] EWHC 1578 (Admin) at paragraph 60.

passage in *Cheltenham Builders Ltd v South Gloucestershire District Council*[16] Sullivan J said that *"[i]t is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood. For the reasons set out above under 'locality', I do not accept the defendant's submission that a neighbourhood is any area of land that an applicant for registration chooses to delineate upon a plan. The registration authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness, otherwise the word 'neighbourhood' would be stripped of any real meaning. If Parliament had wished to enable the inhabitants of <u>any</u> area (as defined on a plan accompanying the application) to apply to register land as a village green, it would have said so."*[17]

82. Lord Hoffman in *Oxfordshire County Council v Oxford City Council*[18] pointed out that the expression *"any neighbourhood within a locality"* was *"obviously drafted with a deliberate degree of imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries."*[19] Having made that point, Lord Hoffman expressed disagreement with the view which Sullivan J had taken in *Cheltenham Builders* that a neighbourhood had to be wholly within a single locality. However, Lord Hoffman did not otherwise criticise aspects of Sullivan J's approach in *Cheltenham Builders* to the issue of neighbourhood and I do not consider that it is correct that the passage set out in the preceding paragraph was in any way disapproved.

83. In *Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust v Oxfordshire County Council*[20] HHJ Waksman QC said that *"[t]he area from which users must come now includes a neighbourhood as well as a locality. On any view that makes qualification much easier because it was accepted that a locality had to be some form of administrative unit, like a town or parish or ward. Neighbourhood is on any view a more fluid concept and connotes an area that may be much smaller than a*

[16] [2003] EWHC 2803 (Admin).
[17] At paragraph 85.
[18] [2006] UKHL 25.
[19] At paragraph 27.
[20] [2010] EWHC 530 (Admin).

locality."[21] In the same case HHJ Waksman QC also made the following observations: "*[w]hile Lord Hoffman said that the expression* [sc., neighbourhood within a locality] *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 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."*[22]

84. In *Leeds Group plc v Leeds City Council*[23] HHJ Behrens said that *"I shall not myself attempt a definition of the word 'neighbourhood'. It is, as the inspector said, an ordinary English word and I have set out part of the Oxford English Dictionary definition.* [Sc., "A district or portion of a town; a small but relatively self-contained sector of a larger urban area; the nearby or surrounding area, the vicinity"]. *I take into account the guidance given by Lord Hoffman in paragraph 27 of the judgment in the Oxfordshire case. The word neighbourhood is deliberately imprecise. As a number of judges have said it was the clear intention of Parliament to make easier the registration of Class C TVGs. In my view Sullivan J's references to cohesiveness have to be read in the light of these considerations."*[24] HHJ Behrens also quoted, with apparent approval, the words of the inspector in the case who had said that it seemed to him *"that the 'cohesiveness' point cannot in reality mean much more, in an urban context, than that a neighbourhood would normally be an area where people might reasonably regard themselves as living in the same portion or district of the town, as opposed (say) to a disparate collection of pieces of residential development which had been 'cobbled together' just for the purposes of making a town or village green claim."*[25]

[21] At paragraph 69.
[22] At paragraph 79.
[23] [2010] EWHC 810 (Ch).
[24] At paragraph 103.
[25] At paragraphs 36 and 99.

85. In relation to the question of the need for a neighbourhood to have boundaries, I have already quoted in paragraph 83 above the observation of HHJ Waksman QC in *Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust* that Lord Hoffman in *Oxfordshire County Council* was *"not saying that a neighbourhood need have no boundaries at all."* In *Leeds Group plc* HHJ Behrens said, in relation to the issue of boundaries, *"I agree with Miss Ellis QC that boundaries of districts are often not logical and that it is not necessary to look too hard for reasons for the boundaries."*[26]

86. When the latter case reached the Court of Appeal the issue in relation to neighbourhood that was considered was whether HHJ Behrens was right to uphold the inspector's view that neighbourhood did not have to be limited to a single neighbourhood and could include two or more neighbourhoods. The Court of Appeal upheld the judge on this point (by a majority).[27] It is also to be noted that, in the course of so doing, Sullivan and Arden LJJ endorsed[28] Lord Hoffman's dicta in *Oxfordshire County Council* in relation to the "*deliberate degree of imprecision"* in the drafting of the expression *"any neighbourhood within a locality"*. All the judges in the Court of Appeal also recognised that Parliament's intention in enacting the neighbourhood amendment (which was originally introduced by section 98 of the Countryside and Rights of Way Act 2000) was to make easier the task of those seeking to register new greens and to avoid technicality by loosening the links with historic forms of greens.[29] In *Adamson v Paddico (267) Limited*[30] Sullivan LJ stated again that in *Oxfordshire County Council "Lord Hoffman clearly considered that the new 'neighbourhood' limb had materially relaxed the previous restrictions relating to 'locality'".*[31]

87. In the light of all the above I approach matters by having at the forefront of my mind that a claim to register a new green on a limb (ii) basis should proceed on the basis

[26] At paragraph 105.
[27] Sullivan and Arden LJJ, Tomlinson LJ dissenting.
[28] At paragraphs 26 and 52.
[29] At, for example, paragraphs 24, 25, 26, 44 and 52.
[30] [2012] EWCA Civ 262.
[31] At paragraph 27. The issue of locality and neighbourhood was not dealt with when this case reached the Supreme Court, [2014] UKSC 7.

that there is a deliberate degree of imprecision in the term neighbourhood, that it is not appropriate for a claim to be defeated on the basis of technicalities and that Parliament's intention was to ease the task of applicants. Having said all that I am not persuaded that the Claimed Neighbourhood qualifies as such. It seems to me that the fundamental issue is not a technical one but that the Claimed Neighbourhood departs too far from the ordinary meaning of the word "neighbourhood" to be regarded as a qualifying neighbourhood. I have noted in paragraph 83 above that HHJ Behrens in *Leeds Group plc* cited a dictionary definition of neighbourhood as *"a district or portion of a town; a small but relatively self-contained sector of a larger urban area; the nearby or surrounding area, the vicinity"* and that the inspector in that case had expressed the view that *"the 'cohesiveness' point cannot in reality mean much more, in an urban context, than that a neighbourhood would normally be an area where people might reasonably regard themselves as living in the same portion or district of the town".* In this case the Claimed Neighbourhood does not seem to me to consist of a portion or district of the town of Ramsbottom but rather an amalgam of several different portions and districts. It also does not seem to me, for example, that a person living in the south of the Claimed Neighbourhood on Bolton Road West would reasonably regard himself as living in the same portion or district of the town of Ramsbottom as someone living on the other side of the town centre in the north of the Claimed Neighbourhood on Stubbins Lane even though each would reasonably regard themselves as living in Ramsbottom.

88. While there is no statutory restriction on the size of a neighbourhood, to mind there comes a point at which an area simply becomes too big to be sensibly regarded as such. In *Leeds Group plc* one aspect of the dictionary definition that HHJ Behrens quoted referred to *"a small but relatively self-contained sector of a larger urban area"* and HHJ Waksman QC in *Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust* indicated that "neighbourhood" *connotes an area that may be much smaller than a locality".* It seems to me that in this case the Claimed Neighbourhood is simply too big and contains too much of the town of Ramsbottom to be appropriately regarded as a qualifying neighbourhood. It is not a small but relatively self-contained sector of a larger urban area but the greater part thereof.

89. The Submission justifies the Claimed Neighbourhood by reference to four factors: topographical unity; location in the context of surrounding neighbourhoods; organic historical growth; and coherence. I am not persuaded by this analysis. I would not ascribe any particular weight to the issue of topographical unity in this case given that both topographical features and administrative divisions are utilised to make up the overall boundary of the Clamed Neighbourhood. As to separation of an area from other areas which are said to be neighbourhoods, that does not of itself mean that the area so separated is itself a neighbourhood even if the others are. The organic historical growth which is relied upon identifies a stone built core to the town of Ramsbottom which was extended by similar stone built development before the Great War followed by substantial developments later on in the twentieth century taking the form of council housing at Tagg Wood and at Peel Brow (the latter not forming part of the Claimed Neighbourhood) in the 1930s-1950s, private housing on Carr Bank in the 1960s-1970s, private housing on the Broad Hey estate in the 1960s-1980s and building of brick terraced and semi-detached houses on Dundee Lane and Earl Street/Victoria Street in the 1930s. It seems to me that this serves to highlight the amalgam of several different portions of Ramsbottom which make up the Claimed Neighbourhood. This factor also dilutes the coherence (which I take to be no different from the "cohesiveness" identified in case law) of the Claimed Neighbourhood although I should also say that, while a neighbourhood should have a sufficient degree of pre-existing cohesiveness, it does not seem to me that a demonstration that an area is cohesive in terms of (say) community facilities and events proves that it is a neighbourhood if the area is not otherwise properly described as such as a matter of ordinary language, which I consider to be the case here.

90. The Submission apart, I also accept a number of Mr Cannock's arguments as to evidential deficiencies in the case put forward in relation to the Claimed Neighbourhood. I agree that the variation in the answers to questions 6 and 7 on the 2012 evidence questionnaires provides little basis for the Claimed Neighbourhood. I also agree that the divergence between the way in which the Application was originally pursued by reference to a core area of stone terraced houses built in the late nineteenth century, referred to by local people as the town centre to distinguish it from the newer development to the south west of Dundee Lane and Nuttall Lane, sits very uncomfortably with the Claimed Neighbourhood presently relied upon which

incorporates the distinguished areas. Mr Todd's response when this point was put to him, which was to suggest that, at least in part, the Claimed Neighbourhood had been extended to encompass the addresses of respondents to the 2013 evidence questionnaires, seems to embody the kind of approach deprecated by HHJ Behrens in *Leeds Group plc* as one *"trying to pull itself up by its own bootstraps"*.[32]

91. I derive little assistance from the fact that, in relation to the 2013 evidence questionnaires, many respondents gave "Ramsbottom" as an answer to question 11 in respect of the locality or neighbourhood which it was believed had the right to use the Application Land given that, as Mr Cannock argued, this was hardly surprising in the light of the cover sheet having referred throughout to "Ramsbottom". I further consider that Mr Cannock was right to point out that Mr Todd's emphasis on the fluid and dynamic nature of the relevant neighbourhood in this case undermines the case for the Claimed Neighbourhood in illustrating the uncertainty that must inevitably therefore attach to it. It also seems to me that Mr Todd's own point made in closing submissions that the evidence showed that local residents' perception of their neighbourhood (their "cognitive neighbourhood") varied with age and lifestyle has the same effect. I finally agree with Mr Cannock that the fact that the Claimed Neighbourhood boundary with Hazelhurst passes through a terrace of houses on Bolton Road West exhibits arbitrariness. It seems to me that the response given by Mr Todd that the situation compares with that in *Leeds Group plc* in which the fact that two houses in the qualifying neighbourhood lay outside the relevant locality was accepted as de minimis is not quite the same. I do not consider that this point would have been determinative taken alone given the degree of imprecision that attends the notion of neighbourhood and the need to avoid an over-fastidious approach to the issue of boundaries. It is, however, another factor in the cumulative picture of shortcomings in relation to the Claimed Neighbourhood. I do not think it necessary to reach any view on the exclusion of Peel Brow from the Claimed Neighbourhood.

92. I do not consider that the Application should be approached on the basis that the Broad Hey estate and the rest of the Claimed Neighbourhood should be treated as two separate neighbourhoods. I do not have the evidential material to reach a conclusion

[32] At paragraph 106.

on whether the Broad Hey estate is a separate neighbourhood. It is suggested tentatively in the Submission that it might be but it is not identified as such by any respondent in the 2012 and 2013 evidence questionnaire series and no witness spoke to this issue. I do not consider that the Claimed Neighbourhood minus the Broad Hey estate amounts to a qualifying neighbourhood either. Beyond that, it is certainly not for me or the Registration Authority to consider whether what I have described as the several different portions of Ramsbottom which make up the Claimed Neighbourhood could themselves be categorised as "mini-neighbourhoods" in any other fashion apart from a sub-division between the Broad Hey estate and the rest of the Claimed Neighbourhood. The case is not put on this basis (but on the basis that there are no such further potential neighbourhoods) and the evidence is not directed to it.

93. In all the circumstances I conclude that the Application fails for want of identification of an appropriate qualifying neighbourhood.

94. While the above is sufficient to reach a conclusion in relation to the way in which I recommend to the Registration Authority that the Application is determined it is nevertheless right that I should go on to consider other aspects of the case given the evidence and submissions I heard.

(b) <u>General matters of approach to use evidence</u>

95. I turn next to consider some general matters of approach to the use evidence. The first of these, as raised in Mr Cannock's submissions, is the appropriate period for consideration of the use evidence. While it is correct that there must be a demonstration of qualifying use in this case in the period 1991-2011, I cannot agree with the particular submission of Mr Cannock that evidence of use of the Application Land before 25th April 1991 is irrelevant. It is clear from section 15(3) of the 2006 Act that, in the case of an application where this is the relevant provision, the cessation of the qualifying use period cannot have occurred more than two years before the application is made so that if an application is made in 2013 there must be a qualifying use period up until 2011. It follows that, as the qualifying use period must be of at least 20 years, qualifying use must be shown between 1991 and 2011.

An application which failed to demonstrate qualifying use between 1991 and 2011 would therefore fail. That is the minimum necessary. However, that is not the same as saying that pre-1991 use is irrelevant. The qualifying use period must be at least 20 years. It can be more. And there is no reason why evidence of use of land before 1991 in a qualifying fashion could not, for example, corroborate evidence of use of the land in a qualifying fashion after this time. Having said all that, as qualifying use must be demonstrated between 1991 and 2011 a particular focus on that period is therefore only to be expected.

96. The second matter is the approach to transitory uses. I also part company from Mr Cannock here in relation to his suggested approach, as I understood it, to transitory uses. Such uses do not fail to amount to qualifying uses because they are transitory. It well may be that an application could not be sustained on the basis of transitory uses alone but, if such uses qualify as lawful sports and pastimes, there is no reason to discount them from the overall picture of recreational use of a claimed green.

97. Thirdly, I deal with the approach to written evidence. In approaching all written evidence in this case I proceed generally on the basis of treating it with caution because it has not been subject to cross-examination but I do consider whether it is consistent with and supportive of oral evidence.[33] Turning to specific aspects of the written evidence, I place very little weight on the 2012 evidence questionnaires. This is not just because the respondents have (in the main) not been subject to cross-examination but also because I consider that it was a significant failing of the questionnaires that they did not seek to ask the respondents to identify when the Application Land was used. I also remind myself that Mr Todd himself conceded that there were "holes" in the 2012 evidence questionnaires.

98. As to the 2013 questionnaires, I do not see that there is anything problematic in principle with the fact that their format and content was, as the Submission made plain,[34] tailored to the Objection. It is an inevitable consequence of a process such as this that a response to an objection will concern itself with answering that objection

[33] Cf. *Alfred McAlpine Homes Ltd v Staffordshire County Council* [2002] EWHC 76 (Admin) at paragraph 75.
[34] Paragraph 4.

and obtaining any extra evidence needed to do so. While I have already accepted in paragraph 91 above that the cover sheet may well have influenced the answer "Ramsbottom" given by many to question 11 on the questionnaire, I take the view more generally that the criticisms made by Mr Cannock of the cover sheet are somewhat overstated. Mr Cannock's criticisms were directed to the independence of the answers which were forthcoming in the questionnaires in the light of the cover sheet. It does not seem to me that an answer to a question necessarily ceases to be the product of the independent recollection of the witness simply because the witness is able to understand from the cover sheet that a particular answer would support the case sought to be advanced whereas a different answer would not. It is also of note that the cover sheet asked for answers to be given independently and honestly and that this was backed up by a declaration of truth on the evidence questionnaires themselves in similar terms. I also do not think that I can infer that the answers in the evidence questionnaires are irredeemably tainted simply because of the fact that the cover sheet raised the possibility that this might be the last chance to protect against future development but I do accept that it is possible that this factor may have had some influence on the answers given by some. And I do not think that it is right to say that question 6 of the questionnaire was inherently biased in asking the witness to specify whether he ever went off the path. Being invited to give an answer to a specific question is not the same as being influenced to answer it in particular way. A witness should have appreciated from the cover sheet and the evidence questionnaire as a whole that he should not say that he did walk off the path if that was not the case. Ultimately, however, I am in general not able to give any more than limited weight to the 2013 evidence questionnaires in themselves, including answers in relation to use off the path, given that the vast majority of the respondents have not been able to be cross-examined.

99. For the same reason – absence of ability to test evidence by cross examination - I place only limited weight on the letters in support of the Application and the statements of those witnesses for Peel who were not called to give evidence.

(c) Use of the Application Land for grazing

100. I turn next to a central factual issue in the case in relation to the use of the Application Land for grazing. There is a stark factual divide between the Applicant's evidence and Peel's evidence on this question. None of the witnesses called to give oral evidence in support of the Application saw horses on the Application Land (or any evidence of their presence) from 1991 (the beginning of the 20 year period counting back from 2011) to 2004 (when grazing is said to have ceased). Subject to very limited exceptions, the written evidence in support of the Application gathered from 2013 onwards (the evidence questionnaires and the letters of support) paints an extremely strong picture of an absence of grazing on the Application Land over any part of the 20 year period from 1991-2011 and is consistent with the oral evidence in support of the Application. For his part Mr Todd did not put the case on the basis that there was no grazing whatsoever on the Application Land during this period but that it was so infrequent that it had not registered with the local community. The gist of Mr Linton's evidence on the other hand was that extensive use was made of the Application Land for grazing up to 2004 through the months from March to October albeit that he did not quantify the number of days during which such use took place save to say that 150 days (a figure found in the written witness statement of Keiran Flatley) was too high. The written witness statements produced on behalf of Peel are broadly supportive of Mr Linton's evidence but there is far from complete consistency on all points.

101. Overall I consider, and find accordingly, that while there was some occasional use of the Application Land for grazing in the March to October period in the 1990s and early 2000s, it was, indeed, infrequent very much as Mr Todd suggested. I accept the evidence of the Applicant's witnesses who gave oral evidence that they did not see horses on the Application Land at this time or evidence of their presence. I do not consider that they were not giving honest evidence about this or that they were mistaken in this respect. Had there been more frequent grazing I find it hard to see how it would have escaped the attention of these users unless they themselves were much less frequent users of the Application Land than their evidence suggested or the horses were hidden from view. I discount the first alternative because I do not consider there was any exaggeration by the witnesses of their frequency of use and I

discount the second because it seems to me that this would only have been likely if use had been entirely confined to Footpath 81 (which it was not) and, even from here, horses at the lower end of the Application Land would have been visible anyway. While I have pointed out above that I am in general able to give only limited weight to the written evidence in support of the Application, I do regard the overall picture which emerges from that evidence with near unanimity – an absence of grazing on the Application Land over any part of the 20 year period from 1991-2011 – as a matter of some significance. The written evidence is consistent with the oral evidence in this respect and it is hard to see how the wide range of users of the Application Land represented by this body of material would not have seen horses grazing there had that been a frequent practice.

102. I am not able to accept Mr Linton's evidence to the effect that the Application Land was used frequently for grazing over the period from 1991-2004. This evidence does not fit with the evidence I have already accepted and, to the extent that it sought to portray more than occasional use of the Application Land for grazing over this period, I consider that it was exaggerated. I found aspects of Mr Linton's evidence to be unsatisfactory.

103. Mr Linton's first witness statement seems to me to have been misleading or inaccurate in a number of respects in relation to the boundaries of the Application Land. His first witness statement had said that repairs were carried out to the chain link fence on the boundary with St Andrew's Church[35] with barbed wire up until 2004 but in his third witness statement it was accepted that the fence was often trampled into the ground and, under cross-examination, the repair he had spoken of was dated to his late childhood and early teenage years, which barely extends to the start of the 20 year period from 1991-2011 rather than 2004. Mr Linton's first witness statement had also said that there was a barbed wire fence at the bottom of the Application Land near to Railway Street and neighbouring the TNT car park in that location which he recalled to have been in position up until 2001 but in examination in chief and cross-examination Mr Linton accepted that any such fence was very dilapidated and had not impeded access at all. The additional stock proof fence at the Bolton Street frontage

[35] The chain link fence was not actually on the boundary of Peel's land with that of St Andrew's Church, as Mr Ashworth explained.

of the Application Land which Mr Linton had referred to in his first witness statement became, under cross-examination, nothing more than a memory of a small piece of dilapidated fence when he was very young and the method of restraining horses was said in oral evidence to be tethering which kept the horses well back, 5-10 metres, from Bolton Street. It provides no basis for confidence in a witness's evidence when he has put his name to a statement which is not reliable.

104. I also found Mr Linton's evidence to be characterised by several further shifts of ground. The horse restraint measures which had started off in the first witness statement as specific roped off plots became, over the course of his witness statements and oral evidence, a mixture of differing arrangements involving not just such specific plots but also tethering and roped corrals. The watering arrangements for the horses on the Application Land were described in Mr Linton's first witness statement as troughs. In his third witness statement this changed to the placement of buckets. Mr Linton's first witness statement had said that signs were located alongside Footpath 81 in particular locations. In his third witness statement it was said, however, that the signs were often attached to the corral ropes. The wording of the signs was said in the first witness statement to be "please do not feed the horses, no trespassing". In cross examination this became "private keep out, don't feed the horses". The protean character of the evidence undermines its reliability.

105. I further consider that the inherent probabilities of the matter point against a frequent use of the Application Land for grazing. The length and nature of the journey to get to the Application Land from 217 Nuttall Lane (including negotiating the low railway tunnel which some horses did not like) and the need to reverse the journey in the afternoon or evening seem to me to militate against the likelihood of this being a frequent undertaking. Added to the overall burden of the operation would have been the need to transport ropes, posts/pins and a sledgehammer to the Application Site as well as water for the horses to drink. I do not consider that the fact that some photographs of parts of the Application Land dating from the 1990s appear to show quite short grass enables any confident judgment to be made that there must have been frequent grazing.

106. In coming to my views above I have considered all sources of evidence which might bear on the question. The limited weight I give to the written statements of those of Peel's witnesses who did not give oral evidence was not sufficient to lead to me to different conclusions. As to the oral evidence, I did not find Mr Trippier's evidence helpful. He seemed to me give his evidence in a defensive and argumentative fashion. His evidence about horses heads hanging over the wall does not match the facts in relation to the state of the Bolton Street wall, which I find, in the light of the evidence provided by the Applicant's witnesses, to have been very low from at least the early 1990s. His resort, under cross examination, to the possibility of a makeshift fence and his failure to accept that his witness statement had created the wrong impression about the wall was not convincing. I also note the contradiction with Mr Linton's evidence that he kept horses well back from this area. Mrs Price's evidence of seeing horses being fed over the Bolton Street wall also seems to me not to be consistent with the state of the wall at the relevant time. Her further account of there being some post and rail fencing in place here as well does not fit with any of the evidence (which I accept on this point) of the Applicant's witnesses (who described only a wall so low it could be easily stepped over) in relation to the time Mrs Price was describing nor, indeed, with Mr Linton's evidence and appears to describe more the situation after 2011. Notwithstanding that Mrs Price dated her recollections by reference to the time she worked at Horse Bits, I think that there is some confusion in her account of matters. A "one off" observation of horses on the main body of the Application Land is not inconsistent with an occasional and infrequent use. Ms Bajda's recollection of having seen a horse's head near Bolton Street was vague and does not assist. I am not able to accept Mr Hall's evidence that the horses he saw near Bolton Street were within the 20 year period from 1991 to 2011. It seems to me that Mr Hall was plainly mistaken in relation to another aspect of his evidence when he described the continuous existence of a stile providing entry to the Application Land from the access drive to St Andrew's Church. The stile, however, had only been in existence since 2011 when erected by Peel as part of the fencing works then undertaken. Mr Hall's evidence in relation to a fence at Bolton Street is also out of step with the evidence I heard from the Applicant's witnesses. I think that the chances are that Mr Hall is conflating more recent periods after the erection of the fencing and the stile in 2011 and grazing after this time with past periods.

(d) Use of the Application Land for lawful sports and pastimes

107. I turn at this point to my assessment of the evidence of use of the Application Land for lawful sports and pastimes. In approaching this assessment I first remind myself of a number of substantive principles which need to be borne in mind as established in case law. First, the requisite use which is required to be shown is, as Lord Hope indicated in *Lewis v Redcar and Cleveland Borough Council,*[36] "*use for at least 20 years of such amount and in such manner as would reasonably be regarded as being the assertion of a public right*."[37] Secondly, as Sullivan J stated in *Cheltenham Builders,* applicants for registration have to "*demonstrate that the whole, and not merely a part or parts, of the site had probably been used for lawful sports and pastimes for not less than 20 years. A common sense approach is required when considering whether the whole of a site was so used. A registration authority would not expect to see evidence of use of every square foot of a site, but it would have to be persuaded that for all practical purposes it could sensibly be said that the whole of the site had been so used for 20 years*."[38] Thirdly, in accordance with the observations and guidance of Sullivan J in *Laing Homes Limited v Buckinghamshire County Council*[39] and of Lightman J in *Oxfordshire County Council v Oxford City Council*[40] at first instance, it is necessary to consider the use of paths on the Application Land, the extent to which there has been use of the Application Land not confined to paths and the question of whether use of paths would appear to the reasonable landowner to be referable to their use as such or to be use for more general recreational purposes which would sustain a claim to a new green. In *Oxfordshire County Council* Lightman J indicated that, if the position was ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green).[41]

108. The use of paths on the Application Land seems to me to be of particular significance in the present case. The Application Land is crossed by Footpath 81

[36] [2010] UKSC 11.
[37] At paragraph 67. See also paragraph 75.
[38] At paragraph 29.
[39] [2003] EWHC 1578 Admin at paragraphs 98-110.
[40] [2004] EWHC 12 (Ch) at paragraphs 96-105.
[41] At paragraph 102.

which is a public right of way and clearly a well used route. Use of Footpath 81 has been "by right" and any such use must be discounted from consideration. I also find that the Permissive Path always marked a clearly defined route across the Application Land (acknowledged to be a well defined line by Mr Kay) over the period from 1991-2011 and that this too was well used over that period. It seems to me that use of the Permissive Path across the Application Land including connection thereto from the top and bottom of Footpath 81 would have appeared to the reasonable landowner as referable to a right of way type use rather than a right to use as a village green. Such a use would not sustain the Application. I am not persuaded by the evidence that there has been sufficient other use of the Application Land off Footpath 81 and the Permissive Path for the Application to succeed.

109. While I have not accepted Mr Cannock's submission that the cover sheet for the 2013 evidence questionnaires introduced such bias that no weight at all could attach to the answers, I consider that there is force in Mr Cannock's submission that there has, in fact, been a shift in the position of two of the Applicant's witnesses between earlier points and the evidence later prepared for and given at the inquiry in respect of non-path use. Mrs de Ruijter's 2012 evidence questionnaire gives a clear impression of use of the Permissive Path which is not consistent with her later evidence of following her dog down the slope all over the grass. Mrs Fletcher's e-mail to Mr Todd of 1st March 2013 provides a very clear picture of use by herself of the Permissive Path ("I have never been asked to leave the unmade path") which was at odds with her later evidence of roaming everywhere or wandering freely. I did not find convincing her response there was not inconsistency but that she should have said more in her e-mail. These inconsistencies impair the reliability of the evidence I heard from these witnesses on this matter at the inquiry. Mrs Fletcher's e-mail also provides a clear description of the extent of use of Footpath 81 and the Permissive Path - "almost always there would be people using the paths, both the flagged one and the unmade one". Mrs Fletcher's concern about loss of regular use of the Permissive Path points up the extent of use made of this particular route.

110. It is of course not the position that all users of the Application Land south of Footpath 81 would have stuck to the Permissive Path. Some would undoubtedly have deviated therefrom at times and perhaps it was the habit of some more often to

wander more generally. It is true also that it was not just Mrs de Ruijter and Mrs Fletcher, of the witnesses who gave oral evidence, who said that their walking was not confined to the Permissive Path while the 2013 evidence questionnaires are suggestive of a body of off path use (of an extent and frequency which it is difficult to evaluate) as well as path only use. That latter evidence has not been able to be tested by cross-examination and can only be accorded limited weight as I have already explained. Overall I find that very much the predominant use of the Application Land south of Footpath 81 has been on the Permissive Path and I do not consider the evidence is sufficient to discharge the onus of showing that it would have appeared to a reasonable landowner that a right to general recreational use was being asserted over all the Application Land south of Footpath 81 as distinct from the assertion of a right to use the Permissive Path. The aerial photographs, while possibly showing other tracks, appear to me to confirm the dominance of the general line of the Permissive Path while other non-aerial photographs dating from 1984, 1992 and 1995 and 1998 also show the distinct nature of this line.

111. In coming to my conclusions I have taken into account all uses which have been referred to in the evidence. For example, I have no doubt that all of the grass slopes of the Application Land south of Footpath 81 have been a popular and well-used sledging venue in snowy conditions and I cannot accept that this is an activity which has been carried on only with the permission of the Lintons. It is also the case that I do not discount this as a non-qualifying use in the way that Mr Cannock urged me to do. The view I reach, however, is that taking evidence of such transitory uses into account (rather than discounting them), the totality of the evidence is nevertheless not enough to show an overall picture of general recreational use of these areas of the Application Land.

112. I agree with Mr Cannock's submission that the live evidence barely touched on some parts of the Application Land, in particular that area north of Footpath 81 and, on the opposite side, the cross fall slopes down to that footpath from the rest of the Application Land. The evidence overall is again insufficient to sustain the claim to register these areas of the Application Land.

113. Accordingly, I consider that the Application fails on the basis of an insufficiency of use evidence apart from evidence of use of Footpath 81 and the Permissive Path.

(e) Use "as of right"

114. For the sake of completeness it is right that I should also go on to consider matters which were raised in connection with the issue of whether use was "as of right". No issue arises in respect of entry on to the Application Land from any of its main entrances by direct physical force save in respect of access to the Application Land off the access drive to St Andrew's Church. The evidence suggests, and I so find, that the access drive was bounded on its east side by a chain link fence at least during the period 1991-2011. As Mr Ashworth explained, this did not form the boundary between the Church's land and the Application Land which was further to the east but not marked by any physical barrier until the fence was erected in 2011. Had there been forcible entry through the chain link fence it seems to me that this would amount to forcible entry on to the Application Land also notwithstanding that some of the Church's land had to be crossed before the Application Land was reached. It would be wholly unrealistic to conclude that there was forcible entry only on to the Church's land in the postulated circumstances. It also seems to me that some force was used at some stage in the past given the accounts in the evidence of the chain link fence being trampled into the ground. However, there is no evidence that any gap in the chain link fence was ever repaired by the Church and the evidence of Mr Linton (which is not supported by any other evidence in this respect) dates barbed wire repair of this feature to, at the very latest, the beginning of the period from 1991-2011. Overall I find that any force used to gain access across or through the chain link fence occurred before the 1991-2011 period, that there was no continued opposition to access from this quarter manifested in any repairs in that period and that access was over all that time freely available without the need to use force.

115. I have already found that the grazing of horses on the Application Land during the period from 1991-2011 was only occasional and infrequent. I accept that, when this occurred, it would have given rise to the need to restrain the horses' movement by tethering or the formation of a roped enclosure. Entry into a roped enclosure by

climbing over, under or through ropes would be forcible albeit that, if such did occur, it could have happened on only those infrequent occasions when the roping practices were employed on the Application Land. However, there is no evidence that such forcible entry into roped off areas ever did occur and I reject the suggestion that there is a body of forcible use of the Application Land by forced entry into roped enclosures. I also consider that the occasional use of roped enclosures on the Application Site to contain horses would not have been sufficient to amount to an interruption which would defeat a claim to register a new green. Although this is not something which relates to the question of forcible use, I mention it here as the most convenient point at which to deal with this particular matter.

116. I turn to the issue of signs. Use of land contrary to a prohibition on that use made clear in an appropriate sign (or signs) will be contentious and thereby forcible. In *Betterment Properties (Weymouth) Ltd v Dorset County Council*[42] the principle was clearly expressed by the Court of Appeal in the following terms: *"if the landowner displays his opposition to the use of his land by erecting a suitably worded sign which is visible to and is actually seen by the local inhabitants then their subsequent use of the land will not be peaceable. It is not necessary for Betterment to show that they used force or committed acts of damage to gain entry to the land. In the face of the signs it will be obvious that their acts of trespass are not acquiesced in."*[43] A number of principles which apply in considering signs or notices were set out in *Oxfordshire & Buckinghamshire Mental Health NHS Foundation Trust v Oxfordshire County Council*[44] of which the fundamental one is *"what the notice conveyed to the user. If the user knew or ought to have known that the owner was objecting to and contesting his use of the land, the notice is effective to render it contentious".*[45]

117. Turning to the facts, I have already indicated in paragraph 104 above that one of the features of Mr Linton's evidence that I found unreliable was the shifting account provided in relation to signs. The limited weight which I place on Peel's

[42] [2012] EWCA Civ 250.
[43] At paragraph 38 per Patten LJ. The passage cited above is not affected by the subsequent decision of the Supreme Court in the case, [2014] UKSC 7.
[44] [2010] EWHC 530 (Admin).
[45] At paragraph 22.

written evidence is diminished further in relation to the issue of signs because, as Mr Todd pointed out, Kieran Flatley and Daniel Phelan each claimed to have seen signs at the top and bottom ends of Footpath 81 which did not correspond with any of the locations where Mr Linton had said they were. The evidence on behalf of Peel in relation to signs leaves a confused and inconsistent overall impression. None of the witnesses who gave oral evidence in support of the Application recalled any prohibitory signs as referred to by Mr Linton and, while I accord limited weight to the written evidence in support of the Application, it is consistent with the oral evidence I heard from the Applicant's witnesses on this point and presents (both in the 16 addendum questionnaires from early 2013 and in the later 2013 questionnaires) a unanimous picture of the absence of any prohibitory signs. If there had been signs visible to users of Footpath 81 I think it is highly unlikely that no one in this significant body of evidence would not have recalled or referred to the same. I find that there were no prohibitory signs during the period 1991-2011.

118. As to Mr Ashworth's sign on the gatepost on the end of the Church access drive, while I have no difficulty in accepting that Mr Ashworth did erect such a sign in the terms he described ("private no public access") I find that those who went on to the Application Land from the access drive to the Church would, as Mr Todd suggested, have probably cut a corner by crossing the trampled down chain link fence rather than going as far as the gate opening as they approached from Bolton Street so that the sign would not have been seen. To my mind "private road no access" signs at the Bolton Street entrance to the access drive to the Church would have conveyed a prohibition on vehicular and not pedestrian access.

119. It follows from all the above that, had my conclusions been otherwise in relation to the issues of neighbourhood and sufficiency of use, I would not have considered that the Application should be rejected on the basis of failure to demonstrate that use was not "as of right". I should perhaps add that Ms Bajda's evidence of having, as a child, crawled through a gap to get on to the Application Land and having known that she was trespassing is too generalised to carry any weight in my consideration of matters while Mr Phelan's account of access from the direction of the playing fields by climbing through a little hole stands on its own as a

description of an entry point to the Application Land and so does not affect my conclusions.

(11) OVERALL CONCLUSION AND RECOMMENDATION

120. The Application fails for want of identification of an appropriate qualifying neighbourhood and on the basis of an insufficiency of use evidence apart from evidence of use of Footpath 81 and the Permissive Path. I recommend accordingly to the Registration Authority that it should be rejected.

Kings Chambers
36 Young Street
Manchester M3 3FT

Alan Evans
1st June 2014