

REPORT OF CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)

APPLICATION TO REGISTER A TOWN OR VILLAGE GREEN AT SMOKEY'S FIELD, LANGOLD

Purpose of the Report

1. To enable Committee to consider an Application made under the Commons Act 2006 to Nottinghamshire County Council as Registration Authority to register land as a Town or Village Green.

Information and Advice

2. An Application was made by Mr. Alan Fisher in June 2010 to register an area of land known as Smokey's Field in Langold as a Town or Village Green. The application land is shown on the plan marked as **Map A** and is an irregularly shaped piece of land which is grassed, part of which had been used as a football field.
3. Notices of the Application were sent to all the interested parties and made available at County Council offices (County Hall and Centenary House) and at the offices of Bassetlaw District Council. Notices were affixed at various places on and around the application land and were advertised in the local press. Objections were made to the application from Mr. Peter Eyre, the owner of the land, and by Gleeson Developments, the prospective developer of the land.

The Law

4. As Registration Authority, the County Council has a duty to decide whether or not the use of the Application Land fully meets all the elements of qualifying use under Section 15(1) and 15(2) of the Commons Act 2006. For land to have become capable of registration as a Town or Village Green it must be proved to have been used:
 - By a significant number of local inhabitants;
 - For lawful sports and pastimes;
 - As of right (being without force, without permission and not in secrecy);
 - For 20 years, prior to the date of the Application;
 - With such use continuing at the time of the Application.

5. The Registration Authority is required to either accept or reject the Application solely on the facts. Any other issues, including those of desirability or community needs, are not legally relevant and cannot be taken into consideration. Acceptance means the land will be registered. Rejection means that no registration may take place. Under the current law, land can only have the legal status of a Town or Village Green upon registration.

Public Inquiry

6. Due to the complexity of the evidence and the complex nature of the law relating to this subject a public inquiry was held to test the evidence and to see if the requirements for registration had been met. The use of a public inquiry for such an Application has been approved of by the courts as being in the interests of openness and fairness.
7. The Registration Authority appointed a Barrister, Mr. Martin Carter from Kings Chambers, Manchester, as an independent Inspector to conduct a non-statutory public inquiry to hear the evidence, find the facts and prepare a report with recommendations on the Application.
8. The Applicant and objectors were notified of the decision to hold a public inquiry and the Inspector issued directions in a pre inquiry meeting on the 30th August 2011 setting out how pre-inquiry matters and the inquiry itself would proceed. Notices were affixed at various places on and around the Application Land informing members of the public of the arrangements for the inquiry and notices were also put in the local newspaper. The inquiry ran from Monday the 31 October 2011 to Thursday 3 November 2011 and was held at the Langold Hilltop Club, Langold. Opportunity was given by the Inspector at the Public Inquiry for the applicant and objectors to give evidence as well as any members of the public

The Inspector's Report

9. The Inspector's report contains a detailed analysis of the background to the case, site description, history, relevant statutory provisions, information heard at the public inquiry, the Inspector's conclusions, the application of the law and a recommendation. A full copy of the report is attached as Appendix B to this report.
10. The Inspector's report deals with each of the relevant elements of the qualifying use for Town or Village Green status and the Inspector concludes that:
 - The first and main issue on the question of whether the use was as of right is whether the use of the football pitch by the Football Clubs was as of right. (paragraph 160 of Appendix B).
 - There is evidence that suggests that use of the field by the Football Clubs being by permission and therefore the use of the application site by the football teams was therefore not as of right throughout the 20 year period. (paragraphs 161 and 162 of Appendix B)

- The evidence of other recreational activities on the application site does not establish a significant number of the inhabitants of the neighbourhood of Langold indulged as of right in lawful sports and pastimes for a continuous period of 20 years on the application site which continued to the date of the application. (Paragraphs 164 to 167 of Appendix B)
- The recommendation to the Registration Authority is that the application is refused and that the application site should not be registered as a Town or Village Green. (paragraph 168 of Appendix B)

Statutory and Policy Implications

11. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.
12. The following rights under the European Convention on Human Rights may be engaged when making this decision;
 - Article 1 of the First protocol provides that every natural or legal person is entitled to the peaceful enjoyment of their possessions.
 - Article 6 of the Convention is also applicable in that it provides a procedural right to a fair hearing. It is considered that the holding of a non-statutory Public Local Inquiry meets the requirements for a fair and open hearing.
 - Article 8 of the Convention provides everyone with the right to respect for their private and family life and their home.
13. These rights may be interfered with in certain circumstances. The rights of the landowners to enjoy their land and property may be affected by a decision to register such land as a Town or Village Green. Equally local residents may feel that they have rights to use the land and that it should be registered as a Town or Village Green for their enjoyment as part of their life. The Council may interfere with such rights in accordance with the law as contained in the Commons Act 2006 and, where necessary in a democratic society, in the interest of, among other things, the general interest.

RECOMMENDATION/S

- 1) It is RECOMMENDED that the Committee considers the Inspector's report and rejects the Application.

Angus Trundle
Commons and Town or Village Greens Officer

For any enquiries about this report please contact: Angus Trundle
Tel: 01159774961

H/AT/ROW 80 - Smokey Fields, Langold
02.04.2012

Constitutional Comments (MM29/03/2012)

14. The matters set out in this report are matters within the purview of the Rights of Way Committee pursuant to the Full Council decision of 24 September 2009.

Financial Comments (DJK 23.03.12)

15. The contents of this report are duly noted; there are no financial implications.

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

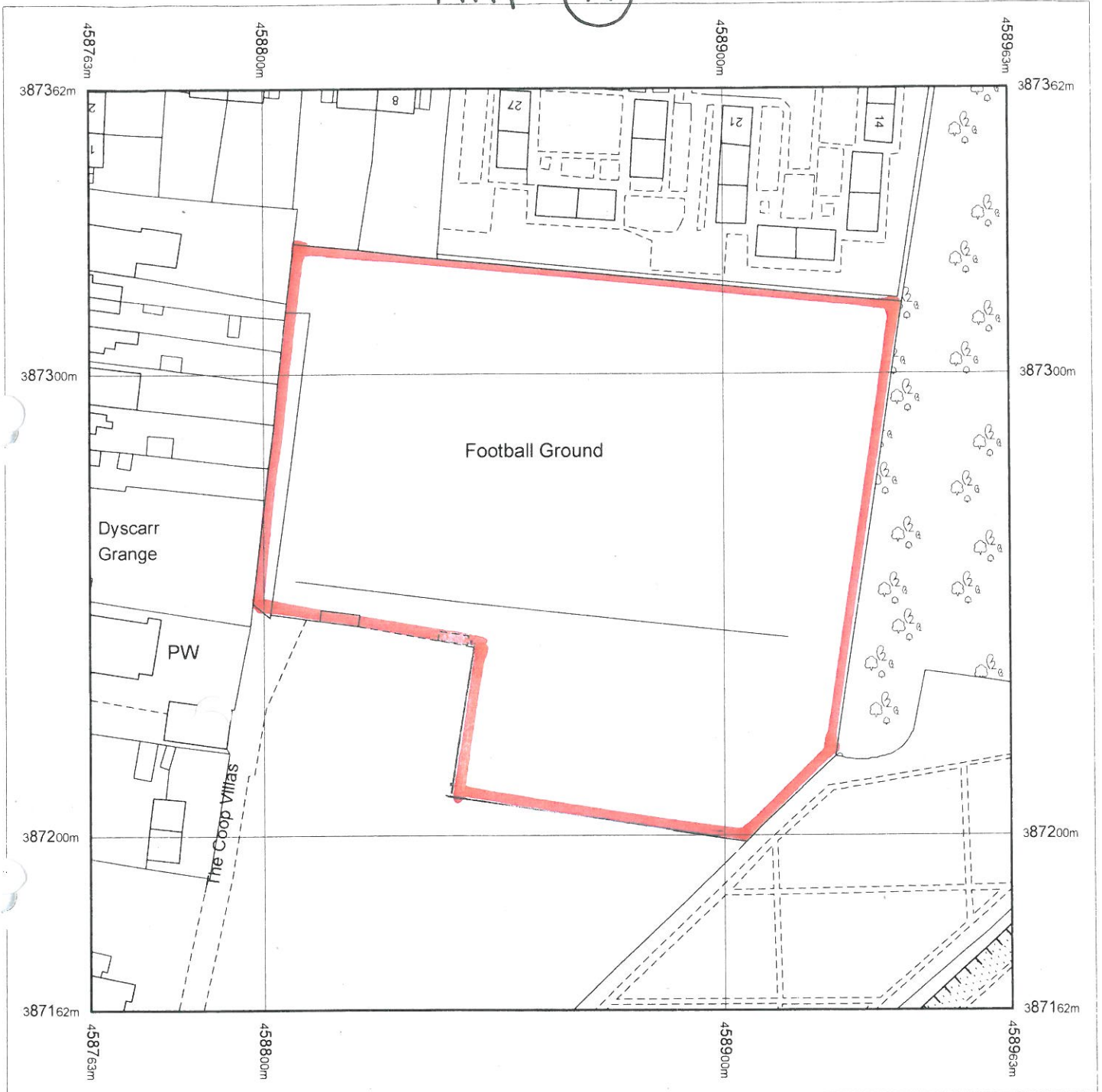
- The office file relating to the application.
- Documents submitted at the inquiry.

Electoral Division(s) and Member(s) Affected

Blyth and Harworth Councillor Shelia Place



MAP (A)



In the Matter of an Application to Register land known as Smokey's Field,
Langold, as a Town or Village Green

REPORT

of Mr. Martin Carter.

11th March 2012.

Alison Garraway

Legal Practitioner

Legal Services

Policy, Planning and Corporate Services

Nottinghamshire County Council

County Hall

West Bridgford

Nottingham

NG2 7QP

Ref: 359NVG

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND KNOWN
AS SMOKEY’S FIELD, LANGOLD AS A TOWN OR VILLAGE GREEN**

REPORT

INTRODUCTION

1. As explained below, this application to register land as a Town or Village Green (“TVG”) has to be dealt with in accordance with the law as set out in the Commons Act 2006.
2. I am asked to make a recommendation to Nottinghamshire County Council, in its capacity as Registration Authority (“RA”), as to whether an application to register land at known as Smokey’s Field, Langold, as a TVG should succeed.
3. Under the Commons Act 2006 (“CA 2006”) the County Council is the Registration Authority for the registration of land in the statutory register of Town and Village Greens. Neither the CA 2006 nor any Regulations made pursuant to the powers set out in that Act provide any mechanism for the RA to carry out any factual investigation which may be necessary to allow applicants and objectors to put their respective cases. In common with the practice in many other instances, the RA instructed me to hold a non-statutory public inquiry to consider the merits of the application.

4. I held that informal inquiry over 4 days in October and November 2011. The inquiry opened on Monday 31st October 2011 and sat on that day and the 1st, 2nd and 3rd November 2011. Closing submissions were delivered verbally, accompanied by written texts, on the last day of the inquiry.
5. Upon being instructed, I was invited to make informal directions as to the exchange of evidence and of skeleton arguments. I gave those informal directions at a pre-inquiry meeting on 30th August 2011. I am grateful to the parties for co-operating with those directions. It should also be recorded that as Mr Fisher was not professionally represented, I made clear to him at that meeting that as the applicant, the burden of proof in this matter rested on him to prove that the application site qualified for registration as a TVG, and that the standard of proof on factual matters was the balance of probabilities.
6. It is important to state that this report can only be a set of recommendations to the RA – I have no power to determine anything. Provided it acted lawfully, the RA would be free to accept or reject my recommendations. It is also free to seek further Advice from another person as to the content of this report before deciding whether or not to accept its recommendation.

THE APPLICATION

7. The application was made by Mr Alan Fisher (“the applicant”) on behalf of Langold Old Boys’ Football Club and care of their address at The Sheiling, Scrooby, Great North Road, Doncaster DN10 6AU and is dated 19th July 2010.

Part 4 of the application form states that section 15(2) of the Commons Act 2006 applies to the application. In answer to Question 5 on the application form, the application site's ("AS") particulars are given as:

"Smokey's Field. Location: Grosvenor Road, East of Doncaster Road, Langold, Worksop".

8. In answer to Question 6, the locality or neighbourhood within a locality in respect of which the application is made is given as:

"Smokey's Field is in the village of Langold in the parish of Hodsock, Bassetlaw, North Notts to the east of the A60 behind the shops within easy walking distance. See Map A for extent of application. See map D for position within village outlined in red."

9. The application was accompanied by a substantial amount of supporting information, contained in the applicant's first bundle.
10. Objections to the application were made by Mr Peter Eyre and by Gleeson Developments Limited ("Gleeson"). They raised the same issues, with which I deal below. Mr Eyre is the freehold owner of the application site. Gleeson is a prospective developer of it.

DOCUMENTS RECEIVED

11. I have the following sets of documents. From the applicant:

a. Two green bundles. The first contains the application and its supporting documentation. The second contains the applicant's response to the objections and a further section referred to as "the annex".

b. From the objector:

i. A blue bundle containing the objection submitted by Mr Eyre, but not that of Gleeson Developments, which is with my original papers. It also contains further witness statements produced on the objector's behalf.

ii. A dark green lever arch file containing the objector's skeleton argument and authorities relied upon.

12. In this report, references to this documentation are as follows. Each reference includes a page number following one of the following prefixes:

a. The first volume of the applicant's material, containing the application, has the prefix "A";

- b. The first part of the second bundle, containing the applicant's response to the objections has the prefix "R";
- c. The second part of the second bundle, which has its own page numbers, has the prefix "Annex";
- d. The objector's bundle has the prefix "O".

13. Hence references such as: [A/12], [R/23], [Annex/34], [O/45].

REPRESENTATION AT THE INQUIRY AND PROCEDURAL MATTERS

14. At the inquiry, the applicant represented himself. Mr Eyre was represented by Mr. Philip Petchey, of counsel. Gleeson was not represented, but their objections were within the scope of those covered by Mr Eyre.

15. At the opening of the inquiry I explained the procedure which I would use, which I had also explained at the pre-inquiry meeting. I adopted a procedure akin to that of a planning inquiry. The parties were afforded a chance to make opening statements. I heard the applicant's case first, with each witness giving evidence in turn. I then heard the objector's case. I heard any third party who wanted to give evidence. The parties made closing submissions, with the applicant having the last word.

16. I also explained at the inquiry that my sole remit was to consider whether the AS and its user met the statutory requirements for registration as a TVG and that it was no part of my task to consider whether registration as a TVG would be advantageous or disadvantageous to anyone. Similarly, I explained that the merit or demerit of any development proposals for the application site were of no relevance to my task.

DESCRIPTION OF THE APPLICATION SITE AND THE AREA AROUND IT

17. The extent of the application site (“AS”) is shown on Map A attached to the application [A/11]. It is an irregularly shaped piece of land put down to grass. The land lies to the east of the main road through Langold, the A60, behind shops. Its northern boundary is straight and abuts the rear of housing development at Goldthorpe Avenue and Goldthorpe Close. Along the northern boundary is an established hedge, within which is a low metal fence. The northern boundary is largely continuously impermeable, although I noted that there is a slight gap in the hedge at the location where public access along Goldthorpe Close reaches the other side of the fence/hedge.

18. At its north east corner, the site’s boundary forms a right angle and heads south, adjoining woodland known as Goldthorpe Plantation. There are well worn paths through the plantation and signs of den-making and fires. The main entrances into the Plantation from the AS are in the north east corner of the AS and approximately half way along the eastern boundary between the Plantation and the

AS [A/64 and A/65]. Beyond the woodland to its east is an extensive area of agricultural land.

19. The boundary then turns south west for a short distance, along the fence of Langold Cemetery, which is to the south east. The boundary then heads west, parallel to the northern boundary, but for a shorter distance than the northern boundary. At a point roughly two thirds along the corresponding point of the northern side, the boundary heads north and then turns west again. The western boundary is straight and runs along the rear of properties on the east side of the A60, Doncaster Road.

20. In the south west corner are two sets of gates. Those to the east are pale grey in colour and in line with the wall to the east [O/204]. On the right hand gate of that pair is a sign that reads “Prohibited Area Authorised Persons Only” [O/190]. The left hand pair is slightly taller and placed at an angle to the other pair [O/195]. Between the two sets of gates is a gap [O/200] which a person is easily able to pass through. To the left of the left hand pair of gates is an apparently new close-boarded fence [O/195], built on the outside of a remnant boundary wall. The fence has narrowed the distance that would have formerly existed between gate post and wall, which has been infilled with a metal sheet fixed to the post nearest the fence [O/196, O/197, O/198].

21. The area to the south west of the AS used to be occupied by club premises. Those premises were demolished in 2007.

HISTORICAL EVIDENCE AS TO THE APPLICATION SITE.

22. Much of the historical information was not in dispute. Langold was built from 1925 in order to provide accommodation for miners working at Firbeck Colliery to the south of the village. The colliery was to close in 1968.
23. In 1937, land 140 feet by 120 feet was purchased to build the Doncaster Road Working Men's Club, known as Smokey's. This is the site of the former club premises which is outside the AS.
24. By a Conveyance dated 12th November 1948 and made between Cuthbert Riddell and Arthur Crosse, as Vendors, and Albert Parker, Arthur Hopley and Alfred Smith as trustees of the Doncaster Road Working Man's Club, the Trustees purchased the AS. The purpose of the purchase was to provide a playing field.

THE EVIDENCE IN SUPPORT OF THE APPLICATION

THE APPLICANT'S CASE.

LIVE EVIDENCE

25. I heard from the following witnesses in support of the application. I report only the salient points of their evidence. Their full witness statements are in the bundles which the RA has.

Mr William Brown

26. Mr Brown read through his letter at [R/28] He has lived in Langold all his life and was 54 years of age when he wrote the letter. He was an original member of Langold Boy's Football Club, founded in 1967. From the age of 18, he was a regular at Smokey's Club and was an original playing member of Langold Old Boys Football Club. When he ceased playing, he became Club Secretary, which he is now. He played football on the AS between 1967 and 1982. He has enjoyed the field and it has been an important part of his and his family's lives for 30 years. He has never asked for or been given permission to use the land and has never been challenged in his use of it.

27. Mr Brown gave the following supplementary evidence in chief. He appears as the top left player in the photograph of the Langold Boys' first squad in 1967 [A/59]. He is also in the 1993 photograph [A/60 top]. He is also shown on the AS with his family in about 1997 or 1998 [A/63 top] and in 2009 or 2012 [A/78 top].

28. He was asked about the copy of "Villager's Voice" from April 1995 [O/150], which sets out that Langold Old Boys FC had resigned from Division 1 of the Yorkshire League and was to disband. He explained that the club had not, in fact, disbanded, but had simply resigned from that particular league. He was then directed to a copy of the programme of the Rotherham Yorkshire League Association Football League Cup Final for 1996 [Annex/59], which shows that Langold Old Boys played in that Cup Final. They won, as the press cutting from the "Green'Un" demonstrates [Annex/61]. There was an unbroken line of the Club

from 1967 to date. The Saturday team for club folded in 1997, due to problems finding people who could play, but the Club continued playing as a Sunday team.

29. Shortly after Mr Peter Eyre's company bought the land, he had attended a meeting with him and Mr Richardson. Paragraph 7 of Mr Richardson's statement [O/20] is correct in saying that a meeting took place. The purpose of the meeting, however, was to discuss the possibility of Lottery Funding for the Football Club, not to ask for permission to use the land. Mr Eyre's witness statement, at paragraph 15 [O/101] is wrong in referring to a meeting at Smokey's Field, if he means there was only one meeting. Mr Brown said that the meeting he attended was at the Corner Pocket Snooker Club.

30. Mr Brown referred to Mr Snailham's witness statement [O/124 onwards]. He has not lived in Langold all his life, as he claims in paragraph 1 [O/124]. He is from Carlton-in-Lindrick. Mr Brown knew of the violent episode between Mr Snailham and his wife which led to Mr Snailham's imprisonment [O/124, paragraph 2]. Paragraph 10 of Mr Snailham's evidence [O/126] says that referees for games changed in Smokey's Club. Mr Brown said that that was because players and officials had to be kept apart and there were not facilities for the officials in the changing rooms on the football field. Paragraph 11 of that same statement is wrong in saying that Langold Old Boys moved their home games for a while to another ground to allow Worksop Borough to use the pitch. He said that both teams shared the AS.

31. Mr Brown was asked a number of matters in cross-examination. He has lived in Langold all his life, being born there in 1956. He has been twice married and has two daughters born in 1980 and 1985 from his first marriage. He remarried in 1994. The AS has been a football pitch for as long as he can remember. It was laid out as such in 1946, which is what he grandfather told him, although he recognised that it was not referred to as a football field on Ordnance Survey maps until 1962. He has always had a dog. He walks it every day when he is not at work. He would walk his dogs on the pitch every day. Langold Old Boys was formed in 1982. The Club has never had a constitution because it is not obliged to have one. He has been the Secretary since 1998 when Mr Fisher was already the Chairman and Treasurer. The club keeps accounts. It does not hold an Annual General Meeting. There are occasional meetings when people who pay to play can attend. Members pay £1 per game to play. The Sunday team is still going. The team started playing on the AS in 1948. It has had various names over the years. He was asked what the arrangements with Smokey's Club were and he replied that he did not know as that "was before his time". The football has continued since 1948. It did not cease even when the Colliery closed in 1968. As men's football ended, Langold Boys FC was set up in 1967. It was a Sunday team and played home and away games. The Club started with an Under 13 team and grew to 9 teams. The Boys' Team no longer plays on the AS. They stopped about ten years ago. Langold Old Boys was formed in 1978. He was then just a player and was not on any committee overseeing that club. He did not know what, if any, arrangements were made between Langold Boys FC, Langold Old Boys FC and Smokey's Club about the arrangements for playing games. The club changing rooms never had an electricity supply. In 1967 the changing rooms were a wooden

hut. The photograph [R/66] shows a later building, in the same location. The changing had a water supply from a pipe which emerged from the floor, and had electricity from Mr Brown's generator. The Football Club never paid Smokey's Club for water or electricity.

32. Mr Brown broke his leg in 1982 and was a spectator from then until he started to manage the team in 1996 or 1997. Mr Brown could not say when the gate shown in the objector's photograph [O/195] was erected. He agreed that Smokey's Club mortgaged the club building and the AS to a brewery in 1988, the club failed and the brewery foreclosed in 1992. The brewery took over, selling Smokey's Club in 1999. He said that the first manager for the Brewery, John Smart, had said that he wanted football teams on the field, so they carried on. By 1999, when the Club was sold, Mr Brown was Secretary and Manager of the football club. The Old Pub Company bought the club and the Football Club's use of the land was never challenged. The Old Pub Company did not make a success of the Club and so it was offered for sale again. He agreed that the sales particulars [A/46] referred to the football pitch being "let without charge", but said that there had never been any conditions as to how and when the pitch could be used.

33. Mr Brown was asked about the meeting with Mr Eyre shortly after CPS Leisure Limited bought the land in 2002. He agreed that there was a meeting at the Corner Pocket Snooker Club. He had seen the document at [O/107] before. It was referred to at the meeting in the context of securing Lottery Funding and assistance from the Football Foundation. Mr Brown claimed that Mr Eyre had referred to a meeting of the wrong people at the wrong place. He was also asked about the

April 1995 edition of "Village Voice" [O/150]. He said that the references to disbanding were to the Saturday team, not the Club. He was also asked about Mr Snailham's witness statement. He denied that the Club had a 3 or 4 week spell when it was banned from using the field, as Mr Snailham claimed at paragraph 9 of his witness statement [O/125]. Mr Brown was asked about paragraph 5 of Mr Eyre's statement [O/44-45], where Mr Eyre claims that he asked to use the AS for a team he was trying to get together from the Corner Pocket Snooker Club, but were refused when they asked Smokey's Club for permission. Mr Brown's response was that there were photographs of charity days, so use by people other than the Old Boys Football Club did occur. It was put to him that Maureen Featherstone's evidence [O/40] showed that the club kept people off the pitch. Mr Brown said that was probably correct in the 1980s, but things were more relaxed in the 1990s. In the 1990s people were not ordered off the pitch. When Smokey's Club shut, anyone could use the pitch. He was asked about the existence of a track on the west side of the pitch in 1962, by reference to OS maps. His response was that he did not recall such a track, because there were lots of places where access could be gained to the pitch. Access from the south was gained by a number of routes: from the cemetery via gaps in the fence, through the factory to the south, between the factory and the club or through the back of the Legion building. The shops on Doncaster Road had no boundary preventing access. You could gain access via the housing development at Goldthorpe Close to the north, as there was a spur running south from the houses and you could continue through that way after 1990, as late as 1996. It was the shortest route to the shops. Access could also be gained via Goldthorpe Plantation. There was no gate at the end of Grosvenor Road when he was 15.

34. Mr Brown was asked about the aerial photograph from 1988 [R/52]. The photograph shows an aerial view of Smokey's Club, from the west. The club building is in the centre of the photograph. Attached to its north side was the steward's house. Adjoining the steward's house was a fence of a few metres in length, with a gate in it. The fence turned through ninety degrees and ran almost to the south west corner of the AS, where there was a sizeable gap, which can be seen in the photograph. To the south of the club was a factory, separated by a gap. There was a passageway between the club and the factory, which allowed access onto the field. He was also asked about the gate shown in one of the objector's photographs [O/195]. He had no idea when it was fitted, but it was not there, he said, in 1988, by reference to the aerial photograph. Nor was it there when the Council laid the block paving next to Doncaster Road, in the early 1990s. It was there when he became Secretary of the Old Boys in 1998. He was asked about the photograph of the gap in between the western set of gates at the south west corner of the AS and an apparently new fence [O/196]. Mr Brown said that gap did not prevent anyone from getting through. He was also asked about the photograph of the gap between the two sets of gates at the south west corner [O/200]. The post holding up the left hand gate of the eastern pair of has holes in it. It was suggested that shows that there was, in the past, a plate attached to the post, closing the gap. Mr Brown did not accept that, but said he had no reason to go that way. He used to use the gap between the Steward's House and the fence. People have always been able to get through the gap between the two sets of gates, as now. On a Saturday and Sunday the gates were open, in any event. He used to get on the AS via the passage between the club and factory, or via the Plantation, or by the side of the Steward's House or through the rear of his wife's house on Doncaster Road,

which had no rear boundary. He could not remember the passageway between club and factory being blocked off, despite being shown the aerial photograph produced by the objector [O/159]. He challenged Mr Snailham's statement's claim [O/125, paragraph 5] that the passage was blocked in 1995, on the basis that Mr Snailham would have been in prison at the time he claims the blocking off of the passage occurred.

35. It was suggested to Mr Brown that in the 1990s someone was making concerted efforts to keep people off the AS by reason of the gate on Grosvenor Road, the blocking of the path between the club and factory and the erection of a corrugated fence in the south-eastern part of the site as shown on the plan appended to Mr Snailham's evidence [O/130]. Mr Brown's response was that these efforts did not prevent access, because there was still access via the cemetery, plantation, Goldthorpe Close and Mr Pendleton's garden on Goldthorpe Avenue. There was also still access from Doncaster Road in the 1990s. Access by that route was still possible as late as 1996, when he owned a shop on Doncaster Road. He last walked his dog through onto the AS from Doncaster Road in 2000/2001. He was asked when access via Goldthorpe Avenue/Close ended. His response was that it was still available via Mr Pendleton's garden, Goldthorpe Close, via the north-east corner of the AS into the plantation and from back gardens. He described as "rubbish" the suggestion that the Club was "pretty unenthusiastic" about the walking of dogs on the AS and said it was incorrect to suggest that people on the site did not walk on the pitches.

36. In re-examination, Mr Brown was asked about the 1988 aerial photograph [O/52] and Mrs Featherstone's evidence. He said that the aerial photograph showed how the south-west part of the site looked in the 1980s. He also said that the photograph from 1983, showing the north-west corner [R/31] matched his recollection of the site's appearance at that time.

37. He also said that next to the changing room was a toilet, shown on the left hand side of one of the photographs attached to Mr Mugglestone's evidence [O/76]. Mr Brown said that the photograph looking west from within the AS [R/75] showed that the rear of the shops on Doncaster Road were open to the AS at the rear.

Alan Eyre

38. Mr Eyre read his letter [R/63]. His letter responds to Mr Pendleton's witness statement. His letter says that throughout the 1980s he was a committee member of Doncaster Road Working Men's Club ("Smokey's") and was a trustee for a time. He became Secretary in 1991. During the summer of 1992 the club was desperate for new committee members and John Pendleton became a committee member for a few weeks before Smokey's finally closed on 21st September 1992. He was not aware that permission to use the club was ever sought or granted. The working men's club did not contribute at all to the upkeep of the field. The club was just grateful for the passing trade.

39. He was asked some supplementary questions by Mr Fisher. He said that Mr Pendleton's claim to have been a committee member for 3 or 4 years before the

club closed was “far from true”. He was on the committee for 21 days and attended the last two meetings at the club. He was taken to the 1988 aerial photograph [R/52] He could not remember any gates across the entrance at the end of Grosvenor Road prior to 1992. He never remembered shutting a gate. Artistes or “turns” performing at the club would use a door at the eastern side of the club, at its rear, and he never remembered having to open a gate for them to have access. He was asked about the double pair of gates [O/195]. He said that in 1989 Nottinghamshire County Council (“NCC”) block-paved the fronts of premises at Doncaster Road. NCC asked for permission to park vehicles on a track at the western end of the AS and erected the fence inside the western boundary which can be seen now. Mr Goulding’s different evidence [O/171, paragraph 5] was wrong. There were then no gates, but a bollard that could be laid flat. Neither set of gates on that photograph were present when the club shut in 1992.

40. In the period between 1988 and 1992, there were a few weeks when a market was held, but had to be stopped. Bonfires were held on the field, to the rear of the Club, on November 5th. There was a Gala Day for football every summer. Mr A Eyre was a member of Smokey’s Committee between 1984 and 1992. In that time he was not aware of any approaches by Langold Old Boy’s FC about the regulation of the use of the AS. The field “was for the football club. The Committee had nothing to do with it”. All maintenance was done by the Football Club.

41. In cross-examination, he confirmed that he was born in Langold in 1953, joined Smokey’s Club at the age of 18 in 1971 and became a committee member in 1984.

He became the Secretary in late 1990 or early 1991. He never played football. The Club kept minutes of meetings, but the minute books were lost when the Club shut down. He has two dogs and lives at 51 Firbeck Crescent, where he was born. He used to watch Langold United A and B teams on the AS in the 1960s. Although there was a gap when men's football was not played, there was never a gap in playing football, because the Boys' Team started before the men's team finished. He could not remember any gates at the Club prior to it shutting, although he conceded that there might have been gates which he did not see. The grass on the AS did occasionally get long, outside the football season. He recalled a time when someone borrowed farm equipment to mow the grass because the Football Club's mowers had broken. He was asked about the 1962 OS map [O/154], which shows a way marked from the end of Grosvenor Road inside the western boundary of the AS, turning into the rear of a property on Doncaster Road. He said that you could get a car down there in the 1960s. By the late 1980s that track was not used for vehicles. He thought that by 1989 it was possible to walk through from the rear of properties on Doncaster Road, but he would use Grosvenor Road to get onto the land. He repeated this view when taken to Mr Goulding's statement at paragraph 4 [O/33], which sets out that people knew not to use the football pitch. After 1989, the rubble on the western fringe of the AS was cleared by NCC. He did not recall whether people used the track after the rubble was cleared, but if they did, Smokey's Club did not stop them. He said that there was no inhibition on using the AS: "We just used to go on and play on it".

42. He was asked about the side passage at the Club, between it and the factory. He said that in 1991 or 1992 the Club was altered and the Fire Authority insisted on a

fire escape being put in place. That exited into the side passage. In 1988 there was a path through the passage. He used it every night when he walked round every night when the Club closed for business. The path was used by others. There were blackberry bushes there and people used to pick the fruit. People walked down the access path to go onto the field and to the woods. They probably went looking for rabbits to catch on it too. People used to come onto the land to walk their dogs around. Smokey's Club never stopped them. He used to walk his own dogs on there. The Football Club never objected. The dogs did not mess up the field. He walked his own dogs round the edges of the field when matches were being played. He walked his dogs there on Saturdays or Sundays and did not use the field at any other time. He was not aware of the football club "policing" its use. After 1992, he went to watch football on the AS, when the gates were always open. He was asked about Maureen Featherstone's evidence, paragraph 5 [O/40], which says that she remembered one occasion in mid to late 1980s when he son's ball went over the fence from Smokey's into the AS. She says that the gate was locked so her husband went over the fence, but was ordered to leave by a member of Smokey's Club's committee. Mr Alan Eyre denied this was correct, observing that the 1988 aerial photograph clearly showed no gates in place between the end of Grosvenor Road and the AS.

43. He was asked about the changing rooms, as shown in the photographs [R/66 and R/67]. He said that a wooden shed preceded the building shown there, which was burnt down. The wooden building might have had water, but the building in the photographs had neither electricity nor water. There were certainly no charges made by Smokey's Club in connection with it. The newer changing rooms were

given planning permission in 1977 and were erected around that time. The markets were organised by Smokey's Club and were held on the southern part of the AS on 5 or 6 occasions in about 1991. The public were admitted and did not pay for entrance. There were only a couple of bonfire parties, which were open to the village. There was no charge and they were held at the rear of the club, in the southern part of the AS. They were organised by Smokey's Club. There were no other community events. After 1992, he went to the Club for a drink. He only went to watch football. He was absolutely sure that Mr Pendleton was a member of the Committee for only 3 weeks.

44. In re-examination, Mr Alan Eyre described the markets as being held in the summer, not at Christmas. The rubble he had referred to on the western edge of the AS could be seen, overgrown, in the 1983 photograph [R/31].

Mr Moore

45. Mr Moore lives at 33 William Street, Langold. He read his letter [Annex/18]. He is 38 and has lived in Langold all his life. He started to play for the Langold Boys' Team in 1984 and moved up to play for the Old Boys over 16s when he was old enough. He is now a part time playing member but still goes to watch whenever possible. He takes his family with him. His family has always used Smokey's Field for sport and recreation and his children are the fourth generation of his family to do so. He grandfather [Annex/30 and A/58 bottom photograph], grandmother [A/58] and uncles took part in matches on the AS. In 2003 he was presented with the Invitation Cup [R/65 and Annex/31 top photograph]. He is not

aware of permission being granted to use the AS and he has never been challenged. His involvement in the Football Club has been in team selection.

46. In cross-examination he said that he was born in 1973. He played for the Boys' Team until the Under 16s stage, at which time they were playing on Smokey's Field. He does not know when the Boys' Team moved elsewhere. He too was asked about the changing rooms. He could not recall any pipes being connected to them but said that they did have running water. He did not recall any cable carrying electricity, but did recall a generator being used. He goes to the AS to play football, but not for any other reason. He used to play football on the AS with his mates in the mid to late 1980s. They used to play in the southern part, behind Smokey's Club or, occasionally, on the pitch. There were then no gates at the end of Grosvenor Road. The passage to the side of the Club could be used to gain access. He was not aware of the gap being closed up. He did not know when the gates at the end of Grosvenor Road were erected. When he goes to the AS, the gates are open. In response to Mr Snailham's statement [O/124 paragraph 8] he said that he could not remember a time when games were not played on the AS. Nor did he remember any agreement being made to buy the team kit or any dispute about the team not drinking in the club.

47. In re-examination, he said that the kit was not sponsored by anyone in Langold.

Mr Burrridge.

48. Mr Burrridge's letter is dated 22.9.11 [Annex/19]. It states that he lives at 67 Firbeck Crescent, Langold and that he has lived in Langold all his life. He has been using the AS since about 1970 without any permission. His first use was as a youngster to play in the woods and go on the field. His three sons all play for Langold Old Boys and he spectated as often as he could, before the pitch was dug up (which was after the date of the application for registration being made). Until recently he was the occupier of the nearby Jay's public house and used to witness many people going onto the field unchallenged. He has also refereed matches on the field.

49. Mr Burrridge had completed one of the user forms [Annex 40a]. It adds to the content of the letter by setting out that he gained access to the AS via Grosvenor Road or through the wood. He refers to exercising dogs on the AS too. His use was described as weekly. His family use the land for football, training and for dog walking. Galas, fun days, barbecues, Millennium Day and charity matches had also taken place. He has seen snowballing, playing, rounders, dog walking, team games, blackberry picking, community celebrations, fetes, football, bird watching, walking, bonfire parties, cycle riding and youths socialising on the AS. He has never sought or been given permission nor been prevented from using the land.

50. In oral evidence in chief he clarified that he was born in Glastonbury and moved to Langold when he was 5 or 6. He is a qualified League Referee. He was the referee at the Invitation Cup Final in 2003 and was photographed receiving his

referee's medal [Annex/31]. He has family members who play for Langold Old Boys.

51. In cross-examination, Mr Burrridge said that Jay's Public House is on the east side of Doncaster Road, backing on to the southern part of the former factory site. It is now called the Legion. At football matches on the AS, no changing facilities were offered for referees and you had to arrive in your kit or change in the car. Or on the car park. As a youngster, he crossed the AS many times to get to the woods. He used the passage between the Club and factory or via the railway embankment. You could also access the woods without going across the field. His refereeing took him the AS on weekends, but he also went midweek for enjoyment, either watching his boys play football or watching informal games. His three sons were born in 1984, 1985 and 1988. They possibly went to the site to play football in the mid-1990s. He could not say when the gates across the end of Grosvenor Road were erected. He would have got onto the AS with his sons via Grosvenor Road as there was never anything to stop them. His 3 sons all play for Langold Old Boys. Even now they go for a kickabout. He last went down with them for a kickabout a lot later than the mid-1990s. Access has never been prevented. When he was at Jay's pub, he could see people walking onto the field from Grosvenor Road.

52. In response to me, Mr Burrridge said that he had been out of Jays for about 2 or 3 months and had started occupying the pub about a year before that. He was there every day from about 8 am until 3 am the following day. He did not remember any gates there in the mid-1990s. The entrance was "wide open" in the mid-1990s.

53. That concluded the Applicant's live evidence. I again repeated the point to Mr Fisher that the burden of proof was on him, that some factual matters were only covered by him in the application material and that Mr Petchey might adversely comment on the lack of evidence from him. Mr Fisher chose not to give evidence after I said that to him.

APPLICANT'S CASE – WRITTEN EVIDENCE.

54. There is a considerable amount of written material produced by the applicant. Where that material is controversial and has not been tested by cross-examination, I attach less weight to it than would otherwise be the case. The same applies to the untested written material produced by the objector. I shall not set out all of the material in this report, but note the main matters. Items of evidence which were put to witnesses at the inquiry are not referred to again here.

55. Mr Fisher has written a statement accompanying the application, setting out the background. I do not attach substantial weight to the controversial aspects of that statement, given that Mr Fisher was at the inquiry, well able to give evidence to support it, but chose not to do so, in the full knowledge that the burden of proving his case was on him and that a lack of evidence from him might be commented upon adversely by Mr Petchey, as was indeed the case. He describes the history of the acquisition of the AS, which I have set out above. He describes the history of Langold Boys and Langold Old Boys, which was covered by Mr Brown in live evidence. Under the heading "The 20 year period" [A/16] Mr Fisher says that the gates at the south west entry point were donated by a local builder and erected to

prevent vehicular access and pedestrian access was unaffected. He then says that the use of the field continued unchallenged until 1992. He then describes Smokey's Club being taken over by a brewery. If this is intended to suggest a time frame for erection of those gates, I attach no weight to that in the absence of the testing of that evidence and in the context of it being an issue between the parties. He describes the sales of the Club premises to third parties and the references to the Football Club's occupation in sales particulars. CPS Leisure Limited bought the land in 2002 and sold it to Mr Eyre, a Director of CPS Leisure, in March 2008. He refers to the use made of the AS by local people for various purposes. He has maintained the field and his efforts have been recognised by others. He produces letters from Bassetlaw DC, where the AS is described as a recreational facility of importance [A/27] and in active community use [A/28]. Langold Old Boy's registered with the Sheffield and Hallamshire County FA in May 1978 [A/32].

56. A letter from Mrs G Ramplin [A/34] of 25 Goldthorpe Close sets out that she has lived in Langold all her life and discusses the use of the field by the football teams and its "constant" use by dog walkers and local youths. Her property backs onto the field.

57. A letter from Mr and Mrs Sankey [A/35] of 18 Goldthorpe Close says that the AS has been used by the community for Galas, such as the Silver Jubilee, other galas, for football matches and recreation. They have lived at their address overlooking the AS since 2007. They lived in Langold before that. Mr Sankey has lived in Langold all his life.

58. Mr F K Harrison [A/36] lives at 2 Court Cottages, Doncaster Road, Langold and has done so for 30 years. Over the years he has had free access with his children onto the field for recreation purposes. He has also watched football at the weekend. He harvests elderberries from a tree on the site for home brewing. His neighbour also uses the field. Mr Harrison also completed a user form [Annex 37a], which adds dog walking to the list of activities he has undertaken and says that he used the field on a daily basis.

59. Mr and Mrs Morrison [A/37] live at 24 Goldthorpe Close. Mr Morrison has lived in Langold since the 1940s and the AS has been a football field and play area for the people of Langold. He refers to the organised and informal games that happen on the AS and also refers to dog walking.

60. I attach no weight to the petition [A/38 to A/43], because the signatories, quoting the petition, simply “support the application for the registration of land known as Smokey’s Field as a Village Green” [A/38 to A/42] or else have signed a document headed “For the Village Green” [A/43]. The petition therefore tells me nothing about user of the land.

61. A letter from Smith-Woolley Chartered Surveyors, dated 21st September 2001 to Mr Fisher [A/48] refers to the Goldthorpe Plantation being “heavily trespassed” and that the author is concerned about “the lack of fencing on the east boundary of the playing field between the cemetery fence and the bungalow fences to the north to prevent people getting in to Goldthorpe Plantation.” The letter sets out that the conveyance of the land imposed a fencing obligation in respect of that boundary.

A letter of 29th November 2001 from the same firm is to the same effect [Annex/23].

62. A letter from Mr N Armson [R/61] says that he was on the Committee of Smokey's Club between 1989 and 1990. While he was on the committee, Mr Pendleton was not. A letter from Mr J Partridge [R/22] makes a similar point, setting out that Mr Pendleton was elected to the Committee at the end of August 1992, and the Club closed as a working men's club on 21st September 1992.

63. A letter from Mr John Mann MP dated 17th November 2010 [Annex/15] sets out that Smokey's Field has been a playing field for many years and provides essential recreational facilities for the village, including a football field.

64. County Councillor Sheila Place wrote a letter [A/17] which includes reference to her being a Langold resident who has watched her father, mother, mother-in-law, uncles and friends play football on Smokey's Field. A fair used to come in summer and people of all ages also used the field as a place to take part in a range of sporting and local activities.

APPLICANT'S EVIDENCE – USER FORMS

65. There are a number of user forms in the Annex. I do not need to repeat the content of Mr Burridge's or Mr F K Harrison's user forms. For the remainder, I shall summarise their content. As the evidence they contain has not been tested, the weight I can give them is reduced. I set out the summary by giving the name,

address, period of use of the site, the activities they say that they undertook. All of them refer to seeing others undertaking activities that are lawful sports and pastimes. None of the users say that they were given permission or been challenged in their user. The summary is as follows:

- a. [Annex/35a] Glenn Harrison, 2 Court Cottages, Langold; since 1978; recreation, dog walking, fruit picking, conker picking, snowballing, daily use. Access was gained via the path to the side of Smokey's.
- b. [Annex 36a] Craig Harrison, 20 Firbeck Crescent, Langold, since 1978, fruit picking, running, sports, 2 or 3 times weekly.
- c. [Annex 38a] Carolyn Bouvier, The Legion Public House (resident at 11 White Avenue, Langold when used the land); from 1963 to 1986, then from 2009 to present; dog-walking or a walk on her own; daily use.
- d. [Annex 39a] Philip Sewell, 62 Riddell Avenue, Langold, since 1966; watching youngsters play football; "very regular" use.
- e. [Annex 41a] Mark Millington, 93 White Avenue, Langold (and Chestnut Road, Langold), since 1975, watching football and dog walking, regular use at first occasionally later on. He says that he gained access at "side of vehicle gate".

f. [Annex 42a] Craig Wilson, 60 White Avenue, Langold; since 1986; to play football, later watching football and walking dog; as a child, every day, now twice a week.

g. [Annex 43a] Darryl Layden, 57 Firbeck Crescent, Langold, 1980 to 2009, football/jogging, occasional use.

h. [Annex 44a] Mark Owen, 14 Markham Road, Langold, since 1967, watching football, occasional use.

OTHER EVIDENCE IN SUPPORT OF THE APPLICATION

66. On day 4 of the inquiry I heard some third parties who wished to give evidence.

Roy Pickersgill

67. Mr Pickersgill has lived at 8 Chestnut Road, Langold for the last 4 years but has lived in the Langold area all his life. He lived in Carlton-in-Lindrick until 4 years ago. He wanted to know why he could not go down across the field into the wood like he did as a child.

Valerie Hoyle

68. She has lived in Langold all her life and has lived at 4 Mellish Road, Langold, all her life. She remembered Smokey's Field when she was only eight and used to

play on there. Her father was a committee member at Smokey's Club and was President for about twenty years. He said that the football club had never asked them for permission and that there was an agreement with the club. Her husband had helped clear stones to make the pitch when he was 8. He is now 76.

Gail Moore

69. She has lived at 26 Church Street, Langold, for 36 years. Smokey's Field was used for sports and was used in 1977 for the Silver Jubilee and she has photographs of her sons racing on the field. Her husband used to go to the field and started a kids' team. Her son had played there since he was 10 or 11 and is now 38.

70. When asked by Mr Petchey who organised the Silver Jubilee event, she said it was the village and Smokey's Club Committee.

THE CASE FOR THE OBJECTOR.

LIVE EVIDENCE

Michael Goulding.

71. Mr Goulding read his witness statements [O/33to 35 and O/171-172]. In summary, he stated that since 1984 he had a business at Grosvenor House, where he now lives. The house was built as a replacement for the premises which contained his business. Grosvenor House is marked "A" on the plan attached to

his statement [O/37]. When the business was open, as a bookmaker, then fishing tackle shop and later a grooming salon, he would be open every day of the week and he spent most of his time there. As a child he would walk from Doncaster Road to Goldthorpe Plantation. He knew that he was not to go on the football pitch. He said that when the factory to the south was constructed, it effectively enclosed the southern boundary to the football field. Although some of the properties on Doncaster Road had access onto the field via the rear of their properties when he was young, he said that Smokey's erected a fence along the western side of the field "30 years or more ago". The northern boundary already had a hedge along it and there was a high fence along the eastern boundary. That made the whole field enclosed and difficult to access, except through a gate which was kept locked.

72. He said that it was a common local belief that the local Squire had donated the field to the club. The Committee were very keen to look after it and so people were not permitted to use it.

73. He was certain that the gate across the entrance at the end of Grosvenor Road (shown as "B" on his plan [O/37]) was there when he took over the betting shop at Grosvenor House in 1984. He guessed that the signs on the gate were erected around 15 years ago. He did not recall ever seeing dogs on the AS. He did not walk his own dogs on the pitch. He recalled a period when Worksop Town FC used the pitch. The field ceased to be enclosed when the club and factory were demolished in around 2004 (six years prior to his statement dated December 2010). Mr Fisher still kept people off the pitch and maintained it thereafter.

74. In his supplementary statement, he says that he was not speaking for Hodsock Parish Council, of which he is chairman, and has no personal interest in any redevelopment proposals on the AS. He said that the path between club and factory was present in 1988, but had been closed for many years since. He adhered to his point that the Club erected the western fence, but thought that the northern boundary might have been enclosed by a fence not a hedge. He never walked his dogs on the field when it was used as the Club's pitch. In the past two years or so he has walked his dogs around the perimeter of the field. He denied telling Mr Fisher that he wished to see the field developed.

75. In cross-examination, Mr Goulding was taken to the letter from the Parish Council of 27.7.10 [Annex/56]. The letter refers to the AS as "an eyesore" and the Parish Council "would be only too delighted" to see the AS "changed into a [sic] eyecatching housing development." He chaired the Parish Council meeting which decided that the letter should be written. He was taken to the 1988 aerial photograph [R/52]. He did not agree that it showed free passage between the side of the Club and the factory. He said that there was a corrugated fence across the passageway since the 1980s. He said that it was there at the time of the 1988 photograph. It was there by 1984. It was pointed out to him that such a claim conflicted with paragraph 4 of his second statement [O/171]. He said that there was a gate at the entrance from Grosvenor Road, despite it being put to him that the 1988 photograph showed a lack of a gate. He explained his evidence about dog walking by saying that he did not walk them on the pitch on the AS. He denied that his dogs were let loose when football under way. Then he was taken to a photograph which appeared to show that happening [Annex/27]. He said that

there was no match underway then. I observe that the photograph shows a person wearing what appear to be dark blue long socks, dark blue shorts and a dark blue short sleeve football top or T-shirt. No football or other person is in view.

76. He was asked about the record of the Parish Council meeting of 12.4.11 [Annex/55]. He there declared an interest in “the Gleeson development” as a relative may profit from that scheme. He said that he was advised to do so by the solicitor advising the Parish Council. He denied that the fishing competitions linked to his tackle shop business [Annex/25] would mean he was away from the AS, because other people organised the events at the fishing lakes and he would not necessarily be at them.

77. In answer to me, Mr Goulding said that he thought that the passage between the club and factory could be seen to be blocked on the 1988 aerial photograph [R/52]. I have to say that I cannot see any fence, wall or other blockage of that passageway on that photograph. He said that he could not comment on the 1983 photograph of the north west part of the AS [R/31], which shows a variety of boundary treatments along the western side of the AS at the rear of properties on Doncaster Road.

Maureen Featherstone.

78. Mrs Featherstone read her statement [O/40-41]. She has been a Langold resident for 25 years. She used to go to Smokey’s Club on a regular basis and knew that the Club’s football team played on the pitch at the rear of the Club. The pitch was

enclosed by the large gate which was kept locked, and by a fence, the Club and the factory. Apart from the gate, the only way to get onto the pitch as through Smokey's Club. She remembered one occasion in the mid to late 1980s when their son's ball went over the wall from the Club onto the pitch. Her husband climbed over the wall to get the ball and was told off by a Club Committee member and told to get off the AS. They did not tend to go to Smokey's when football was being played, but did visit on different days and at different times. They often parked in front of the gate, which was always locked and no-one complained. She could recall a Christmas Market being run on the field, with the Club's permission. She never saw anyone walking dogs on the pitch or picknicking or picking fruit. She thought that had anyone done so, they would have been promptly chased off.

79. In cross-examination, Mrs Featherstone was asked to compare what she said about the gate's presence in the mid-1980s with what is shown in the 1988 aerial photograph [R/52]. She said that the gate was where the gap is shown and she knew it was there at the time she said. She adhered to her point about a Christmas Market, saying that she had a stall there. In re-examination she said that the boy she referred to was born in 1981 and the ball went over a gate when he was aged 4 or 5.

Brian Richardson

80. Mr Richardson confirmed his two witness statements [O/19-21] [O/115-116].

81. Between 1996 and 2007 he was the manager of the Corner Pocket Snooker Club and has worked in Langold for twelve years. He is an employee of CPS Leisure Limited. He often walked down Grosvenor Road after the factory became vacant, to check whether local youths were misbehaving. There was always a gate at the end of Grosvenor Road, which was locked with a padlock and chain when matches were not being played. When the Club and factory were still standing, the buildings and the gate formed a barrier than meant that access to the pitch was not easy. The factory was vacant when he first came to manage the Corner Pocket in 1996.

82. He would attend football matches sometimes. The snooker club sponsored some games. Access was always via the gate at the end of Grosvenor Road. He believes that it was physically possible to get onto the pitch via gaps around the factory, but he never saw anyone do so. He never saw casual use or dog walking on the football pitch or any carnivals or fetes. It was common knowledge that the pitch was only for the use of the football club. In the late 1990s members of the snooker club who were involved with the Junior Langold Football Team asked Mr Fisher if they could use the pitch. He was told that permission had been denied. Throughout the time he worked at Langold there were two large containers by the pitch. One of them was being used as a changing room. He saw inside it and saw that it had water and electricity connected to it, together with a toilet.

83. Not long after Peter Eyre's company bought the Club and field in the early 2000s, he attended a meeting with Mr Eyre, Mr Fisher and Mr Fisher's assistant. Mr Eyre agreed to allow the Old Boys' Team to continue to use the pitch at no cost,

provided they maintained it and that there was no cost to Smokey's Club. Worksop Town FC used the pitch to train in the early 2000s and he was informed that they paid for its use. He cannot recall who told him that.

84. Over time, the proportion of players in Langold Old Boys' Team who were Langold residents fell.

85. In cross-examination, Mr Richardson said that membership of the Corner Pocket was limited to those over 18 year of age. He was looking around the factory to protect Mr Peter Eyre's interests. He had been informed that there was drug use in that area. He accepted that he was shown on the top photograph at [A/62], which dates from 1997. He denied that there was a separate toilet shown behind him in the photograph. The meeting he referred to in the early 2000s, when Mr Eyre allowed Langold Old Boys to continue using the pitch took place at the Corner Pocket. He adhered to that when he was taken to Mr Eyre's evidence that a meeting at the Corner Pocket was between only Mr Eyre and Mr Fisher.

86. He was asked about the May 2003 photograph of the Langold Old Boys [R/65]. He was asked what percentage of those shown were Langold residents. He knew that 7 of the 11 shown were from Langold.

87. He did not know the terms on which Worksop Town used the pitch. He was told that they paid rent. The payment could have been a donation. He never saw any paperwork relating to the use of the pitch by Langold Old Boys. He did not recall seeing the paperwork at [O/107] before.

Roy Mugglestone

88. Mr Mugglestone confirmed his statement [O/64-68]. He lives in Sheffield and is a property developer. In 2003, after Mr Peter Eyre had bought the Club, he negotiated with him for its purchase. He set up Marine Leisure (UK) Limited specifically to buy the Club. On 22nd August 2003, the Smokey's Club premises were transferred by CPS Leisure Limited to Marine Leisure (UK) Limited. The Transfer is an exhibit to his statement [O/91 to 96]. The purchase did not include the football pitch area and was limited to the former Smokey's Club premises, the steward's house and their curtilage.

89. Throughout the time that Marine owned the Club, the pitch was completely enclosed by a large double gate at the end of Grosvenor Road. Marine owned the Club for about three years. During that time he would visit frequently, around 2 or 3 times per week. He used to see Mr Fisher whilst on site and got on very well with him.

90. The pitch had concrete changing rooms which had water and electricity from the Club. They were on Marine's land, but Mr Mugglestone allowed the football club to use them, on the basis that he told Mr Fisher that the situation would have to change if Marine were to develop the land. He had conversations with Mr Fisher in which Mr Fisher told him how long the football team had been using the pitch with permission.

91. In late 2003 he took photographs of the Club, factory and pitch. These photographs are attached to his statement [O/71-89]. They show the southern boundary entirely enclosed and the passage between the Club and the factory blocked off.
92. When he visited, it was very rare for him to see anyone on the field, apart from Mr Fisher maintaining it, if there was no match or training going on. There were numerous occasions when he climbed over the wall to get to the rear of the premises. He saw the “very occasional” dog walker, walking around the pitch, not on it. He assumed they had been let on by Mr Fisher or had come from the properties on the western side of the pitch.
93. The Club, steward’s house and factory site was sold to Capricorn Homes Limited in 2006, after planning permission was secured for its redevelopment.
94. Mr Mugglestone brought better copies of his photographs with him to the inquiry. One photograph [O/73] shows what appears in the photocopy in the bundle, to be a person squeezing through the gap between the two sets of gates at the end of Grosvenor Road. In fact, the better copy shows that there was a solid piece of what looks like sheet metal blocking the gap. There also appears to be an object blocking the gap at the left side of the left hand pair of gates too. The photographs show a well-maintained pitch with pitch markings on it.
95. In cross-examination, Mr Mugglestone was asked about one of his photographs, showing the eastern boundary of the site [O/80]. It was suggested to him that the

boundary was shown with no fence. Mr Mugglestone answered that the boundary was impassable. He could not remember whether there were fences, but the foliage was too thick to be passable. That was why he went to look at the back of the Club premises via the cemetery when he visited the site. He was taken to letter of 29.11.01 [Annex/23] complaining about the “total dilapidation” of the eastern boundary fence. He could not help with that. Nor could he assist with what was shown of the western boundary in another photograph [R/66, bottom]. Mr Fisher would not have seen him climb over the wall, because when Mr Fisher was at the field the gates were open. He explained his reference to inferring that dog walkers came from the west of the field by saying that there was the odd gate or access onto the pitch from that side.

Mrs Mugglestone

96. Mrs Mugglestone confirmed her statement [O/121-122]. Her statement confirms the content of that of her husband. She did not recall seeing anyone on the site, apart from Mr Fisher, when she visited. There is no other new point in her statement, and so I do not summarise it here.

97. In cross-examination, she said that there were no gaps around the area of the gates at the end of Grosvenor Road that could be used to gain access to the field.

Martin Copcutt

98. Mr Copcutt confirmed his witness statements [O/15-16] [O/131-132].

99. Mr Copcutt is the proprietor of L&S Copcutt & Son, now of Worksop but formerly of Doncaster Road, Langold. He used to live in accommodation attached to the business which his father ran. He moved to Costhorpe when he was 19, but he ran a car dealership in Langold until about 10 years ago. As a child he used to play with friends at the rear of the shops on Doncaster Road. They generally never dared to go onto the pitch or its surrounding areas, as they knew they would be in trouble if they did. The area was gated off at the side of Smokey's Club. When they did risk going on, they were caught by members of Smokey's Club and thrown off. He remembered from his childhood that there were large corrugated gates at the end of Grosvenor Road, where the existing gates are now. They were only opened when matches were played. He and his friends would often go to Smokey's to get deposits back on pop bottles that they had collected. They played in Goldthorpe Plantation, but got there via the railway cutting. He remembered some sort of fence separating the Plantation from the pitch. He did not recall seeing dog walkers or leisure activities taking place on the AS whilst he was a child or running his car dealership.

100. He did not own land to the rear of the Corner Pocket snooker club. Nor had he had any business dealings with Mr Peter Eyre, apart from an occasion when one of his companies purchased cars from his dealership. He does stand to benefit if land belonging to Mr Bob Burridge is developed. He collected pop bottles from family, friends and neighbours.

101. In cross-examination, he was asked how he took pop bottle back to the Club. He replied that he visited off-sales, which were through the main front door,

which used to be in the middle of the front of the Club building. He would never have gone down the side of the club.

Ian Batty

102. Mr Batty confirmed his witness statements [O/134-136] [O/207-210]. He is an Estate Agent who is a self-employed consultant. He acts for Mr Peter Eyre and CPS Leisure Limited in property-related matters. He had contacted the Nottinghamshire FA, after being told that the Langold Old Boys Football Club did not have a constitution, minutes of meetings, accounts and other various requested correspondence. He was told that it was highly recommended for a Sunday League team to have balance sheets, constitution and minutes of meetings. A register of players is compulsory. He produces the “Villager’s Voice” newsletter from 1995 [O/150]. He also produces historic OS maps from 1948, 1950, 1956, 1962, 1967, 1978-1991, 1981 and 1991 [O/151 to 158], a Google Earth aerial photograph from 2002 [O/159], a press article from 2003 [O/160] showing that Langold Old Boys were expressing concern about having to leave the pitch. He also produces a photograph which his statement says is of the former corrugated gates at the end of Grosvenor Road, referred to be other witnesses [O/161].

103. Mr Batty’s second statement explains photographic evidence in the objector’s bundle:

- a. [O/190] this photograph was taken in August 2010. It shows the sign on the right hand pair of gates reading “Prohibited area authorised persons only”;
- b. [O/191] An aerial photograph of 7.9.04 showing undergrowth in front of the left hand pair of gates at the end of Grosvenor Road;
- c. [O/192] The same 2004 photograph marked up with annotations;
- d. [O/193] Another angle of the Google Earth photograph of September 2004, showing the undergrowth at the left hand pair of gates;
- e. [O/194] the same photograph with annotations;
- f. [O/195] The left hand pair of gates, photographed on 19th October 2011;
- g. [O/196] close view of the blocked gap between the extreme left hand gate, taken from within the application site on 19th October 2011;
- h. [O/197] a still closer view of the same area taken on the same day;
- i. [O/198] photograph of the fixing method of the metal sheet to the left-most gate post, taken on the same day;

- j. [O/199] a photograph of the same gate post, taken from the other side;
- k. [O/200] a photograph of the gap between the two sets of gate posts, taken on 19th October 2011;
- l. [O/201 – 203] photographs of the holes and patterns of rusting on the gate posts between the two sets of gates;
- m. [O/204] A photograph taken in June 2008 of the view along Grosvenor Road towards the gates at the appeal site;
- n. [O/205 - 206] two June 2008 photographs of the north-west corner of the application site. There is no observable route through the vegetation in the north-west corner suggesting this as a point of access to and from the site.

104. In cross-examination Mr Batty was taken to the Villager's Voice extract [O/150] and was asked whether he now accepted the evidence that the Langold Old Boys continued to exist. He answered that it was not for him to say. He did not answer differently when he was taken to a 1996 match programme, team details and press report [Annex 59-61]. He accepted that the stewards' house [O/159] had a hipped, not gable roof. The building behind the players in the team photograph with corrugated gates behind them [O/161] showed a building with a gable. Mr Batty accepted that the photograph he said was one of the corrugated gates at the end of Grosvenor Road did not show those gates. I later saw on site

that the building in the rear of the photograph is one of the properties on the east side of Doncaster Road, so the photograph was taken looking west from the pitch.

105. He was asked, but did not know, why the left hand pair of gates were at an angle. There was no fixing point on the left hand gate of the right hand pair of gates, but he said that the metal on the left hand side was thick enough to avoid being pushed aside.

Peter Eyre

106. Mr Eyre confirmed his statements [O/44-48] [O/98-102].
107. He is a Director of CPS Leisure Limited (“CPS”) and IPM Land Securities Limited. He owns the application site in his personal capacity under Land Registry Title NT343729 [O/50 to 52]. CPS bought a former cinema on Doncaster Road in 1985 which he opened as the Corner Pocket Snooker Club in 1986. Smokey’s Club was then still open. The pitch was physically enclosed by gates and fencing along the southern boundary, as well as by Smokey’s Club, its Steward’s house and the factory. It was known that the football pitch was for Langold Old Boys’ use. When he tried to get a Corner Pocket football team together, he Smokey’s Club for permission to use the pitch, which was refused. A later request to use it for a charity day was also refused. He asked the Old Value’s Pub Company if he could use the pitch in 1999, but he was told that that Company had agreed to let the Langold Old Boys Football Club have exclusive use of the pitch and so he could not let them use it.

108. CPS Leisure bought Smokey's Club and the field in March 2002. He produced the selling agent's particulars [O/53 to 54]. Those particulars state [O/54, RH column] that:

"The football pitches and changing room buildings have been used without charge by Langold Old Boys Football Club (the football club report since 1978), but there is nothing within the deeds to suggest that the football club has any legal right of use".

109. Before purchasing, he wanted to be clearer about the Football Club's basis for occupying the field. He produced relevant correspondence [O/55 to 59]. A letter from the vendor's agents, Sidney Phillips, dated 25th January 2002 [O/57] includes this passage:

"On 31 October 2001 at 6.30 pm I spoke with the Chairman of Langold Old Boys Football Club, Mr Alan Fisher ... He indicated that the Working Men's Club Committee had allowed free use of the football pitch and changing facilities since 1978, provided all maintenance costs were carried by the Football Club. He also indicated that they had been fortunate in not being charged for the electricity and water used in the changing facilities which are of very modest construction."

110. Around the same time he met with Mr Fisher. He agreed with Mr Fisher that the Club could remain on the application site for its own use and at no charge. The

Football Club also used electricity from the Club and that use continued. His solicitors informed his bank of the arrangement [O/58].

111. At this time the pitch was still totally enclosed by the gates, fence, Club and factory on the southern boundary. There was a fence along the eastern boundary and a hedge along the northern boundary. Free access to the pitch was not available and people would have to be let on by Mr Fisher unlocking the gates. He did not see anyone using the pitch and its surrounding land for dog walking, or any activity other than football. Shortly after purchasing the land, Mr Eyre was approached by Mr Fisher for a financial contribution towards providing lighting as part of an application for lottery funding. Mr Eyre declined. The Club was sold to Marine Leisure in 2003.

112. CPS sold the pitch to IPM Land Securities Limited in 2005 and Mr Eyre then bought it in 2008. Throughout that time the football club has used it and Mr Fisher has sought to exclude others. In August 2011 Mr Eyre's agent removed the padlock and chain on the gate and replaced it with a new one and a new sign [O/190]. The padlock was removed and replaced by unknown persons within 48 hours.

113. In his second statement he says that he accepts that a fire escape was permitted by a Deed dated January 1969, but that the fire escape could not be accessed from the front of the Club when his company purchased the club. He sponsored Langold Old Boys, not a Corner Pocket football team. The Club did have an

electricity supply at the time of the purchase by CPS. The pitch was totally enclosed, although the eastern fence was in need of repair.

114. In cross-examination, Mr Eyre did not accept that there were gaps in the eastern boundary. He said that the vegetation was so thick as to be a good barrier. He said that the reasons why his evidence about meetings with Mr Fisher did not tally with that of Mr Richardson, was that Mr Richardson came to one meeting but Mr Eyre had several meetings with Mr Fisher. The meeting to discuss the continued occupation of the field was a different meeting from that which discussed the potential financial contribution towards lighting. Mr Fisher asked whether Mr Eyre had any electricity bills for the Club – Mr Eyre did not. Nor did he have any documentation relating to him granting permission to the football club to use the pitch.

Graham Coe

115. Mr Coe confirmed his statement [O/24-25]. He was born in Langold in 1950 and lived there until around 1977. He returned to Langold 6 years ago, to his present address at 9 William Street, Langold. As a child he remembered being warned that football field was private and “out of bounds”. As a result, people did not go generally go onto the pitch and would be chased off if they did. He watched football games on the pitch as a child. There were high corrugated gates at the end of Grosvenor Road which formed a barrier. There was a pedestrian gate which you had to pay to go through to watch games. Those gates were removed in the mid-1970s and replaced by another barrier before the gates now on site were

erected. He has not seen dog walkers on or around the pitch either as a child or as a resident for the last 6 years. He did not walk his own dogs on the application site. He went to Goldthorpe Plantation via the area between the east side of the cemetery and the railway cutting. In the 1960s there was a boxing club next to the football pitch. Access to that was through the gates at the end of Grosvenor Road which had to be opened by the boxing coach. People did not go onto the pitch until the last year or so.

116. In cross-examination, he said that children did go onto the site as children will break rules. He accepted that the September 2001 letter [A/48] referred to the plantation being “heavily trespassed” and accepted that this was correct in 2001.

Mary-Ann Nicholson

117. Mrs Nicholson confirmed her statement [O/174 to 175]. She is a resident of Langold and a Parish Councillor. She was born in 1961. She left Langold in 1987 and returned in 1994. She has known the application site all her life. As a child she played in the woods. The end of Grosvenor Road had no gate, but did have a thick wire rope. She used to go between the Club and factory and cross the field to get to the woods. Although one could get onto the pitch, no one did, through fear of being chased off. She often played in the woods or spent time with her grandfather, who was a gravedigger, at the cemetery. She does not remember seeing anyone other than footballers on the field. Her father was a committee member at Smokey’s Club in the 1970s and 1980s. If the steward or committee member saw anyone on the pitch they would be told to get off straight away. She

does not recall seeing dogs on or around the pitch. She did not walk her own dogs there. In 1996 /1997 her husband used to play for the team and she used to go and watch. She went onto the field through the gate, which would be unlocked on match days. Apart from football, the field was only used for the occasional event organised by the Club committee.

118. In cross-examination, she said that the passageway between the Club and the factory was not difficult to use. There was rubble in one spot, which she could walk over. She confirmed that her sister was shown on one photograph [Annex 38a].

OTHER LIVE EVIDENCE IN OPPOSITION TO THE APPLICATION

Mrs Janet Goulding

119. Mrs Goulding is married to Mr Goulding, who had earlier given evidence for the objector. She said that Mr Fisher had produced a photograph and implied that she had been onto the field. She said that she could not go onto the field because her dogs would take the football. If the photograph Mr Fisher produced was supposed to be on a match day, she claimed that goalposts could not be seen. She referred to Mr Brown's evidence that he walked his dogs three times per week on the field. She said she knew every dog walker on the field. Six people walk their dogs daily. Three do so occasionally. Mr Brown is not there three times each week.

120. She was cross-examined by Mr Fisher. She was taken to a photograph [Annex/27]. She said that the occasion was a practice session and she was bringing the dog off the field. At least nine people walk dogs on the field in current times.

Kathleen Brightmore

121. She has lived at 5 Ramsden Avenue, Langold, for 74 years. She is a Parish Councillor and is trying hard to take the village forward. It has an excellent lake, park and village hall. She referred to Langold not being safe for anyone. Shops in the village are closing and the people of Langold deserve better. She worked as bar staff at Smokey's Club and she can recall football being played. She said she had never known the field being use for anything else.

122. She was asked questions by Mr Fisher. She confirmed that when she referred to a lack of safety, she was referring to the area, not the field, which she acknowledged Mr Fisher kept "immaculate" for footballers. She had been a Parish Councillor since 2003. She confirmed that a Millennium event did take place.

OBJECTOR'S CASE, WRITTEN MATERIAL.

123. There are a number of statements in the objector's bundle whose authors did not give evidence. I summarise their evidence briefly here. I attach less weight to evidence which has not been the subject of cross-examination.

John Pendleton

124. He had produced two statements [O/28-30] [O/118-119]. He lives at 6 Goldthorpe Avenue and has done for the last 21 years. He has lived in Langold all his life. He played for Langold Juniors on the field. At that time, 35 to 40 years ago, it was possible to access the field from a walkway at the side of the Christian Community Church, which is now fenced off. An annual race also used to go from the field to Oldcotes, via Goldthorpe Plantation. He says he was a member of Smokey's Club Committee for 3 or 4 years before it closed down. Around 20 years ago, Mr Fisher took over use of the field and kept other off and erected the sign on the gate which is there now. He refers to the gates, wall and fence preventing access to the field from the south, and refers to events on the field which were organised by Smokey's Club. Since living at his current address, he has not seen anyone using the field other than footballers and Mr Brown. 3 or 4 years ago, Mr Pendleton's grandson went onto the field for a kickabout and Mr Fisher told him to get off, swearing as he did so. Access has increased over the last few months, but did not happen before.

125. In his second statement, Mr Pendleton responds to points made by Mr Fisher. Mr Fisher produce a plan of what he said was the correct route of the annual race [R/64]. Mr Pendleton says that the original route of the run was that he claimed and which is shown by Mr Fisher as a red coloured route. The green route, along the Doncaster Road, was used later on. He insists that he was a member of the committee at Smokey's for "a good three years". He can see the application site from his bedroom windows.

Ian Snailham

126. Mr Snailham produced a statement [O/124-127]. He says he has lived in Langold all his life. Between 1995 and 2000 his wife was licensee of Smokey's Club, managing it for a Brewery. They lived in the Steward's House although it is correct that he spent 18 months in prison at the end of that period for possession of a shotgun and inflicting grievous bodily harm. He states that the left hand pair of gates at the end of Grosvenor Road were in place when he moved in in 1995. The second pair were erected by Mr Fisher shortly after Mr Snailham moved in. You could walk between the Club and the factory when he moved in, but that gap was blocked by Mr Fisher at around the same time as the erection of the newer pair of gates. At the same time, a fence was erected from the rear corner of the factory to the cemetery fence, as shown on his plan [O/130]. It would have been possible to get into the field from the Plantation, but it was overgrown and he did not know people to do that.

127. His statement says that during the time his wife was licensee, the arrangement with the Football Club was that the team were allowed to play on the pitch in return for the team promising to drink in the Club and bring in the visiting teams. The Football Club also had to maintain the pitch at no cost to Smokey's Club. Electricity and water supplies were taken from the Club to the changing rooms. There was a three or 4 week period when the team did not drink in the Club after a dispute, which was resolved. He says that the team vacated the ground for a period to allow Worksop Borough to use the pitch. If anyone went onto the pitch they

would be chased off by Club Members or by Mr Fisher. Occasional events were held which were organised by the Football Club.

Michael Sumption

128. He has produced a statement [O/162-163]. He is a surveyor who has acted for Mr Peter Eyre and his companies. He gives evidence about two occasions when he met Mr Fisher. The first was in early 2007, possibly in April, when he met Mr Fisher, who claimed that Mr Goulding was proposing to build a new house on a plot which included some of Mr Eyre's land. The second was on 14th May 2008 when he visited to look at the access along Grosvenor Road. He took a photograph that day [O/170]

Christopher Carr

129. His statement [O/212] simply produces the photographs at [O/204, 205 and 206] which I have described above.

THE LAW.

130. I received legal submissions from both parties, together with closing submissions. I shall not set out those submissions in full in this report, but shall deal with the principal points they raise when explaining the conclusions which I have reached.

131. The application is made in reliance upon section 15(2) of the Commons Act 2006 (“the 2006 Act”) which provides:

“(2) This subsection applies where—

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

132. I will refer to use which meets this definition as “qualifying use”.

Burden and Standard of Proof.

133. The burden of proof lies on the applicant to show that the land meets the criteria for registration as a TVG. *R v Suffolk County Council ex parte Steed* (1996) 75 P&CR 102 is authority for the proposition that all of the elements required to establish that land has become a town or village green must be “properly and strictly proved” [at page 111 per Pill LJ].

134. However, the standard of proof is still the civil standard of proof on the balance of probabilities. That is the approach I have used.

The Relevant Area of Land

135. The application does not have to stand or fall on the basis of the original area of land specified in the application. Provided that the procedure adopted is fair, a smaller area can be address and, if appropriate, registered. Here, there is no issue about the area of land which should be registered. It is all of the AS or none of it.

The Correct Twenty Year Period

136. It must be shown that the local inhabitants have used the land as of right for lawful sports and pastimes for not less than twenty years, and the use must continue to the date of the application. It was agreed by the parties at the inquiry that as the application was made on 19th July 2010, in order to satisfy the requirements that the application site qualifies for registration as a TVG, the applicant must show that use which meets the statutory criteria began no later than 19th July 1990 and persisted throughout the twenty year period to 19th July 2010. If qualifying use began prior to 19th July 1990, it still had to continue until the date of the application.

The Use of the Land

137. In the case of *R v Oxfordshire County Council ex parte Sunningwell Parish Council* [2000] 1 AC 335 the House of Lords held that “lawful sports and pastimes” is a single composite class which includes modern activities such as dog-walking and playing with children, provided always that those activities are

not so trivial or intermittent so as not to carry the outward appearance of user as of right.

The Users of the Land.

138. The persons who use the land must be a significant number of the inhabitants of either a locality or of a neighbourhood within a locality. It is now generally accepted that a “locality” has to be some geographical unit whose existence is recognised by the law, such as a borough, ecclesiastical parish or manor: *MoD v Wiltshire CC* [1995] 4 All ER 931; *R (on the application of Cheltenham Builders Limited) v South Gloucestershire DC* [2003] EWHC 2803 at paragraphs 72 to 84 and *R (Laing Homes Limited) v Buckinghamshire CC* [2003] EWHC 1578 Admin at paragraph 133. See also the very recent decision of the Court of Appeal in *Adamson v Paddico (267) Limited and others* [2012] EWCA Civ 262 at [29] where a Conservation Area designated pursuant to the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 was rejected as a possible locality, on the basis that it was not an area which related to any community of interest of its inhabitants.

139. If a case is put on the basis of “locality” then there must be a single locality that can be identified. When the word “locality” appears on its own, and not as part of the phrase “neighbourhood within a locality”, the word means a single locality: *Oxfordshire County Council v Oxford City Council and another* [2006] 2 AC 674 at [27] per Lord Hoffmann.

140. It was held at first instance by HHJ Behrens in *Leeds Group PLC v Leeds City Council* [2010] EWHC 810 (Ch) that the two limbs in section 15 dealing with “locality” needed to be interpreted separately. If a case was put on the basis that the users were from a neighbourhood within a locality (a so-called “limb (ii) case”), then “locality” was a term which did not have to have imported into it “all the technical difficulties in the word ‘locality’ that have arisen in relation to common law greens”. That was because “it was the clear intention of Parliament in a limb (ii) case to relax the requirements necessary to register a TVG and to weaken the links with a common law village green” (both quotations from paragraph 89 of the judgment). Thus, a local government area which ceased to exist in the 1930s could be a limb (ii) locality, if the users came from an identifiable neighbourhood within it. This issue fell away when the case was considered by the Court of Appeal [2011] Ch 363, who noted that the Judge had held, in the alternative, that the neighbourhoods were located within the locality of an ecclesiastical parish. It therefore appears that HHJ Behrens’ finding on this issue stands, and so “locality” means different things in both limbs.

141. A “neighbourhood within a locality” does not have to be within one locality (*Oxfordshire* paragraph 27). Further, the users can come from more than one neighbourhood within the locality and “neighbourhood” includes “neighbourhoods”: *Leeds Group* in the Court of Appeal, affirmed in *Paddico* at [26]. It remains the law that a neighbourhood must be an area which has a sufficient degree of cohesiveness: *Cheltenham Builders*, paragraph 85.

142. Whether use has been by a significant number has been held to be a matter of impression and “significant” is to be approached according to its ordinary meaning. The use has to be sufficient to indicate that the land is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers: *R (on the application of Alfred McAlpine Homes Limited) v Staffordshire CC* [2002] EWHC 76 (Admin). There is no longer any need to show that the users were predominantly from the claimed locality or neighbourhood: *R (Oxfordshire and Buckinghamshire Mental NHS Foundation Trust & Ors) v Deluce and Ors* [2010] EWHC 530 Admin.

Extent of User

143. The RA does not have to look for evidence that every square foot of a site has been used. Nor is there any mathematical formula to be used. Rather, the RA needs to be persuaded that for all practical purposes it can sensibly be said that the whole of the site had been used for lawful sports and pastimes for the 20 period.

Continuity / Interruption.

144. The use has to be continuous throughout the relevant twenty year period: *Hollins v Verney* (1884) 13 QBD 304. The use has to show the landowner that a right is being asserted and must be more than sporadic intrusion onto the land. It must be use which suggests that rights of a continuous nature were being asserted. That is not to equate an intermission in use with a lack of continuity. What matters is that the use is frequent and when sports and pastimes are not being indulged in,

there must have been no other activity happening which would have prevented lawful sports and pastimes from being enjoyed.

As of Right.

145. Use which is as of right has to be use which is made openly, without force and without permission, and the intention of the users of the land is irrelevant: *R v Oxfordshire County Council ex parte Sunningwell Parish Council* [2000] 1 AC 335.

146. There is no principle of deference and if use by the relevant persons has been open, without force and without revocable permission then the use has been as of right and the land should be registered as a TVG. However, registration neither enlarges the inhabitants' rights nor diminishes those of the landowner, who retains the right to use the land as he has done before, and in practice it is possible for the respective rights of the owner and of the local inhabitants to co-exist with give and take on both sides: *R (Lewis) v Redcar and Cleveland Borough Council* [2010] 2 AC 70 [Supreme Court].

147. Use which is by force is not limited to use by physical force. The requirement is that the use must be neither violent nor contentious: *Lewis* at [88] to [91] per Lord Rodger of Earlsferry.

148. Permission can either be expressly given or implied from conduct, but the permission which is given or implied has to be revocable permission: *R (Beresford) v Sunderland CC* [2004] 1 AC 889.

Lawful sports and pastimes

149. Lawful sports and pastimes is a composite class. In *R v Oxfordshire County Council ex parte Sunningwell Parish Council* [2000] 1 AC 335 [2/tab 10] the House of Lords held that “lawful sports and pastimes” is a single composite class which includes modern activities such as dog-walking and playing with children, provided always that those activities are not so trivial or intermittent so as not to carry the outward appearance of user as of right. Use of a footpath for the purposes of passing and re-passing cannot be use for lawful sports and pastimes.

FINDINGS

150. There is one general matter that I deal with at the outset. Mr Fisher, as applicant, bears the burden of proving that the application site meets the criteria for registration as a TVG. Contested matters of fact have to be proved by him on the balance of probabilities, albeit that each element has to be properly and strictly proved. Mr Fisher chose not to give evidence. He did so having been informed by me that he bore the burden of proof and that I might be asked to draw inferences adverse to his case if he chose not to deal with such matters. I said that at the pre-inquiry meeting in August 2011. I repeated that at the inquiry, whilst noting that there appeared to be some factual matters upon which he was best placed to assist

the inquiry. Where there are matters of fact upon which there is evidence adverse to Mr Fisher's case and upon which he could have but did not give evidence, it is open to me to conclude that the position is adverse to him.

151. I have taken into account the written material, as well as the live evidence.

Less weight should be attached to evidence which cannot be tested. I am unable to attach much weight to the content of the user forms or letters in support of the application if their authors have not given evidence. That is because they are not very clear in relation to the type, duration and frequency of the user referred to. They do not always distinguish between user which could be user as part of playing or watching organised football matches, which is important in light of what I say below about those matters. The user forms are not clear about the physical extent of user across the application site.

Land

152. All subsections of section 15 of the CA 2006 concern the use of "land". The land in this case is not within one of the exemptions from the application of Part I of the CA 2006 set out in section 5 of the Act. There is no difficulty in identifying the relevant land and this element of the definition is clearly met.

Locality or neighbourhood within a locality

153. The application refers to the village of Langold and the parish of Hodsock in the District of Bassetlaw. A parish, whether ecclesiastical or administrative, is

clearly a “locality” for the purposes of section 15 of the 2006 Act. So is a District. Mr Petchey did not argue that they were not. Similarly, Langold is a self-contained village with a wide range of facilities and has a good degree of physical and social cohesiveness. In my view, Langold qualifies as a “neighbourhood” for the purposes of the 2006 Act. Again, Mr Petchey did not argue to the contrary.

154. I have no plan which shows the precise extent of the parish or the District, but the objector did not dispute that those entities exist. I do have a plan showing the boundaries of Langold [A/22]. Mr Petchey did not urge me to recommend rejection of the application on the ground that there was no parish or District plan.

155. I find that the applicant has proven that Langold is a neighbourhood within a locality. The locality would either be the parish of Hodsock or the District of Bassetlaw.

156. I therefore have to consider whether there is evidence of qualifying user by a significant number of inhabitants of the neighbourhood of Langold.

Use as of right for lawful sports and pastimes by a significant number of local inhabitants for a continuous period of twenty years and continuing to the date of the application.

157. These aspects of the qualifying criteria set out in section 15(2) of the 2006 Act can best be considered together.

158. I set out relevant factual findings:

- a. The application site was acquired by the Trustees of Smokey's Club in November 1948 for the purpose of providing a playing field. Football has been played on it since 1948.
- b. Langold Boys Football Club was established in 1967 and started to play their home games on the application site. The changing rooms were then a wooden hut;
- c. In 1968, adult men's football ceased being played on the application site, but boys' football continued;
- d. In 1977, new changing rooms received planning permission and were erected either then or shortly thereafter. It is noteworthy that, according to the application form, the applicant for permission was the Secretary of the "Doncaster Road Working Men's Club" (i.e. Smokey's Club). I prefer the evidence that water and electricity supplies were provided to those changing rooms from Smokey's Club. The evidence to the contrary is confused and contradictory. I take particular note of the content of the letter from Sidney Phillips, the agent for the then vendor, in the letter of 25th January 2002 [O/57] which reports Mr Fisher referring to the Football Club's luck in not being charged for water and electricity. If this evidence was not accepted by Mr Fisher, he had every chance to dispute it by giving evidence himself, but did not do

so. I think it more likely than not that the electricity and water was supplied when those changing rooms were erected rather than later, but nothing turns on that precise matter. The 2001 sales particulars refer to the changing rooms having “showers and WC” [R/50]. The presence of another, albeit basic, toilet outside the changing rooms does not mean that there was no toilet in them;

- e. Langold Old Boys Football Club was formed in 1978, whilst the Boys’ Teams were still using the application site. I accept the applicant’s case that the use of the application site by football teams has been unbroken since well before 1990 and that it continued, throughout the football seasons over the years;
- f. In 1988, there was no gate or barrier which prevented access to the application at the end of Grosvenor Road, although there were gate posts in place. The passage between the Club and the factory was then able to be used as a through route to the field. So much is clear from the aerial photograph [R/52] which demonstrates that Mr Goulding’s evidence to the contrary cannot be right and that Mrs Featherstone’s evidence cannot be right in dating the incident when her husband had to climb over a wall to retrieve a ball. In the same year Smokey’s Club was mortgaged to a brewery;
- g. In 1992, Smokey’s Club closed as a Working Men’s Club and began to be managed by a brewery. I accept Mr Alan Eyre’s evidence that the

passage was then still open and that there was still no gate across the end of Grosvenor Road. I also accept the evidence that Mr Pendleton was only a Committee Member at Smokey's for a few weeks prior to its closure;

- h. In 1995, the Saturday team disbanded, but the Sunday football team continued. I accept the evidence of Mr Brown that there was a change of personnel leading the Football Club and not a closure of it. That much is clear from the match programme and cup victory which followed. Also in 1995, Mr and Mrs Snailham moved into occupation of the steward's house at the Club. I see no reason to doubt his evidence that the western pair of gates at the end of Grosvenor Road were in place by then and that the eastern pair were erected soon afterwards. There was no live evidence called by the applicant which contradicted that claim – Mr Brown's claim that Mr Snailham was then in prison is contradicted by Mr Snailham's statement that he was in prison towards the end of the 1995-2000 period. Mr Richardson said that all of the gates were there when he started working in Langold in 1996 and Mr Brown recalled that the gates were in place by 1998. At around the same time, the fence from the end of the factory to the cemetery fence was erected, which closed the gap in the southern boundary [O/130].

- i. In 1996 or 1997, Mr Brown became the Langold Old Boys' Manager;

- j. In May 1998 Smokey's Club was offered for sale by Carlsberg Tetley Brewing Limited. The particulars of sale referred to the Football Club occupying the ground on an informal basis and the purchaser being able to negotiate future occupation terms;
- k. In 1999, the Old Pub Company acquired the Club premises and operated them as a going concern;
- l. In 2001, the Club premises were offered for sale with sales particulars that referred to the field being "let without charge" to the football team. In September, there was correspondence which referred to the wood being heavily trespassed, which I accept was the case.
- m. At some time approximately ten years ago, the Boys' Teams stopped playing at the application site, but the Old Boys continued to play there;
- n. In March 2002 CPS Leisure bought Smokey's Club and the application site. Shortly before the purchase Mr Peter Eyre and Mr Fisher met and agreed that CPS Leisure would allow the football club to continue to occupy the field on the terms described by Mr Eyre in his evidence. Again, Mr Fisher could have disputed this in evidence if he wished, but did not. Mr Brown and Mr Richardson's evidence is reconcilable by there being more than one meeting between Mr Eyre and Mr Fisher. I

find that Mr Brown and Mr Richardson were addressing different meetings in their evidence;

- o. After 1988 and by no later than 2002, the passageway between Smokey's Club and the factory was blocked off, as shown on the 2002 Google Earth photograph [O/159];
- p. In August 2003, CPS Leisure transferred the premises of Smokey's Club to Mr Mugglestone's company. The gates at the end of Grosvenor Road were by then in place. By that time, the sign on the right hand gate [O190] prohibiting unauthorised access had been erected: see Mr Mugglestone's photographs [O/71]. It has remained there ever since. Those gates were also padlocked [O/78]. Also by that time, the gaps either side of the left hand pair of gates were blocked by what looks to be sheet metal [O/73]. These sheets prevented easy access, because people would not otherwise have had to climb over walls or find other routes to get to the rear of Smokey's Club;
- q. In 2007 the Club and factory premises were demolished;
- r. In May 2008, Mr Eyre bought the application site in his own capacity;
- s. I find that the southern boundary of the application site was enclosed by gates, walls and fences by no later than 2003 and probably by the mid-1990s. I also find that the gates were opened only when football

matches were in progress, when training sessions were held or perhaps when Mr Fisher was on the field carrying out groundwork. At other times I find that the gates were closed and, in all likelihood, locked. I accept the evidence that Smokey's Club Committee members sought to keep people off the pitch prior to 1992 and if Mr Fisher disputed the claim that he challenged people on the site then he could have given evidence to say so. Mr Fisher's actions are relevant as (i) I find that the Football Club was permitted to use the site and so he was acting on the owner's behalf and (ii) regardless of that first point, his actions would have deterred some people from going on the site;

t. The evidence about fencing at the western, northern and eastern boundaries is less clear:

i. The western boundary has a mixture of fences which I accept provided a means of access until some time in the 1990s. The extent to which people other than Mr Brown did make use of those means is not at all clear:

ii. At the north west point of the application site is an area where access can be gained to private gardens on Goldthorpe Avenue and Goldthorpe Close, over low fences. This is not a public place and I do not accept that any significant use of it by local inhabitants has been made throughout the twenty year period that I have to consider.

- iii. The northern boundary has a fence which appears to be of some vintage, although I have no evidence about when it was erected. It is, however, embedded within a substantial hedge. It has plainly been there for some years. There is a slight gap in it at a point close to where the public can gain access from Goldthorpe Close. However, the extent to which people used that gap in the relevant twenty year period, as opposed to some earlier time, if at all, is not clear;
- iv. The eastern boundary did have a fence which has long disappeared. It was very dilapidated by 2001. I cannot conclude when the Plantation's tracks were formed. I think it likely that it was possible to enter the application site from the Plantation, and vice versa, for some or all of the twenty year period, but the extent to which such access was actually gained is not clear. Mr Fisher could have clarified this issue if he had given evidence about it, as he could have done about all of the fencing issues I have described. That he did not take that opportunity leads me to conclude that he has no or insufficient evidence to substantiate his case in these respects.
- u. I accept Mr Petchey's submission that it is hard to explain why the gates and signs were erected to keep people out of the site from the southern side, if the eastern and other sides were as permeable as Mr Fisher claims. The effort of keeping not just vehicles but people out

(by closing the gaps at the sides of the gates), makes little sense unless the rest of the site was relatively secure. I find that the remaining boundaries could not have been open to pedestrians throughout the twenty year period, or at least that Mr Fisher has not proved that they were.

159. As to whether the use was as of right, there is no claim by the objector that any use was by stealth. Climbing over fences or walls would be user by force, but there is no evidence that people broke fences to get onto the site.

160. The first and main issue on the question of whether the use was as of right is whether the use of the football pitch by the Football Clubs was use as of right. Again, Mr Fisher's case is hampered by him not giving evidence. On the basis of the incomplete evidence that I have, I find it inconceivable that a football pitch next to a working man's club would simply be occupied by a football team, initially as trespassers, without discussion with the Club, when the field has the advantage of changing rooms which, as I have found, were supplied with utilities from Smokey's Club some time after 1977. I also find that the fact that the applicant for planning permission for the changing rooms in 1977 was Smokey's Club's Secretary indicates that at that time control and management over the Football Club was being exercised by Smokey's Club. The evidence I have heard and seen compels the inference to be drawn that the football club were permitted to occupy the application site by the Trustees or committee of Smokey's Club, as the landowner until the Working Men's Club's demise in 1992. Mr Fisher could have explained his case by giving evidence of his own experience. He did not. I

find that permission was given by the relevant persons on behalf of Smokey's Club was given to the persons running the football teams no later than 1977 (being the date of Smokey's Club's Secretary's planning application) and, in all likelihood, before that date.

161. Evidence of later events also suggests that the landowners permitted the occupation of the application site:

- a. Mr Alan Eyre gave evidence that the brewery's first manager, Mr Smart, asked for the pitch to be used. That tends to suggest a relationship whereby the landowner to some degree controlled the use of the pitch;
- b. Mr Snailham refers to permission being granted to the Football Club during the 1995 to 2000 period, and Mr Fisher did not give evidence to address this claim;
- c. The January 2002 letter from Sidney Phillips [O/57] reports that Mr Fisher indicated that Smokey's had "allowed" free use of the pitch. Mr Fisher did not give evidence to gainsay the content of the letter;
- d. In 2002 I find that Mr Peter Eyre gave permission on behalf of CPS Leisure Limited for the pitch to be used. I accept his evidence to that effect, which is corroborated by his solicitor's letter of 28th March 2002 to his bank [O/58] Although the company was not then the

landowner it is clear evidence of what the arrangement would be as and when CPS Leisure bought the land.

162. I find that the use of the pitch by the Langold Boys' Football Club and the Langold Old Boys' Football Club until 1992 was by licence of the landowner, the Trustees of Smokey's Club. There is evidence which tends to suggest permitted use of the pitch during Mr Smart's tenure as brewery manager and during Mr and Mrs Snailham's tenure of the Club. There is clear evidence that team use was permitted after 2002. The use of the AS by the football teams was therefore not as of right throughout the twenty year period. I find that the permission should be found to extend to the use of the field by people spectating the matches and using the field at the same time as matches. That is because a rational landowner would know that by permitting such matches to take place, others would come to watch them. Further, the evidence is that the gates at the end of Grosvenor Road were otherwise kept locked and were opened on match days. Their opening indicates permission for people to enter during matches to watch the games.

163. There has been reference to organised activities on the land, such as bonfires, markets, charity days, Silver Jubilee celebrations and the like. These activities were not sports, but may have been pastimes. However, the visitors to them were not on the field as of right. That is because the evidence is that these activities were organised by the Club committee. The use during these events was permitted by the landowner. The fact that they were organised by Smokey's Club, not the football club, shows that Smokey's, and not the football teams, was the body

exercising control over the use of the application site. Further, many of them pre-date the relevant twenty year period.

164. That leaves the evidence of other recreational activities which I have heard about. That largely comes down to dog-walking, informal football games or kick-about and insubstantial references to occasional fruit-picking and the like. I have explained why I cannot attach much weight to the user forms and supporting letters.

165. I heard live evidence from 4 persons called by the applicant and from 3 others who support the application for registration. Of those 3 people in the latter group, I can derive little assistance from their evidence. Mr Pickersgill's evidence was about access to the wood, not matters relevant to my deliberation. The evidence of Valerie Hoyle lacked specificity and what detail there was plainly related to a period prior to the commencement of the relevant twenty year period. The evidence of Gail Moore similarly lacked detail and what detail there was related to the playing of football.

166. That leaves the evidence of the four witnesses that Mr Fisher did call. Even if their evidence proved that they were qualifying users and saw others (wherever they might have lived), I do not consider that their evidence amounts to proof of qualifying user by a significant number of local inhabitants. However, that evidence also lacks important detail:

- a. The considerable focus of Mr Brown's evidence was to explain the use made of the AS by Langold Boys and Langold Old Boys Football Clubs. His evidence about other recreational user was limited to dog walking. I accept that he has had a dog throughout the relevant period and that he has walked his dog on the AS with great frequency. He did not explain whether he used a set route or routes of which his use of the AS formed a part or whether he and his dog wandered all over the AS.

- b. Mr Alan Eyre's evidence in chief was also focussed on explaining the relationship of Smokey's Club and the football clubs. He did give evidence, in cross-examination, about walking his own dogs and seeing dog walkers on the land, but this was evidence about the period when Smokey's Club was still in existence, that is, prior to 1992. Since 1992, Mr Alan Eyre only references to going to the AS were on match days. His evidence is not a substantial source of evidence about use of the AS for lawful sports and pastimes that were (i) not part of the football teams' use and (ii) undertaken throughout the twenty year period, particularly after 1992.

- c. Mr Moore's evidence was also focussed on the use of the AS by the football teams. He claimed no use of the AS other than for football. His only reference to use of the AS for football which was not part of an organised team game was to playing there with his friends in the 1980s.

d. Mr Burridge gave live evidence and had also completed a user form.

His oral evidence demonstrates why care needs to be used when assessing the content of user forms. His oral evidence referred to use which had participation in organised football games as a substantial component of it. He did refer to other use, but these references either:

- i. Pre-dated the twenty year period (his childhood user);
- ii. Were not references to use of the whole AS for lawful sports and pastimes (crossing the AS to get to the woods);
- iii. Did not span the twenty year period, because his use of the AS with his sons for informal games of football referred to there being no gates across Grosvenor Road, which must mean that such use pre-dated no later than 1998 (and probably earlier) as 1998 is the last date I heard as the time when those gates were erected, or
- iv. Post-date the application. Mr Burridge's evidence about his observations of what he saw from Jay's Public House relate to a time period which wholly or mainly post-dates the date of the application.

167. For those reasons, I do not consider that the evidence of the four witnesses who gave oral evidence at the inquiry establishes that the AS is land on which a

significant number of the inhabitants of the neighbourhood of Langold within the locality of Bassetlaw District or the locality of the parish of Hodsock indulged as of right in lawful sports and pastimes for a continuous period of at least twenty years which continued to the date of the application for registration of the land as a TVG. The written material produced by the applicant is not sufficiently detailed and reliable to make good the defects in that evidence.

OVERALL CONCLUSION

168. I recommend to the Registration Authority that the application is refused and that the application site should not be registered as a town or village green.

169. I would strongly advise that this report is made available to the parties in good time prior to its formal consideration by the Registration Authority, so that the parties have ample opportunity to consider it and make any views known upon its contents.

170. It remains only for me to express my gratitude to the parties for the efficient and good natured conduct of the inquiry and my thanks to officers of the Registration Authority, particularly Alison Garraway, for their assistance during this process.

MARTIN CARTER
11th March 2012.

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