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Case No: 9LS530895 and CO/4193/2007

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
LEEDS DISTRICT REGISTRY

Leeds Combined Court Centre
Oxford Row
Leeds LS1 3BG

21st April 2010

B e f o r e :

His Honour Judge John Behrens
sitting as a Judge of the High Court

Between:

LEEDS GROUP PLC	**Claimant**
- and -	
LEEDS CITY COUNCIL	**Defendant**

George Laurence QC and Jane Evans-Gordon (instructed by DLA Piper UK LLP of Princes Exchange, Prices Square Leeds LS1 4BY) for the Claimant
Morag Ellis QC (instructed by Karen Blackmore, Solicitor, Leeds City Council, Civic Hall, Leeds LS1 1UR) for the Defendant
Hearing dates: 29th, 30th and 31st March 2010

Judge Behrens :

Introduction

1. This claim is concerned with a piece of land known as Yeadon Banks, Yeadon on the outskirts of Leeds. Part of Yeadon Banks, some 5½ acres, ("the Leeds Land") is owned by the Claimant and is registered at HM Land Registry under Title Number WYK 695688. The remainder of Yeadon Banks ("the Council Land") is owned by the Defendant.

2. Mr Douglas Jones ("Mr Jones"), who lives in Haw Lane, Yeadon, is the Chairman of a group known as Keep Yeadon Banks Green ("KEYBAG"). By an application notice dated 16th July 2004 Mr Jones made an application to register Yeadon Banks as a Class C town or village green ("TVG") under the relevant statute. In the application Mr Jones described himself as acting on behalf of the residents of the areas known locally as "The Haws" and "Banksfield". He described the locality as being "Yeadon". The application was supported by completed evidence questionnaires from 82 individuals. It was made to the Defendant as the relevant registration authority. Thus the Defendant was both the relevant registration authority and also the owner of part of the land (the Council Land) that was subject to the application.

3. The application was made under section 13(b) of the Commons Registration Act 1965 ("the 1965 Act") as amended by the Countryside and Rights of Way Act 2000 ("the 2000 Act") and

governed by the Commons Registration (New Land) Regulations 1969 ("the 1969 Regulations"). As will appear later in this judgment there is considerable judicial authority (much at the highest level) on the requirements necessary to establish a TVG under the 1965 Act both before and after the amendments in the 2000 Act.

4. The Claimant as owner of the Leeds Land objected to the application on a number of grounds. The Defendant, on the other hand, as owner of the Council Land made it clear that it did not object to the registration.

5. As is common in cases such as this the Defendant decided to hold a non statutory public inquiry into the issues raised in the application. Accordingly it appointed a senior barrister Mr Alun Alesbury ("the Inspector"), for that purpose. The practice of holding such inquiries to resolve cases which are not suitable for determination on the documents has been noted with approval by the Courts: see *R v Suffolk County Council ex p Steed* (1995) 70 P & C R 487, 500-501.

6. The Inquiry was held on 7th and 8th November 2006 and was followed by a formal inspection of Yeadon Banks on 9th November 2006. At the Inquiry Mr Jones represented himself and called 7 local residents in support of the application. The Claimant was represented by Solicitors and Counsel (Mrs Evans-Gordon) and called no evidence. The Inspector produced a report on 20th December 2006. In it he recommended the registration of the whole of Yeadon Banks as a TVG. It will be necessary to consider the report and the reasons for the recommendation later in the judgment. On 22nd February 2007 the Defendant decided to accept the recommendation in the report. Accordingly on that date the register of town and village greens kept by the Defendant was amended by the addition of the whole of Yeadon Banks.

7. It is common ground between the parties (though the statutory reasoning is tortuous) that where an amendment to the register has been made under section 13(b) of the 1965 Act it can be challenged either by way of an application under section 14 of the 1965 Act in the Chancery Division or by way of an application for judicial review.

8. The Claimant has adopted both methods of challenge. On 22nd May 2007 the Judicial Review Claim form was issued. The Defendant's Acknowledgment of Service was dated 15th June 2007. Permission was granted on 11th October 2007 and the matter was transferred to the Chancery Division on 15th January 2009. Meanwhile on 28th July 2008 the Claimant issued a Part 8 claim seeking relief under section 14 of the 1965 Act. Following a Defence filed on 23rd October 2008 the claim was transferred first to the Administrative Court then back to the Chancery Division. It is important to note that the Defence and the Acknowledgment of Service were filed by the Defendant in its capacity as the registration authority. In such capacity it has sought to uphold the advice of the Inspector on the material before him. It has taken a neutral stance to additional material and additional evidence contained in the section 14 proceedings. It has taken no part in the proceedings in its capacity as owner of the Council Land.

9. On 9th October 2009 Roth J gave directions in both actions. He permitted the filing of further evidence in the section 14 proceedings and permitted the Claimant to rely on a witness statement from an expert – Ms Susan Ansbro – in the section 14 proceedings. He transferred both actions to Leeds and directed trial by a judge authorised to sit in both the Chancery and Administrative Court jurisdictions. He directed that the section 14 proceedings be tried first. It is in fact agreed that if the section 14 proceedings succeed there will be no need to pursue the judicial review proceedings. On the other hand if the section 14 proceedings fail then so will the judicial review proceedings. In effect, save in respect of costs, the outcome of the section 14 proceedings will be determinative of the result of the case.

10. Mr Jones, the Applicant for the amendment to the register, was made an interested party to the judicial review proceedings and kept fully informed of the section 14 proceedings. It was made clear to him at all times that he could be joined to the section 14 proceedings if he wished. He is a retired widower, 78 years old and without any significant means. He was thus not in a financial

position to fund any litigation and furthermore until a late stage of the proceedings made it clear that he did not wish to be a party.

11. He did, however, have some financial assistance. The Claimant had provided him with £1,000 to enable him to obtain Counsel's opinion. I have not seen that opinion but have been told that he was advised that there was a better than 50% chance of resisting the claims. The Claimant also offered not to seek an order for costs against Mr Jones if it was successful provided he made a reciprocal offer to it.

12. The Defendant offered limited financial assistance to Mr Jones in order to enable him to make an application to be joined and (more importantly) for a full protective costs order. In February 2010 solicitors on behalf of Mr Jones duly made the application. Unfortunately the application was issued in London whereas the proceedings had been transferred to Leeds. In the result there was an inevitable delay before the application came to the attention of anyone in Leeds. It was not in fact possible to list it until 26th March 2010 (one working day before the scheduled date of the trial). The matter came before Mr Andrew Sutcliffe QC and was refused on two main grounds. First Mr Sutcliffe QC was not satisfied that the grounds for a protective costs order in accordance with *R (Corner House Research) v Secretary of State* [2005] 1 WLR 2600 were made out; second if he had acceded to the application an adjournment of the trial would have been inevitable with significant wasted costs. It was not clear what evidence Mr Jones wished to adduce and KEYBAG would have some protection as a result of the submissions of Miss Ellis QC on behalf of the Defendant. In his view justice and fairness demanded that the application be refused.

13. In the result Mr Jones was not a party to the hearing and not represented before me. He did however attend Court on each day of the hearing and was present at the view on the second day. Indeed he provided valuable assistance by providing me with a pair of wellington boots in order to carry out the view without getting my feet wet. I am most grateful to him.

The issues

14. Before considering the material in more detail it is worth summarising the issues to be determined.

The definition of a TVG

15. The relevant definition of a TVG is contained in section 22(1) of the 1965 Act. That section was amended with effect from 30th January 2001 by virtue of sections 98 and 103(2) of the 2000 Act. Section 22 has since been repealed by the Commons Act 2006 (which provides for land to be registered as a green under the conditions stated in section 15), but it is common ground that the 2006 Act is irrelevant for the purpose of this case.

16. In the light of the submissions that have been made it is convenient to set out both the original and the amended version

17. The original definition was in the following terms:

> *'town or village green' means [a] land which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or [b] on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or [c] on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than twenty years.* [In accordance with a practice adopted in the authorities I have added the parentheses]

18. It will be seen that there were 3 separate categories of TVG. This case is concerned with the third such category referred in the authorities as a Class C TVG. The amendments in the 2000 Act

replaced the wording for Class C by incorporating a new subsection (1A) which provides where material as follows:

(1A) Land falls within this subsection if it is land on which for not less than twenty years a significant number of the inhabitants of [i] any locality, or [ii] of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either—

(a) continue to do so, or

(b)….

I have added the [i] and [ii] above to identify what Mr Laurence called limbs I and II of the amended definition..

19. Broken down into its constituent parts, the key express requirements of s 22 (1A) in this context may be described thus: there must be

1. Land on which for not less than 20 years

2. a significant number of the inhabitants of [i] any locality or of [ii] any neighbourhood within a locality

3. have indulged in lawful sports and pastimes,

4. as of right, and ...

5. continue to do so.

20. It was Mr Jones' case at the Inquiry that this was a limb (ii) case and he produced a plan – Map A – showing the neighbourhood which he alleged satisfied the definition in subsection (1A). As already noted the Inspector found that Mr Jones had made out his case and advised in favour of registration of a TVG. In so doing he identified as (what the Claimant later defined as) Area C an area from which the predominant users of Yeadon Banks were drawn.

21. In these proceedings the Claimant accepts that a significant number of the inhabitants of Area C used Yeadon Banks for 20 years prior to the application (i.e. between July 1984 and July 2004) for lawful sports and pastimes and continued to do so at the date of the application. The issue in the case is whether the inhabitants are inhabitants of "a neighbourhood within a locality" within the meaning of the section. Both of these issues were before the Inspector who decided them adversely to the Claimant. Mr Laurence QC has, however, put forward detailed arguments on both the meaning of the word "neighbourhood" and the word "locality". Armed with the additional evidence of Ms Ansbro he has submitted that the users of Yeadon Banks do not form a single neighbourhood as the Inspector found or two separate neighbourhoods. He submitted that the area identified by the Inspector was not sufficiently cohesive to constitute a neighbourhood and that in some respects the boundaries were unclear or arbitrarily drawn. He submitted that as a matter of law if there are in fact a significant number of individuals from two separate neighbourhoods using Yeadon Banks the claim to register a TVG must fail. He also submitted that if there is just one neighbourhood the use of Yeadon Banks for sports and pastimes must be predominantly by users from that neighbourhood. He submitted that the word "locality" in limb (i) of the definition must mean the same as "locality" in limb (ii). There cannot be 2 localities. Furthermore the locality identified by the Inspector could not be a locality within the meaning of limb (ii). He considered a number of other possible candidates as "localities" within the meaning of limb (ii). He submitted that they all failed.

22. Miss Ellis QC took a neutral stance in relation to the additional evidence. She accordingly did not cross-examine Ms Ansbro and made no submissions in relation to her evidence. She, however,

submitted that the Inspector was fully entitled to reach the conclusion that he did on the evidence then before him. In so doing she also made detailed submissions on the legal position in relation to Class C claims. She submitted that many of Mr Laurence QC's submissions of law were wrong. She submitted that the Inspector was fully entitled to reach the conclusions he did both in relation to the existence of a "neighbourhood" and in relation to a "locality". She submitted that there was no reason in law why there should not be two qualifying neighbourhoods or two qualifying localities. She did not accept that it was any longer necessary that the individuals using Yeadon Banks should be predominantly from the neighbourhood or neighbourhoods.

23. At the hearing before me Mr Laurence QC sought and was granted permission to take a further point. This was a point not taken before the Inspector and was taken as a result of part of the judgment of Lord Walker in the recent Supreme Court decision in *R (Lewis) v Redcar & Cleveland BC (No 2)* [2010] 2 WLR 653 ("the Redcar case"). He submitted that the user by the inhabitants could not be said to be "as of right" within the meaning of the amended section because, before the amendment that took effect on 30th January 2001 a landowner such as the Claimant would have had no reason to take any steps to contest the assertion of rights by individuals who were merely part of a neighbourhood within a locality because prior to the amendment they were acquiring no new rights. Miss Ellis QC did not accept that this analysis was correct as a matter of law. If, contrary to her submission, it was correct she suggested that it raised a procedural problem in that the point was not taken before the Inspector, and local people represented by Mr Jones were not represented before the Court.

The nature of the jurisdiction in section 14 proceedings

24. Section 14 of the 1965 Act provides:

The High Court may order a register maintained under this Act to be amended if—

(a)…

(b) the register has been amended in pursuance of section 13 of this Act and it appears to the court that no amendment or a different amendment ought to have been made and that the error cannot be corrected in pursuance of regulations made under this Act;

and, in either case, the court deems it just to rectify the register.

25. In *Betterment Properties v Dorset CC* [2008] 3 AER 736 ("the Betterment case") Lloyd LJ considered the nature of the jurisdiction in paragraphs [19] to [32] of the judgment. He approved paragraph 15 of the judgment of Lightman J at first instance which may be summarised:

1. The court is free to adopt the procedure best calculated to enable a just and fully informed decision to be reached, whether no amendment or a different amendment ought to have been made, whether it is just to rectify the register and what should stand as evidence and what evidence should be admitted.

2. The Court has power to direct that evidence adduced before the registration authority should stand as evidence and that any finding by it shall stand as a finding of fact or as a finding of fact in the absence of evidence to the contrary.

26. It will thus be seen that the jurisdiction is in no way an appellate jurisdiction and the Court has power to admit evidence to enable it to reach the just and fully informed decision referred to above.

27. In this case both Mr Laurence QC and Miss Ellis QC accepted that I could and should look in detail at the evidence before the Inspector at the Inquiry and at his conclusions. Equally they accepted that in reaching my conclusions on the "neighbourhood" and "locality" issues I should

take into account the additional evidence of Ms Ansbro and any impressions I myself formed at the view on the second day of the hearing.

The Inspector's Report

28. The Inspector's report is a detailed and lengthy document. The report itself is some 67 pages long. In addition there are approximately 95 pages of appendices. On any view it has been prepared with meticulous care and thoroughness. I have derived very considerable assistance from it.

29. In the light of the issues before me I propose to concentrate on those parts of the report that relate to "neighbourhood" and "locality".

Locality

30. The inspector considered the question of locality in paragraphs 12.7-12.20 and 13.5-13.24 of his report.

31. In paragraphs 12.7-12.20 he set out in detail the submissions of Mrs Evans-Gordon on behalf of the Claimant. Paragraphs 12.7 to 12.16 consist of submissions of law which I shall address later in this judgment. In paragraph 12.17 he recorded a submission to the effect that Yeadon could not be a locality. It had existed as a locality recognised by the law from the early 18th century to 1937. On that date all changed. Yeadon Urban District Council and Civil Parish were mostly absorbed into Aireborough UDC with a part going to Bradford. In 1974 the Aireborough Council was absorbed into the enlarged city of Leeds. Yeadon as an administrative district ceased to exist in 1937 and it is thus not somewhere recognised by law. Thus she submitted that Yeadon cannot be a locality in the sense established by the case law.

32. In paragraph 13.8 of the report the Inspector recognised a judicial consensus that under the old law (i.e prior to the amendment in the 2000 Act) village green rights were only capable of being created on behalf of some recognisable unit of this country. He referred to the decision of Harman J in *MOD v Wiltshire* [1995] 3 AER 931 at 937b and to paragraph 27 of Lord Hoffmann's judgment in *Oxfordshire v Oxford City Council* [2006] 2 AC 674 ("the Oxfordshire case").

33. He, however, concluded in paragraphs 13.12 – 13.20 that Yeadon was the relevant locality for the purpose of section 22. He gave a number of reasons for this:

    1. In his view there could hardly have been a more obvious candidate than Yeadon for the sort of "locality" which under the old law would have been entitled to have a town green for the benefit of its inhabitants.

    2. He accepted that for the period between 1984 and 2004 there was no legally recognisable local government unit called Yeadon. However (in paragraph 13.16) he pointed out that Yeadon was a locality known to the law for a long time, and still has all the other characteristics that it had prior to 1937.

    3. He concluded that there was nothing in the authorities to suggest that the word "locality" as used in section 22 of the 1965 Act was intended to exclude a place like Yeadon merely because the current local government status has been re-organised. In his view such a result would be a "defiance of reason".

34. In paragraph 13.22 of the report he made the point that the whole of any conceivable neighbourhood was within the parish of St Andrew. In paragraph 13.23 he did not find attractive the suggestion that an electoral ward was a locality. He concluded in paragraph 13.24 by making

the comment that on any view there was a locality within which a neighbourhood could be seen to lie.

Neighbourhood

35. The inspector considered the question of "neighbourhood" in paragraphs 13.25 to 13.42 (some five pages) of the report and expressed his overall conclusion in paragraph 14.1. He thus considered it with considerable care and in considerable detail.

36. In paragraphs 13.25 to 13.32 he considered the relevant law. In so doing he referred to the observations of Lord Hoffmann in the *Oxfordshire* case, the dicta of Sullivan J (as he then was) in the *Cheltenham Builders* case [2004] JPL 975 at 996 and the definition of "neighbourhood" in the Shorter English Dictionary. In paragraph 13.31 he expressed the view that on the ordinary understanding of the word in an urban context a neighbourhood is often just a collection of streets where people live near to each other. In paragraph 13.32 he expressed concern over the requirement (expressed in the dicta of Sullivan J) that a neighbourhood must have a sufficient degree of cohesiveness. After pointing out the possible conflict between these dicta and Lord Hoffmann's reference to the "deliberate imprecision of the term" and after giving examples of what in his view Parliament cannot have intended to be a necessary ingredient of a neighbourhood he went on to say:

It seems to me that the "cohesiveness" point cannot in reality mean much more, in an urban context, than that a neighbourhood would normally be an area where people might reasonably regard themselves as living in the same portion or district of the town, as opposed (say) to a disparate collection of pieces of residential development which had been "cobbled together" just for the purposes of making a town or village green claim.

37. In paragraphs 13.36 to 13.38 he considered the argument that the existence of two neighbourhoods would be fatal to the application. He rejected the argument on the basis that it was inconsistent with the logic of Lord Hoffmann's speech in the Oxfordshire case. In his view the normal presumption under the Interpretation Act applied. He made the point that there must be numerous examples within built up areas where the very existence of an open space would tend to create the impression of distinct neighbourhoods. In his view it would be an absurdity and a manifest distortion of Parliament's intentions to hold that a TVG can only be registered in such circumstances where it can be shown that all or the predominant bulk of the users came from the neighbourhood on one side of the open space and not the other.

38. In paragraphs 13.33 to 13.35 and 13.40 to 13.42 he considered the facts relating to the potential neighbourhood or neighbourhoods around Yeadon Banks.

39. There were two such potential neighbourhoods – referred to as The Haws and Banksfield. They are shown coloured pink and yellow on the plan referred to as Map A on p 927 of the trial bundle.[1] It can be seen that The Haws adjoins the southern and eastern boundary of Yeadon Banks, and Banksfield adjoins the western boundary. There is access from The Haws at points S and R and access from Banksfield at points P and Q.

40. In paragraph 13.33 the Inspector described The Haws.

"The Haws is the area north of Yeadon Town Centre, its southernmost street being Hawthorn Avenue, stretching between roughly St Andrew's Church and the (apparently) historic line of the bridleway carrying on from Otley Lane on the west side, eastwards across to Cemetery Road. Most of the residential development, apart from Whitestone Crescent, is on the east side of Haw Lane. Large parts of the area consist of semi-detached houses which give the strong impression of having been developed as a common scheme between the two world wars of the 20th century; some of the streets contain housing which is obviously newer than that (but still several decades old), though often still semi-detached (but there is still some terraced and other housing); over

near (and on) Cemetery Road there are however a number of apparently 19th century properties, a lot of them quite small."

41. In paragraph 13.34 he described Banksfield:

"Banksfield is essentially the area west of Yeadon Banks and the old bridleway, to the west of the old Banksfield dyeworks site and then (as I understand it) roughly to the west of St Andrew's Church/Otley Lane at the southern end. Its suggested western edge is along roads called Queensway and Coppice Wood Road. Both these roads have the appearance of 'local distributor roads', which I mean not in any technical sense but in the sense that they are not just residential side streets or culs-de-sac but carry a certain amount of local 'through traffic' heading for streets which branch off them [the same incidentally is true of Cemetery Road on the east side of The Haws]. Many of the street names within Banksfield incorporate the word "Banksfield" in them. Most of the housing in Banksfield has very much the appearance of post World War II speculative development, again mostly semi-detached though there are some exceptions, including two more recent-looking blocks of flats. There are a number of ginnels or passageways enabling pedestrian access to be gained through from Banksfield Crescent, Banksfield Grove, and Banksfield Mount to Yeadon Banks itself (the City Council part) as well as several private gateways from back gardens directly on to Yeadon Banks."

42. In paragraph 13.35 the Inspector concluded that each of The Haws and Banksfield could qualify as a neighbourhood. Each of them has a consistent character, the streets interconnect and in his view the residents might very reasonably regard themselves as living in that particular neighbourhood or part of Yeadon. He found that they had a sense of cohesiveness.

43. In paragraph 13.40 he made the point that The Haws and Banksfield were both on the north side of Yeadon town centre, of fairly similar character and enclosed and marked from other parts of Yeadon by busyish distributor type roads. Both abutted Yeadon Banks, a grassy space used by a significant number of the inhabitants of both areas. In his view Banksfield and The Haws area could be regarded as a neighbourhood, the neighbourhood surrounding Yeadon Banks.

44. In paragraph 13.42 he expressed the conclusion that The Haws and Banksfield might quite reasonably be regarded as separate adjacent neighbourhoods or as one overall neighbourhood. In his final conclusion in paragraph 14.1 he described the neighbourhood as the "Banksfield/The Haws" neighbourhood.

Ms Ansbro's evidence

45. Ms Ansbro is the Director of Planning at White Young Green of Headingley, Leeds. She has 31 years experience in planning and associated matters. She has in her report concentrated on factual matters relating to the combined area of The Haws and Banksfield. She has in addition provided a number of helpful plans and photographs.

46. On the first day of the hearing I made it clear that I intended to consider the possibility that either The Haws or Banksfield might be a neighbourhood within the meaning of section 22(1A). As a result she provided in bullet point form an e-mail setting out why she considered that they were not.

47. In section B of her report she describes the historical development of The Haws and Banksfield and provided some historical maps. In Section C she describes the present day road layout. In summary there are 11 roads within or bounding Banksfield and 17 roads within or bounding The Haws.

48. In section D she describes the housing in the two areas. In Banksfield there are between 200 – 250 dwellings. Much of the housing is described as 1960/1970s semi-detached or bungalows. There are approximately 20 private flats built in the 1970s and approximately 5-10 pre-1900

houses. Beyond Banksfield there is nothing that obviously distinguishes the houses in Coppice Wood Crescent from the adjoining houses within Banksfield.

49. The housing in The Haws is also of differing styles and ages. 60% (200 – 250) are semi detached built in the 1950/1960s. 15% are 1960/1970 semi detached and terraced bungalows. 15% (in Whitestone Crescent) is predominantly early 1970's semi detached housing. The remaining 10% is pre 1900 stone housing.

50. In section E she describes the access between Banksfield and The Haws. She points out that The Haws and Banksfield are separated from each other by Yeadon Banks, the Old Dyeworks and the Pink Triangle. The most direct access between the two is via Silver Lane, Haworth Lane, and Queensway. She describes in detail the pedestrian access by reference to points on the plans. It is not necessary for me to rehearse that evidence.

51. In Section G^2 she describes the lack of community facilities within the area. She has prepared a plan [Plan 3] showing 3 primary schools, one secondary school, 2 dentists, a doctor's surgery and 4 public houses all outside the area. The only community facilities within the area are St Andrew's Church and the Kiddiwinks Play Group.

52. In Section H she makes a number of miscellaneous points. She points out that she found no evidence of any community events for the area. Local estate agents do not market properties in the area by reference to The Haws/Banksfield area. Whilst there are a number of sporting clubs in Yeadon there is no evidence that the area is regarded as a sub-community of Yeadon. Whilst there is a "neighbourhood watch" scheme for the whole of Yeadon and for a number of streets within The Haws and Banksfield, there is no one scheme covering the whole area.

53. In her e-mail she summarises in bullet point form the reasons why she considers that neither The Haws nor Banksfield could qualify individually as a neighbourhood. Many of the points duplicate points she has already made in her main report. However she draws attention to the boundaries. There is no clearly defined boundary of either area. She highlights the north western boundary of Banksfield which she describes as "particularly subjective" and the southern boundary of The Haws. She makes the point that there is no specific activity to link either area to Yeadon Banks and that there is no distinctive line to separate The Haws and Banksfield at the southern point.

54. It will be recalled that Mr Jones and the local residents were not party to the proceedings and that Miss Ellis QC on behalf of the registration authority had made it clear that she was neutral with regard to the new evidence. In those circumstances it was apparent that Ms Ansbro's evidence was not going to be subjected to any cross-examination. In those circumstances I invited Mr Laurence QC to put to Ms Ansbro the parts of the Inspector's report relating to "neighbourhood" to give her an opportunity to comment on it.

55. Much of the oral evidence that she gave repeated views that she had set out in her report and I shall not lengthen this judgment by repeating them. However she did make a number of points which threw light on her views:

    1. She made the point that there was no definition of neighbourhood in the statute. Thus in her report she had identified a whole series of things that one might look at which could help to define the cohesiveness of the area and give it some identity. All these could be put into "the melting pot" to see whether there was a neighbourhood.

    2. She did not disagree with the Inspector's comment in paragraph 13.30 that it was not essential for the area to have within it a row of shops, or a surgery or some other community facility. In her view, however, these were factors to be put into the melting pot.

    3. She did not wholly agree with the Inspector's descriptions of The Haws and Banksfield in paragraphs 13.33 and 13.34. She did not agree that there was a common scheme and differed as

to the dates of construction. She made the point that the housing to the west of Queensway is indistinguishable from the housing in Banksfield to the east.

4. She did not agree with the Inspector's conclusion in paragraph 13.35. In particular she disagreed with his finding that there was a degree of cohesiveness. She relied on the matters set out in her report.

56. It is, of course true, that Ms Ansbro's evidence was not before the Inspector and that he did not have the benefit of her opinion; the Claimant elected not to call any evidence at the Inquiry. However much of the material on which she relied was in fact before him and relied on by Ms Evans-Gordon in her submissions. Thus there is a plan at page 291 showing much the same information as is in Plan 3 provided by Ms Ansbro. It is plain from the comments in paragraph 13.30 and 13.32 that points about cohesiveness were very much part of the Claimant's case.

The view

57. The view was partly on foot and partly by car. It is best followed by reference to the plan on page 929. It started at point S. We walked from Point S to Point R (via point H). We walked from R to T via the path that forms the boundary to the development that was formerly the Old Dyeworks. At point T we looked southwards down Otley Lane at what has been referred to on Map A as the pink triangle. We walked northwards along the extension of Otley Lane to join Banksfield Crescent. At point K we turned right up a ginnel to point Q from where we walked back to point S. I was then driven from Point S around both The Haws and Banksfield. I was driven via Haw Avenue to Cemetery Road and along Hawthorn Avenue. I was driven to Queensway (the western boundary of Banksfield) and up Coppice Wood Avenue and Banksfield Mount. I was shown the houses to the west of Queensway and north of Banksfield Mount to show their similarity to the houses within the "neighbourhood". We then returned to point S. The whole of the view took approximately 55 minutes although I did not time the individual parts.

The authorities on neighbourhood and locality

58. In the course of his opening Mr Laurence QC made the point that the validity and effect of TVG registrations was and continued to be an area of vigorous judicial activity. There are 4 decisions of the House of Lords/Supreme Court and a number of other cases both at first instance and the Court of Appeal. One reason for this is the reluctance of landowners who may have development plans to have their land the subject of a TVG registration.

Many of the authorities contain extensive reviews of the authorities both in respect of the registration of common law (Class B) and the new statutory (Class C) TVGs. It is, however common ground that there is no authority at High Court level on the meaning of "neighbourhood" although there are dicta to which my attention has been drawn.

The *Cheltenham Builders* case [2003] EWHC 2803 (Admin)

60. Much of the case was concerned with the meaning of locality. It was a case where the suggested locality was an area described in the plan accompanying the application. In paragraph 43 Sullivan J made it clear that he was entirely satisfied that "locality" did not mean any area arbitrarily put on a plan. In those circumstances his observations on neighbourhood were dicta. They are contained in paragraph 85:

"85 It is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood. For the reasons set out above under "locality", I do not accept the defendant's submission that a neighbourhood is any area of land that an applicant for registration chooses to delineate upon a plan. The registration authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness, otherwise the word "neighbourhood" would be stripped of any

real meaning. If Parliament had wished to enable the inhabitants of any area (as defined on a plan accompanying the application) to apply to register land as a village green, it would have said so."

61. In paragraphs 87 and 88 he expressed a view on whether locality in limb (ii) of the new definition of a Class C TVG could be plural:

"87 Mr Petchey referred to the joint arrangements made between the two unitary authorities to deal with such matters as strategic planning. The need for such arrangements merely emphasises the fact that there are indeed two separate authorities. He sought to rely on section 6(c) of the Interpretation Act 1978 and invited me to read section 22(1A) as though "neighbourhood within a locality" meant "neighbourhood within a locality or localities".

88. In my judgment, a contrary intention appears in section 22. For the reasons set out above, locality in the case of class (a) and (b) village greens means an administrative unit, not one or more administrative units. That "locality" has the same meaning in sub-section (1A) is reinforced by the use of the word "within", signifying that a "neighbourhood" must be wholly inside a single locality. In effect, the defendant's case requires sub-section (1A) to be read as though it referred to a "neighbourhood within, or partly within one and partly within another, locality"."

62. In her submissions Miss Ellis QC pointed out that Sullivan J recognised that his conclusions were contrary to the intention of Parliament and that it was Parliament's intention to make easier the registration of TVGs by local inhabitants.

The *Oxfordshire* case

63. I was referred to the judgments of both the Court of Appeal and the House of Lords. The Court of Appeal decision ([2006] Ch 43) is notable for the full review by Carnwath LJ of the history of the Act and of the authorities. In that review he drew attention (in paragraph 55) to the restrictive interpretation of the statute taken by Carnwath J (in *ex p Steed* (1995) 70 P & C R 482) and by Harman J (in *MOD v Wiltshire CC* [1995] 4 AER 931) in 1995. All changed as a result of the landmark speech of Lord Hoffmann in the *Sunningwell* case [2000] 1 AC 335. As he pointed out in paragraph 56:

"In *Sunningwell*, not only was the principle of the modern Class C green accepted by the House of Lords without question, but it was taken as one of the reasons for the statutory provision for amendment. Since then, the amendment made in 2000 to the statutory definition of Class C can be seen as implicit endorsement of the principle by Parliament. Accordingly, even if (as I believe) it was not what was intended in 1965, the clock cannot be turned back. However, this history may be relevant when one is trying to make sense of the statutory scheme as we now have it."

64. In paragraph 65 he made this comment about the amendment in the 2000 Act:

"This general approach can be seen as having received endorsement by Parliament in the 2000 Act, which introduced the new concept of a "neighbourhood within a locality", and required no more than a "significant" number of local users. Whatever precisely that expression means (which happily is one of the few issues not before us), it can only have the effect of weakening still further the links with the traditional tests of customary law."

65. I was referred to the speech of Lord Hoffmann in the House of Lords. Lord Hoffmann carried out a review of law relating to village greens at common law. Amongst the cases he reviewed in paragraph 9:

"In *Hammerton v Honey* (1876) 24 WR 603, 604, Sir George Jessel MR rejected a claim to rights of recreation over Stockwell Green on the ground (among others) that the evidence did not show that use of the green was confined to inhabitants of Stockwell:

'If you allege a custom for certain persons to dance on a green, and you prove in support of that allegation, not only that some people danced, but that everybody else in the world who chose danced and played cricket, you have got beyond your custom'."

66. Later in his review he referred to the decision in *Edwards v Jenkins* [1896] 1 Ch 308, in which Kekewich J held that the inhabitants of the contiguous Surrey parishes of Beddington, Carshalton and Mitcham could not have a customary right of recreation over land in Beddington. One parish, one custom. In *New Windsor Corpn v Mellor* [1975] Ch 380, 387 Lord Denning MR thought that Kekewich J had gone too far. "So long as the locality is certain, that is enough."

67. Mr Laurence QC referred me to both *Hammerton v Honey* and *Edwards v Jenkins* in the course of his submissions.

68. At the end of paragraph 11 Lord Hoffmann concluded:

"…there is no doubt that the locality rule was the pinch-point through which many claims to customary rights of recreation failed to pass."

69. After the historical review Lord Hoffmann turned his attention to the 1965 Act and to proof of user and the relaxation of the locality rule in the *Sunningwell* case only to the extent of saying that not all the users needed to be inhabitants of the locality in question. It was sufficient that the land was used "predominantly" by such inhabitants.

70. Lord Hoffmann then turned to the amendments contained in the 2000 Act and said:

"26. Soon after the decision in the *Sunningwell* case, the question of town and village greens was raised in Parliament. This was in the debates on the bill which became the Countryside and Rights of Way Act 2000. No one voiced any concern about the construction which the House in its judicial capacity had given to the 1965 Act. On the contrary, the only question raised in debate was whether the locality rule did not make it too difficult to register new village greens. In your Lordships' House, Baroness Miller of Chilthorne Domer described the need for the users to be predominantly from the local community, defined by reference to a recognised ecclesiastical parish or local government area, as a "loophole" in the 1965 Act which "allows greens to be destroyed" (Hansard (HL Debates) 16 October 2000, col 865). The Government was sympathetic and introduced a suitable amendment which was adopted at the report stage (Hansard (HL Debates) 16 November 2000, col 513). This became section 98 of the 2000 Act, which amended section 22 by substituting a new third limb of the definition (Class C): [Lord Hoffmann set out the amendment and went on:]

27. "Any neighbourhood within a locality" is obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries. I should say at this point that I cannot agree with Sullivan J in *R (Cheltenham Builders Ltd) v South Gloucestershire District Council* [2004] JPL 975 that the neighbourhood must be wholly within a single locality. That would introduce the kind of technicality which the amendment was clearly intended to abolish. The fact that the word "locality" when it first appears in subsection (1A) must mean a single locality is no reason why the context of "neighbourhood within a locality" should not lead to the conclusion that it means "within a locality or localities"."

MOD v Wiltshire CC

71. This was one of the 1995 first instance decisions referred to by Carnwath LJ in his review of the existing law. It is relied on by Mr Laurence QC in support of his restrictive interpretation of the word "locality".

72. Much of the judgment is concerned with the necessary user but Harman J said that his views on locality were a second ground for his decision. At page 937 b – c he said:

"Other points were argued. In particular, Mr Drabble QC argued that it was impossible for a village green to be created by the exercise of rights save on behalf of some recognisable unit of this country – and when I say recognisable I mean recognisable by the law. Such units have in the past been occasionally boroughs, frequently parishes, both ecclesiastical and civil, and occasionally manors, all of which are entities known to the law, and where there is a defined body of persons capable of exercising the rights or granting the rights.

The idea that one can have the creation of a village green for the benefit of an unknown area – and when I say unknown I mean unknown to the law, not undefined by a boundary upon a plan, but unknown in the sense of unrecognised by the law – then one has, says Mr Drabble, no precedent for any such claim and no proper basis in theory for making any such assertion. In my belief that also is a correct analysis."

***Oxfordshire and Buckinghamshire Mental Health Trust v Oxford City Council* [2010] EWHC 530 ["the Mental Health Trust case"]**

73. This is a very recent decision (23rd March 2010) of Judge Waksman QC in the Administrative Court. It is relevant because of its discussion of "The Neighbourhood Issue" in paragraphs 58 to 79 of the judgment. The issue was whether the predominance test [i.e whether qualifying users must come predominantly from the relevant locality or neighbourhood within the locality] has been carried forward with the amendments under the 2000 Act.

74. The issue is of some relevance to the present case. If there is just one neighbourhood (i.e Area C – the combined area of The Haws and Banksfield) then Mr Laurence QC conceded that the qualifying users came predominantly from that neighbourhood. On the other hand if it is right to consider The Haws and Banksfield as two separate neighbourhoods it is plain that the predominance test cannot be met in respect of either.

75. Judge Waksman traced the history of the predominance test. In paragraph 66 he referred to Lord Hoffmann's speech in the *Sunningwell* case where it emerged and its acknowledgment by both Carnwath LJ and Lord Hoffmann in the *Oxfordshire* case. He noted a submission that it had been carried through into section 22(1A) and rejected it. In paragraphs 69-72 he said:

"69. First, the provision had changed in two material respects. The area from which users must come now includes a neighbourhood as well as a locality. On any view that makes qualification much easier because it was accepted that a locality had to be some form of administrative unit, like a town or parish or ward. Neighbourhood is on any view a more fluid concept and connotes an area that may be much smaller than a locality. But in addition the requirement is now not that there is land on which the inhabitants of any locality have indulged but rather land on which a significant number of the inhabitants of any locality have indulged. It is said that this latter change does no more than state what was obvious anyway that there needed at least to be a significant number from the locality, rather than just a handful. But without more this need not follow. It could equally indicate a change from a requirement that the users predominantly come from the locality (or now neighbourhood) to a requirement that the users include a significant number from it so as to establish a clear link between the locality (or now neighbourhood) and proposed TVG even if such people do not comprise most of the users. That overall, the requirements were relaxed is supported by paragraph 65 of the judgment of Carnwath LJ in *Oxfordshire* …

70. Thus there is no reason now to assume that the user required for class (c) rights should be the same as for class (b) rights.

71. On that footing, I reject the notion that the Predominance Test has been carried forward into s22(1A). That provision is clear in its terms and provided that a significant number of the inhabitants of the locality or neighbourhood are among the users it matters not that many or even most come from elsewhere."

76. Judge Waksman went on to consider the Parliamentary materials on the footing that the provision in the 2000 Act was ambiguous within the principles laid down in *Pepper v Hart* [1993] AC 593. He referred to the proceedings in the House of Lords on 16th October and 16th November 2000. It is, incidentally, plain that the same material was before Lord Hoffmann and is referred to in paragraph 26 of his speech in the *Oxfordshire* case. Judge Waksman referred to the speech of Baroness Farrington on 16th November where she made clear that the amendment was designed to address two of the three concerns that had been raised by Baroness Miller on 16th October. He quoted directly from the speech:

> "It makes it clear that qualifying use must be by a significant number of people from a particular locality or neighbourhood. That removes the need for applicants to demonstrate that use is by people from the locality and means that use by people from outside that locality will no longer have to be taken into account by registration authorities. It will be sufficient for a significant number of local people to use the site."

77. Judge Waksman went on to summarise the second concern that the amendment sought to address. Baroness Farrington had said this:

> "Secondly, the amendment addresses the problem of applications being accepted only where it can be demonstrated that users come from a discrete area such as a village or parish. That is not easy in large built up areas. The amendment introduces the concept of neighbourhood and provides that users should either come from a locality or from a neighbourhood within a locality."

78. Judge Waksman held that the Parliamentary intention could not be clearer. The predominance test was being removed.

Submissions and Discussion

Locality

79. Mr Laurence QC made a number of submissions about the meaning of "locality" in limb (ii) of the definition in section 22(1A). He submitted that "locality" in limb (ii) must mean the same as "locality" in limb (i) and that accordingly Lord Hoffmann was wrong in paragraph 27 of his speech in the *Oxfordshire* case to say that in limb (ii) it could be plural whereas in limb (i) it had to be singular. He pointed out that paragraphs 26 and 27 of Lord Hoffmann's speech were obiter dicta because (as Carnwath LJ pointed out in the Court of Appeal) the meaning of neighbourhood was not an issue before the Court.

80. He submitted that the Inspector was wrong to define Yeadon as the locality. Yeadon had ceased to exist as an administrative district in 1937 and authorities such as *MOD v Wiltshire* made it clear that a locality had to be some recognisable administrative unit of the country.

81. In paragraph 37 of his skeleton argument Mr Laurence QC submitted that in order to qualify under limb (ii) a locality had to be

> "a locality of a size and situation such that, given the particular activities which have in fact taken place, might reasonably have been capable of accommodating a proper spread of qualifying users undertaking activities of that type."

82. Furthermore it had to be a recognisable administrative unit in accordance with the authorities.

83. Mr Laurence QC then considered the three other possible localities mentioned in the report. Mr Laurence QC submitted that the metropolitan area of Leeds was too big to be a locality. If locality could include a whole county or metropolitan area such as that of Leeds City Council

there would have been no need for Lord Hoffmann to have had resort to the Interpretation Act to interpret locality in limb (ii) as including the plural.

84. He contended that the ecclesiastical parish of St Andrew's church is too big to be a locality within the definition. In paragraph 37 of his skeleton argument he submitted in order to qualify as a limb (ii) locality it had to be:

"a locality of a size and situation such that, given the particular activities which have in fact taken place, might reasonably have been capable of accommodating a proper spread of qualifying users undertaking activities of that type."

85. Mr Laurence QC next made the point that a small part of Area C is not within the parish boundary. This point was not in fact developed in detail at the hearing. It is to be noted that in paragraph 13.22 of his report the Inspector had commented that the whole of Area C was within the parish. However Mr Laurence QC referred to a more detailed map of the parish boundaries on page 382 which appears to show that 2 houses on the corner of Haworth Lane and Queensway are apparently outside the parish boundary. He submitted that this is fatal. In his submission within cannot mean "nearly within" with the result that the parish cannot be a locality within the definition. (If, however, there are two separate neighbourhoods it is plain that the whole of The Haws is within the parish boundary. The two houses are within Banksfield).

86. Finally he considered the electoral ward of Aireborough. He submitted that an electoral ward cannot be a locality. He referred me to a dictum of Sullivan J in paragraph 138 of *Laing Homes v Buckinghamshire CC* [2003] EWHC 1578 and to the doubts of the Inspector expressed in paragraph 13.23 of the report.

87. Miss Ellis QC took issue with many of these submissions. She draws attention to Lord Hoffmann's observations in paragraph 27 of the *Oxfordshire* case and points out that Lord Hoffmann must have accepted that the word "locality" need not have the same meaning in limbs (i) and (ii) of the definition. She points to the observations of Carnwath LJ in the *Oxfordshire* case, that Class C TVGs are a free standing category, that the obvious intention (as noted by a number of the judges) of Parliament was to make it easier to register Class C TVGs and to weaken the link with the technicalities of the common law. She therefore invites me to follow Lord Hoffmann's approach in preference to that of Sullivan J.

88. She accordingly submitted that there is no reason to imply a restriction on the size of the locality (or localities) in a neighbourhood case. There is no reason why a limb (ii) locality has to have been known to the common law, cannot consist of an electoral ward or must have been a legal entity. In effect she adopts much of the reasoning of the Inspector. She submits that the Inspector was entitled to regard Yeadon as the locality. The boundaries of Yeadon are known; the fact that Yeadon ceased to be an administrative unit in 1937 does not prevent it from being a limb (ii) locality.

89. I prefer the submissions of Miss Ellis QC and the views of the Inspector to those of Mr Laurence QC. I agree that it was the clear intention of Parliament in a limb (ii) case to relax the requirements necessary to register a TVG and to weaken the links with a common law village green. As Miss Ellis QC pointed out the Court is actually concerned with the meaning of the phrase "neighbourhood within a locality". There seems no reason to import all the technical difficulties in the word "locality" that have arisen in relation to common law greens. I agree with the views of the Inspector in paragraph 13.18 of the report and share his view that a place like Yeadon would not have lost its right to a village or town green because of the events of 1937. I agree that the authorities do not compel that conclusion. The boundaries of Yeadon are defined and I accordingly agree with the Inspector that Yeadon is the relevant locality for the purpose of limb (ii).

90. If, contrary to that view, Yeadon cannot be a locality for the purpose of limb (ii), I would hold that the parish of St Andrew is the relevant locality. I see no reason to limit the meaning of "locality" in limb (ii) in the manner suggested in paragraph 37 of Mr Laurence QC's skeleton argument. There is nothing in the wording of the 2000 Act which refers to the size of the "locality". Furthermore one of the main purposes of the amendment, as it seems to me, was to allow inhabitants in a neighbourhood to qualify in a situation where the locality itself was too big. It cannot, in my view, have been the intention of Parliament that both the neighbourhood and the locality had to be small enough to accommodate a proper spread of qualifying users. The fact (if it be right) that two houses out of well over 600 are not within the parish is in my view not fatal. I would regard it as "de minimis".

Neighbourhood

91. This was the most controversial area of the case. As already noted Mr Laurence QC's submissions covered a number of areas.

More than one neighbourhood

92. Mr Laurence QC submits that there cannot be more than one neighbourhood. He points out that Lord Hoffmann accepted (in paragraph 26 of his speech in the *Oxfordshire* case) that locality in limb (i) had to be singular. For the same reason neighbourhood in limb (ii) has to be singular. In paragraph 27 of his skeleton argument he puts the matter thus:

> "The Claimant says that it cannot possibly be the case that neighbourhood in Limb II means neighbourhood or neighbourhoods any more than locality in limb I (or in limbs b and c of the original definition) means locality or localities. If it did, the whole basis of customary village green law would have been undermined by the amendment. If neighbourhood included the plural, it would mean that however many neighbourhoods people came from and however far flung within any locality the inhabitants were, the inhabitants of all the neighbourhoods would on registration acquire a right to use the land. Even Lord Hoffmann did not suggest that neighbourhood in limb II included the plural which he surely would have done if that had been his view."

93. He went on to submit that the decision of Judge Waksman on the allied predominance point in the *Mental Health Trust* case was plainly wrong and that I should not follow it.

94. Miss Ellis QC, on the other hand submitted that there is no reason to limit the construction to one neighbourhood. She draws my attention to the Parliamentary intention to address the two loopholes referred to above, the words of the statute, Lord Hoffmann's reference to the "deliberate imprecision" of the word "neighbourhood" and to the approach of Judge Waksman. She points to the free standing character of Class C greens and makes the point that there is no reason why the user should be predominantly on the part of one and only one neighbourhood. As she says in paragraph 5.1.12:

> "… in a case like Yeadon Banks, where the Application Land is the nucleus of semi-urban housing development lying either side whose inhabitants admittedly used the land for LSP without any attempt by the landowner at restraint for more than 20 years, rejecting registration on the basis of the number of labels which might be given to the recreational community would thwart the legislative intention; such a result would be truly "objectionable". Adopting the pragmatic construction of "neighbourhood" avoids the hypothetical questions set out in Claimant's Skeleton Argument."

95. Again, I prefer the submissions of Miss Ellis QC. I also agree with the views of the Inspector at 13.36 of the report and the approach of Judge Waksman in paragraphs 69 and 70 of the judgment in the *Mental Health Trust* case. Far from considering the judgment to be plainly wrong I consider it to be helpful and convincing.

96. The Act now only requires a "significant number" of the inhabitants of "any neighbourhood within a locality" to have indulged in the activities. There is nothing in the wording limiting the neighbourhood to "one neighbourhood" and there is no logical reason why there cannot be two or more neighbourhoods. The views of the Inspector in paragraphs 13.36 to 13.38 of the report are particularly convincing. It would be contrary to the clear intention of Parliament and for the reasons given by Judge Waksman and others there is no reason not to treat Class C TVGs as a free standing class.

97. In my view, therefore, the existence of two or more qualifying neighbourhoods within a locality or localities is not fatal to an application to register a limb (ii) Class C TVG.

The meaning of neighbourhood

98. This, ultimately, is the central question in the case. Mr Laurence QC submitted that the Inspector was wrong to have regarded the area C as a single neighbourhood and to have regarded either The Haws or Banksfield individually as neighbourhoods within the meaning of limb (ii) of section 22(1A). He reminded me of the observations of Sullivan J in the *Cheltenham* case. He invited me to accept the views of Ms Ansbro that there was no neighbourhood. He relied on the lack of cohesiveness in all of the respects set out in her report and on the lack of a rational southern boundary for The Haws and north western boundary for Banksfield. He summarises the submission in paragraph 31 of his skeleton argument:

"1. There can only be one qualifying neighbourhood.

2. To qualify the area must have a sufficiently cohesive quality to be described as a neighbourhood

3. The area must have clear and rationally defensible boundaries.

4. A neighbourhood cannot be called a neighbourhood by putting two neighbourhoods together and calling the resulting area a neighbourhood unless the combined area passes tests (2) and (3) which the very cohesiveness possessed (separately) by neighbourhoods 1 and 2 will prevent the combined areas from possessing.

5. In the present case it is obvious from the evidence as recounted by the Inspector and from the evidence to be given by Sue Ansbro [4/34/869-930] that Area C (the combined area of Banksfield and The Haws), did and does not have any kind of individual cohesiveness. The two areas are physically distinct and almost completely separated from each other by the old Dyeworks and Yeadon Banks itself.

6. Even if Banksfield and The Haws were separately regarded as qualifying neighbourhoods, the registration could not be upheld."

99. I have dealt with subparagraphs (1) and (6) above and will not repeat my views. It will be recalled that the Inspector adopted a rather different definition of neighbourhood. He pointed out that neighbourhood is an ordinary English word that comes without legal baggage. In paragraph 13.29 he refers to the Dictionary Definition – "A district or portion of a town"; "a small but relatively self-contained sector of a larger urban area"; "the nearby or surrounding area, the vicinity". He defined cohesiveness in the terms I have set out in paragraph 36 above and found cohesiveness both in The Haws and Banksfield individually making reference to the consistent character of the houses, the intercommunication of the streets. He found collective cohesiveness in the sense that it was "the neighbourhood surrounding Yeadon Banks".

100. Miss Ellis QC seeks to uphold the views of the Inspector (though she is neutral on Ms Ansbro's evidence). She reminded me of Lord Hoffmann's view that the word neighbourhood was obviously drafted with deliberate imprecision; she reminded me of Parliament's intention and

invited me to follow Lord Hoffmann's approach rather than the more rigorous approach of Sullivan J in *Cheltenham Builders*. She summarised her submission in paragraph 5.1.10 of her skeleton argument:

"Given the clear Parliamentary intention in 2000 to free applications for TVG registration from legalistic "loopholes", 'neighbourhood' should be interpreted to mean the area or areas in which the recreational users reside – the neighbourhood or vicinity of the Application Land for the purposes of recreational use of that land ("the recreational community"). There is no statutory requirement for it to have a name or not to have two or more names or sub-areas, "rationally defensible boundaries" or any particular facilities or characteristics or any particular degree of 'cohesiveness'; given the Parliamentary intention, there is no warrant for implying such restrictions. The concept is partly geographical, partly functional and partly one of community identity; such considerations are not always susceptible to logic and the Court should be slow to cut down the statutory term by imposing such requirements. Whether the statutory requirement is met in any case is a question of fact and degree for the decision maker."

101. She pointed out that the Inspector did in fact find cohesiveness and boundaries to the neighbourhood. She pointed out that parliamentary and ward boundaries are constantly changing and not always easy to justify rationally. There is no reason why the boundaries of a neighbourhood should have to pass any stricter test.

102. I remind myself that this is not an appeal against the decision of the Inspector/the Registration Authority and that I have to be satisfied on the evidence before me that a different or no amendment ought to have been made to the register. However, where, as here, an experienced independent barrister has produced such a comprehensive and detailed report it seems to me that I can attach considerable weight to his views. It is true that the Inspector did not have the benefit of Ms Ansbro's evidence and views. However, as already noted, there was very little in Ms Ansbro's evidence that was not already before the Inspector.

103. I shall not myself attempt a definition of the word "neighbourhood". It is, as the inspector said an ordinary English word and I have set out part of the Oxford English Dictionary definition. I take into account the guidance of Lord Hoffmann in paragraph 27 of the judgment in the *Oxfordshire* case. The word neighbourhood is deliberately imprecise. As a number of judges have it said was the clear intention of Parliament to make easier the registration of Class C TGVs. In my view Sullivan J's references to cohesiveness have to be read in the light of these considerations.

104. I have come to the conclusion that both The Haws and Banksfield are properly to be regarded as neighbourhoods within the meaning of section 22(1A). I am conscious that there are limited community facilities and no shops within the two neighbourhoods and that estate agents do not sell properties by reference to The Haws or Banksfield neighbourhood. However it was conceded both before the Inspector and by Ms Ansbro that this was no more than a factor to be taken into account in determining whether there was a neighbourhood. She also accepted that many of the streets in Banksfield had the word "Banksfield" in their name and that many of the streets in The Haws have "Haw" or "Hawthorn" in their name. Ms Ansbro very properly conceded that those were factors to be taken into account pointing in favour of a neighbourhood. As the Inspector pointed out there are connecting streets within each neighbourhood and although there are a variety of styles there is a preponderance of post war semi-detached housing within each of the areas. I agree with the Inspector that there is sufficient cohesiveness to justify the description of each area as a neighbourhood.

105. As already noted Mr Laurence QC submits that there is no rational reason for the fixing of the north western boundary of Banksfield and the southern boundary of The Haws. I agree with Miss Ellis QC that boundaries of districts are often not logical and that it is not necessary to look too hard for reasons for the boundaries. However I note that the north westerly boundary of the Banksfield neighbourhood is "Banksfield Mount" a road one would expect to be within the neighbourhood, whereas the street to the north west is part of Coppice Wood Crescent which

might well not be. Coppice Wood Crescent is in any event quite a long way to the north west of Yeadon Banks. Similarly the southern boundary of The Haws is Hawthorn Avenue which one would expect to be within the neighbourhood whereas the main street to the south is Town Street. Town Street is in any event considerably further south. In my view the reasons for selecting these boundaries are perfectly rational even though as was evident on the view there may be not a great deal of difference between the housing immediately outside and inside the two neighbourhoods.

106. I have more difficulty with the view of the Inspector and the submission of Miss Ellis QC that there was one composite neighbourhood here, a neighbourhood of those that enjoyed the facilities. Such a construction would, to my mind, denude the word "neighbourhood" of any real meaning. It is, to borrow a submission of Mrs Evans-Gordon before the Inspector, an argument trying to pull itself up by its own bootstraps. As Mr Laurence QC pointed out the two areas are physically distinct and have little cohesiveness as a single neighbourhood. Access between them is not straightforward.

107. In the circumstances I conclude that there were two separate neighbourhoods here – The Haws and Banksfield and not the single neighbourhood found by the Inspector.

"As of right"

108. I propose to deal with this submission relatively briefly as I do not accept it. It is based on a passage in the judgment of Lord Walker in the recent *Redcar* case [2010] 2 WLR 653. In paragraph 36 of his judgment in that case Lord Walker stated that he had no difficulty in accepting that the English theory of prescription is concerned with how the matter would have appeared to the owner of the land (or in the case of an absentee owner to a reasonable owner on the spot). That has led Mr Laurence QC to make this nuanced submission:

"The application to register in this case was made in July 2004. It is true that by then the amendment of section 22 of the 1965 Act had been on the statute book for 2½ years, and true also that the House of Lords has held in the Oxfordshire case that applications to register made on and after 30/01/2001 (when the new definition took effect) engaged the new definition. But no reasonable owner, taken to know the law, could ever have thought that Area C was in law a "locality" within the meaning of section 22 whose inhabitants had used the land for 20 years. No reasonable owner could reasonably have been expected, before the coming into force of the new definition, to resist recreational use on the part of people living nearby (i.e. in Area C) when such use was incapable, as a matter of law, of giving rise to a claim to register the land as a green."

109. Miss Ellis QC answers this submission in paragraphs 5.4.1 and 5.4.2 of her skeleton. She points out that there is no evidence to suggest that the reason that the Claimant took no action to protect itself was because it concluded that the users did not originate from a locality (in accordance with the law prevailing pre the 2000 Act amendment). She referred me to a passage from paragraphs 120 – 121 of Lord Rodger's judgment in the *Oxfordshire* case where he rejected the submission that section 22(1A) …

"applied only to situations where the relevant activities of the inhabitants occurred after 30th January 2001", holding that there was "nothing in s.98 or any other provision of the 2000 Act to limit its application in this way" and that such an interpretation "would mean that Parliament had chosen to postpone the operation of the amendment indefinitely in what might well be a significant number of cases ... the administrative and other complications of operating two different systems afford powerful reasons for supposing that Parliament would have intended that there should only be one".

110. Mr Laurence QC made it clear that he did not seek to suggest that Lord Rodger's view was wrong. However in the vast majority of cases his submission – if right – would produce the same result as that rejected by Lord Rodger. It would mean that in most "neighbourhood" cases time would not start to run against the landowner until the passing of the 2000 Act. Like Lord Rodger

I do not accept that that was Parliament's intention. I do not think it is possible for a landowner to pray in aid paragraph 36 of the judgment of Lord Walker in the *Redcar* case to assert that the user was not "as of right" in a neighbourhood case until the passing of the 2000 Act.

Conclusion

111. In the result I am satisfied that the registration of Yeadon Banks as a TVG was correct and that there are no grounds for amending the registration. Both the section 14 proceedings and the application for judicial review are accordingly dismissed.

112. I cannot depart from this case without thanking all concerned for the helpful way it was prepared and presented and in particular without thanking all Counsel for the patient and clear way they led me through what can only be described as the minefield of TVG law. Only time will tell if I have navigated it successfully.

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[1] This is not the same as Map A attached to the application for a TVG submitted by Mr Jones.

[2] There is no Section F