

**IN THE MATTER OF AN APPLICATION FOR REGISTRATION OF LAND AT
OAKVILLE ROAD, CHARLESTOWN, HEBDEN BRIDGE, WEST YORKSHIRE
AS A TOWN OR VILLAGE GREEN**

IN THE MATTER OF THE COMMONS ACT 2006

BETWEEN

The Oakville Residents Association

Applicant

And

Richard Pont

Objector

Applicant's reply to objector's submissions of 21 March 2010

The comments below refer to the objection letter of Richard Pont of 21 March 2010 (the objection). A copy of the objection is attached as Appendix 1.

1. The objection document contains a number of important concessions which are listed below.
 - The objector concedes that part of the land (colour coded beige on the aerial photograph attached to his objection) has been used by the local community for activities which would meet the definition of lawful sports and pastimes for the purposes of the Commons Act 2006 (the Act) [paragraph 4]. The objector concedes that these activities are

'recreation' in his paragraph 2 and are [lawful] sports and pastimes in paragraph 6.

- The objector concedes that this area of land has been used by a significant number of inhabitants of the local community [paragraph 6].
- The objector concedes that the area has been used for 20 years [paragraph 6].
- The objector concedes that the previous owners of the land, British Rail, acquiesced in its use. The objector uses the phrase "informally permitted locals to use the land appropriately" which we submit amounts to acquiescence [paragraph 10].
- The objector concedes that the western wooded area of the land has been used for lawful sports and pastimes for the past 20 years [paragraph 16].
- The objector concedes that the fencing on the land has been erected pursuant to a demarcation agreement the purpose of which is defined as *"to identify a property rights and liabilities"*.
- The objector concedes that the fence in the western wooded area does not, in fact, restrict its use, *"When I want to use this part of the land I walk round the end of the fence"* [paragraph 23].
- The objector has continued to acquiesce in the use of the land for activities which would fall within the definition of lawful sports and pastimes [paragraph 28].

2. The objector takes a number of points of objection which we will deal with in turn.

Not all of the claimed land is used for recreation [paragraph 2]

3. This is denied; however it is a question of fact to be established by the Registration Authority on the evidence before it. In so far as the objector raises issues about specific areas of the land and contends, as a matter of law, that they cannot be used for recreation because of their nature, for example because they are fenced or because they are inaccessible, we have dealt with these points below.

The neighbourhood is too large

4. The objector states that the “catchment area” does not represent the actual number of people who use the land for recreation. By catchment area we take him to mean the neighbourhood which the Association relies on in its application.
5. The point taken by the objector at this stage would appear to be that having regard to the size of the neighbourhood and the evidence about who uses the land, use is not significant. This is denied. The registration criteria require an applicant to show that “*a significant number of the inhabitants of any locality, or 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*”. Case law has established that “significant” does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is general use by the local community for informal recreation, rather than occasional use by individuals as trespassers. (see R (McAlpine) v Staffordshire CC [2002] EWHC 76 (Admin) at paragraph 77).

It is submitted that what the objector is saying is that British Rail acquiesced in the use of the land. It is submitted that acquiescence is not inconsistent with as of right use.

16. In so far as the objector contends that British Rail encouraged use by making the land safe (by putting a fence around a deep pothole) this is still not enough to indicate permissive use. As Beresford makes clear permission cannot be implied by acts of encouragement by a landowner.

Parts of the land are inaccessible due to the presence of brambles, nettles and bind weed

17. The question of whether parts of the land are inaccessible can only be answered having regard to a proper examination of the evidence. The Applicant does not accept that parts of the land are inaccessible. However, as set out above, it is submitted that inaccessibility of parts of the land does not make the land, or even the inaccessible parts of it, unregistrable (see Oxfordshire).

The wooded areas

Wooded area to the west [paragraph 18]

18. The point that the objector takes here is that there has not been use of the wooded areas by a significant number of inhabitants of the neighbourhood. As to this see above. The question of significant use is a matter of fact to be determined by the Registration Authority on hearing evidence.

Wooded area to the east [paragraph 24]