IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT BYRD ROW, NORTON, EVESHAM, WORCESTERSHIRE AS A TOWN OR VILLAGE GREEN

REPORT

of Miss Ruth Stockley

13 May 2013

N Q R Z Q Football Field / Pitch D Q G L W V Adjacent to the Playing Field on RHS of Byrd Row, opposite the Village Hall $ Plan was submitted with the Application attached to the Statutory Declaration which showed the Land subject to

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

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

2.6 At the Inquiry, the Applicant was represented by Mr Tadjrishi, and the Objectors were represented by Mr Johnson of Thomson & Bancks Solicitors. Any third parties who were not being called as witnesses by the Applicant or the Objector and wished to make any representations were invited to speak, but no additional persons did so.

3. THE APPLICATION LAND

3.1 The Application Land is identified on the map submitted with the Application on which it is outlined in green.

3.2 It comprises a flat area of open grassland which is largely rectangular in shape. The grass in the centre is currently un-maintained and overgrown, but there is a visible worn path round the perimeter which appears to have been mown. The eastern part of the Land in front of the Village Hall is well maintained and closely mown. To the north of the Land is a Z H O O P D L Q W D L Q H G D Q G H T X L S S H G F K L O G Phoenix Park. There is a row of wooden posts and a hedge between the two areas. To

the south and west of the Land are open fields. In the south eastern corner, the Land bounds the Village Hall which has a car park to its north. Byrd Row runs north easterly from the north eastern corner of the Land. There are no signs on the Land itself nor any benches, but one set of old goal posts remain in situ.

4. THE EVIDENCE

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

4.2 The evidence was not taken on oath.

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

CASE FOR THE APPLICANT

Oral Evidence in Support of the Application

4.4 Mrs Kim Davies[7] has lived at 12 Kings Lane, Norton since August 1997. Prior to that, she lived outside the Parish. She has been a Parish Councillor for Norton and Lenchwick since July 2012. When she came to Norton in 1997 with her 3 year ROG GDXJKWHU QHLJKERXUV LQIRUPHG KHU WKDW WK

[7] 7KH)RRWEDOO)LHOG´ ZDV D JRRG SODFH WR ZDON S

recreational purposes for as long as they could remember. Over the past 16 years, she,

onto it. The adjacent land, Phoenix Park, has play equipment on it, football pitches and the grass is mown. She disagreed that Phoenix Park was the main area for FKLOGUHQ¶V SOD\ 6KH UHFDOOHG WKDW WKH /DQG D effectively one area of land when she came to the Village as shown on the photograph taken in June 1998[8], and her and her family had used the entire area. She is not a dog walker, but sees others dog walking on the Land. They tend to walk everywhere on the Land rather than merely round its boundary. There is a Club which meets in the Village Hall, but she has not attended any of its events.

4.6 Mr Lynn Davies[9] has lived at 12 Kings Lane, Norton since 1999 when he moved to the Village. He met his Wife prior to that at the Village Hall drama club. Some of their practices took place on the Land. He also attended a rounders training event on the Land. He spent time kite flying on the Land with his Step Daughter. His neighbours regularly walked their dogs on the Land, and he sometimes accompanied them. They cut through into the adjoining area from the Land as part of a longer walking route. +H KDG ZDONHG RQ WKH SDWKV VKRZQ RQ WK[10] His personal usage of the Land has been varied fairly regularly, namely on average a couple of times a week, and he has seen others using the Land on most occasions. Its most popular use is for dog walking.

4.7 There is a play area for younger children on the adjacent land, but that was a relatively recent development. Prior to the equipment being brought onto the adjacent land approximately 3 or 4 years ago, there was no differentiation between the two areas, and Wagers did not distinguish between them but regarded them and used

[8] At AB page 191.
[9] His evidence questionnaire (joint with his Wife) is at AB page 11.
[10] At OB pages 207 and 208.

them as part of one stretch of open space. He had used all that area. He recalled the

posts around it which prevent vehicular access onto the Land, but not pedestrian access. He has seen the Dog Training Club using the Land, but he is not a member.

4.9 Mrs Maureen Malvern Grinter [12] has lived at 3 Byrd Row since 2006 which she bought from the Objector

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football team.[15] The Village Hall was previously located at the top of Kings Lane. It was sold for social housing sometime between 1993 and 1997. The Village Hall & R P P L W W H H V R X J K W W R U D L V H I X Q G V W R S X U F K D V H D Club on which a new Village Hall could be built. Various fund raising events took place for that purpose, some of which took place on the Land. The Dog Training Club had permission to use the part of the Land closest to the Hall. That involved group training on the Land on a formal basis. She was not a member.

4.13 She acknowledged that she and the Village Hall Committee were content with part of the Land being developed that was further away from the Hall, as evidenced by the Village Hall Minutes of 6 July 2012 and shown on the attached plan, as that was 'suiting the Hall'.[16] However, it subsequently became apparent that residents of Byrd Row objected to such development. That placed her in a difficult position as she represented both the Hall and the Villagers.

4.14 The Land was used as a football pitch from the ¶V W R G X U L Q J Z K L F was well maintained. The current Owners continued to keep the Land mown until 2008 after which it became overgrown. Since then, volunteers have mown it in front of the Hall. Phoenix Park adjacent to the Land is maintained by the Parish Council. It is well used. The photographs taken in June 1998[17] show that there was very little play equipment on that area then. The focus of playing sports was then on the Land rather than on Phoenix Park. It was not until 2008 that new play equipment was installed. The two areas were then one large space with a rough hedge between them, and Villagers used the entire space. Dog walking was a favourite activity, and

[15] At OB page 195.
[16] At OB pages 80-82.
[17] At AB page 191.

being one large field. She has seen others using the Land for playing, cycling, dog walking and kite flying. She stopped using the Land in 2003, but started using it again in 2006 since when her main use has been for dog walking. She has looked after a IURHQGV¶ GRJ since then. When they are away during which times she takes the dog for a walk on the Land around three times a day. She walks with the dog on a lead down one side of Phoenix Park, and then lets the dog off the lead on the Land. She walks through the middle of the Land, throwing the ball for the dog. She has never noticed the trodden area round the perimeter of the Land. Children have always played on the Land.

4.18 She had been a member of the :RUNLQJ 0HQ¶V &OXE EXW ZDV QRW committees. As a member, she had access to the building where she played darts. The Club did not raise any objection to its members using the Land. She recalled athletes other events being held on the Land and there were no protests from the Club. She was involved with organising Parish rounders on the Land. She had seen organised football matches on the Land when the Club was still in operation. She was not a member of the Dog Training Club. The present landowners erected posts around the Land to prevent vehicular access, but they were not an obstacle to pedestrian access as they were merely posts with no fencing between. There were never any signs on the Land restricting access to it or restricting its use.

4.19 Mr Steve Penrose[23] has also lived at 7, Heathfield Road since 1986. His family used the Land much more when the Children were young. With the Children,

ends close to that adjacent area. However, dogs are not welcome there, so some dog owners skirt around it and also pass along the boundary of the Land itself on their way to other places, fields and paths. It is very likely that such dog walkers pass through the Land but do not stay to play on it

4.26 Pedestrian access to the Land has never been prevented. Signs have never been displayed preventing the use of the Land. Permission has been given to people to use the Land for recreational purposes if they requested it. However, he was unaware whether any of the 49 local residents who had submitted evidence questionnaires in support of the Application had been given such permission

4.27 Mr Timothy Smith [27] is the other joint freehold owner of the Land and is the other Objector. He expressed the view that the Applicant had not intended to include the area of land that was subject to the most recent planning permission as part of the Application Land. That planning permission is for 4 dwellings on part of the Land adjacent to Byrd Row and the Village Hall car park and is dated 15 October 2012.[28] The Applicant supported that planning application. However, he acknowledged in cross examination that in the Application itself, reference had expressly been made to the Owner having outline planning permission for a small part of the Land.[29] He confirmed that the Objection relates to the entirety of the Application Land.

4.28 He confirmed the evidence given by Mr Wadley. At the time they purchased WKH :RUNLQJ 0HQ¶V &OXE LW ZDV EDGO\ YDQGDOLVHG eyesore. The Village Hall had also been subject to vandalism. When the properties on

[27] His witness statement is at OB page 55.
[28] The planning permission is at OB page 107. The approved plan is at OB page 82.
[29] Box 11 of the Application Form at AB page 7.

4.30 During the Inquiry, I invited any other persons who wished to give evidence to do so. There were no such other persons who gave additional evidence.

5. THE LEGAL FRAMEWORK

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

Commons Act 2006

5.2 The Application was made pursuant to the Commons Act 2006. That Act requires each registration authority to maintain a register of town and village greens within its area. Section 15 provides for the registration of land as a town or village green where the relevant statutory criteria are established in relation to such land.

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

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

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

(i) the Application Land F R P S U L V H V 3 O D Q G ´ Z L W K L Q W K H P H
Act;

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

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

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

(v) such use has been as of right; and

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

Burden and Standard of Proof

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

5.6 Further, when considering whether or not the Applicant has discharged the evidential burden of proving that the Land has become a town or village green, it is important to have regard to the guidance given by Lord Bingham in R. v Sunderland City Council ex parte Beresford[31] where, at paragraph 2, he noted as follows:-

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indulgence in what are properly to be regarded as lawful sports and pastimes DQG ZKHWKHU WKH WHPSRUDO OLPLW´ RI \HDUV¶ Hence, all the elements required to establish that land has come to be a town or village green must be properly and strictly proved by an applicant on a balance of probabilities.

Statutory Criteria

5.7 Caselaw has provided helpful rulings and guidance on the various elements of the statutory criteria required to be estab4C0(a)ed [-793e118r5800 1 0 0 1 283.has be

5.10 It was made clear in R. v. Oxfordshire County Council ex parte Sunningwell Parish Council[33] W K D W ³ O D Z I X O V S R U W V D Q G S D V W L P H V ´ L V G H F L G H G L Q O D Z I X O V S R U W V D Q G S D V W L P H V [S U H V V it is sufficient for a use to be either a lawful sport or a lawful pastime. Moreover, it includes present day sports and pastimes and the activities can be informal in nature. Hence, it includes recreational walking, with or without dogs, and OH G U H Q ¶ V S O D \

5.11 However, that element does not include walking of such a character as would give rise to a presumption of dedication as a public right of way. In R. (on the application of Laing Homes Limited) v. Buckinghamshire County Council[34], Sullivan J. (as he then was) noted at paragraph 102 that:

> ³It is important to distinguish between use which would suggest to a reasonable landowner that the users believed they were exercising a public right of way ± to walk, with or without dogs, around the perimeter of his fields ± and use which would suggest to such a landowner that the users believed

confined to the track may readily be regarded as referable to user as a public highway alone. The situation is different if the users of the track, e g, fly kites or veer off the track and play, or meander leisurely over and enjoy the land on either side. Such user is more particularly referable to use as a green. In summary it is necessary to look at the user as a whole and decide adopting a common-sense approach to what (if any claim) it is referable and whether it is sufficiently substantial and long standing to give rise to such right or rights.

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

Continuity and Sufficiency of Use over 20 Year Period

5.13 The qualifying use for lawful sports and pastimes must be continuous throughout the relevant 20 year period. Hollins v. Verney[36]

5.14 Further, the use has to be of such a nature and frequency as to show the landowner that a right is being asserted and it must be more than sporadic intrusion onto the land. It must give the landowner the appearance that rights of a continuous nature are being asserted. The fundamental issue is to assess how the matters would have appeared to the landowner. R. (on the application of Lewis) v. Redcar and Cleveland Borough Council[37]

Locality or Neighbourhood within a Locality

[36] (1884) 13 QBD 304.
[37] [2010] UKSC 11 at paragraph 36.

5.15 $ l9cality´ P X V W E H D G L Y L V L R Q R I W K H & R X Q W \ N Q R

borough, parish or manorMoD v Wiltshire CC,[38] R. (on the application of

Cheltenham Builders Limitedb1H/( )-39Gv

hET BT 1 0 0 1 9434.71703.9 Tm 9D 05> [(ET BT [w-2(2-2(C0-2(C0-6C3-2(C]Cas)-312(E)n)-387(HC)s)-312(

relevant statutory criteria being satisfied. In determining that issue, it is inappropriate for me or the Registration Authority to take into account the merits of the Land being registered as a town or village green or of it not being so registered, or the merits of any development on the Land that has been granted planning permission or being implemented or not implemented.

6.3 In addition, it is similarly inappropriate for me or the Registration Authority to take into account any negotiations that may have taken place between the Parties with a view to reaching an agreement to resolve the matter which negotiations often occur in practice Such negotiations that have apparently taken place in this instance and any agreements that may or may not have been reached between the Parties, consequently have no influence or effect upon my findings as to whether the relevant statutory criteria have been satisfied in relation to the Application Land and the basis of all the evidence adduced, and the Registration Authority should take the same approach.

6.4 I shall now consider each of the elements of the relevant statutory criteria in

6.5 There is no difficulty in identifying the relevant land sought to be registered. A map was submitted with the Application attached to the Statutory Declaration which showed the Land subject to the Application outlined in green[51], and that is the definitive document on which the Land that is the subject of the Application is marked. The Land has clearly defined and fixed boundaries, and there was no dispute at the Inquiry nor in any of the evidence adduced that that area of land comprises ³ODQG´ ZLWKLQ WKH 5(1) Doc that is capable of registration as a town or village green in principle and I so find.

Relevant 20 Year Period

6.6 Turning next to the identification of the relevant 20 year period for the purposes of section 15(2) of the 2006 Act, the qualifying use must continue up until the date of the Application. Hence, the relevant 20 year period is generally the period of 20 years which ends at the date of the Application. The Application Form and the accompanying statutory declaration are dated 11 November 2010, and the Application was received by the Registration Authority on 12 January 2011. In my view, the relevant date of the Application is the date when the Application is received by the Registration Authority. It follows that the relevant 20 year period for the purposes of section 15(2) is January 1991 until January 2011.

Use of Land for Lawful Sports and Pastimes

6.7 Turning next to whether the Land has been used for lawful sports and pastimes in principle during the relevant 20 year period, it is contended by the Applicant that the Land has been used for various recreational activities during that period.

[51] At AB page 158.

6.9)XUWKHU , QRWH WKDW LW LV QR SDUW RI WKH

recreational activities have taken place on the Land. Instead, the main dispute

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namely the locality of Norton and Lenchwick Parish. That area is identified on the Plan of the locality submitted with the Application.[53]

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

Use as of Right

6.13 Before turning to the extent of the qualifying user by the inhabitants of the locality throughout the relevant 20 year period, I shall consider next whether the use of the Land has been 'as of right' during that period. There was no suggestion in any of the evidence that any of the use was by stealth. On the contrary, it was carried out openly during daylight hours and without any element of secrecy. The use of the Land has thus been nec clam. Similarly, none of the u

6.14 As to whether the Land has been used precario, it was a significant element of the Objectors' case to the Inquiry that the Applicant's use was with express permission or with implied permission and was consequently precario.

6.15 Starting with express permission, the material evidence in that regard was largely undisputed. In terms of the element of the relevant 20 year period when the Land was owned by the Workmen's Club between January 1998 and October 2001, documentary evidence in the form of minutes from their meetings that the Applicant had been able to obtain demonstrated that the Club granted express permission on various occasions during that period for organised activities to take place on the Land, often imposing a charge for such use. That included the regular football matches that occurred on the Land by various teams, but also social activities, such as the holding of fetes and concerts. It seems to me to be clear from such documentary evidence that the Land was regularly used during that period by different football teams as a football pitch and that express permission was given by the Club for such use, together with permission for other more infrequent organised activities on the Land. Indeed, that was accepted by the Applicant.

6.16 As to the later part of the relevant period during which the Objectors owned the Land from October 2001 until January 2011, it seems to me that an element of the use during that time was also subject to express permission having been granted. Again, that related in the main to organised activities on the Land, and to that extent, the Applicant did not dispute that such use was carried out with express permission. Hence, permission had been given by the Objectors for the Dog Training Club to use

to that particular issue that the onus shifts to the Landowners to show that the use was pursuant to implied permission.[55]

or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to exclude, and so makes plain that the inhabitants' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use".

Lord Rodger stated at paragraph 59:

"The grant of such a licence to those using the ground must have comprised a positive act by the owners, as opposed to their mere acquiescence in the use being made of the land". 0 \ H P S K D V L V

"From these observations, which I take as authoritative guidance on conduct by an owner which may count as an overt act or as a relevant or demonstrable circumstance sufficient in law to allow an inference of permission, it appears that the owner must make it clear that the public's use of the land is with his permission and that that may be shown by excluding the public on occasional days (per Lord Bingham, para 5; and see para 79 per Lord Walker); he must do something on his land to show that he is exercising his rights (as owner) over his land and that the public's use is by his leave (para 6); there must be a positive act by owner qua public though a notice is not necessary provided the circumstances relied on allows the inference to be drawn (para 59); implied consent by taking a charge for entry or similar overt act communicated to the public is sufficient without the need for express explanation or notice (para 75); such conduct need only occur from time to time (I should add, perhaps once only during the period under scrutiny) (para 76); such conduct will be expected to have an impact on the public and show that when the public have access (I should add, to all or part of the land) they do so with the leave or permission of the owner (para 83)".

6.23

being paid or otherwise. The public may well not have walked their dogs over the football pitch whilst a match was taking place, but such conduct is entirely akin to the ³JLYH DQG WDNH´ attitude referred to in Redcar where the activities of the Landowner and of the inhabitants were found to be able to exist. That is very different from a positive and demonstrable act of exclusion as was found to have occurred in Mann. In that case, it was found that the acts of the landowner in holding beer festivals on the DSSOLFDWLRQ DQG IDFW RI H[FOXVLRQ E\ WKH ³RZQHU´[56] Everyone was excluded from a certain part of that land where the festival was taking place subject to the payment of an entrance charge. It was thereby apparent to local inhabitants that they had no right to be on that land.

6.24 In contrast, I have seen no evidence of such exclusion of local inhabitants from any part of the Land during the relevant 20 year period, whether subject to a payment or by access to the Land being occasionally closed. Instead, the evidence suggests that local inhabitants continued to use the Land as such times, albeit ZLWK WKH ³JLYH DQG WDNH´ attitude referred to in Redcar. It was seen from the available evidence that the factual circumstances are akin to those that arose in Redcar rather than in Mann.

6.25 Further, none of the other conduct by the Landowners seems to me to have resulted in such an overt act as to infer permission. I accept and find that the Objectors erected posts around the Land with the specific objective of preventing and thereby controlling vehicular access onto the Land. However, that did not, and was not intended to, restrict pedestrian access, and there is no evidence that any of the

[56] Per HHJ Robert Owen QC at paragraph 72.

informal recreational activities were affected, or intended to be affected, by such actions. That would not, in my view, have demonstrated to the inhabitants that the use RI WKH /DQG ZDV VXEMHFW WR WKH /DQGRZQHUV¶ SH

Landowners that recreational rights were being asserted over the Land by the local community.

6.28 In terms of the elements of the use which must be discounted from the qualifying use, I have already referred above to the dog walking carried out by individuals who had been given permission to walk on the Land by either of the Objectors. Secondly, I exclude from the qualifying use any use of the Land carried out outside the relevant 20 year period. Although such use may be relevant as an indicator as to the extent of the use within that period, and I have taken that factor into account, I am unable to regard such use as part of the qualifying use itself. Thus, I have excluded the recreational uses of the Land referred to in the evidence above that was undertaken prior to January 1991 and post January 2011. I have also taken the same approach with the written evidence. Thirdly, I have excluded such use by persons who were not inhabitants of the Parish of Norton and Lenchwick, such as the use of family and children when visiting from (iv)-11(e)4(n)-187(c)3Par hildrn a p10( )-9n that fact07 Tm [(e

6.30 From the evidence, it is my impression that a material amount of walking and dog walking took place around the perimeter of the Land as well as over the Land generally. Hence, by way of example, Mr Davies had walked along the worn perimeter path; Mr Coleman noted that dog walkers walked both round the perimeter of the Land and over it; and Mr Edwards similarly pointed out that he had seen dog walkers in the middle of the Land and others walking round its perimeter. I accept such evidence. Indeed, it is apparent from the photographic evidence and from my site visit that a worn path exists, and existed during the relevant 20 year period, a

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there was no specific evidence of any community events or formal events having been organised on the Land during the relevant 20 year period aside from those which were granted express permission.

6.32 In terms of walking and dog walking, it is necessary to discount that which was more akin to the exercise of a public right of way. In that regard, where the evidence fails to indicate whether particular routes were taken whilst walking on the Land, and I am unable to assume that the Land was so used by the authors of such evidence given that the burden of proof lies upon the Applicant.

6.33 Having carried out the appropriate discounts, it is my view that on the basis of all the evidence that the qualifying use of the Land has not been demonstrated to have been carried out to a sufficient extent and frequency throughout the whole of the relevant 20 year period to satisfy the statutory criteria for the following reasons.

6.34 In terms of the oral evidence in support of the Application, I note the following. Mrs David Vaughan, a qualifying use of

would not have been playing on the land to any material extent at the start of the 20 year pe

access can still be gained from one to the other. In contrast, the Land itself has not been maintained for the most part during that later period. It appears that much F K L O G U H Q ¶ V S O D \ P H P R U L H V P D \ K D Y H E H H Q P D L Q W D L Q H G R Q W K H / D Q G S D U W L F X O D U O \ L Q W K H P R U H U H F H Q W \ H D U V W K H U H E \ U H G X F L Q J W K H Indeed, that view is supported by some of the written evidence in support of the Application ' U ' L V K D U W U H I H U V E H F R P H Z K H U H G L I I L F X O W W R X V H L W [3] it has not been mown D Q G W R L W Q R O R Q J H U E H L Q J X V H G I R U I the overgrown grass and the lack of posts.[57] Similarly, Mr Staite, Mr and Mrs Johns

gone unnoticed by them whilst they were focused on their work. Nonetheless, in general terms, their evidence supports the view that the Land was not being used on a regular and frequent basis for qualifying uses by significant numbers of local people at that time.

6.39 Taking the oral and written evidence as a whole from both Parties, and from my visit to the Site, it is my impression that over the latter part of the 20 year period, the Land has been used primarily for dog walkers. Moreover, although I accept the evidence that some dog walkers have walked over the Land generally, I find that the majority of dog walkers in that later part of the relevant 20 year period have used the visible worn path around the perimeter, albeit no doubt allowing their dogs to run in the longer grass off the lead. Once that right of way use is discounted, I find that the remaining qualifying use of the Land in that latter part of the relevant period, and particularly since 2008, has been y 1 0 0 ep.25 40 0 ep.25 40 0 ep.25 40 0 ep.25 40 0 0 7(nific)3(

that it has not been so used for lawful sports and pastimes as of right throughout the relevant 20 year period.

6.42 However, in addition, in order to establish that element of the statutory criteria, I accept the Objectors' submission that there must be a reasonable spread of users across the identified locality rather than the users being confined to a particular part of it. The user must have been of such a nature to bring it to the attention of the reasonable landowner that a right of recreation was being claimed by the inhabitants of the particular identified locality, namely by that identified local community. Thus, it seems to me that it is not merely the number of users that are significant, and I have

the locality save for two individuals results in there not having been established a sufficient geographical spread of users across the locality as a whole to satisfy that element of the statutory criteria. Therefore, on that further basis, I find that the Applicant has failed to establish that the Land has been used by a significant number of the inhabitants of the identified locality.

Continuation of Use

6.44 The final issue is whether the qualifying use continued up until the date of the Application, namely 12 January 2011. The Land remains unfenced and open and no signs have been erected restricting its use to date. Witnesses gave evidence that they continue to use the Land. Therefore, subject to the other elements of the statutory criteria, I find that the qualifying use was continuing as at the date of the Application and that that particular element of the statutory criteria has accordingly been satisfied.

7. CONCLUSIONS AND RECOMMENDATION

7.1 My overall conclusions are therefore as follows:

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

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

7.1.3 That the Parish of Norton and Lenchwick is a qualifying locality;

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

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

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

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

7.2 In view of those conclusions, it is my recommendation that the Registration Authority should reject the Application and should not add the Application Land to its register of town and village greens for the reasons contained in this Report and the specific grounds that:

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

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

8. ACKNOWLEDGEMENTS

8.1 Finally, I would like to thank the Applicant and the Objectors for providing all the documentation to me in advance of the Inquiry and for the very helpful manner in which the respective cases were presented to the Inquiry. I would also like to thank all the witnesses who attended the Inquiry as they each gave their evidence in a clear,

succinct and frank manner. I would further like to express my gratitude to the representatives from the Registration Authority for their significant administrative assistance prior to and during the Inquiry.

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

RUTH A. STOCKLEY

13 May 2013

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