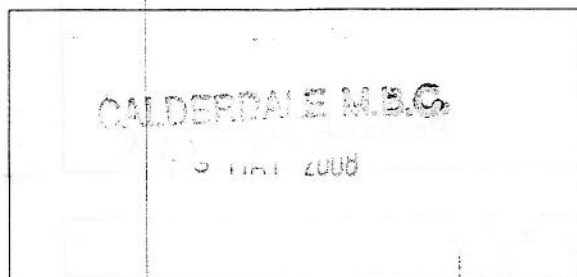


Commons Act 2006: Section 15

Application for the registration of land as a Town or Village Green

Official stamp of registration authority
indicating valid date of receipt:



Application number:

2947

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

1. Registration Authority

To the

CALDERDALE COUNCIL

Box 1
Insert name of
registration
authority.

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicant

Name: **CHRISTOPH KRATZ on behalf of OAKVILLE RESIDENTS' ASSOCIATION**

Full postal address:

**6 BEECHWOOD VIEW
OAKVILLE RD
HEBDEN BRIDGE**

Postcode **HX76NR**

Telephone number:

(incl. national dialling code)

01422 846769

Fax number:

(incl. national dialling code)

E-mail address:

penvillagegreen@gmail.com

3. Name and address of solicitor, if any**Note 3**

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

Name:

Firm:

Full postal address:

Post code

Telephone number:

(incl. national dialling code)

Fax number:

(incl. national dialling code)

E-mail address:

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

* Section 15(6)
If any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**: ☐

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

☒

Section 15(3) applies:

☒

Section 15(4) applies:

☐

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

two areas marked "East end" and "West end" on Map A.

A fence was erected partially severing the area. It is shown in blue on Map A. It was begun in November/December 2007 at the end marked "East end" was completed before Christmas 2007. The fence was continued in the New Year. The area marked "West end" was severed during January 2008.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable to it to be clearly identified.

* Only complete if the land is already registered as common land.

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

The Pen

Location:

at Oakville Road and Stony Lane, Charkestown HX7

edged red
Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

north-east Charkestown

Tick here if map attached: ☒

shown edged green

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

The Oakville Residents' Association is applying for an area of land at Oakville Road, Charlestown, known as the Pen, to be registered as a village green (see Map A).

The Pen has been used at least since the 1950s for recreation by the local inhabitants of north-east Charlestown. It is still used in this way now, every day.

Attached to this application form is a bundle of evidence that shows that over 40 households and more than 100 individuals use the Pen on a regular basis. Every day children play on it, people walk their dogs and relax on it. There are regular picnics, parties and gatherings and an annual bonfire-night party is held here.

In all the time that the Pen has been used for recreation, the owners of the land (formerly British Rail and now British Rail (Residuary) Ltd ('BRB')) have not used the Pen for any purpose of their own. There is one tenancy over a small part of the land, held by Angela and John Sutcliffe, who use it for hanging washing.

Access to the Pen has always been entirely without force, using the four access points in the stone wall boundary. At no time has BRB granted permission for the neighbourhood to use the land for recreation. The residents have never hidden the fact that the land is used for recreation and that use should have been obvious to anyone who came to look.

BRB recently erected a fence, mostly along the top of the railway embankment. This fence does not prevent access to the Pen and is primarily a safety feature. The fence does cut off a part of the Pen at either end, and we maintain our legal right to use those areas for recreation as if the fence had never been erected (even though that area is currently inaccessible).

We believe that the Pen fully meets the requirements for the registration of land as a village green under section 15(2) of the Commons Act 2006 (and for the area beyond the fence under section 15(3) of that Act).

The Pen has been used by the residents of north-east Charlestown as our village green for over fifty years. We now request that Calderdale Council recognises this customary right and formally registers the Pen as a village green.

Oakville Residents' Association
7 May 2008

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

Owner:

BRB (Residuary) Ltd
Whittles House
14 Pentonville Road
LONDON N1 9HF

Agent: Jon Rymer, Lambert Smith Hampton,
3 The Embankment, Sovereign Street, Leeds LS1

Tenant:

A & J Sutcliffe
9 Oak Villas
Oakville Road
Hebden Bridge HX7
6NP

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

10. Supporting documentation**Note 10**

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

Appendix 1: Justification

Appendix 2: Map A showing the application land and locality

Appendix 3: Photographs in support of the application

Appendix 4: Copy lease BRB and JS Sutcliffe, 8 February 1967

Appendix 5: Completed questionnaires from current and former residents

Appendix 6: other supporting documents

Note 11

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

Note 12

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

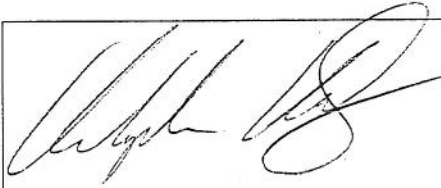
11. Any other information relating to the application

The land is due to be sold at auction on 5 June 2008.

Date:

7 May 2008

Signatures:

**REMINDER TO APPLICANT**

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

17 Any other information relating to the application

The above information is true to the best of my knowledge
Date: 5 June 2008

Note 11

If you are a person who is not a citizen of the United Kingdom, you must also provide evidence of your right to work in the United Kingdom. This may be a certificate of registration or a certificate of leave to remain. If you are a citizen of the United Kingdom, you do not need to provide this evidence.

Note 12

The application fee is £100. This fee is non-refundable. If you are successful in your application, you will be required to pay a further fee of £100. If you are unsuccessful, you will be required to pay a further fee of £50.

Date:

5 May 2008

Signature:



REMINDED TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Date: 5 June 2008

The application and any representations made cannot be treated as confidential. To determine the application and to process for the registration authority to disclose information received from you to other persons may include other local authorities, Government departments and other bodies.

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name
(and address if not
given in the
application form).

I Christopher David Ward solemnly and sincerely declare as follows:—

² Delete and adapt
as necessary.

Insert name if
Applicable

1.² I am ((the person ~~(one of the persons)~~ who (has) (have) signed the foregoing application)) ~~((the solicitor to (the applicant) (³ one of the applicants))~~). *application for the registration of land as a Town or Village Green (Form 44) made to Caldesdale Council and dated 7 May 2008.*

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ Complete only in
the case of
voluntary
registration (strike
through if this is not
relevant)

4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

- (i) a declaration of ownership of the land;
- (ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have

Cont/

⁴ Continued

been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said

Christopher David Kratz

at Hedden Bridge

this 21st day of August 2008



Signature of Declarant

Before me * SIAN HUNTER

Signature:



Address:

PINSENT MANSIONS
100 BRISFORD SQUARE
MANCHESTER
M2 3SS

Qualification:

SOLICITOR

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

been received and are exhibited with this declaration or
(ii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the
same to be true, and by virtue of the Statutory Declarations Act 1935

Declared by the said

Charles David Jones

at Hobart, Tasmania

This 12th day of August 2008



Signature of Declarant

Before me at Hobart



Signature

Address:
12/12, Market Street,
Hobart, Tasmania
7000

Justification

* This statutory declaration must be made before a justice of the peace, practicing
solicitor, commissioner for oaths or notary public.

Signature of the statutory declarant is a sworn statement of truth in presenting the
application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please refer all applicants and mark any map as an exhibit

Appendix 1: JUSTIFICATION

1. The Pen is an area of land in Charlestown, Hebden Bridge. It is between Oakville Road, Stony Lane and the Hebden Bridge to Todmorden railway line. This statement shows that the land has been used as a village green by the people of the locality for well over 20 years, without force, without secrecy and without permission. It should, accordingly, be registered as a village green by Calderdale Council.

Evidence

2. The Oakville Residents' Association sent out questionnaires to each postal address in the neighbourhood and to some former residents. 150 questionnaires were sent out in total. The questionnaires, produced by the Open Spaces Society, are intended to provide a structured and objective means of gathering evidence about the way the land has been used during the last 20 years.
3. Fifty one completed questionnaires were returned (enclosed at Appendix 4). We have estimated this to represent approximately one third of all households in the neighbourhood. It also represents at least 132 individuals¹ (at least 40 of which are children) for the entire time period covered.
4. Most of the evidence relates to use of the Pen in the last 20 years. The earliest evidence dates back to 1956.
5. We also received a large number of photographs of which we attach a selection in chronological order in support of our application (Appendix 2). The earliest photograph showing recreational use of the Pen is from 1960. We have photographic evidence from every decade since then.

Description of the land

6. The Pen is a long, narrow strip of land, about 400 metres long and up to about 15 metres wide, tapering to a point at each end. It rises in a number of terraces from the east up to the junction of Oakville Road, Stony Lane and Turret Hall Road. It then slopes down again towards the west, to the level of the railway.
7. The area is a mixture of rough grassland and lightly wooded areas. There are patches of heath on the steeper slopes. Some of the land nearer the boundary wall has been tended and planted with flowers and shrubs.
8. The Pen has a dry-stone wall boundary with Oakville Road and Stony Lane. It has four entrance ways built into the wall, one of which is large enough to allow vehicle access. Towards the railway there was until recently no boundary other than the railway embankment itself which does not form part of this application. Between October 2007 and January 2008, contractors for the owner BRB (see below) erected a 2m high fence of concrete posts and wire

¹ This estimate assumes that the questionnaires were completed on a household basis. The number is based on our knowledge of actual composition of each household where known and using a conservative estimate of 1 for those we did not know for certain.

along the top edge of the embankment and across the Pen, severing a part of the area at each end.

Ownership

9. We believe the Pen to be owned by British Rail (Residuary) Ltd. ("BRB") They do not occupy the land and make no use of it whatsoever.
10. We believe that the land was at one time leased to Railway Paths Ltd. We do not know whether this arrangement still persists.
11. We are aware of one tenant, Angela and John Sutcliffe who rent a small part of the land opposite their address at 8 Oak Villas. Their plot is used for hanging washing and has a bench on it. It is not fenced.

Recreation on the Pen

12. We believe almost every resident in the locality has used the land for some form of recreation since at least 1956. Of the 51 questionnaires returned, all reported that they had used the Pen for recreation and all had seen the land used in this way.
13. The Pen is used for recreation by a very large part of the population in the neighbourhood. We have received 46 questionnaires from current residents and all of these confirm that the Pen is used on a regular basis for a range of recreation activities. We have estimated that this represents at least 110 individual users. The number of actual users is likely to be higher.
14. This use has been continuing uninterrupted for at least 20 years. This is supported by a total of 17 responses from current residents who have been living in the neighbourhood since 1988 or earlier. It is further supported by those residents who have lived in the neighbourhood for part of that time (all but one person who responded lived in the area for at least part of the last 20 years).

"BBQs at least 22 years, bonfires at least 22 years, children playing together 22 years, walking 22 years" Christine and Michael Sharp (1986 to present)

"Bonfire, social gatherings, parties, sports, kids playing for as long as I can remember (15 years)" Gavin Parry (1992 to present)

15. However, the Pen has been used for recreation for much longer, at least 52 years. This is supported by the evidence of 20 questionnaires returned from people who were living in the area before 1988. These include Eileen Cunningham (1956 to present), Leah and Donald Coneron (1958 to present), Julie Finney (1960 to present), Jill Yates (1962 to 2007), Kathy McMahon (1962 to 1979), Angela and John Sutcliffe (1964 to present), Doris & Bryan Sharpley (1968 to present) and many others.

"I was born in Charlestown and played on the Pen all my childhood. We had a rope swing." Eileen Cunningham (1956 to present)

16. Many people use the Pen daily, for instance the children in the neighbourhood and the people walking dogs. Other people use the Pen mostly at weekends and for regular seasonal activities such as blackberrying or the annual bonfire. More on these below.

"Yes, every day. All local children use it." Eileen Jones (1988 to present)

17. The main recreation activities taking place on the Pen are children playing, dog walking, games, community celebrations, informal sports, picnicking, bonfire parties, cycling and relaxing:

Children playing

18. The most important and regular activity on the Pen is that the children in the neighbourhood play on it. This happens almost every day, after school, at weekends and during the holidays. Fifty questionnaires identified this as an activity on the Pen.

"As a child we always had a den on the land, I had three brothers, we also always had a bonfire and rode our bikes. We climbed the trees." Eileen Cunningham (1956 to present)

19. Playing takes place on almost the whole area of the Pen. The lower terrace to the east is suitable for ball games, the willow trees mainly in the middle are ideal for climbing, and the more wooded area towards the west (including an area now fenced) for more adventurous play. Frequently, adults in the vicinity take it in turns to supervise the play of the younger children.

"I like the Pen because it:

- *is a wide open space.*
- *is a good place for bonfires and parties.*
- *is a good place for sledging down the hills.*
- *It's got strong trees for playing in."* Lewis (aged 7 yrs)

"Our three boys grew up on this land as a play area". It was an "adventure playground for our grandchildren" Leah and Donald Coneron (1958 to present)

20. Tents can be seen on the Pen several times a year for daytime play, and older children sometimes camp out. Five residents mentioned camping in their questionnaires.

"As a child it was an Indian reservation, outer space, foreign lands - anything we wanted it to be." Kathy McMahon (1962 to 1979)

Walking dogs

21. Many local people come to the Pen to walk dogs. This takes place over the entire area. There is a well used circular route towards the western end of the Pen, part of which was recently fenced off, cutting short the walk. This use is supported by the evidence of 51 residents (see also pictures Yates 5 and 6, Martin 1 and 2, Woollet 4, Horn 1)

Games, cycling and winter sports

22. The Pen is used for a wide range of informal sports and games (confirmed by the evidence of 47 residents). The lowest terrace is flat and fairly large and lends itself to ball sports. It has a football goal on it which has been there for at least ten years. It has been used for cricket (see photos Lockhart 1, 3 and 4 and Elliott 1, 1983) and there was a basketball hoop on a pole opposite Beechwood View (see in the background of photo Lockhart 8, 1989). Badminton, Frisbee, rounders, tennis and swingball have also been mentioned and are or have been played on the Pen.
23. The uneven terrain of the Pen has been attractive to generations of children on BMX and offroad bikes (supported by the evidence of 33 residents, see also photos Coneron 1 to 3). Since the 1970s generations of children have 'enhanced' the terrain by creating a more challenging BMX track towards the western end of the Pen.
24. After a little snow, the slopes on the Pen are inevitably used for sledging. There are a range of grades, ranging from nursery slopes to sheer drops. Snowmen are also made and snowballs thrown. This is confirmed by 25 questionnaires. Jill Yates confirms that she went *"sledging as a child and also with my own children"* (Jill Yates, 1962 to 2007) and photograph Yates 5 shows sledging in the late 1960s. Similar scenes in subsequent decades can be seen in Photo Lockhart 11 & 12 (1989), Finney 1 to 3 (1994), Christodoulou 2 (2006) and Johnson Renshaw 4 (2008).

Community celebrations, socialising and the annual bonfire party

25. The Pen is probably best known for its annual bonfire celebration. This has been a regular event in Charlestown since at least the 1960s with bonfire, fireworks, food and drink provided by the residents. It has been an annual event for at least the last twenty years and is very well attended by the neighbourhood.

"Every year since 1960 there has been a bonfire." Eileen Cunningham (1956 to present)

"I have attended the bonfire on the Pen since the 1960s. Other events happen regularly." Julie Finney 1962 to present

"BBQs at least 22 years, bonfires at least 22 years, children playing together 22 years, walking 22 years" Christine and Michael Sharp (1986 to present)

"Bonfire, social gatherings, parties, sports, kids playing for as long as I can remember (15 years)" Gavin Parry (1992 to present)

26. The Pen has been used on many occasions for other celebrations, including many birthday parties, summer barbeques and impromptu get-togethers. 47 residents have identified the bonfire and other celebrations as having taken place on the Pen and many have specifically mentioned birthday parties. See also photos Lockhart 5 to 9 (1989), Hobbs Willmore 2 (2003) and 3 (2004) Christodoulou 1 (2005), Horn 2 (2006) and 3 (2007) and Johnson Renshaw 1 (2007).
27. The Pen is also recognised as a space for socialising and meeting neighbour more generally, and this is specifically referred to in more than 16 responses.

Picnicking, relaxing and enjoying nature

28. The Pen is of enormous value for quiet outdoor enjoyment. It is an ideal spot for a picnic as it is largely south facing and has lots of grassed open areas. 39 residents identified picnicking.
29. It is also widely used just for sitting and relaxing, with or without a book. There has been furniture on the land for a long time (see for instance photo Hobbs Willmore 6 (2002)), currently three benches and a table on the land, all in regular use. It can be a very tranquil spot, with few houses to be seen, other than on Oakville Road, and the Pen seems far from the bustle of the valley below. 'Activities' such as relaxing, reading, sunbathing and enjoying the scenery were identified on 8 questionnaires.

"As a young adult it was peace and tranquillity after a day's work, a place for reflection."
Kathy McMahon (1962 to 1979)

30. The views from the Pen, across and along the valley, over to the densely wooded Callis and Horsehold woods, and Foster's Stone (or the 'Cuckoo Stone') on the ridge opposite are beautiful and give it a strong sense of place within an increasingly wooded part of the valley. There are many birds (tits, blackbirds, rooks, robins, jays, magpies and regular passes by heron, to name just a few), deer are often seen and badgers have been observed. A seasonal 'pond' often contains tadpoles and a few rushes. Either end of the Pen has young or maturing woodland, with oaks, willows (sallow), ash, birch and some mountain ash. On the steeper slopes is a little heather. Unsurprisingly then, bird-watching, watching wildlife and enjoying the view has been mentioned in 17 questionnaires.

Other activities

31. Other activities that residents have mentioned are: carol singing, easter egg hunting (see picture Johnson Renshaw 2 (2008)), carol singing, watching trains, walking, exercise and blackberrying.
32. In addition, it is likely that this application, having been put together in a relatively short amount of time, has missed out many activities that have taken place on the Pen in the last twenty years. The size of the Pen and its variety of landscapes allow it to accommodate a diversity of uses – many more than a more ordinary village green or park.

Caring for the Pen

33. As there has been very little involvement in the Pen by its owners, the neighbourhood takes care of it. The lower terraces to the east are mown several times a year and other areas are trimmed from time to time (see photo Finney 4 (1997)).
34. At various places on the northern boundary residents have planted or sown flowers and created paths and seating areas (see photos Martin 1 (1976), Hartley 1 to 3 (late 1990s), Woollet 2 (2004)). See also the letter from Anne Rooney at Appendix 6.
35. In March 2008, after the erection of the fence, residents planted wild roses, honeysuckle and other shrubs so that it will eventually screen the fence (Johnson Renshaw 2 (2008)).

Locality

36. We consider the neighbourhood that uses the Pen to be those residential streets which surround it and which are within the green line on Map A (as amended). For the purposes of this application we suggest that the area can be referred to as North-East Charlestown.
37. Most of the area is in Blackshaw Parish except for a small number of houses towards the east of the neighbourhood which are in Hebden Royd and those to the south of the river Calder which are in Erringden Parish.
38. This area is a part of an area known by residents as Charlestown and identified as such on current and historic Ordnance Survey maps. Most of the houses in this area are identified in the Calderdale Unitary Development Plan as being in the “Charlestown North East” village envelope².
39. The area has a strong sense of community. This is in large part due to the role of the Pen in providing a focus for the area. Other local facilities, such as the former Woodman pub and shop and post office at King Street, have existed until the recent past.
40. The Oakville Residents’ Association has been active for well over 20 years. It meets at least once or twice a year and has officers and a bank account. It mainly covers residents of Oakville Road, Calderside, Stony Lane, Turret Royd, Turret Hall Road and Under Cragg, but it has had a wider reach on occasion.
41. Map A, which shows the locality, was sent out with all the questionnaires and confirmed as accurate by almost all respondents. However, the original version of Map A mistakenly omitted the houses at Thistle Bottom. This was purely an unintentional error in drawing the green line. Three responses from Thistle Bottom highlighted this mistake. Accordingly, the version of Map A which is attached to the application has corrected this error.

Use as of right

without force

42. Access to the Pen is straightforward. There are two small openings in the dry-stone wall on Oakville Road and one small opening on Stony Lane, all of which are clearly intended as access ways. These have not been gated for at least 20 years.
43. There is also a large opening in the wall on Oakville Road opposite Beechwood View. Although the wall to either side of this has deteriorated, it is probable that this opening is also a purpose built access, there having been workshops in the past on that part of the site.
44. It is therefore not necessary, nor has it every been necessary, to use force to enter the Pen.

² The fact that some of the houses are not in the envelope can be explained by the fact that they are not in the Green Belt: the Calderdale UDP only defines village envelopes for settlements in the Green Belt.

without secrecy

45. The Pen is used all week long and at all times of day. Signs of use are generally evident, be it play equipment (such as the football goal) or outside furniture. Use of the Pen for recreation has always been open and should have been obvious to anyone who cared to look.

without permission

46. There is no evidence that the owners of the Pen have ever been asked for or ever granted permission for the neighbourhood to use the land for recreation. None of the 51 respondents to the questionnaire have identified any permission having been sought or granted in the last 20 years.

interference with recreation use

47. In November and December 2007 contractors for BRB erected a 2m tall concrete post and wire fence along the top of the embankment, preventing access from the Pen to the railway line. This fence also cuts across the Pen at two points. To the east the fence cuts off the eastern end of the Pen opposite 1 Oak Villas. To the west the fence cuts across the Pen and joins the dry-stone wall shortly after the last access point on Stony Lane – this cuts off a further part of the Pen which includes a clearly defined path used as part of a circular route around the wooded part of the Pen.
48. No claim is made that the railway embankment itself is used for recreation in any way. The part of the fence which is along the top of the embankment does not interfere with the use of the Pen as a Village Green. However, the areas of land severed by the fence to the east, and more significantly, to the west of the Pen have a history of regular use for recreation and are included in the Village Green application.

Other uses

49. The Pen has in the past been used for workshops and livestock smallholding (mostly chicken). Most of this activity had ceased by the 1950s and certainly by 1988 there were no more animals or buildings on the Pen.
50. A small part of the land opposite Beechwood View, where a number of outbuildings once stood, is used for parking in the evenings.
51. The land subject to the tenancy opposite 9 Oak Villas is used for hanging laundry.
52. None of these other uses are exclusive, in that the land is not fenced or people prevented from entering it in some other way. Critically, these uses do not interfere with or have a significant impact on the main use of the land which is for general recreation by people in the neighbourhood.

Conclusion

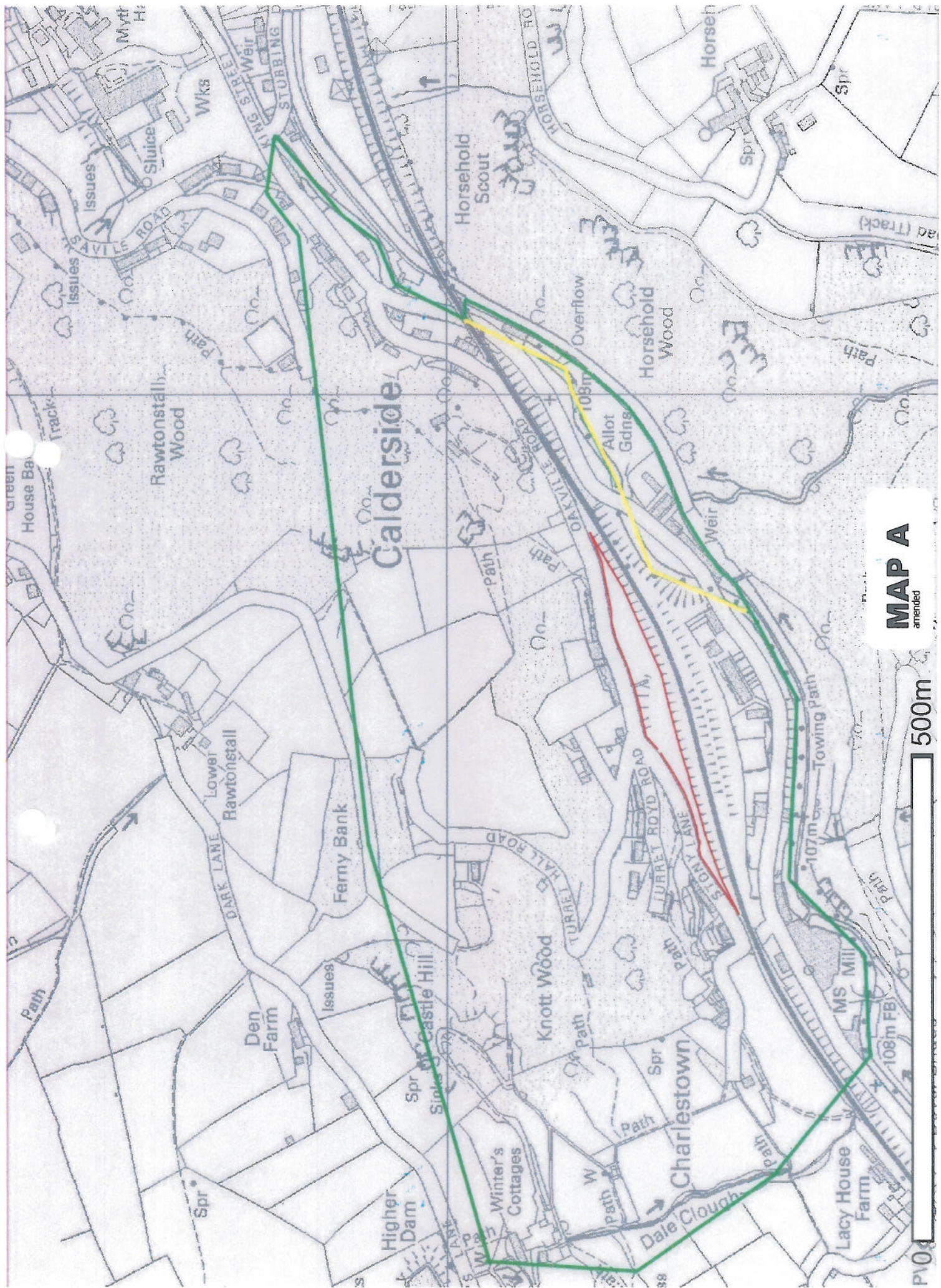
53. The Oakville Residents' Association, supported by those current and former residents who have submitted the attached evidence, firmly believes that the Pen fully meets the requirements for the registration of land as a village green under section 15(2) of the

Commons Act 2006. For the two areas beyond the railway fence, this application is made under section 15(3) of the Act.

54. The Pen has been used by the residents of north-east Charlestown as if it were our village green for over fifty years. We now request that Calderdale Council recognises this customary right in law and formally registers the Pen as a village green.

Oakville Residents' Association

7 May 2008



MAP A
amended

500m

