

RE: LAND AT OAKVILLE ROAD, CHARLESTOWN, HEBDEN BRIDGE

COMMONS ACT 2006, SECTION 15

**Registration Authority: CALDERDALE
METROPOLITAN BOROUGH COUNCIL**

REPORT OF THE INSPECTOR

MR ALUN ALESBURY, MA., Barrister at Law

into

**AN APPLICATION TO REGISTER LAND AT OAKVILLE ROAD,
CHARLESTOWN, HEBDEN BRIDGE**

as a

TOWN OR VILLAGE GREEN

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1. Introduction

- 1.1. I have been appointed by Calderdale Metropolitan Borough Council (“the Council”), in its capacity as Registration Authority, to consider and report on an application formally received by the Council on 9th May 2008 for the registration as a Town or Village Green under Section 15 of the Commons Act 2006 of an area of land off Oakville Road, Charlestown (commonly known as ‘the Pen’) in the Parish of Blackshaw, near Hebden Bridge. The land covered by the application is within the Council’s area.
- 1.2. I was in particular appointed to hold a Public Local Inquiry into the application, and to hear and consider evidence and submissions in support of the application, and on behalf of the Objector to it. However I was also provided with copies of the original application and the material which had been produced in support of it; the objections duly made to it; and such further correspondence and exchanges as had taken place in writing from the parties. Save to the extent that any aspects of it may have been modified by the relevant parties in the context of the Public Inquiry, I have had regard to all of that earlier material in compiling my Report and recommendations.

2. The Applicant and Application

- 2.1. The Application registered by the County Council on 9th May 2008 was made pursuant to Section 15 of the Commons Act 2006, by Mr Christoph Kratz, of 6 Beechwood View, Oakville Road, Hebden Bridge, on behalf of the Oakville Residents Association.
- 2.2. The Oakville Residents Association is accordingly “*the Applicant*”, for present purposes, and that is how I shall refer to it in this Report.
- 2.3. It was indicated in the Application Form as completed that the Application was based on **subsection (2), or in the alternative subsection (3), of Section 15 of the Commons Act 2006**. The Application was accompanied by a map (“Map A”) showing the boundaries of the land to which the Application related, and a suggested “*locality or neighbourhood*” from which inhabitants were said to have been drawn who had used the application land. I have already briefly mentioned that there was other accompanying material, including a written justification, photographs, a considerable number of completed evidence questionnaires, and a number of written statements from individuals in support of the Application. Copies of all of these items have been provided to me by the Council. I know that there was other correspondence at an early stage between the Registration Authority and the Applicant concerning certain technical issues relating to the application, but in the event nothing turns upon that correspondence, and the application is proceeding on the basis on which it was lodged, subject only to the points which I refer to below.

- 2.4. I mention briefly at this point that at the Inquiry the Applicant sought to vary the aspect of the application dealing with the matter of “*locality*”. A new plan, ORA29, was put forward showing a suggested “*Neighbourhood*” relevant to the application, which was smaller than the “*locality or neighbourhood*” shown on ‘Map A’ with the original application. This was not in itself a change which was objected to by the Objector, who had indeed criticised as being too large the extent of the originally claimed “*locality or neighbourhood*”.
- 2.5. In conjunction with this new definition of a claimed “*neighbourhood*”, the Applicant suggested at the inquiry that the relevant locality (in the context of “*neighbourhood within a locality*” in Section 15 of the Commons Act) should be taken to be the Civil Parish of Blackshaw. The “*neighbourhood*” as represented on the new plan ORA29 is wholly within that civil parish, whereas (I was given to understand) the originally claimed “*locality or neighbourhood*” had extended into at least one other civil parish.
- 2.6. The newly defined neighbourhood and locality fit better with the statutory wording in Section 15, and the existing jurisprudence on the term “*locality*”. The Objector made no objection to the more narrowly defined “*neighbourhood*”, and made no comment at all on the question of the relevant “*locality*” within which the neighbourhood is to be regarded as situated. Accordingly for the purposes of my Report I propose to accept these amendments to the Application, and I advise that the Registration Authority should do likewise. Thus the “*neighbourhood*” I shall be considering later in this Report is as shown on Plan ORA29, within the “*locality*” of the Civil Parish of Blackshaw.
- 2.7. The Application Site itself, at the time of my visits, was in varying degrees mostly covered with grass, trees or scrub, and is a long, relatively thin strip of land, tapering to a point at both ends, lying between the roads called Oakville Road and Stony Lane on the north, and the railway line to the south. I shall have more to say later in this Report as to any distinctions which can or ought to be drawn between different parts of the Site, including the question whether different subsections of Section 15 (2006 Act) might apply to any of those different parts.

3. The Objector

- 3.1. An objection to the Applicant’s application, bearing the date 21st March 2010, was submitted to the Council by Mr Richard Pont, of Wood Cottage, Pudsey Road, Todmorden. The objection was accompanied by various documents including two marked aerial photographs. Copies of these documents were also provided to me by the Council.

4. Directions

- 4.1. Once the Council had decided to appoint me to hold an Inquiry into the application (and the objection to it), I issued Directions to the Parties as to procedural matters, including the exchange before the Inquiry of additional written material, such as Proofs of Evidence, submissions, legal authorities etc. Since those Directions were, broadly speaking, observed by the Parties, and no issues arose from them, it is unnecessary to comment on them any further.

5. Site Visits

- 5.1. As I informed the parties at the Inquiry, I had the opportunity on the afternoon before the Inquiry to see the site, unaccompanied, from its northern boundary along Oakville Road/Stony Lane, as well as the surrounding area generally.
- 5.2. After the end of the Inquiry, on 21st September 2011, I made a formal site visit, accompanied by representatives of the Applicant, and by the Objector, and Ms Houshmand of the Registration Authority. In addition to entering, or at least looking at, all parts of the application site, we visited much of the claimed “*neighbourhood*”, which lies to the north of the site itself.

6. The Inquiry

- 6.1. The Inquiry was held at Halifax Town Hall on 20th and 21st September 2011.
- 6.2. With the agreement of both parties (i.e. the Applicant and the Objector), all of the oral evidence to the Inquiry was given on oath or solemn affirmation.
- 6.3. As well as the oral evidence, I have had regard in producing my Report and Recommendations to all of the written and documentary material submitted by the parties, including the material submitted in the early stages of the process, which I have referred to above. I report on the evidence, and the submissions of the parties, in the following sections of this Report.

7. THE CASE FOR THE APPLICANT – Evidence

- 7.1. As I have already noted in passing, the Application in this case was accompanied by various documents: the plan or map already referred to, a ‘Justification’ document containing evidential matter as well as submissions; copies of photographs said to have been taken between about 1960 and 2008, some 51 completed evidence questionnaires from current and former residents; and a small number of other supporting documents.

- 7.2. Other written or documentary material was submitted by the Applicant in the run-up to the Inquiry, in accordance with the Directions which had been issued. Some of this material consisted of written statements from witnesses who would in due course given oral evidence at the Inquiry itself (as well as some made by people who in the event did not give oral evidence).
- 7.3. I have read all of this written material, and also looked at and considered all the photographs, plans and other documentary items with which I was provided, and have taken it all into account in forming the views which I have come to on the totality of the evidence.
- 7.4. However, as I made clear to the parties in the Directions which I issued, and at the Inquiry itself, more weight will inevitably be accorded to evidence which is given in person by a witness, in this instance on oath (or affirmation), who is then subject to cross-examination, and questions from me, than will be the case for mere written statements, evidence questionnaires etc, where there is no opportunity for challenge or questioning.
- 7.5. With all these considerations in mind, I do not think it is generally necessary for me to summarise in this Report all the evidence contained in statements, letters or questionnaires by individuals who gave no oral evidence. They are broadly consistent with the tenor of the evidence given by the oral witnesses, and nothing material stands out as being particularly worthy of having special attention drawn to it in this Report. In any event all of the written or documentary material I have referred to is available to the Registration Authority as supplementary background material to this Report, and may be referred to as necessary.

The Oral Evidence for the Applicant

- 7.6. ***Mrs Leah Coneron*** lives at 10 Turret Royd Road, Charlestown, Hebden Bridge. She has lived at this address since 1977. Previously she lived at 4 Turret Royd between 1962 and 1977.
- 7.7. She had been married in 1958, and from that stage lived at a cottage in Charlestown. It did not take her long to find the blackberry bushes on ‘the Pen’ (the application site). She could not remember a season since then when she did not collect the fruit from the site. The blackberry bushes stretched from Stony Lane to Oakville Road. There were also raspberry bushes by the two garages on the Pen near Oakville Road. Mrs Coneron had always believed the land was public, and never saw any signs, nor was told to keep off the land.

- 7.8. After moving to 4 Turret Royd in 1962 her first son was born in 1963. From then on she used the land to take him and the family's dog along the winding paths there, where she always felt safe and at peace with the world.
- 7.9. In 1964 and 1969 two further sons were born, and they in turn enjoyed the land on the Pen for playing and pleasure: sledging, football, tree climbing, and as a place to get together with their friends.
- 7.10. During her children's childhood, in the 16 houses on Turret Royd Road and Turret Royd there were 14 children who would all play on the flat area within the Pen. They built ramps for BMX bikes, camped out and generally did all the things that made a happy childhood. One resident kept two goats on the land for many years.
- 7.11. In fact members of her family have played on the land for the past 52 years. At no time, and in particular not between 1988 and 2008 (the relevant 20 year period) did anyone ask her or any member of her family to leave the Pen. She had never been given permission to use the land nor asked for permission.
- 7.12. *In cross-examination*, Mrs Coneron said she knew the land had belonged to British Rail, but she thought it was publicly available. In contrast to the land on the Pen, there are not a lot of blackberry bushes in the other woodland higher up the hill to the north of Charlestown. She does sometimes go into those other woods to the north, but no-one has ever made a village green claim in respect of land up there, she acknowledged.
- 7.13. To me, in answer to a question as to the years in which her own children had played on the land, Mrs Coneron said that her youngest son had played on the land until he was 10 to 15 years old. That youngest son was 15 in 1984.
- 7.14. ***Mrs Elizabeth (Liz) Stansfield*** lives at 11 Oak Villas, Oakville Road, Hebden Bridge. She and her husband got married in 1972 and moved into the house. One of the attractions to buying this house, apart from the view, was the land of the Pen across the road, owned by the Railway but an area of unspoilt grassland and woods.
- 7.15. Her children were born in 1976 and 1977, and since the early 1980s, when they were old enough to explore, the family started going onto the Pen regularly, and they have used it for recreation several times a week ever since then. Now that her children have grown up and Mrs Stansfield does not work full-time, she still uses the land regularly, often just to chat to people, but also when her grandchildren come, and to walk her neighbour's dogs.
- 7.16. Both her children (two boys) played on the Pen all their childhood life, and joined in activities later on the land, until getting married and leaving home in the mid-1990s.
- 7.17. Their friends from Turret Royd and Stony Lane would gather at the big tree on the top flat part where you can access the Pen, and they would climb up that tree as far as they

could get. There was a BMX course on the top part of the Pen which was used a lot in those days by the children. They used to make an area known as the “*bomb hole*” bigger with shovels. That is in the area below the post box (near the junction of Oakville Road, Stony Lane and Turret Hall Road). That would have been in the 1980s.

- 7.18. Birthdays, especially in summer, were often celebrated on the Pen, playing Tag and hide and seek, when the children were younger in the late 1980s and early 1990s. When they got older they progressed onto football, rounders, badminton and a big picnic.
- 7.19. Bonfire night was always delightful on the Pen and still is. There has been a bonfire on the Pen ever since the Stansfields moved there in 1972. All the children used to bring firewood and the bonfires were really big. There used to be a competition between the children at Horsehold and the children from the area of the Pen to see whose bonfire was the biggest. Those who attended were mainly locals from the neighbourhood, and the children’s friends as well. Food and drink were provided by residents of the community. The bonfire used to go on long past midnight. The land was always cleared up afterwards and the Pen would be back to normal.
- 7.20. Quite a few of the neighbours have dogs, and the open space of the Pen has been great for that. Since she has lived in the area people from the neighbourhood have walked their dogs on the Pen every day. Even her own children’s guinea pigs and rabbits had had a run out on the Pen. Her children used to enjoy camping out on the Pen with their friends when they were in their early teens, and used to sit around a small camp fire before returning to bed. She and her husband are now grandparents, and the whole thing has come around again. Her grandsons love playing on the Pen, and as she sits in her own small garden overlooking the Pen she hears children playing there after school.
- 7.21. Sledging in winter is and was a huge enjoyment when her own children were small. The Pen is very well cared for by local people, with mowing and trimming particularly on the flatter play areas. A couple of nice benches have been placed there, and shrubs and flowers planted.
- 7.22. The Residents Association was started by Gabriel Elliott in the 1980s, when the Railway were thinking of selling the Pen to the local residents. The residents did not buy it at that time because there were legal problems. The Association carried on after that, and met every now and then to discuss things like parking in the area, the state of the roads, and things to do with the Pen. At no time up to 2008 had anyone ever asked her or any member of her family to leave the Pen. Nor have they ever been given permission to use the land or asked for permission to use it.
- 7.23. Mrs Stansfield confirmed that the annual bonfire still does happen each year on the Pen.

- 7.24. *In cross-examination* Mrs Stansfield said that she does indeed walk all around the area, and not just on the Pen. She walks up to the top of the hill by the woods to the north, for example. It is true that the whole surrounding area has free and open access to it in a way similar to the Pen.
- 7.25. She had been there in 1988 when the Pen was due to be sold at public auction. She had understood that there had been legal problem relating to something underneath the ground. The chance came to buy it, but the neighbours did not in fact want to buy it at that time, in part because of those problems.
- 7.26. *In re-examination* Mrs Stansfield said that her children had spent most of their time playing in the wooded areas of the Pen. Her grandchildren nowadays do the same. Nowadays she herself uses the Pen more when her grandchildren come to her house.
- 7.27. **Mr Gabriel Elliott** lives at 1 Castle Cottage, Dobroyd Road, Todmorden. That is not in the locality of the application site; however Mr Elliott lived at 3 Beechwood View, Oakville Road, from 1977 to 1997, when he moved to Todmorden.
- 7.28. When he and his wife purchased their house at Beechwood View one of the attractions was the availability of the Pen, almost literally on the doorstep, and providing a pleasant natural area for strolling and playing.
- 7.29. In 1977 his children were aged 5 and 2, and the Pen provided a safe and easily supervised area for them to play or simply sit in. Throughout their childhoods the Pen was continually used by them. They met friends there and played at any time of the year. Children and young people from Oakville Road, Stony Lane, Turret Royd, Undercragg, and as far as Wood Farm would use the Pen, as well as visiting friends and relations.
- 7.30. They played all sorts of game there: sports – football, cricket and rounders, children’s games – tag, hide and seek, tree climbing. These took place in different areas of the Pen according to the mood of the children. The uneven area (probably where some old attempted railway tunnel excavations had collapsed) provided an excellent BMX track for children. Sometimes his children would eat their lunch or have a picnic out on the Pen.
- 7.31. There were community activities such as the annual 5th November bonfire, attended by people from all the neighbourhood, with everyone contributing food and refreshments. Most adult usage of the land was impromptu. Strolling and chatting to other people on the Pen was a regular occurrence. In summer, on returning home from work, like others he would often stroll on the Pen with a cup of tea.
- 7.32. The Pen provided a variety of environments within such a relatively small area: one could chat with other people or sit quietly admiring the view in a secluded area. It also provided an alternative walking route between Oakville Road and Stony Lane which

was used daily during the school time by children catching a bus to the local secondary school.

- 7.33. The large number of families living in the neighbourhood seemed to make a clearly defined community, with the Pen very much at its centre. In 1987, when British Rail Properties were looking to sell plots of land such as the Pen, a Residents Association was formed. This was felt to be necessary in case urgent action needed to be undertaken, and if any funds were to be collected. The fact that there was already a 'community' in the area facilitated this. Indeed everyone in the area felt that the Pen belonged to the community. At no time up to 1997 (when he moved away) did anyone ever ask him or any member of his family to leave the Pen. Nor was he ever given permission to use the land, nor did he ever ask for permission. He produced some copies of old newsletters of the Oakville Residents Association, from the period around 1988, when he himself had been the chairman.
- 7.34. *In cross-examination* Mr Elliott said that back when he lived in the area he did not think of the land as a "*village green*". He himself had visited the woodlands uphill to the north of Charlestown. However his children did not play in those woods to the north. They might go up Turret Hall Road to Wood Farm. However they never asked to go and play in the woods to the north. They may have walked through those woods with him himself though.
- 7.35. His son was born in 1975; he had a BMX bike in 1986 at the age of 11, and used it for a couple of years on the Pen. The use of bikes like that went on on the land until fairly shortly before he left the area in 1997. That area of the land was in fact used for other games as well as BMX biking.
- 7.36. He had indeed felt that this area 'belonged' to the community – not in a specific legal way, but that was just how the situation appeared to be.
- 7.37. Mr Elliott knew about the public auction in 1988. It was true that the Residents Association did not buy the land at that time. The Residents Association was formed at about that time, and the idea of buying the land was considered. However there were some concerns. An estimate of £6,000 as the purchase price had been given to the Association by British Rail. Overall there were mixed feelings about whether to buy the land or not. It was unclear as to what the liabilities would be for walls, and there was a query over liability for the road. So overall the feeling was not to buy the land. It was clear that the land might well go to auction again though. The land was not for sale immediately after the auction, but the Association was told that it would probably be re-auctioned.
- 7.38. *In re-examination* Mr Elliott said that the BMX area of the land was also used for chase games quite a lot, and was a nice area to sit down on, with heather on the ground and an attractive view.

- 7.39. **Mrs Angela Sutcliffe** lives at 9 Oak Villas, Oakville Road, Hebden Bridge and has lived there since July 1966.
- 7.40. When she and her husband first moved there at that time there was already a regular annual bonfire on the land, and recreational use of the Pen.
- 7.41. She and her husband on moving in took over a tenancy of a *“hanging out facility with permission to cultivate”* from British Rail on an area of the Pen in front of their house. They had taken this over from previous tenants Mr and Mrs Robinson. They therefore had the right to enter that part of the land of the Pen for those purposes, from that time until Mr Pont’s purchase of the land. The tenancy agreement from British Railways Board was dated 8th February 1967, and a copy of this agreement was produced to the Inquiry. After Mr Pont’s purchase of the land, he (Mr Pont) purported to grant and deed full rights of ownership of that small patch of land to Mr and Mrs Sutcliffe, Mr Pont purported to do this on 31st July 2008, without any instigation from the Sutcliffes, or indeed any reply from them on this topic.
- 7.42. Mrs Sutcliffe said that other children joined her own in activities on the area around the *“hanging ground”* on the application site, because it was flat. She produced some pictures showing children’s activities on that part of the site. The Sutcliffes never minded other people using that area of the ground as it did not interfere with hanging the washing.
- 7.43. Very early in their tenancy they were asked to fence the hanging ground and to put a gate on. Her husband had made a gate but within 2 weeks it had been pulled off. They wrote to the railway to tell them this, and BR wrote back to say that the land could be left as it was. Consequently they never fenced off that area of the land.
- 7.44. When the Sutcliffes came to raise their family (they have three daughters) they used the rest of the Pen outside the hanging ground just like the rest of the community did. Again Mrs Sutcliffe produced photographs to show some of these activities. In all that time they had never asked for authorisation for such use, and all the neighbourhood used the land for recreation without consent, or discouragement, as a community area which has always been a valued amenity.
- 7.45. Her own children learned to walk and to play and indulged in many activities on the application site. The area is regularly cleared of litter and kept litter-free by local people, and the grass is mown. Some areas have been planted by local people, with seats of the weary to sit on. At times when she has been out on the Pen British Rail representatives would approach her and pass the time of day, but she was never asked to leave, or asked for authorisation to be there. Such BR representatives would have seen the garden furniture and other people out on the Pen, but they never did anything to discourage it.

- 7.46. At one stage her husband's father had rented a small building on the Pen for use as a carpenter's workshop, but that workshop was demolished over 50 years ago. At no time up to 2008 (when the application was made) did anyone ask any of the Sutcliffes to leave the Pen, and nor have they ever been given permission to use the land or asked for permission, apart from the part of it subject to their former tenancy agreement.
- 7.47. The hanging out area of which the Sutcliffes had formerly had a tenancy measured about 12ft x 12ft. After the first request back in the 1960s to put up a fence around that area, BR never asked the Sutcliffes again to do anything like that.
- 7.48. Her grandchildren now visit the land regularly. Sometimes this is four grandchildren, sometimes two. When they are at Mrs Sutcliffe's house they get the run of the Pen.
- 7.49. *In cross-examination* Mrs Sutcliffe said that people tend to take their dogs, when they walk them on the Pen, to the scrub land away from the areas of short grass on the land. She confirmed that there were bicycle tracks on the land there on the morning of the day on which she was giving evidence. Indeed there are always bike tracks on the land from children riding their bikes there.
- 7.50. When they rented their small patch of land from BR they paid up to about £40 or £50 per year. It was always a bona fide arrangement. This rental payment carried on up until the land was sold to Mr Pont.
- 7.51. The Sutcliffes had felt it was inappropriate to let their girls play in the woods up above Charlestown, they wanted them playing in the area of the Pen in front of their house.
- 7.52. *In re-examination* Mrs Sutcliffe said that she could shout for the children to come in when they were playing on the Pen. She also said that two local residents had had hanging grounds on the land rented from British Rail.
- 7.53. To me Mrs Sutcliffe said that her daughters had been born in 1969, 1970 and 1973. They all played on the land in their younger years. She now has four grandchildren. Two of them (twins) are aged 12½, and the other two are aged 11 and 8 now at the time of the Inquiry.
- 7.54. The other hanging ground on the application site had been let to Mr and Mrs Howarth, but they had let their tenancy agreement lapse, Mrs Sutcliffe understood.
- 7.55. As for the area that had been her hanging ground, in practice children did not play there when there was washing out. Neither her own children nor other children would play in that particular area if she had sheets out on the line.

- 7.56. ***Doctor Andrea Johnson-Renshaw*** lives at 4 Under Cragg, Hebden Bridge. She has lived there since December 2009, but previously she lived at 7 Beechwood View on Oakville Road from May 2005.
- 7.57. While living at Beechwood View she and her family had a dog, and she would take the dog onto the Pen at least once a day, often twice. They would walk a circular route through the woods, including beyond where the railway fence is now, back to the hill and down to the football net, every day. As their house faced onto the Pen they would also access it for picnics, cups of tea with neighbours, and for the children to play on a regular basis.
- 7.58. When they first moved to the area her son was four years old. He has played on the Pen every weekend, and in the summer probably every day since then. He is now 10 years old. The Pen is very important to the local children. A group of five to eight children come together regularly to play, build dens, play football, play badminton and rounders, or explore in the woods, at least every weekend, and after school during the week when it is light.
- 7.59. When her family wanted to move to a different house, they did not want to move away from the Pen or the community that surrounds it. The area is special for its close connections between neighbours, and it is the Pen that allows this natural coming together to be maintained. She now lives around the corner from the Pen, and accesses it at least twice a week for walking and playing and meeting up with neighbours. Her daughter is three years old, so the Pen provides a safe place for her to explore and play, whilst her parents can sit and keep an eye.
- 7.60. Since 2005 she has also accessed the Pen for the annual bonfire event, annual Easter egg hunt, sledging every time there is any snow, a village green summer fair, and for various other purposes. At no time has anyone asked her or any member of her family to leave the Pen, and nor has she been given permission to use the land or asked for it.
- 7.61. As for the others who live in Under Cragg (where she lives now), several neighbours' children also play often on the Pen with or without their parents. If her family are at home at weekends her son will play on the Pen with other friends. It is a safe and confined space.
- 7.62. She and her family would use all of the land on the Pen. There was no part they would not use, and she would see others walking their dogs on the Pen – often several people doing so.
- 7.63. *In cross-examination* Doctor Johnson-Renshaw said she did walk her dog elsewhere as well, before it died. However when one has small children the Pen is an easy place to walk.

- 7.64. The family do have a garden, but nothing like as exciting as the Pen. Children do play in the woods uphill from Charlestown a bit, but some of those woods are full of glass and dangerous things; they are not as safe as the Pen. She acknowledged however that there are paths and some rope swings in those areas of woodland. Her children would have to ask her if they wanted to go up to the woods rather than play on the Pen. It was true that neither she nor her family had ever been turfed out of those other woods either.
- 7.65. **Lewis Johnson-Renshaw**, who is ten years old, also read out a statement to the Inquiry. He is the son of Doctor Johnson-Renshaw.
- 7.66. Like his mother he said that he had lived at 4 Under Cragg since December 2009, and before that at 7 Beechwood View. When he moved to Beechwood View he was only four years old. When he first saw it the area of the Pen looked fun to play on. Over the years he has enjoyed playing various games on the land, attended bonfires, Easter egg hunts and picnics and so forth; it is a good place for little children because it is so big and wide and safe for them to play. Since 2005 he has played out on the Pen every weekend, most evenings when it is light, and in the school holidays. He plays out there with a group of other children who live in the neighbourhood.
- 7.67. **Mr Stephen Burnip** has lived at 13 Oak Villas, Oakville Road, since 2002. Previously he lived at Oak Crest, Oakville Road, Hebden Bridge, between 1988 and 2002. He looks out directly onto the land in question, known locally as the Pen. He has seen it used by local people for almost a quarter of a century.
- 7.68. This piece of land has been enormously important in his life. His children were born soon after moving into Oakville Road, and they grew up playing every day on the Pen. They have left home now, but they grew up playing games every day on the grass area and in the wooded area, with children from up and down the road.
- 7.69. In the time he has lived here adults have used the Pen extensively for all sorts of social events as well – birthday celebrations, bonfires and community celebrations etc. More importantly, it is also used on a daily basis by residents just doing the small things which create a community – chatting, discussing local issues etc. Local residents have always looked after the Pen. Some people have planted flowers in certain areas. There are also some benches that have been put out over the years which one can go and sit on.
- 7.70. The Railway used to own the land. They never prevented local people from using it. Locals have considered it common land as far back as anyone can remember. At no time between 1988 and 2008 did anyone ask Mr Burnip or any member of his family to leave the Pen, and nor have they ever been given permission to use the land or asked for such permission. He and his family used the whole area of the Pen, apart possibly from a tiny piece of it in the bottom far eastern corner of the land.

- 7.71. Children tend to use the land between the ages of 4 and 16 – it is a real community glue. This use is not done secretly, people have always believed that the land was common land for them to use.
- 7.72. Other areas around and about are not playable in the same way. The woods to the north are very steep, and the railway hems local people in to the south.
- 7.73. *In cross-examination* Mr Burnip said that he has two children. They do occasionally play in the woods to the north, but those woods are nowhere near as good to play on as the Pen.
- 7.74. *In re-examination* Mr Burnip said that no-one from British Rail had ever ‘permitted’ local people to use the land. Occasionally he had seen British Rail people on the land, but they never questioned the presence of local people there. One just saw a man with a yellow coat on, very occasionally they used to cross to get to the railway embankment.
- 7.75. To me Mr Burnip said that there was always at least one bench on the land, he thought. He could not swear that they had been there for exactly 20 years, but there had been benches for a long time. There was always one bench more or less in Mrs Sutcliffe’s hanging area, and another one lower down.
- 7.76. **Mr Chris Sugden-Smith** has lived at 2 Oak Villas, Oakville Road, Hebden Bridge since May 2006. He had lived in Hebden Bridge since November 2000, previously living at two addresses in Hebden Bridge itself, rather than in Charlestown. In fact he first took ownership of 2 Oak Villas in January 1998, but moving in came 8 years later in 2006. During that period of 8 years he was, as he put it, slowly developing what is a very small, mid-terrace, stone house dating from the 1880s. He had however known the Pen and its immediately neighbouring community since the Spring of 1993. That early experience of the Pen came from sitting on it on a bench opposite 8 Oak Villas, whilst staying as a guest of friends, Mr and Mrs Pearson who owned 8 Oak Villas.
- 7.77. Mr Sugden-Smith very much feels (he said) that the neighbourhood around the Pen has become his home since his first acquaintance with it in 1993; from then to the present he has always understood the Pen to be the place where traditionally the residents of the area went for sitting out, socialising, recreation and exercise. This was not something anyone gave them by permission, but rather a facility which was taken openly in the absence of a landlord or owner being present, or indeed anyone else bothering in any way to say “keep off”.
- 7.78. During the earlier years, 1993 – 1997, through his good friends in 8 Oak Villas, he got to know the Pen through going to the bonfire nights there, as well as birthday parties and other more impromptu gatherings sitting out on the Pen, or going for circular walks, some of which would begin or end through the Pen itself. By the summer of 1997 he knew that Oakville Road on the edge of the Pen was where he wanted to live

and settle. Autumn 1997 brought the chance to buy 2 Oak Villas and begin the process of converting it to make better use of its small space.

- 7.79. Since the time he had moved in in 2006, he had shared with a neighbour the use of a washing line out on the Pen, and with that neighbour provided food for the bird table on the land there. Right through the time that he has been familiar with the land he was aware that local people went and harvested the seasonal crop of blackberries which grow on parts of the land. He had often sat out on the Pen himself, and watched local people play football on the well-worn pitch on the land. Others played different games on different parts of the Pen. At no time up to 2008 had anyone ever asked him to leave the Pen, or given him permission to use it, nor had he ever asked for permission. Mr Sugden-Smith lives alone, so has no other family members in his house who would use the land. Some of his neighbours tend flowers on the land, a number including himself also use the washing line on the land. People would not deliberately trample over someone's flowers, but would use the Pen more generally. There are some areas on the land which encourage more lively use than others do.
- 7.80. *In cross-examination* Mr Sugden-Smith said that the bramble patch on the land was used by humans, not just by insects and wildlife. Mr and Mrs Sutcliffe for example would walk around the large blackberry patch. The only time when any of that blackberry patch ever got cleared was when Mr Pont himself had cleared it. Some people occasionally went into the bramble patch to retrieve balls which had accidentally got in there. One could get into the bramble patch if one was intent in getting something out such as a ball. Nevertheless Mr Sugden-Smith accepted that the bramble and nettle patches on the land had been there for a very long time.
- 7.81. When he came to know the area Mr Sugden-Smith did not know who was the owner of the Pen. He had understood that originally it was owned by some aspect of British Rail. Only later did Mr Sugden-Smith become aware that Mr Pont was offering to sell strips of the land at about £1,000 each. That had seemed to be a bit of a cheek, given the price Mr Pont was understood to have paid for the land. Only later on did Mr Pont try to sell it to local residents as one piece of land. The principal area of brambles on the land was approximately opposite No.2 Oak Villas.
- 7.82. **Mr James Howarth** has lived at 1 Beechwood View, Oakville Road since September 1989. Previously, from his birth in 1984 until 1989, he had lived elsewhere in Hebden Bridge.
- 7.83. When his parents moved to the area he was only 5, and had a 15 year old brother. The open space known as the Pen was used and enjoyed by the current residents, and Mr Howarth felt sure that that was a major factor in the location his parents chose for him and his brother to grow up in. Thus when they moved to the area he used the Pen as it was already used by the current residents of the area. He remembered walking the family's dog as well as playing fetch with sticks and balls. Also he regularly played on the Pen with children from the neighbourhood, many of whom he could name.

Different children's games were played according to who was playing at the time, and Mr Howarth gave many examples.

- 7.84. He quickly learned to ride his bike on the part of the Pen which is referred to as the bike track, with its quirky lumps and bumps. It was ideal for a number of different activities which the older children instigated, including riding bikes and building ramps to see who could jump the furthest.
- 7.85. Now that he has his own child he still regularly uses the Pen, and they enjoy playing out together as it is a safe play area for his son. They regularly play badminton, football and catch. He has his own group of friends who he plays out with, and they use the Pen as Mr Howarth himself did when he was his son's age.
- 7.86. The Pen is an essential part of the community and has been ever since Mr Howarth has lived there. It is used daily by people of various ages and for a number of different activities, but it is the fact that it brings the residents together which makes it so valuable. A notable event which has taken place on the Pen ever since he could remember is the annual bonfire on the Friday closest to bonfire night. The bonfire is made by the children, the parents generally make food, and it is a massive success where all the community come together.
- 7.87. At no time has anyone ever asked Mr Howarth or any member of his family to leave the Pen. He has never been given permission to use the land, nor asked for it.
- 7.88. *In cross-examination* Mr Howarth acknowledged that he does sometimes walk his dog elsewhere, for example up through to the woods to the north. People do indeed walk up there, but one does not very often see children playing up there. Most of the time they play on the Pen.
- 7.89. ***Ms Maria Howarth*** also lives at 1 Beechwood View, Oakville Road, and has done so since 1989. She previously lived elsewhere in Hebden Bridge. She was delighted when she signed for her present house in 1989. She had visited the Charlestown area many times since moving to Hebden Bridge in 1974. The Pen had been a major reason for her buying a house in this area. Previously she had witnessed children playing in a safe open environment there, and she herself had enjoyed roaming through heather, trees and grass. Her sons were 15 and 5 years old when they moved to Oakville Road. Since then their activities on the Pen have been numerous.
- 7.90. Their dog moved in with them, and was a dog which always wanted exercising. In between her regular lengthy walks, the Pen was ideal for someone to take her to chase round the trees, play hide and seek and retrieve as many sticks as could be thrown for her benefit.
- 7.91. She remembered her younger son playing out on the Pen relentlessly through all seasons with various neighbourhood children, from the day they arrived in their house.

She was happy that he was in a safe place where she could easily keep an eye on him if not hear him and his friends, and yet he was able to be independent in an open natural environment.

- 7.92. Specifically she recalled that by Christmas 1989 he had learned to ride his bike on the big boys' BMX track. Some of his other pursuits which she has observed over the years have included practising football techniques, flying kites, badminton, various chase games, sledging, snowball fights, igloo and snowman building, and camping.
- 7.93. Her eldest 9 year old grandchild now lives with them in the same house. He has developed his own circle of friends with the current neighbourhood children, who he regularly meets under the swing tree on the Pen. Ms Howarth enjoys watching him engaging in and practising very similar pursuits to his father. Football, tree climbing and hide and seek etc., happen frequently most weekends. The large volumes of snow over the last two years have led to some of the best sledging tracks she has ever seen.
- 7.94. She has usually accessed the Penn through the gap in the wall opposite Beechwood View, though she does sometimes use the smaller entrances going down the hill. Regularly she walks around the treed area at the west end to unwind and relax, often hoping not to meet anyone. When being more sociable on an impromptu basis she has sat on the Pen with neighbours and enjoyed conversations and the surroundings.
- 7.95. In good weather visitors and friends have also enjoyed sitting out on the Pen, opposite her house, sometimes picnicking while watching children play. Previously she herself has collected rubbish, cut down weeds and strimmed this section of the Pen to make it more accessible. Several years ago, in about 1995, she planted a Lilac Tree, but as it was not thriving she trimmed it down last year in the hope that it will flourish in the future. Around the same time and in the same area she also planted some geraniums and bluebells. She hopes to tidy up that part of the land again this year.
- 7.96. She believes she has attended every community bonfire in November in the last 21 years. Each year the adults try to encourage the current children to organise the fire. This has benefits for the children and the surrounding area. Children are involved in purposeful self-directed team work, something sadly missing in many young people's lives.
- 7.97. There have also been community mid-summer fairs for the last two years. Ms Howarth has been involved in organising activities and catering for those as well. The Pen is the hub of the area for children. They actively enjoy all parts of it, and she has enjoyed watching many children grow and develop over the years on this land. At no time has anyone asked her or her family to leave the Pen and she has never been given permission to use the land nor asked for permission to use it.
- 7.98. *In cross-examination* Ms Howarth said that she did walk her dog up to the woods to the north as well as on the Pen. She does not believe that she and the local people own the Pen. However if she saw something unreasonable being done there she would say

so. For example, there had been an occasion when a neighbour had erected a compost bin right opposite her living room window, and Ms Howarth had asked that neighbour to move it elsewhere on the land. Also that neighbour had used glass bottles to mark the outside of a flowerbed on the land; Ms Howarth was concerned that they would cause danger to children, and said so. She has no objection to flowers being planted on the Pen though.

- 7.99. She acknowledged that one can go up through the woods to the top of the nearby hills without permission as well, and most of the land around Charlestown is effectively open access land.
- 7.100. *In re-examination* Ms Howarth explained that some of the land had been cleared of weeds, and that a neighbour had put glass bottles upside down to identify the beds in which flowers had been planted, or to create paths there. She personally enjoys seeing flowers on the Pen.
- 7.101. To me Ms Howarth explained that the compost bin which had been referred to was not on the land for very long, it was erected on one day; Ms Howarth asked her neighbour to move it and she did. Ms Howarth did not know where it was moved to, it was only there for a matter of days. The glass bottles that had been referred to were there for just a few weeks before they were removed. However the flowers which had been planted by her neighbour were still there.
- 7.102. **Ms Lizzie Lockhart** lives at Jumble Hole Mill, Hebden Bridge, which is not in the immediate neighbourhood of the application site. However she lived at 8 Beechwood View, Oakville Road between 1983 and 1991.
- 7.103. She moved to 8 Beechwood View in September 1983 along with her seven year old son. From the start he played on the Pen with the other local children. The geography of the Pen allowed their play to be in many different forms, including BMX tracks on the right hand part of the Pen, a basketball ring set up on an existing concrete patch, hide and seek, football, cricket, rounders, grass-sledging in summer, snow-sledging in winter, building of snowmen, building of dens, and an enormous amount of free play as well.
- 7.104. During her time on Oakville Road the Pen was also the focus for the street's events, including an annual bonfire and summer barbeques. Ms Lockhart showed the Inquiry photographs of these events, and she explained how they enhanced community spirit and brought the locals together.
- 7.105. Her daughter's childminder lived at Higher Undercragg, and in the summer months she and four other children were taken down to the Pen after school for picnics, and to be able to run round in safety. This was an excellent way of giving the children supervised play but also a feeling of space after being inside for most of the day.

- 7.106. Each year Ms Lockhart would pick raspberries from raspberry canes that had been left from when the Pen had been used for livestock and gardens in the past. These were mainly in the part that is opposite the entrance in the middle of the Pen. She also annually picked blackberries for preserves, and regularly walked along the path from Stony Lane up through the Pen. At no time did anyone ask her or any member of her family to leave the Pen. She has never been given permission to use it nor asked for such permission.
- 7.107. She confirmed that her children did play on the whole area of the Pen. At the time she lived there everyone local appeared to agree on everything to do with the land, there were communal clean-ups and everyone regarded the Pen as a fantastic local asset.
- 7.108. *In cross-examination* Ms Lockhart acknowledged that she did go for walks elsewhere. She never asked for permission in those places either. However she thought that the Pen and the use which was made of it was very different from that made of the other land round and about the area. The Pen was a piece of land on which local people really had access, other land round about was not used anything like as much as the Pen was used by local people. When she wandered up on the hills to the north or elsewhere she would always go on tracks rather than wander the land generally.
- 7.109. **Ms Julie Finney** has lived at 8 Beechwood View, Oakville Road, since May 1991. She previously lived at 2 Beaumont View, Hebden Bridge as a child. That is on the other side of the main road to the south, between the road and the canal.
- 7.110. For as long as she could remember she has used the land known as the Pen on Oakville Road for many activities. As a child in the 1960s when living at Beaumont View she regularly used to come and play with Mrs Dyer (nee Yates) and her sister. Her brother played with Mrs Coneron's children, and they also played with other children from school who lived in that neighbourhood area. Living where she did she always considered it a different neighbourhood to her own.
- 7.111. She played all sorts of childhood games on the Pen with her friends who lived in that neighbourhood, as well as attending children's parties and bonfires. With her parents they also used to walk on that land and as a teenager; it was a fantastic safe place to hang out with friends.
- 7.112. After leaving the area in the 1980s she returned and got married. In 1990, when looking for a family home after the birth of their son, she and her husband were delighted when a property became available on Oakville Road. For the last 20 years, since moving in in 1991 with a five week old baby, she and her family have all enjoyed many and varied activities on the Pen. When the children were babies they would meet with other young mums for picnics, to chat while the children were playing safely, and to make new friends in the community. As the boys got older they would play on every part of the Pen with other children in the neighbourhood. They have played every childhood game imaginable. Summer and winter alike it has been a safe place to play all sorts of games. In addition, children's parties, parties for adult

celebrations, barbeques and picnics for families and friends have been held over many years. She has attended many annual events such as the bonfire and a summer fete. These activities bring the community together. People have always had and continue to have pride in what they regard as their communal piece of land. It is well cared for, and there are regular litter picks for example.

- 7.113. She continues to use the land on a regular basis for walking and leisure purposes and for relaxation. She has used the Pen for almost 50 years for varying activities, never seeking permission or being given consent. There is a residents' association which covers Oakville Road, Stony Lane, Turret Royd, Under Crag and Throstle Bower. It was set up over 20 years ago and meets every now and then to discuss a range of things including the Pen. She was Chair of the Association for 10 years until 2010.
- 7.114. At no time before the application was made in 2008 did anyone ever ask her or any member of her family to leave the Pen, and nor has she ever been given permission to use the land or asked for permission. She explained the location of various photographs that she had produced as part of her evidence.
- 7.115. *In cross-examination* Ms Finney said that she and her family would have barbeques on the land a couple of times a year, but only about twice had they ever held a barbeque at the particular position shown in one of the photographs she produced.
- 7.116. Ms Finney also explained that a written statement which had been produced by her son Lewis Finney is accurate in what it states. She said that her son Lewis had used a BMX bicycle on the land from about the age of five until he was about 12 or 13 years old.
- 7.117. ***Mrs Jill Dyer*** now lives at Mytholmroyd. However she had lived at 12 Oak Villas, Oakville Road between 1962 (the year she was born) and 2006. Her parents, Mrs and Mrs Yates, had bought 12 Oak Villas in 1954. She was the youngest of three children born while they lived there. Her brother Frank was born in 1956 and her sister Kathy was born in 1958.
- 7.118. During their childhood all the children played on the Pen. Even when they had birthday parties at home they always ended up playing on the Pen. They spent many an hour playing games there.
- 7.119. The Pen stretched from the bottom of Oakville Road right up the hill and down the other side to Stony Lane. It was often used as a short cut to go to friends who lived at Southview, and they in turn used it to come to visit her on Oakville Road. It has always been a place to play.
- 7.120. They had friends who lived on Turret Royd, Under Crag and Throstle Bower who all joined in the playing of games on the Pen.

- 7.121. Each year there was a communal bonfire which was held on the bottom level of the Pen. The children would spend weeks preparing the bonfire. These bonfires were huge events with lots of friends and family coming to join them.
- 7.122. In the mid 1980s, when the Residents' Association was started, it was the time when British Rail were wanting to sell the land. There was a neighbourhood barbeque held on the top section of the Pen across from Beechwood View. There was a marquee erected on the land and everybody contributed with food and drinks.
- 7.123. Until six years ago she remained living at Oak Villas, and has two children of her own, who are now 22 and 20. They too spent all their childhood playing on the Pen. It started from when they were babies, and they subsequently spent many a happy hour playing games there just as she had herself in her childhood. Her son had been the one who organised the bonfire for many a year right up into his teenage years. He played football with his friends on the Pen, and also camped there with them too. Her daughter Katie also played all the games that the boys did. The children had a lot of fun playing when there was snow on the land. The Pen has for generations always been a communal gathering area. Her own mother would pass the time of day chatting to other neighbours on the Pen. She still regularly drives down Oakville Road and it is always good to see the children still playing there and the neighbours chatting to each other on the land. For as long as she can remember the Pen has been the centre of local community spirit and play. It has always been regarded as a safe haven for generations of residents' children and their friends.
- 7.124. At no time up to 2008 did anyone ever ask her or any member of her family to leave the Pen, nor was she given permission to use it nor did she ask for permission.
- 7.125. Her daughter Katie still child-minds up in the neighbourhood. It would be true to say that her generation of children used the whole area of the Pen, and her own children used it in the same way.
- 7.126. *In cross-examination* Mrs Dyer said she did not know why the Residents' Association did not buy the land in 1988. She had only just moved up there. She was not directly involved in the Association at that time. However her recollection was that it would have been a lot of money for the residents to raise at that time.
- 7.127. **Mr Christoph Kratz**, who had submitted the application in this case, lives at 6 Beechwood View, Oakville Road, and has done so since 2005. He lives there with his wife and his two daughters aged four and seven. From the day they moved into their house he and his family have used the Pen regularly for recreation.
- 7.128. A large part of this use has been based around his children who play regularly on the Pen. In summer this includes playing out after school and at weekends. In the winter the family go there mostly at weekends, unless it is snowing, in which case they will

play on the Pen most days. Now that the family have a dog (since 2011) they also walk the dog every day on the Pen.

- 7.129. The typical range of things his children do on the Pen has changed over the years. Initially they would be allowed to toddle under supervision. They used many areas of the Pen at that time.
- 7.130. Later when they became more independent the children were allowed to range more freely. Nowadays his children play on all parts of the land, whether to the left or the right on entering the land from in front of his house. As a family they often have their tea out on the Pen in the summer. There are various different favourite spots for picnicking on the land. When the children have friends round they also like to have a picnic there.
- 7.131. The “*pond*” on the land is also regularly visited by his children. It is an interesting area for their games and they spend a lot of time around it, and on the nearby bike track area. Ball games are normally played on the flatter eastern levels of the land, and this is also where Mr Kratz and his wife tend to socialise with neighbours. There are benches put out in that area of the land. Since he has lived here there have always been at least three benches on the Pen.
- 7.132. There are also some flower beds that have been planted, which make the place look well cared for and attractive. When it snows the family always sledge on the Pen. They may also build a snowman.
- 7.133. In the summer Mr Kratz often puts one or more tents up on the Pen. His children and other children always play in the tent when it is up. He uses several spots on the land for this. He has done this at least three or four times a year every year that he has been living here. He has also seen other people put up tents in a similar way. One boy had a tent up on the land for several weeks.
- 7.134. Parts of the Pen become bramble beds in late summer, and he and others pick blackberries from those areas every autumn. Near the bottom an area has been planted with teasels and other wild flowers, and there are plenty of scrubby patches. These areas are important for wildlife. He finds the area very interesting to explore. The grassy parts have a variety of wild flowers, the trees are interesting. There are heathy patches and a small boggy area. Deer and probably badger pass through the Pen, and frogs breed in the pond every year.
- 7.135. In addition to his own family’s use of the Pen he has observed many other people from the neighbourhood using it. Almost every dry day that he has lived there children have played on the Pen. These are normally the children from Turret Royd, Oakville Road and Under Crag. There are normally between 4 and 10 of them at any one time, and they seem to spend the entire time running around chasing each other or generally playing. They use the entire area from east to west. They also play football either on the lower level, or on the next level up between the washing lines. They are hard to

miss because of the constant shouting. In mid-summer they play outside until very late. It really does dominate the area.

- 7.136. Some of the children who used to be out there every day have grown up a little and spend less time there now, but they still use the Pen either for football or relaxing and spending times outdoors.
- 7.137. Families with small children use the Pen very regularly in the same way as his own family did. A number of people have parties on the Pen. He has witnessed at least five parties taking place there in the time he has been in the area. The flatter parts of the Pen are usually used for these. They frequently involve the erection of gazebos and the use of barbeques. They are both children's parties and adults, parties.
- 7.138. Dog walking takes place on the Pen every day. During the time he has lived here he can think of 13 dogs from the neighbourhood that were walked on the Pen twice daily. His family also now have a dog and walk it on the Pen. Other households in the neighbourhood have had dogs in the past and used the Pen in the same way. Dog walkers generally make a circuit of the land, particularly the western wooded part. There is a clear path and before the railway fence was built there was a nice loop that one could walk round at the very end before it dropped off steeply; that loop is still clearly visible on the ground.
- 7.139. The annual Guy Fawkes bonfire has taken place on or around bonfire night every year that he has lived here. They moved into their house on bonfire night and met all their neighbours on the first evening. The date is set by the Residents' Association in advance. Bonfire wood is brought onto the Pen by residents of the neighbourhood and supplemented by the older children. Attendance has varied in his experience from just people living in the neighbourhood to people coming from other parts of Charlestown, or friends and school friends. He recalls numbers between about 30 and 60 people attending. It is a well known event locally. His wife recalls knowing about it when she was growing up in Hebden Bridge.
- 7.140. In many years there is also some sort of summer event. The date and time for this is set each time by the Residents' Association. In addition to formal events the Pen is often used for impromptu gatherings. On a fine day many people can be out at the same time, and there have been many occasions when he has ended up sitting and chatting with a group of neighbours there, watching the children out of the corner of his eye.
- 7.141. The Pen is a well cared for area of land and almost all the maintenance of it has been carried out by the people living in the neighbourhood. In carrying out such maintenance, to his knowledge nobody has ever asked for permission from the owner of the land or from anybody else. British Rail never did any maintenance of the Pen.
- 7.142. To look after the land involves a fair amount of work by local people. The lower levels are kept free of trees and the grass is kept relatively under control. The lowest

level is strimmed at least a few times a year, and football boots take care of the rest. Part of it has flower beds looked after by the residents of the nearest houses, with paths through them. The next level up is mown regularly by Mr John Sutcliffe, and strimmed in other parts by other residents. The upper level is strimmed once or twice a year. The wooded area is also managed a little. The paths are usually strimmed back in high summer, and the clearings are strimmed back a bit. There would be a lot more brambles if these areas were not cleared every now and then.

- 7.143. In 2008, after the railway fence was erected, the Residents' Association bought some wild roses, hawthorn and other plants and planted them along the fence. They took a while to take off but they are now developing nicely.
- 7.144. A litter-pick on the land is held once or twice a year, and litter is also cleared after the bonfire and any parties.
- 7.145. In early 2008 Network Rail announced plans to carry out tree clearance on the railway embankment. The Residents' Association met and discussed the issue, and decided that they would try to avoid trees being cleared from the Pen itself as local people enjoyed having them there. Network Rail engaged with the Residents' Association and the Parish Council, held a meeting and accompanied representatives from the Residents' Association on a site visit. None of those discussions involved the landowner of the Pen, which at that time was British Rail Residuary (not Network Rail). It appeared that Network Rail did not engage with the landowner BR Residuary at all, but accepted the Residents' Association as having a bona fide interest in the land. In the end a compromise was reached with Network Rail, in which key trees were marked by the Residents' Association and were left standing.
- 7.146. All of the local residents' management activities on the land were carried out without the permission or indeed knowledge of the Pen's then owner British Rail Residuary. These activities were all done to improve the recreational amenity of the site for the benefit of the neighbourhood.
- 7.147. When he moved here in 2005 Mr Kratz quickly became aware that this is an area with a strong sense of community. The neighbourhood has a clear core area centred around Oakville Road, Stony Lane, Turret Royd and Under Crag. That is what Mr Kratz believed was his neighbourhood when he moved here in 2005, and what he still perceives to be his immediate neighbourhood. In those streets he knows about 80% of the households by name. The neighbourhood has a post-box at the junction. It does not have any other facilities any more, although that is not unusual these days.
- 7.148. The Pen is an important feature in this neighbourhood. It is a shared area which allows local people to get to know each other better. This neighbourhood also forms the core membership of the Oakville Residents Association. The membership of the organisation is all residents of Stony Lane, Oakville Road, Turret Royd, and Under Crag (including Turret Royd Road and Throstle Bower).

- 7.149. The administrative boundaries in this area are complicated, and are not necessarily the same as the areas people identify with. The whole neighbourhood as identified in the modified plan produced by the Applicant is within the Parish of Blackshaw, although most of that Parish is up a steep hill centred around the hilltop village of Blackshaw Head. Nevertheless the Parish Council is very active and takes a keen interest in what goes on at the bottom of the hill.
- 7.150. The postal address is Hebden Bridge, and that is also where the nearest shops are nowadays. However the neighbourhood is not in Hebden Royd Parish. The Parish boundary cuts across Oakville Road just west of Calderside. To people who do not know the area Mr Kratz would normally say he lives in Hebden Bridge or just outside. To people who do know the area he says that he lives in Charlestown. Locally people know what you mean when you say Charlestown, and people used to put that on their postal addresses. It is the long spread out area between Calderside and Eastwood. It is partly in Blackshaw, Hebden Royd and Erringden Parishes.
- 7.151. When the original application was made the Residents' Association did their best to understand the meaning of the words "*locality*" and "*neighbourhood*" in the Commons Act 2006, and showed on the map an area that was approximately the north-east part of Charlestown, but also included houses in Calderside and Winters. Almost all people who use the Pen live within this area. The area was mistakenly defined in the original plan submitted as a "*locality*". However the Applicants now know that *locality* means something like a Parish. It is this appreciation of the law relating to the topics of "*locality*" and "*neighbourhood*" which has caused the application plans to be amended, and the newly defined neighbourhood to be put forward by the Applicants.
- 7.152. Since he has lived here Mr Kratz has always known, (and he believes it was general knowledge) that the Pen was owned by 'the Railway' until it was sold in 2008. He eventually learned it belonged to British Rail (Residuary).
- 7.153. In late 2007 contractors came on site to put up the railway fence. Mr Kratz spoke to them about it and they told him it was for safety. He saw them on the day they were working opposite his house. He asked them whether they could not put the fence a little closer to the railway, but they said it was too difficult because of the slope. He, Mr Kratz, was not around when they built the end sections of the fence. The railway workers did not challenge his use of the site.
- 7.154. In the spring of 2008 surveyors (Lambert Smith Hampton) started coming onto the Pen. Mr Kratz spoke to them a few times, and it emerged that they were going to sell the Pen at auction. At no stage did they ask Mr Kratz to leave the land and he did not ask for their permission.
- 7.155. A Residents' Association meeting was held and it was decided to try to buy the land. The Association asked British Rail (Residuary) to withdraw the land from the proposed auction so that the Association could raise money to purchase it. British Rail

did not agree to that. It was at that stage that the decision was made to put in the application for Village Green status. At no time prior to 2008 did anyone ask Mr Kratz or any member of his family to leave the Pen. He has never been given permission to use the land or asked for such permission.

- 7.156. It is Mr Kratz's understanding that Network Rail have powers to take down trees within about 20 metres of the railway even if it is on private land. He had attempted to mark where the railway fence had been erected on the plan which was produced as ORA30. However Mr Kratz said at the inquiry that he thought ORA30 was slightly wrong in that respect. The western part of the railway fence should in reality start further east than where he had shown it on ORA30. There may be other minor errors as well which could be inspected on site.
- 7.157. The fence was started about the end of 2007 by putting in posts. The contractors were (he thought) agents for British Rail (Residuary) who were still the owners. He did ask the contractors why they were doing it, but they said they did not know. Until the new fence was erected there was not a fence on or about the southern boundary of the application site at all. The contractors carried on their work in early 2008.
- 7.158. Along the central part of the southern boundary the railway fence comes in to the north of the red line marked on the application plan. Mr Kratz said he thought children had used that middle part of the land near the southern boundary before it was fenced off by the railway workers. The railway fence also cut off the eastern narrow section of the application site.
- 7.159. The effect of that piece of fence to the east was to stop people carrying on into that extreme eastern part of the application site. The fenced off part in the middle of the southern boundary also stopped people going into that part of the land. As far as the western pointed end of the site was concerned, Mr Kratz did carry on going over that part of the land after the fence was erected, as did other local people, but such use has declined. The fence at the western end did not really prevent access to that piece of the land. Mr Kratz sees the whole of the application site as being just part of the same piece of land.
- 7.160. When the land of the Pen was put up for auction in June 1988, it did not reach its reserve price. However afterwards Mr Kratz was told that someone had offered the reserve price after the auction and British Rail (Residuary) had accepted that offer. Later on the purchaser, Mr Pont, offered strips of the land for sale. However local people did not want the land divided up into strips, they wanted the whole area. In July 2008 Mr Kratz was nominated by the Residents Association to enter into negotiations with Mr Pont to try to buy the land, and Mr Kratz produced a letter of 15th July 2008 addressed to Mr Pont in relation to that.
- 7.161. Some further correspondence carried on, in which the Association made it clear that it did not wish to see the land of the Pen divided up into smaller parcels. The Association has always been prepared to consider purchase of the whole of the Pen.

- 7.162. *In cross-examination* Mr Kratz confirmed that he moved here in 2005, and did not believe then or now that the Residents' Association owned the land of the Pen. Mr Kratz knew that the land had belonged to British Rail, and that it now belongs to Mr Pont. The Association was trying to persuade British Rail not to sell the land at auction because it wanted to buy it for the local people. The Residents' Association put in the Village Green application in order to preserve the use of the land for recreation. It was thought that the new owner might put up a fence, for example.
- 7.163. The Residents' Association could in theory have bid for the land but it was not practical, as Mr Kratz had sought to explain in his evidence. Owning the land and using it are two different things. The Association was not ready to buy the land at the auction. It did want to buy the whole land. It knew that a Village Green application would devalue the land for the owner. However any devaluation on that account had already occurred at the point that British Rail sold the land and Mr Pont bought it.
- 7.164. Mr Kratz understood that at some point Mr Richard Wincer had asked Mr Pont if he could re-sow some grass on a small area of the land. However Mr Wincer had mown the part of the land that he regularly mows for a long time before that, without any permission from Mr Pont or anybody else.
- 7.165. The flowerbeds on the land had all been planted by various local residents. However those residents had not 'occupied' gardens on the land, or put fences round them; they were not claiming them as 'their' gardens. The Residents' Association does not manage the village green, or order what should happen on the village green. If any issues are ever in dispute they are discussed among local residents. For example there were some people who were sad to see the brambles go. Clearly people do not wish to upset each other.
- 7.166. As for the land affected by the railway fence, Mr Kratz said that other local people than himself had told him that they walked around the far western part of the land in spite of the railway fence, and that can be seen when one goes on that part of the land. That area was certainly used before the fence went up, although it is harder to get into it now. It is not the heart of the site, and clearly there is less use towards the edges of the land.
- 7.167. In the east end of the site there is an old shaft. Mr Kratz thought that that eastern part of the land would have been used more before the railway fence went up. He personally had not been as far as the old shaft, but he has been into the eastern end of the site beyond where it has now been fenced off. It is not a huge part of the Applicants' case that people have been extensively using the very furthest ends of the site, they are just parts of the overall land. Certainly the wider part of the eastern section (now cut off by the railway fence) was used.
- 7.168. **Ms Clare Blakey** lives at 5 Oak Villas, Oakville Road, and has lived there since 1991. She moved there in 1991 with her husband and three children. The house had been

recommended to her as a good place to live. She had been told that it had a good community group which held an annual bonfire party, and the children would be able to play on the land in front called the Pen. One of the first things she did was to erect a washing line on the Pen opposite her house, since her neighbour at 3 Oak Villas already had one, and also maintained a small garden area on the land.

- 7.169. As she and her husband had imagined, her children did play on the Pen, all sorts of games. The Pen was always the place to have children's parties, including one where they hired a bouncy castle for her daughter's birthday. Every year there has been a community bonfire, and there are always dogs playing, and children playing ball games. Soon after she moved in she began ridding the area in front of her house of knotweed which was beginning to spread all round the area. She then re-planted that area with wild roses and began gardening. This began as a wild flower area, not intended to look cultivated. It was intended to look natural. Over the years it has since been added to, and now has many plants grown especially to attract birds and butterflies. She does that because she enjoys gardening and because she knows it gives other people pleasure. Other local people have also planted areas of the Pen and have put up benches and made paths in the same way, and they do it for the same reasons.
- 7.170. In 2002 Mrs Blakey got two dogs and began regularly walking them, especially around the birch wood area at the far western end of the land. That made a good loop to walk, although she cannot do it any more because of the railway fence. That area was regularly used as a den-making and camping area by older children which was just a bit more private than the rest of the land. The wood at the western end is especially important as a dog walking area for older residents, as most of the other walks around the area are steep and wooded. That part of the site has also been used for collecting blackberries in autumn, and there is an apple tree as well. There is also a pond and she, with other residents, have discussed with a wildlife officer how best to keep the large frog population there healthy when there is a dry spell. The wooded area is also included in regular spring-cleaning sessions organised with the local Parish Council.
- 7.171. The main top area of the land is well maintained by Mr and Mrs Sutcliffe, and children regularly play there. Additional furniture appears there in the summer when neighbours meet up to chat or have tea or barbeques. Mrs Blakey considers this to be the hub of the community area. She had been treasurer of the Residents Association for 10 years. The meetings have been well attended with great community interest, especially to save the Pen from being built upon.
- 7.172. For the summer fair on the land she strims parts of the Pen to make paths between the planted areas and nettles. The Pen has been of enormous significance to her and her family, and now her granddaughter enjoys it as well.
- 7.173. She described the regular bonfire parties, summer barbeques and New Years Eve parties on the land. There have also been some quite large birthday celebrations for

local people on the land. At no time up to the 2008 application had anyone ever asked her or any member of her family to leave the Pen, nor has she ever been given permission to use the land or asked for such permission.

- 7.174. *In cross-examination* Mrs Blakey said that people had been scared that someone would try to build on the Pen. No-one ever did build on it or even proposed to, it was just a fear.
- 7.175. One of her neighbours called Lou had wanted to keep chickens on the land because she used to keep them somewhere else. Mrs Blakey understood that she had asked Mr Pont, who had encouraged her and permitted her to do that on the land within the last two years.
- 7.176. At one point Mrs Blakey, who is a keen user of the land on the Pen, had thought of establishing a vegetable garden. She might have wanted that, but in hindsight the neighbours did not want it there. There has to be neighbourly agreement on such matters. People whose house it was in front of did not want it there.
- 7.177. Her children used to go and play in the far eastern part of the Penn before the railway fence; there is a shaft in there (fenced) and there are some pets buried in that part of the land. There is a safety fence around the old shaft. She certainly used to go further into the woods than where the railway fence is now.
- 7.178. Children used regularly to go into that eastern end of the land, they played all over the land. She could not remember when British Rail had put the safety fence around the old shaft.
- 7.179. **Mr Renos Christodoulou** has lived at 3 Beechwood View, Oakville Road, since September 1997. He, his wife and three children have used the Pen since September 1997. The Pen and the community spirit it engenders were a major factor in choosing to move here.
- 7.180. His children first used the Pen on the day they moved in, before they even unloaded their possessions from the removal van. A group of 'Pen' children from the neighbourhood came to their door and invited their eldest out to play while they got on with the unpacking. The Pen is and has been for many years more than a place to be used for sports and pastimes. It has been a place where individuals moving into the locality quickly become community members, starting with the young. Children congregate on the Pen from all the nearby streets of the neighbourhood.
- 7.181. His eldest child is now turning 16, but it is reassuring to see today's 4 and 5 year olds following in the footsteps of countless other children of the locality, forming yet another generation of 'Pen' children, some of whose parents were 'Pen' children themselves.

- 7.182. Over the years he and his family have used the Pen for a variety of activities. The bottom part has been used by all the children to play football and other ball and throwing games. Further up a flatter area has been used by the younger children for ball games, as well as for racket games, badminton, etc., or for general chasing games. Both those areas are visible from the houses, and this has made it easy for parents and neighbours alike to watch over the safety of the children. The whole of the Penn has been used for hide and seek games, especially the upper wooded parts, which have also been very popular for den-building and the like. Children have also used the BMX track in the woods, built by other generations of children before them. More recently the wooded part of the Pen has also been used for nature watching.
- 7.183. The Pen has been used on many occasions for camping or putting up tents and gazebos for birthdays and other parties. In summer the Pen is often used for barbeques and picnics. A popular annual event ever since his family moved in has been bonfire night which brings not only the local community together but also their friends and family.
- 7.184. Local people treat the Pen with respect, hence there is not a frequent need to organise a rubbish clear-up to remove litter, because everyone sees the Pen as an extension of their own homes, and treats it with respect. A lot of work goes into keeping certain areas of the land tidy and under control, trimming and mowing lawned areas to keep them accessible. A few years ago the whole neighbourhood turned out to plant roses along the fence erected by the railway. Local people prefer the wooded parts of the Pen to be kept wilder, so there is less maintenance to do there except for clearing paths when they become overgrown, or if a tree falls down. It is not only children who use the land. Adults go there frequently for instance for fruit picking, especially for blackberries for jam, or to walk the dog or to spend some time in a quieter area. The Pen is also heavily used when it snows, for sledging, building snowmen, snowball fights etc.
- 7.185. At no time up to 2008 had anyone ever asked Mr Christodoulou or any member of his family to leave the Pen. Nor has he ever been given permission to use the land nor asked for such permission.
- 7.186. Blackberrying did and does happen at the far end points of the land beyond the new railway fences.

8. THE SUBMISSIONS FOR THE APPLICANT

- 8.1. The Applicant's original application was accompanied by a document of several pages length headed 'Justification'. This document contained material which constituted submissions. It was followed by a reasoned reply to the objections to the application which had been received from Mr Pont. Both of these documents are of course available in writing to the Registration Authority. Subsequent to their production the Registration Authority decided to hold the Public Inquiry into this matter. Since then the Applicant submitted further written submissions in the run-up to the Inquiry, and at the Inquiry itself the Applicant's representative, Mr Kratz, was able to make both

opening submissions, and then final submissions in the light of the evidence as it had actually been received. In view of these more recent submissions, it does not seem to me to be necessary or appropriate in this Report to set out a summary of the earlier sets of submissions which had been made on the Applicant's behalf.

- 8.2. In the written submissions provided shortly before the Inquiry itself, the relevant tests under **Section 15** of the **Commons Act 2006** were summarised. A brief summary was given of the extent of the evidence that was proposed to be called. The Applicant acknowledged that the issue of locality and neighbourhood had not been fully addressed in its original application. Accordingly it sought to amend its application by identifying the relevant neighbourhood in the manner shown on the plan identified as ORA29. This represented a smaller area than that which was shown at a suggested locality on the plan with the original application. In its submissions the Applicant also sought to indicate that the relevant locality should be regarded as the Parish of Blackshaw. These amendments represented the way in which the Applicant pursued its case at the Inquiry itself.
- 8.3. In opening for the Applicant Mr Kratz explained how the Oakville Residents Association was established in 1987, and the area which it seeks to represent. The Applicant's proposed evidence was explained, and the point was made that it was only a representative sample of the totality of the evidence which could be called as oral witnesses. In principle a much greater number of local residents could have been called.
- 8.4. The physical layout and extent of the application site were explained, as was the fact that until 2008 the site had no internal boundaries whatsoever. A railway safety fence was completed in 2008 by British Rail (Residuary), and that now obstructs access to either end of the site, and a dangerous shaft to the eastern end of then land was fenced at some time before that. Other than that there was not a single fence or wall on the Pen for the entire application period.
- 8.5. The evidence shows that the land has been used for lawful sports and pastimes for well over 50 years, at least since 1956. The recreational activities on the land have been carried out "*as of right*". No force was required, the openings in the wall of the Pen have been in existence for as long as anyone can remember. No secrecy was involved, the activities have taken place during daylight hours on any day of the week quite openly and in large numbers. There is certainly no question that permission was ever given by British Rail or anyone else for general recreational use of the land, or that they ever tried to stop it happening. British Rail's inaction may well amount to acquiescence, but it does not amount to permission. Even when railway officials were building a fence on the land, they did not attempt to block entrance to the site. Indeed it is common ground with the objector that the fence is a safety feature in respect of the railway and is not intended to prevent access to the site itself, despite the fact that it has that effect at the far ends of the land.

- 8.6. The users of the Pen are the inhabitants of the claimed neighbourhood. For the entire period that the land was owned by British Rail, British Rail have made no use of the land whatsoever. The most frequent users are the children of the neighbourhood, and people who walk dogs. The overall pattern of use has been constant and consistent. As well as those main elements of the use there is use for summer picnics, chatting with neighbours, evening strolls, summer fairs and the annual bonfire. The overall level of use has been significant over the entire application period, and indeed for decades before that. There is ample physical evidence on the land of its long use by local people.
- 8.7. The recreational activities on the land have been so significant that British Rail ought to have been, and probably were aware of the fact that some kind of right was being asserted against them. They did nothing to discourage the use which was being made of the land.
- 8.8. The application rests primarily on recreational use of the land between 1988 and 2008, although the use can be shown to have gone back well into the 1950s. The main focus of the application and the Inquiry should therefore be the years between 1988 and 2008. Although the land has changed hands since then, only British Rail's period of ownership is relevant to the application.
- 8.9. In closing for the Applicant, Mr Kratz reiterated that the relevant locality should be regarded as Blackshaw Parish, and explained what it was about the "*neighbourhood*" identified on ORA29 which allowed it to be properly regarded as such for the purposes of *Section 15* of the *2006 Act*.
- 8.10. As regards lawful sports and pastimes, it is not claimed that every activity went on every day of every year. For instance it is not argued in particular that BMX biking remains the craze that it was in the 1980s and 1990s, but that this use of the area for cycling contributes to the lawful sports and pastimes for part of the 20 years. In fact the evidence shows that children still cycle on the old bike track, but on the 21st century equivalent of the BMX, the mountain bike, but it is accepted that the current use is not as intense for this particular purpose. These trends change with time and will no doubt change again. However what the Applicant argues is that that part of the site, like every other part, is used for informal recreation of some form or other, whether it is the current or previous forms of biking or other activities. The evidence from the witnesses and from the numerous evidence questionnaires accompanying the application amply justifies this view.
- 8.11. A key question is whether the number of people using the land was such that it should have indicated to the landowner that the site was in general use by the local population for informal recreation. The reasonably observant landowner does not need to have been satisfied that every single part of the site is being used in this way, merely that the site in general is being used for some form of recreation.

- 8.12. Even driving by the site there would be clear evidence of recreational use which should have put BR as landowners on notice that some rights might be being accrued, and it would not take an unreasonable amount of observation to notice that recreational use on the Penn is very extensive, and carried out by a significant number of people. It was definitely far more than trivial or sporadic.
- 8.13. It is critically important that for almost all of the relevant period – from the 1950s until very recently – there have been no internal boundaries on the site. The area was a single piece of land, having been created following the building of the railway to the south, and its boundaries being defined by a single dry stone wall of even age. It was clearly perceived to be a single area of land, both by local residents who referred to it simply as “*the Pen*”, and by British Rail who sold it as a single unit. The inhabitants have been able to move freely from one part of the Pen to another so that all the land has been available for use. It is notable that not one local resident took up Mr Pont’s offer to sell them a strip of land and turn it into a private garden. Nor did the Sutcliffes take the opportunity at any stage to fence off the small area of the land that was let to them by British Rail as a hanging ground for drying their washing.
- 8.14. One of the objector’s main themes was to argue that the Pen was no different from any other countryside around here. The Applicant says that this argument is irrelevant because they make no claims in relation to other areas of countryside around and about. It is not right to state as the objector does that all of the countryside around is “*open access*”. That might be true of the moorland areas, but there is no such right in the woods surrounding the neighbourhood. In fact there is a significant difference in the character of the use made of the Pen, as opposed to the general countryside. The woods to the north are not as intensively used for informal recreation by this neighbourhood, precisely because the Pen is available for play and recreation. Indeed a number of the witnesses confirmed that when they walk in the woods to the north they walk on public rights of way. On the Pen by contrast there will go where they please.
- 8.15. In response to the objector’s complaints that the Applicants are trying to ‘steal’ the Pen, when they should have bought it, it is pointed out that the application will not result in a change of ownership; the application merely seeks to register recreational rights over the land, not that the neighbourhood should own the land. In fact the Residents’ Association had been keen to purchase the land but could see no way of buying it at auction collectively, because they had no idea how much money needed to be raised and not enough time to raise it, and no time to establish a legal body which might own it. They had tried to persuade British Rail to withdraw the land from the auction so that the Association could raise money to purchase it but British Rail did not agree. In fact it was the case that subsequently the Residents Association offered to buy the whole area of land from Mr Pont after he had purchased it from BR after the auction. However Mr Pont has never agreed to sell the whole area to the Association.
- 8.16. It does not matter that local people knew that the land belonged to British Rail, or at least some part of the railways, during the period relevant to this application. The

statutory test does not include the requirement for any kind of belief on the part of users that land was *already* a village green in terms of its status. Neither is there anything about British Rail's actions as landowner which plausibly suggests that they somehow gave permission to local people to use the land. There was clearly no express permission. In fact the land was almost never visited by British Rail except for access to the track and later to build the fence. British Rail were simply not interested in the site until it came to the time when it was due to be sold.

- 8.17. It is true that there have on occasions been minor disagreements between local residents about certain aspects of what ought to be done on the application site, such as about a proposed vegetable plot, compost bins, chickens or a dry stone wall. In fact most of these disputes to which the objector had referred took place after the application had been made in any event. Such issues as this are entirely irrelevant to the question whether the Pen was used for lawful sports and pastimes. All the objector has done is to highlight the fact that the neighbourhood around the Pen is just like any other community – a mixture of different people with different ideas of what makes a place look nice. Crucially, issues like this are normally resolved satisfactorily. Minor disputes would be a characteristic of any other town or village green which is already registered.
- 8.18. Reverting to the question of “*neighbourhood*”, Mr Kratz said that the neighbourhood being claimed is cohesive, and is perceived as a neighbourhood, by people both inside and outside of it.
- 8.19. In respect of the fact that some parts of this land are covered with vegetation, Mr Kratz pointed me to the principles expounded by the House of Lords in the well known “*Trap Grounds*” case. In fact this land at the Pen seems much more fully accessible by local people than had been the case in that instance. Much more than 25% of this site is fully accessible for use, and used by the community.
- 8.20. It is no part of the Applicant's case to say that the former tenancy of a small area in favour of Mr and Mrs Sutcliffe in any way contributes to the case for the application. However other witnesses confirm that their children would go onto the Sutcliffe's land without permission. Mrs Sutcliffe herself said that she did not mind that, and no-one ever asked her for permission to go onto her hanging ground.
- 8.21. It was true that planting on the land, and the placing of benches, were done by individuals, but these were things people did both for their own use and that of other local people. People do not claim any exclusive rights to particular patches of this land, and it can truly be said that all local people support the village green application in one way or another. Yes there may have been issues about glass bottles placed around a flower bed, or compost heaps, but this sort of issue could just as much arise on an already registered town or village green. The use of this land goes back well before the 20 year period, but the pattern has been essentially the same over the whole of the 20 years and more. The application ought to be granted on the strength of the evidence produced.

9. THE CASE FOR THE OBJECTOR – EVIDENCE

- 9.1. The objector, Mr Richard Pont, was the only person to give oral evidence in support of the objection. At the time of his original objection he gave his address as Wood Cottage, Pudsey Road, Todmorden, although I was given to understand that subsequently he had taken up residence overseas.
- 9.2. Mr Pont's oral evidence to the Inquiry was very brief, and consisted of little more than an acknowledgement that he had had no personal involvement with the land of the application site until he heard of the auction of the land by British Rail (Residuary) in 2008. With his original objection to the Registration Authority, Mr Pont did include some documents of an evidential nature. These included some aerial photographs of the land, on which Mr Pont had made various markings indicating what he understood had taken place on these parts of the land. He also included a copy of the tenancy agreement of 1967 between the British Railways Board and Mr and Mrs Sutcliffe for their "*hanging ground*" on the application site. Also included at that stage was the "*demarcation agreement*" between British Railways Board and Railtrack Plc of 14th February 1996, and a draft Deed of Covenant which if implemented would have passed on British Rail's obligations to Network Rail under the demarcation agreement to the new purchaser of the former British Rail land constituting the Pen.
- 9.3. In the run-up to the Inquiry the only evidential material produced by Mr Pont was a further copy of the so called demarcation agreement of 1996. However it would be fair to observe that in the various documents produced by Mr Pont by way of submissions, namely his original objection, a written note he produced for his opening submissions to the Inquiry (headed "*Inquiry Presentation*"), and in his closing submissions, Mr Pont included a number of observations which were really of an evidential nature. Frequently these were comments on the evidence of other people, or sometimes they were indications of evidential points which Mr Pont said he had understood from talking to other people, sometimes named and sometimes not. Rather than attempt to extract from his various submissions all the points which were of an evidential or semi-evidential nature and record them here separately, I propose to include what appear to me to be the more significant points of that character made by Mr Pont in my summary of his submissions given in the next section of this Report. No objection was taken at the Inquiry on behalf of the Applicant to the fact that much of his evidential material was included in what Mr Pont described as his submissions.

10. SUBMISSIONS FOR THE OBJECTOR

- 10.1. Mr Pont's original objection, which was dated 21st March 2010, has been with the Registration Authority for a long time. In many respects it has been superseded by or incorporated within the submissions which Mr Pont made at the Inquiry. Therefore I do not attempt to capture the whole of it in this report. However there were some points incorporated in that representation of March 2010 which were neither varied nor repeated in quite the same way by Mr Pont at the Inquiry, and I accordingly note what seem to me to be the more significant of these in the following paragraphs.

- 10.2. A particular point which had exercised Mr Pont in his original objections was the view that the application had proposed much too large a catchment area or locality from which users of the land on the Pen were said to have come. Effectively that point was addressed by the amendment sought to be made by the Applicant which reduced the claimed “*neighbourhood*” to the significantly smaller area represented on plan ORA29. Mr Pont at the Inquiry maintained that this showed that the application had been made on a fraudulent basis. However he did not actually object to the identification of the smaller neighbourhood as such. Indeed it was apparent from his remarks at the Inquiry that it represented much more the area from which he himself understood that users of at least part of the Pen had come over the years.
- 10.3. In his original objection Mr Pont expressly acknowledged that a part of the land in front of some of the houses on Oakville Road had been used by the local community for many years for an annual bonfire, a summer event, picnics, children kicking a ball about, and that there was also a tree where small children could climb and have a swing. He in fact marked that area on two aerial photographs which he produced. He also pointed out certain other small parts of the overall application site, approximately in front of the houses known as Oak Villas, which he said had been individually occupied by local residents of the neighbourhood for significant periods, and by implication that they were therefore not susceptible of being registered as a Town or Village Green.
- 10.4. Mr Pont in his original objection stressed his view that British Rail must have informally permitted locals to use the land for various leisure purposes, in effect because they tolerated them doing so over such a long period.
- 10.5. He also stressed that much of the land was relatively impassable with thickets and brambles, and so could not really have been used by local people. Other parts might occasionally have been walked through on foot tracks, but that could not constitute the sort of use which gave rise to Village Green rights.
- 10.6. He pointed out that the railway fence which has been erected in recent times on the land has been sited without any regard to the actual boundary between the land now in his ownership (the Pen) and the railway embankment. The fence appeared to have been sited where those who erected it could dig fence post-holes easily without encountering roots. He had (since he bought the land) encouraged various people of Oakville Road to use the land more, for example to make a new lawn or a vegetable plot and smokers’ garden, or to provide a home for their chickens.
- 10.7. In his opening to the Inquiry Mr Pont stressed that he had tried to compromise with the Residents Association again and again, but they had insisted on a waste of public resources in the holding of the eventual Inquiry into their application. He saw himself as defending his rights as a legal landowner. In his view a law which was meant to preserve open green space in towns and cities was here being misapplied in a country area which is 95% green and open space already. Local people in effect are claiming

that the land in front of their houses belongs to them and not to the legal owner who has paid money for it and taken responsibility for it.

- 10.8. If the land has been used by local people it has been through the kindness and goodwill of the present and previous owners of the land, who have not fenced it and have permitted free access to it by people from the adjoining properties. That is the same as all the other green countryside and woodland belonging to other owners surrounding this area. A landowner ought to be able to share his own land freely with his fellow human beings and not fear that his rights to use the land himself will be taken away from him and his hospitality abused.
- 10.9. In this case the former owners British Rail, also at one time owner of the houses in the neighbourhood, which were originally tenanted by railway workers, allowed and permitted its tenants to use this land. As the houses were sold into private ownership it seemed reasonable to infer that the railway saw no reason to fence the land and continued to permit free access to it. He believed many people had wanted to rent parts of the land for use as gardens, but after the railway rented an area to Mr and Mrs Sutcliffe as a garden they declined to do so to others, saying that the rents involved were too small to warrant the legal expenses and paperwork involved. Nevertheless the railway, said Mr Pont, allowed several people to make gardens on their land without renting and paperwork.
- 10.10. The Residents Association had every opportunity to buy this land for themselves as it was offered to them in public auction – once in the late 1980s at a small price, when they decided that they did not wish the responsibilities of ownership. Then it was offered again at public auction in 2008, when again the Association did not bother to bid for it and buy the ownership of the land. Instead they tried to intimidate those in the auction room by leafleting all the bidders present and trying to put them off purchasing the land because they wanted it for their village green.
- 10.11. Mr Pont reiterated his claim that it had been a fraudulent misrepresentation on the part of the Residents Association originally to assert that residents of a considerably larger area had been regular users of the Pen. Mr Pont's view is that it was only the houses facing the land and a few up the hill that had any interest in the land of the Pen at all. Although the Applicant has now sought to narrow down the neighbourhood from which users of the land are claimed to come, Mr Pont still thought it was too large, as he did not believe that people who lived in the houses on Stony Lane would have any interest in the application.
- 10.12. Mr Pont did not believe that residents had genuinely been using that part of the land which does not lie in front of their houses. Yes, there may have been a footpath through it, as there are footpaths through all the woods in the area. Similarly they may have ridden BMX bicycles there from time to time, but this does not mean the sort of use which ought to be registered as a village green. If a landowner has permitted people to pass through his woods on foot (or perhaps on a bicycle) doing no-one any harm, how does that make the whole area of land into a village green? If it does then

hundreds of acres of woodlands and fields surrounding Mr Pont's land are also a village green. Why should his land be singled out? Only because of the proximity of the houses from which the Applicants come. They could have bought the land but they did not want to pay for it or have any responsibility for it.

- 10.13. Since purchasing the land Mr Pont had built a wall to block cars from parking there on his land. Local people were fed up with seeing them there on the green. Yet another resident from Oakville Road immediately destroyed his wall, twice.
- 10.14. Just because British Rail as the landowner had had no agent there to tell people that they had permission to go on the land, and the people who entered there had not asked anyone, that is not proof that permission was not in fact given. In Mr Pont's view permission had always been given for people to enter the land. The burden of the proof should rest on the shoulders of those who seek to remove the rights of the legal owner to use his land without compensation. The burden of proof that permission was not given lies with the Applicant. Just saying that permission was not asked for is not a proof. Permission did not need to be asked for because permission had always been there. Mr Pont's belief was that permission had been given decades before and never revoked. Certainly during his time as owner Mr Pont had freely given his permission for all to enter and enjoy his land who wished to do so. Why should that give an excuse to people to prevent him from using the land as he wishes as its legal owner. Since being owner he has given specific permission to various local residents to do various things on the land like clearing a dense patch of nettles, and the planting of a lawn by one of the local residents or the making of a home for another resident's chickens.
- 10.15. In closing, Mr Pont reiterated that the railway had always permitted their land to be used by the residents of Oakville Road. No proof that local people did not have their permission had been shown. Mrs Sutcliffe's evidence was that the railway representatives were friendly to the residents, passing the time of day, and that they never did anything to discourage or ask anyone to leave. That was clear evidence that they gave their permission. They did not need to make a performance out of it by putting up signs and fences. The evidence was that the land was in fact used by the railway to access its line whenever that was needed. Mrs Sutcliffe's plot was rented from the railway, because the Sutcliffes took the view that that was the proper thing to do. Mrs Sutcliffe encouraged and permitted neighbouring children to play on her plot and the surrounding area.
- 10.16. All of the witnesses who said they walked on the paths through the woods on the Pen also said that they walked through other wooded paths in the neighbourhood belonging to other people, also without asking for permission. In fact permission to walk on paths had always been there all over the surrounding land, not only on Mr Pont's land. In Mr Pont's view the claims of use of the Pen had been exaggerated, people who might just have walked a dog were effectively trying to make Mr Pont's land belong to them. Similarly the evidence about a BMX track on the land mainly related to use in a period around 1984, before the period which was important for the Inquiry.

- 10.17. Mr Pont confirmed that he had known that the town or village green claim was being made at the time that he bought the land in 2008, so he bought in awareness of the claim being made by local people.
- 10.18. In conclusion, Mr Pont identified the main points which formed the basis of his objection. First, it is a serious matter to remove the rights of a landowner without any compensation. Second, in his view local people had always been permitted to enter the land. No proof had been given that they were not permitted. Then it was clearly the case that not all the area of the land had been significantly used. Some parts were hardly used at all, or occasionally by a couple of people. Blackberrying once a year is not a significant use of the land. Finally, the Residents' Association has been given every opportunity to buy the main part of the land opposite to their houses but has preferred not to, but rather to pursue the village green claim. In these circumstances the claim ought not to be allowed to succeed.

11. DISCUSSION AND RECOMMENDATION

- 11.1. Under **Section 15** of the **Commons Act 2006**, whichever out of subsections (2), (3) or (4) might apply, the legal position is that, in order to add the Application Land here to the Register of Town and Village Greens, the Registration Authority must be satisfied in respect of it that:

“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”

- 11.2. In this particular case the Application Form as completed for the Applicant indicated that the application was based on **subsection (2)** or **subsection (3)** of **Section 15**.

- 11.3. **Subsection (2)** applies where the state of affairs set out above continues to apply at the time of the application for registration, (9th May 2008). **Subsection (3)** on the other hand is effective where the words I have set out above apply, but where it is also the case that:

- “(b) they [the relevant local inhabitants] ceased to do so [i.e. to use the land for sports and pastimes] before the time of the application but after the commencement of this section; and*
(c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).”

The commencement date for **Section 15** in England was 6th April 2007.

- 11.4. The Applicant in this case explained on the application form why two subsections had been indicated as possibly applying. It was stated there that:

“A fence was erected partially severing the two areas marked ‘East end’ and ‘West end’ on Map A. It is shown in blue on Map A. It was begun in November/December 2007 at the end marked ‘East end’ [and] was completed before Christmas 2007. The fence was continued in the New Year. The area marked ‘West end’ was severed during January 2008.”

I understood this to mean that the Applicant was claiming that **subsection (2)** would apply to the bulk of the land on the site, but that there were areas at the extremities of the land which were severed from the rest by the fencing erected between November 2007 and January 2008, and to which **subsection (3)** might accordingly be the more appropriate provision.

- 11.5. Completing the Application form in this way (with an explanation) seems to me to be an eminently appropriate and sensible way of dealing with a factual situation such as that which had arisen on this site. It in no way prejudices landowners or potential objectors, and indeed it must be noted that the Objector Mr Pont did not make any objection to the Application being considered on this basis – i.e. that **subsection (2)** was the applicable provision to be considered for most of the site, but that (because of the ‘new’ railway fencing) it could be **subsection (3)** that needed to be considered in relation to the parts which had been fenced off. Such an approach appears to me to be entirely consistent with the words of **Section 15** itself, even though I note that the standard Application Form invites applicants to “*tick one*” of the boxes relevant to the individual subsections.
- 11.6. I therefore propose to approach this matter on the basis I have explained in my two preceding paragraphs, and my recommendation to the Registration Authority is that it should do likewise.

The Facts

- 11.7. In this case in the event there was very little conflict on significant matters of fact. This partly arose from the fact that the Objector, Mr Pont, only came on the scene after the ‘village green’ application had already been made, and then did not call any evidence, or produce any witness statements, other than from himself.
- 11.8. Mr Pont in his case as presented at the Inquiry did take the line that some of the facts were being exaggerated by witnesses for the Applicant; he also asked for an inference to be drawn that local people using the land were doing so on the basis of

“permission” that must have been given by the relevant part of the British Rail, or some predecessor, at an unidentified time in the past.

- 11.9. None of this seems to warrant my setting out at this point in my Report a series of ‘Findings of Fact’. Rather what I propose to do, before setting out my overall conclusions, is to consider individually various particular aspects of the statutory test under **Section 15** of the **2006 Act**, and assess how the facts in this case relate to those aspects. It should not however be assumed that facts I mention under one heading are only relevant to that heading. I have taken into account the totality of the underlying facts in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusion as well.

“Locality” and “Neighbourhood within a locality”

- 11.10. I have already mentioned that the application (with plan) as originally submitted only sought to identify a *“locality”* from which the users of the land on ‘the Pen’ were said to come. That area was somewhat arbitrarily drawn, and did not take account of the case law which seems to say that a *“locality”* for these purposes, must be some kind of administrative area known to the law.
- 11.11. This was an understandable error on the Applicant’s part, as the judicial interpretation of ‘locality’ is far from being one that would be obvious to lay people. As it happens, the Objector at an early stage did take the point that he considered the *“proposed catchment area”* – by which he clearly meant the originally suggested ‘locality’ – was too large.
- 11.12. It is plain that between the time of the original application and that of the eventual Inquiry the Applicant’s representatives became aware of the state of the law around the questions of ‘locality’ and ‘neighbourhood within a locality’. Hence their application at the Inquiry (and presaged in the documents they lodged before the Inquiry) for the Section 15 Application to be amended by identifying the relevant *“locality”* as the Civil Parish of Blackshaw, and the relevant *“neighbourhood”* within that locality as the area shown (outlined in green) on ORA 29.
- 11.13. The newly suggested ‘neighbourhood’ is substantially smaller than the originally suggested ‘locality or neighbourhood’, and to that extent meets one of the Objector’s original complaints.
- 11.14. I have already discussed this issue early in my Report, at paragraphs 2.4 to 2.6, where I indicated that I proposed to accept the amendment sought by the Applicant, and recommend the Registration Authority to do likewise. I do not propose to repeat here the discussion in those earlier paragraphs.
- 11.15. I will however repeat the point that the Objector himself did not object to this amendment, which goes some way towards meeting one of his original complaints. I

also do not think that the Objector was in any way prejudiced by the amendment which I accepted. It is worth mentioning also that it is my understanding of the position on the case law is that it is in any event ultimately for the Registration Authority to decide, on the evidence, what the identities of the relevant locality and neighbourhood are, assuming that the case for an application is otherwise made out.

- 11.16. There is no doubt at all that the Civil Parish of Blackshaw is capable of being a “locality”, in the legal sense. In my view the “neighbourhood” as now defined on Plan ORA29 has in ample measure such “cohesiveness” as might be required by the case law. It is a coherent and relatively compact area, to the north of the railway line. It was clear to me from the evidence I heard that there is a strong community spirit, manifested not least by the existence of the Oakville Residents’ Association (the Applicant). I have no doubt at all that the area outlined in green on plan ORA29 is capable of being regarded as ‘a neighbourhood’. All of the oral witnesses called on behalf of the Applicant are residents (or in a few cases former residents) of that neighbourhood.
- 11.17. The only residual complaint that Mr Pont, the Objector, had on this particular topic was that he felt that the neighbourhood was still being over-widely defined. He felt that the houses in Stony Lane [quite frequently spelt Stoney Lane – the documents presented to me were inconsistent on this] facing the western end of the application site should be excluded.
- 11.18. It is true that none of the eventual oral witnesses came from those houses in Stony Lane, but I note that a number of the originally lodged evidence questionnaires did come from the occupiers of those cottages. I can see no reason why the part of Stony Lane included on Plan ORA29 should be excluded from the relevant ‘neighbourhood’. The area shown on that plan appears to me to be a logical and cohesive one, and also to bear a clear relationship to the application site. My conclusion and advice to the Registration Authority is that Plan ORA29 properly shows the relevant ‘neighbourhood’.

“A significant number of the inhabitants”

- 11.19. In my judgment there was ample evidence that significant numbers of the local inhabitants had made use of the land for leisure purposes. I discuss the geographical extent of that use within the site later, under my sub-heading “On the land”. Even Mr Pont expressly accepts that some parts of the land have been extensively used by local people over many years. His only point on this (apart from the geographical extent point) is his belief that they had ‘permission’ – an argument I discuss under “As of right”, below.
- 11.20. I therefore conclude that the Applicant’s evidence clearly meets the “significant number of the inhabitants” aspect of the statutory test.

“Lawful sports and pastimes”

- 11.21. This issue as such was not really in active dispute at the Inquiry. Therefore it is not necessary for me here to repeat, even in summary form, the extensive range of leisure activities which the evidence showed the local inhabitants had indulged in for many years on this land. Subject to my immediately following remarks, they were clearly ‘lawful sports and pastimes’,
- 11.22. It should be noted that I am not including in this category the hanging out of washing by Mrs (or Mr) Sutcliffe on the small patch of the land which was licensed to them over a long period for that purpose by British Rail. However the evidence was clear, in my judgment, that that piece of the ground was effectively indistinguishable, over the whole of any relevant period, from the rest of the land around it, and that it was used, in common with the adjoining parts of the site, by other local inhabitants (especially the children) in general, for their lawful sports and pastimes, even if respect was paid to Mrs Sutcliffe’s washing while it was actually hanging there.
- 11.23. Likewise, although there was some evidence over the years of attempts at ‘gardening’ by individual local inhabitants on small parts of the land, the evidence did not in any way support the view that any of this had been done in a way which excluded the inhabitants of the neighbourhood generally in an extensive sense. There was some suggestion, though no direct evidence from any witness, that in the very distant past, way before any period relevant to these present proceedings, there might have been individual smallholdings or yards or gardens, privately tenanted or occupied on the land of the Pen. No trace of such potentially ‘exclusive’ occupation of parts of the land survived (the evidence indicated) during any part of the years relevant to the Commons Act claim, with the sole exception of Mrs Sutcliffe’s washing line, which I have already discussed.
- 11.24. Another, rather different, point to discuss under this heading is the argument pursued quite strongly by Mr Pont as objector that the use of the land on ‘the Pen’ was only the same as the ability of people to wander freely over most of the countryside surrounding Charlestown. He referred particularly the areas of woodland up the hillside to the north of Charlestown, and the more open areas of the tops of the hills. Why should the Pen be registered as ‘village green’, Mr Pont argued, when those other areas are not being so registered?
- 11.25. A significant proportion of the witnesses, when questioned by Mr Pont, agreed that they do sometimes go for walks (with or without dogs) through the woods to the north. A number of them did stress however that they were much more likely to stick to the paths when walking through the woods than they were when indulging in various activities on the Pen.
- 11.26. I have no doubt that there are parts of the woodland on the hillside, and open areas beyond that, where people can in practice wander quite freely. However it seems to me on the evidence that there is a marked difference in scale and intensity between

such use and that which goes on on the Pen. Use of the Pen is and has been much more intensive, and there are many aspects of the use made of the Pen which are not reflected at all in such use as is made of the open or wooded areas further up in the hills. I have in mind such things as Bonfire parties and other social events, and in particular the very much more intensive use made (of the Pen) by children for playing. It was abundantly clear from the evidence that parents (quite sensibly in my view) took a different attitude to their children playing out in the relatively contained space of the Pen, 'in front of their houses', from the view they would take of them going to play up in the woods on the hillsides.

- 11.27. Finally on this particular point, as the Applicant not unfairly pointed out, this application concerns only the use which has in fact been made of the land on the Pen, not what might have happened on other areas of land.
- 11.28. My conclusion therefore, subject to the points I discuss under other headings, is that there is ample evidence of 'lawful sports and pastimes' having been indulged in over many years on the application site, by inhabitants of the 'neighbourhood'.

"As of right"

- 11.29. The expression "*as of right*", in relation to use being made of land, is generally taken to mean without force, without secrecy and without permission. On the evidence in this case there is no basis at all for thinking that the use made of the Pen by local people during the relevant years was 'by force'. That would mean the breaking down of fences, ignoring of prohibitory notices, or actions like that. There is no evidence to suggest that anything of the kind ever took place.
- 11.30. Likewise there is no basis for concluding that the use made of the land was carried out secretly, e.g. by sneaking onto it at night. It is clear on the evidence that the use was quite open.
- 11.31. That only leaves the question of "*without permission*". Clearly Mr and Mrs Sutcliffe had been given permission by British Rail to use the particular small area of 'hanging ground' that was licensed to them over a long period. That personal use of that particular patch therefore cannot count towards 'as of right' use of that area by local inhabitants. However I have already found that other residents in fact used the whole of the land, including the Sutcliffes' 'hanging ground' patch, for informal leisure activities, in spite of the Sutcliffes' right to hang washing there.
- 11.32. One of the main points pursued by the Objector Mr Pont was his belief that local people must have had 'permission', at some unidentified point in the past, from British Rail or some predecessor, to use this land for leisure activities. That was his explanation for the point mentioned quite frequently by the witnesses, that railway staff would appear on the land from time to time, and while they would sometimes pass the time of day with local people who they met on the land, they (the railway

staff) would never ask the locals what they were doing on the land, or ask them to leave.

- 11.33. Mr Pont says that this shows that British Rail ‘permitted’ local people to go on the land and use it. In my judgment this point is completely misconceived. The evidence might show that certain BR staff *tolerated*, or did not do anything about, the fact that local people were enjoying and using this land. It certainly does *not* show that *permission* was ever given. Nor was there any other evidence to suggest that a permission (or a series of permissions) were ever given by the landowner to local people – with the exception of the Sutcliffe ‘hanging ground’ point, and any other analogous small patch or patches that might have existed in earlier years. I have already found that the existence of such a small patch or patches did not interfere with an ‘as of right’ use by the local inhabitants on those areas as well, during any period relevant to the present claim.
- 11.34. Thus in my judgment the Applicant has established its claim that there was general “*as of right*” use by local inhabitants during the relevant period.

“On the land”

- 11.35. Two issues of considerable significance fall to be considered under this sub-heading. They also inter-relate with my next sub-heading concerning the relevant period of 20 years which needs to be considered in respect of various parts of the land.
- 11.36. The first issue concerns the identification of the precise geographical area of land which ought to be registered as ‘village green’ under **Section 15**, if any land is to be registered at all. The law appears to be clear that it is permissible to register a *smaller* area than that applied for, where that can be done without injustice to a landowner or objector. [Clearly it is not possible to register a larger area than that applied for in an application].
- 11.37. The second issue concerns the evidence as to whether all parts of the site applied for really were used by local people to a sufficient extent to warrant registration under **Section 15**, and how that is to be assessed. An alternative, implicitly suggested by the submissions for Mr Pont, would be the registration of only part of parts of the land, where the evidence of extensive use was strongest. Clearly there is overlap between the two issues I have identified.
- 11.38. On the first issue, the evidence as presented to me appears to show clearly that the application site identified in the application is precisely the same area of land that British Rail (Residuary) put up for auction in 2008, and which was subsequently bought by Mr Pont. This was not only the view of the Applicant, whose representatives had obtained information and a plan from the Land Registry, but also that of Mr Pont, the Objector.

- 11.39. However the facts on the ground in late 2011 gave an appearance somewhat inconsistent with that. There is now along (approximately) the southern boundary of 'the Pen' a fence, which everyone referred to as "*the railway fence*". For the majority of its length that fence appears approximately to coincide with the southern boundary of the application site (and Mr Pont's land). However there are some very substantial variations. At both ends of the site the 'railway fence' strikes off to the north of the ownership boundary and 'cuts off' a significant acute angled triangular (very approximately) area of land from the main part of the site. There is also a significant area along the southern boundary of the application site 'cut off' by the railway fence, in the area south of the houses known as Beechwood View on Oakville Road.
- 11.40. The evidence to the Inquiry was quite clear that this fencing work was done by railway workers between the late autumn of 2007 and January/February 2008. Prior to that there had been no fence at all along (or approximately along) the southern boundary of 'the Pen'. This was in spite of the fact that (as the uncontested evidence showed) a 'Demarcation Agreement' of February 1996 between the British Railways Board (which continued to hold non-operational land) and Railtrack PLC (which was from that time to hold operational land) set as its boundary here the same one which had subsequently become the southern boundary of Mr Pont's ownership, and of the 'village green' application site.
- 11.41. I was also made aware at the Inquiry, and saw on the site visit, that within the eastern extremity of the application site, in the part now 'cut off' by the railway fence, there is a small circular area, protected by stout fencing, which apparently contains (and protects people from) a disused shaft of some description. No witness who attended the Inquiry was able to tell me exactly how long that particular piece of protective fencing had been there, but the consensus was that it had been there for a long time, very much longer than the relatively recent 'railway fence'.
- 11.42. For the purposes of the Inquiry the Applicant's representatives had produced a plan, ORA30, which purported to show the approximate location of the railway fence. However at the Inquiry Mr Kratz for the Applicant informed me that he had realised that the plan ORA 30 had got the positioning of the 'new' fence wrong in some respects.
- 11.43. Following discussion at the Inquiry it was agreed with the parties that on the site visit I would attempt to examine, while accompanied by the parties' representatives, the extent to which reality on the ground differed from what is shown on Plan ORA30. This I did indeed attempt to do on the site visit, not least because it seemed to be at least possible that I might be led by the evidence to a conclusion (and therefore a recommendation to the Registration Authority) in favour of 'village green' registration of a reduced version of the application site, whose boundaries would have some reference to the actual position of the 'railway fence' as erected in late 2007/early 2008.

- 11.44. It was quite apparent on site that the workers who had erected the fence had paid scant regard to the boundary shown on the 'demarcation agreement' that had apparently long existed between British Rail and Railtrack PLC (later Network Rail), or the boundary of the plot which was later to be sold by British Rail (Residuary) to Mr Pont. Indeed what could be seen on the ground tended to confirm the view expressed by several witnesses at the Inquiry that, over significant stretches, the fence had been erected where the railway workers found it most convenient to get the fence posts into the ground.
- 11.45. The second thing which was readily apparent on the site visit was that the Applicant's plan ORA30 is indeed very significantly inaccurate in the positioning it shows for the 'railway fence'. The plan is in major error at the western end – a much larger portion of the site is 'cut off' by the fence in reality than the plan suggests. Plan ORA30 also appeared to me to be significantly (but to a much lesser degree) inaccurate in both the other main areas where the fence deviates from the application site boundary – the central part of the southern boundary, and the exact position of where the eastern end is now 'cut off'.
- 11.46. Although I did, in the company of the parties, attempt to mark on a spare copy of ORA30 the position(s) where I believed the actual fence was situated, I realised that to do this accurately would require a rather more elaborate surveying exercise than anything I was able to accomplish on that occasion.
- 11.47. I have in compiling my Report and considering my conclusions given much thought to the question whether those conclusions, and my recommendations, should be affected by the actual positioning of the 'railway fence', and whether anomalous or unworkable results might be produced by making recommendations which affect what seems to be the 'railway side' of that fence.
- 11.48. However I must also take cognisance of the fact that the 'railway fence' only appeared between November 2007 and February 2008, a matter of months before the ***Commons Act*** application was made in May 2008. For the overwhelming bulk of the period about which I received evidence, that fence was not there at all. Furthermore the application had been made on the basis that the parts of the Application Site 'beyond' the railway fence might need to be considered under ***Subsection (3) of Section 15*** of the ***2006 Act***, rather than ***Subsection (2)***, precisely because the fence had appeared at the time it did.
- 11.49. The conclusion I have reached on the evidence is that such use as the local (i.e. neighbourhood) inhabitants made of the Application Site, including the parts now 'cut off' by the railway fence, had commenced and carried on from a time very much earlier than 20 years before even the first post of the railway fence was inserted in November 2007. The evidence strongly suggests that the use which has been made by local people of the whole land of the Pen (a point I discuss further below) has been taking place continuously since much earlier than November 1987 (20 years before

November 2007), probably (on the evidence) since at least the 1960s, if not longer than that.

- 11.50. Accordingly I have come to the view that the positioning of the ‘railway fence’, and any anomalies it might appear to produce, are really issues of land ownership as between Mr Pont and the ‘railway interests’ of Network Rail, and possibly British Rail (Residuary). They are not matters which, after proper consideration, affect the scope of the overall decision which needs to be taken by the Council as Registration Authority under the *Commons Act*.
- 11.51. I now turn to what I have called the second issue under this sub-heading, which concerns the extent to which the evidence supports the view that the *whole* of the Application site has been used by local people for the requisite period, or whether only parts of it have. As noted in passing before, even Mr Pont expressly concedes that some parts of the land, notably those nearest to the groups of houses called Beechwood View and Oak Villas, on Oakville Road, have been used by local people for informal leisure pursuits over very many years. It is quite clear, both from the evidence presented and from my site visit, that different parts of the application site have different characteristics, and will have been used (if at all) by local people in different ways. For example, some parts are relatively open, with mown areas of grass; other parts are lightly wooded, or sometimes more heavily so; and yet other parts are fairly densely covered with scrub or brambles. I also take the point, which emerged from the evidence, that the amount of scrub or bramble cover can vary from one season to another, according in part to whether there have been any (human) efforts to clear it or keep it under control.
- 11.52. In this connection I was quite appropriately asked by Mr Kratz for the Applicant to have regard to the basis on which the well known “*Trap Grounds*” case [just outside Oxford] was decided, and then ultimately upheld on appeal, as *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25. I have had regard most particularly to the explanation of this aspect of the matter given within Lord Hoffman’s opinion, between paragraphs 63 and 67.
- 11.53. It must be recalled that all of the actual *evidence* as to past user of the land has come from the Applicant’s side. Mr Pont called or produced no evidence as to this at all; he merely questioned and made comments about the adequacy of the Applicant’s evidence. The view which I have come to on that evidence is that it is clear that, for at least the time of any relevant period of 20 years, and probably much more than that, there has been use by local inhabitants, in significant numbers, of the whole of the application site, for recreational purposes. This use would clearly have varied in intensity between different parts of the land, but given that until late 2007 there was no internal fencing within the land, it seems to me on the evidence that the proportion of the surface of the land which was actively used (because of trees, scrub etc on the other parts) was probably considerably greater than that noted in the “*Trap Grounds*” case.

- 11.54. Furthermore it was clear on the evidence that there actually **had** been general use by local people, before the fencing works starting in November 2007, extending into the parts of the site then ‘cut off’ by the railway fence. In the case of the western extremity of the application site it was particularly obvious, even in late 2011, that this had been so. For the other two ‘cut off’ areas there was also convincing evidence given that use prior to late 2007 had regularly extended into those parts of the site.
- 11.55. I was not persuaded by Mr Pont’s argument that any use of the land other than the regularly mown grassy areas would only have been use of particular routes as footpaths by people walking their dogs, etc. Although in the more wooded parts of the site there were some obvious tracks, the evidence overall was quite clear that local users of the land, adults and most particularly children, had generally spread a lot, and made use of the entire surface of the land, as far as practicable.
- 11.56. Finally on this point I consider the small area within the eastern ‘pointed end’ of the land, consisting of a disused vertical shaft, which has been long fenced off for safety reasons. This is a very small feature of the overall site. I also note that no-one – and in particular not the Objector Mr Pont – has suggested to me, or to the Registration Authority, that this particular feature should be expressly excluded from the land (potentially) to be registered under the ***Commons Act***.
- 11.57. In these circumstances the view I have formed is that the most appropriate course is to regard this small feature as somewhat analogous to an impenetrable patch of scrub within the overall site (rather as in the “*Trap Grounds*” example), which should be seen as just a feature of the overall site which, as a whole, was in use for lawful sports and pastimes.

“For a period of at least 20 years” Which period?

- 11.58. I have already considered the point that, on the clear balance of the evidence, the whole of the application site was in use by the local inhabitants of the neighbourhood, for lawful sports and pastimes, for a period of well over 20 years before the Application for Registration was made in May 2008. It may well be on the evidence that use of certain parts of the overall site was either curtailed or prevented by the erection of the ‘railway fence’ between November 2007 and February 2008. However, I conclude on the evidence that use on those parts of the application site ‘behind the railway fence’ had in any event been taking place for well over 20 years before November 2007. Therefore whichever period of 20 years is considered, under ***subsection (2)*** or ***subsection (3)*** of ***Section 15***, the case for registration has been made out by the Applicant’s evidence.

Conclusion and Recommendation

- 11.59. Accordingly my conclusion and recommendation to the Council as Registration Authority is that ***the whole*** of the Application Site known as the Pen, off Oakville Road and Stony Lane, Charlestown, Hebden Bridge, should be added to the Register of Town or Village Greens under ***Section 15*** of the ***Commons Act 2006***, because the evidence in relation to it meets the statutory requirements of ***subsection (2)***, or ***subsection ((3))*** as the case may be, of that subsection.

ALUN ALESBURY
19th December 2011

2-3 Gray's Inn Square
London WC1R 5JH

APPENDIX I – APPEARANCES AT THE INQUIRY

FOR THE APPLICANT (Oakville Resident's Association)

Mr Christoph Kratz

He gave evidence himself, and called as witnesses:

Mrs Leah Coneron

Mrs Elizabeth Stansfield

Mr Gabriel Elliott

Mrs Angela Sutcliffe

Dr Andrea Johnson-Renshaw

Lewis Johnson-Renshaw

Mr Stephen Burnip

Mr Chris Sugden-Smith

Mr James Howarth

Ms Maria Howarth

Ms Lizzie Lockhart

Ms Julie Finney

Mrs Jill Dyer

Ms Clare Blakey

Mr Renos Christadoulou

FOR THE OBJECTOR (Mr Richard Pont)

Mr Richard Pont himself gave evidence and made submissions.

He called no other witnesses.

APPENDIX II – LIST OF DOUCMENTS PRODUCED IN EVIDENCE AT THE INQUIRY

NB – This (intentionally brief) list does not include the original application and supporting documentation, the original objection, or any material or correspondence submitted by the parties prior to the issue of the Directions for the Inquiry. Nor does it include the written notes of submissions, law reports, proofs of evidence of intended oral witnesses, maps and other documents provided on behalf of the Applicant before the Inquiry. These were produced as a bundle of documents assembled for the purposes of the Inquiry, which was both satisfactorily indexed and provided to the Registration Authority (and me) as a complete bundle. It is not proposed in this Appendix to repeat the contents of that index. All of the documents referred to above were available to all parties at the Inquiry.

The objector Mr Pont produced only one further document (after his original objection) prior to the Inquiry itself, namely a copy of the ‘Demarcation Agreement’ of 14th February 1996 between British Railways Board and Railtrack PLC.

ADDITIONAL DOCUMENTS PRODUCED AT THE INQUIRY

ORA54 Exchange of emails between Mr Kratz and Mr Pont (Dhyanraj), February 2010

ORA55 Exchange of emails re proposed sale of land by BRB (Residuary) Ltd, May 2008

ORA56 Letter, Oakville Residents’ Association to Mr Pont, 15th July 2008

ORA57 Email Mr Kratz to Mr Pont, 14th September 2008

ORA58 Email Mr Kratz to Ms Honshmand (Calderdale MBC), 9th September 2011

Large aerial photograph of site and surroundings

‘Opening submission’ document – Mr Kratz

‘Applicant’s Closing submissions’ document

By the Objector

‘Inquiry presentation’ – Mr Richard Pont

‘Summary’ - Mr Richard Pont