

## Appendix 4

15 Greyfield Common  
High Littleton  
BRISTOL  
BS39 6YL

September 30<sup>th</sup> 2013

Graeme Stark  
Senior Rights of Way Officer  
Bath and North East Somerset Council  
Riverside  
Temple Street  
Keynsham  
BA31 1LA

Dear Mr Stark

**Application Reference- TVG13/2 (Town & Village Green Application for the land known as "Robin Candy's Fields")**

I refer to the afore mentioned application, that has been submitted to BANES on behalf of Mark Collins, Rachel Tidcombe, Jane Neech and Leonard Sheen, and is supported by many residents of the neighbourhood of Greyfield.

Please find enclosed our response to the objection raised on behalf of Mr Alan Sheppard.

In addition to our response to the objection, I also enclose:

- 5 further statements and associated photographs that have been received by us in support of the application.
- A photograph of the notice on a fence post adjacent to the fields, that we have referred to in our objection
- A letter received from Jacob Rees Mogg, MP.

We await further instruction from you regarding the progression of our application to register the land as a Town or Village Green.

Yours sincerely,

A large black rectangular redaction box covering the signature of Mrs Rachel Tidcombe.

Mrs Rachel Tidcombe

## COMMONS ACT

### APPLICATION TO REGISTER LAND KNOWN AS

### ROBIN CANDY'S FIELDS AS A TOWN OR VILLAGE GREEN

### APPLICANTS RESPONSE TO THE OBJECTION BY

### J E SHEPPARD (SAWMILLS) (the Owners)

#### 1. Introduction

- 1.1. The Applicants acknowledge that the land is:
  - 1.1.1. owned by J E Sheppard (Sawmills) (the Owner);
  - 1.1.2. let to Robin Candy under and Agricultural Tenancy; and
  - 1.1.3. licensed to N F Clothier and Sons for the grazing of sheep

#### 2. The Application and Statutory Provisions

- 2.1. The Applicants confirm that the Application was made pursuant to Section 15 of the Commons Act 2006 and that the Application is made on the basis of subsection 15 (2) of the 2006 Act.

#### 3. The Objection

- 3.1. The Applicants assert that the evidence they have provided to the Council demonstrates that the tests provided in subsection 15 (2) of the 2006 Act have been fully satisfied
- 3.2. The Applicants note that the Owner does not dispute that Greyfield constitutes a "neighbourhood" within the locality of High Littleton Parish Council. The Applicants assert that they have received evidence from 118 people regarding their regular use of the land in question for lawful sports and pastimes which represents approximately 34% of the residents. The meaning of significant is not defined in law but in *R (Alfred McAlpine Homes Ltd) v Staffordshire County Council* [2002] EWHC 7 (admin) 2 PLR 1 Sullivan J. ruled that significant did not mean "a considerable or substantial" number of people but that the number of people had to be sufficient to show that the land was in general use by the inhabitants of the neighbourhood rather than just occasional use by individuals. The Applicants contend that they have satisfied that test.

#### **As of Right**

- 3.3. The Applicants acknowledge that the land has been used for grazing animals and that on occasions a Hay Crop has been taken. However, they assert that whilst this may have restricted activities to certain parts of the field it has not prevented the inhabitants from using the land for lawful sports and pastimes on a continuous basis for twenty years. This is a rural community and the residents in general respect the country code. Thus they will keep animals on a lead near livestock (as requested by the sign which is attached to the gate access opposite Maynard Terrace) and would keep to the edges of the field or the well-worn tracks when a Hay Crop is near to harvest. In his evidence Mr Chivers confirms that dog walkers have used the fields and that a strip feeding system with electric fencing was used for feeding cattle. Such a strip feeding system would not prevent most of the field being available for recreation. The owners assertion that "the cattle were generally in the fields from early April to mid-November" is not compatible with their statement that

“During most years a hay crop was also grown during the months when cattle were not in the field”. Grass tends not to grow much in the winter and early spring.

- 3.4. The evidence of Mr Martin, who may well be a very eminent Chartered Surveyor, is of little value in this matter. As the Land Agent to the Owner, his visits to Greyfield Wood Farm would be infrequent and almost exclusively during the working day. Little if any of his time would have been spent on the Land in question. His claim that this Application is frivolous or vexatious is without any foundation. Mr Kingwill’s evidence does not seem to be complete. His family kept horses at the Farm. In a separate e-mail, Mrs Kingwill has confirmed that people walked dogs in the field. It is submitted that this was on a far more regular basis than is suggested by Mr Kingwill’s evidence. The evidence of Mr Candy confirms that he only ever gave two people permission to walk dogs in the fields, it follows that all others were doing so without his authority and were using the fields “as of right”. The Applicants have ample evidence of individuals using the land for lawful recreation and pastimes on a regular and continuous basis. Mr Candy is a respected member of the community of Greyfield and the Applicants regret any conflict that this Application may have caused him and his wife. He is a good neighbour and as such has shown the residents of Greyfield neighbourly tolerance in the utilisation of the land.
- 3.5. The Applicants do not dispute that some inhabitants do not use the fields when livestock are present. However, the evidence shows that others continue to use the fields at such times, whilst respecting the need not to disturb grazing animals. The sign on the gate referenced in 3.3 above does not try to prevent access, it does not give permission for access, but is consistent with neighbourly tolerance and asks for dogs to be led. It is submitted that if dog walking was not taking place other than by the two people given permission by Mr Candy, there would be no need for the sign. The Applicants have photographic evidence of the fields being used by residents of the neighbourhood when animals are present in the fields. The House of Lords Judgment in *R v Oxfordshire County Council and others ex parte Sunningwell Parish Council* [1999] 3 ALL ER 85 held that neighbourly toleration by the landowner was not inconsistent with use as of right. Additionally in *Sunningwell* (supra) the House of Lords confirmed that “village green rights can be established in circumstances where there happens to be some lawful, and compatible, grazing or indeed hay-cutting, on the land”.
- 3.6. The Applicants accept that the gates in the properties bounding the land are used for the purpose of maintaining boundaries. However they are used by the owners of those properties for recreational activities on the fields. A Witness Statement in this respect made by one of the applicants, Leonard Sheen is attached, and is also acknowledged by other witness statements.
- 3.7. The assertion that users of the field “were doing so with permission” is not supported by the statement of Mr Candy, nor is it supported by the evidence produced by the Applicants. The Applicants assert that the Owner has no basis for making this claim. The Applicants have submitted evidence that use did take place when livestock were present. The Owners assertion that use did not take place when livestock was present is therefore erroneous and it follows that their argument that this acknowledged some kind of permission therefore fails.

### Lawful Sports and pastimes

- 3.8. The Applicants note that the Owners accept that the activities amounted to lawful sports and pastimes.
  - 3.9. That the evidence of 20 years or more usage is less than that relating to more recent time spans is neither surprising nor significant. Twenty years ago the neighbourhood consisted of fewer dwellings. The normal turnover of houses will ensure that current evidence is numerically stronger. However, what is clear from the Applicants evidence is that the land has been in continuous use throughout that period (except during the period around the 2001 Foot and Mouth epidemic when Statutory Restrictions applied). It is not necessary for the Applicants to produce the same level of evidence for all periods, merely for them to show, on the balance of probabilities, that the land has been continuously used during the 20-year period. Recreational Activities are also accepted to be seasonal by nature.
  - 3.10. The Applicants assert that the evidence they have provided demonstrates continuity of use over the 20 year period required by the 2006 Act. The Owners assertion that the evidence from twenty years ago shows insufficient usage is erroneous for reasons outlined in 3.9 above.
  - 3.11. The applicants have made clear in paragraph 3.5 above that their evidence shows that residents of Greyfield do take part in lawful sports and pastimes during periods when livestock are in the fields. The Owners assertion that this is not the case and therefore the twenty year continuity is broken whenever animals are put out to graze is not supported by the evidence.
  - 3.12. For the reasons set out in paragraph 3.9 above the Applicants argue that the Owner is wrong in his assertion that there is not evidence of significant numbers using the Land during the earlier periods prior to the sale of Mr Candy's cattle. The Applicants refer to *R (Alfred McAlpine Homes Ltd) v Staffordshire County Council* [2002] (supra) and the arguments set out in paragraph 3.2 above.
  - 3.13. The applicants assert that the respondents to the questionnaires and those who have provided written statements have done so with honesty and integrity. There is no evidence to the contrary. The Owners have no basis for their assertion that "they do not accept that use was taking place at the levels claimed".
  - 3.14. The Applicants note that all of the statements in support of the Owner's objection are made by those who are or were professional advisers to the Owner, or who otherwise have a direct or indirect financial connection with the Owner. Their evidence is contradictory and does not disprove the case advanced by the Applicants
  - 3.15. The Owners suggestion that the Council needs to look at either the motive for registration or to question why an application was not made sooner is irrelevant to the process of registration and should be discounted by the Council
4. Conclusion
- 4.1. The Applicants submit that the evidence they have provided is sufficient for the Council to register the land as a Town or Village Green. Mr Candy's evidence is that he only ever gave two people permission to walk dogs. The evidence shows that there was far greater use of the land and that that use was without permission, albeit with neighbourly tolerance. It is unclear to whom the Owners are referring when they state that the "farmer's agent has not seen people using the fields. We presume this should be a reference to Mr Candy. Mr

Candy's house and farm yard are not in direct sight of the land in question. The fields are surrounded by and separated by high hedging which, together with the undulating nature of the landscape would make it difficult for anyone to have a clear view of the whole of the land at any one time. As Mr Kingwill stated in his email, he was more aware of the western field than the eastern field.

- 4.2. The Applicants assert that the evidence shows that a significant number of residents of Greyfield have indulged as a right in lawful sports and pastimes on the land for a period of at least 20 years and continued to do so until 19 July 2013.
- 4.3. The Applicants have satisfied the statutory test. Therefore the Applicants respectfully request the Council to register the land in accordance with the provisions of the 2006 Act.

***Presented by:***

*Jane Neech*

*Leonard Sheen*

*Mark Collins*

*Rachel Tidcombe*

*30<sup>th</sup> September 2013*

**COMMONS ACT**

**APPLICATION TO REGISTER LAND KNOWN AS**

**ROBIN CANDY'S FIELDS AS A TOWN OR VILLAGE GREEN**

**WITNESS STATEMENT OF**

**LEONARD WILLIAM SHEEN**

I Leonard William Sheen of Willow House, Greyfield Road, High Littleton, Bristol BS39 6YA make the following statement in support of the application to register the land known as Robin Candy's fields as a Village Green pursuant to section 15 of the Commons Registration Act 2006.

- 1) My wife and I moved to the above address on 25 April 2007. Our property backs onto Robin Candy's fields and we can see the eastern field from our home.
- 2) When we erected a boundary fence in 2007 we included a gate to give us easy access to the field (previously we had climbed over the fence). We did not seek permission to erect this gateway.
- 3) Since we moved to the property we have walked our dogs on Robin Candy's fields most days when we have been at home. Therefore this is a regular and typical activity.
- 4) We gather blackberries, sloes and Elderflowers from the land for culinary purposes.
- 5) We play with our grandchildren on the land; games such as hide and seek, tag, and ball games. Again this is a regular and typical activity.
- 6) In winter during snow falls we have used the land to build snowmen, go sledging and have snowball fights.
- 7) We use the land to introduce our grandchildren to rural matters and the nature of farms and animal husbandry. We have also introduced them to wildlife and bird watching
- 8) At all times we have ensured that our activities do not interfere with any animals grazing the land. However, this has not prevented us from making use of the land when sheep have been present.
- 9) Likewise when a Hay Crop has been grown, we have taken care not to damage the crop. However, this has not prevented us from enjoying the fields, we have merely kept to the edge of the fields or followed the tracks in the pasture where little grass grows
- 10) I have regularly seen other resident of Greyfield making use of the land for similar purposes either when I have been present in the land or from my home.
- 11) When Mr and Mrs Kingwill were residents of Greyfield Road I would regularly meet one or other of them walking their dog and we would engage in conversation. They also rode their pony in the field from time to time when they had stabling at Greyfield Farm.
- 12) We have never been given nor have we sought permission to use the land.
- 13) Mr Candy would have been aware of our activities because on several occasions when we have noticed problems on the land with the livestock we have made contact with him at the farm. Mostly this has been because sheep have escaped or cattle have entered the field from a neighbouring field.
- 14) On these occasions I have assisted Mr Candy in rounding up the strays. On other occasions when we have seen sheep where they should not have been, we have got them back into the field and advised Mr Candy on their escape route.

- 15) Last winter when Mr Candy was in hospital I noticed that the feed to a water trough had failed and I advised Mrs Candy of the problem so that she could get the matter resolved.
- 16) Mr Candy is a very friendly gentleman for whom I have great respect. We would always converse when we met.
- 17) At no time has Mr Candy asked me or any member of my family not to enter the fields.
- 18) I have always understood that the type of use of the field I have described has been available to residents of the neighbourhood and I presume that it is for that reason that there is a notice on the gate at Maynard Terrace asking for dogs to be kept on a lead when near farm animals.
- 19) In the South Eastern corner of the Western field there is a very well-worn track across the fence into the woodland owned by the Woodland Trust. This seems to be a very well worn path, clearly used and accessed by adults and children from the field and must have been in existence for many years.
- 20) I am clear that express permission to use the land has not been given and therefore believe that such use of the land is permitted because it is in effect a Village Green within the meaning of the 2006 Act
- 21) For the above reasons I ask that the registration authority enter into the register of village greens the land set out in this application.

I believe that the contents of this statement are to the best of my knowledge and belief a true statement of the facts therein set out

Signed..  .....

27<sup>th</sup> September 2013

**Leonard William Sheen**

**Subject:** FW: Village Green Objection

**Date:** Thursday, 26 September 2013 07:35:29 British Summer Time

**From:** Rachel Tidcombe

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**From:** paul allen <grumpy1168@gmail.com>

**Date:** Sunday, 15 September 2013 20:19

**To:** Me <rachel.tidcombe@sky.com>

**Subject:** Re: Village Green Objection

I can confirm use of the fields in the period mentioned by Sheppards. I frequently ran to/from Greyfield Woods, before or after work, at least 2 days/week. As a family we also walked into the woods by the same routes. The cows did not pose a problem (they were normally grazing in the most westerly area of the fields ) and we never sought permission. The primary effect of the grazing cows, was to make the southern gate exit (where Candy had a feeder and water trough) almost impassable due to deep mud and faeces. This area has always been wet, sometimes waterlogged, and not a normal route into the woods. I think the objectors should say what level of evidence they require ? Are they saying whatever level of information has been presented, is not factual or otherwise lacking credibility ?

regards

Paul

On Sun, Sep 15, 2013 at 5:06 PM, Rachel Tidcombe <[rachel.tidcombe@sky.com](mailto:rachel.tidcombe@sky.com)> wrote:

All,

Further to my email last week:

We have received one objection from the Landowner (Shepherd & Sons Sawmills). The predominant basis of their objection is as follows:

- The evidence submitted with the Application is insufficient to register a Town or Village Green. For most of the year until October 2001, cattle were kept in the fields. During this time either the local people did not use the fields or their use was with permission.

**If you have used the fields during 1993 to 2001, and you are able to provide a statement to confirm use, please could you provide me with an email to state as such.**

Please note also that the Parish Council have elected to not support the Village Green Application, but have not lodged a formal objection.

If you are able to help further with the Application by providing a statement to support use of the fields as an amenity during this time period especially, please could you contact me by **Friday 20th September 2013**.

Many thanks.

Regards,

Rachel



**Subject:** Fw: Village Green Application.

**Date:** Sunday, 8 September 2013 17:46:45 British Summer Time

**From:** Elizabeth Hatch

**To:** Rachel, rachel.tidcombe@sky.com

Rachel,

Please see e mail below from Derek Hudnott. I haven't responded to Derek yet.

Liz

----- Forwarded Message -----

**From:** Sylvia Hudnott <sd@hudnotts9.freemove.co.uk>

**To:** liz.hatch24@btinternet.com

**Sent:** Sunday, 8 September 2013, 10:26

**Subject:** Village Green Application.

Hi

I have just read the article in the Parish Newsletter regarding the application and would like to help.

We have lived in Scobell Rise for over 40 years now, our three children having attended all the various village groups and organisations over the years, from toddlers to scouts.

From 1998 until last year, I was the voluntary warden for the Woodland Trust responsible for Greyfield Wood, when I handed over the post to Sean Skelhorn.

I still head up the Greyfield Wood Support Group, that has carried out project and maintenance work in the wood since that date.

Regarding the field in question, over the years this was indeed used by locals for recreational purposes, kite flying, tobogganing, dog walking etc, as well as an alternative access leading down to Stephens Wood and the waterfall area beyond the wood. Access for us, before the existence of 'Greyfield Common', was via a gate off Greyfield Road which is probably still there.

I hope this helps

regards

Derek Hudnott. (01761 470847)

**Subject:** Fw: Hi Nicky.... I hope you don't mind but  
**Date:** Tuesday, 17 September 2013 10:01:15 British Summer Time  
**From:** JOANNA MOORE  
**To:** Rachel Tidcombe

Dear Rachel,

Please see below the response from the Kingwill's who owned Woodlea, prior to us...

Thanks

Jo

----- Forwarded Message -----

**From:** "Nickykingwill@aol.com" <Nickykingwill@aol.com>  
**To:** jojomomo@btinternet.com  
**Sent:** Monday, 16 September 2013, 20:03  
**Subject:** Re: Hi Nicky.... I hope you don't mind but

Dear Joanna

Apologies for not replying to your email about the Village Green application, I am not very good at keeping up to date with my emails!

I am so pleased to hear that you are enjoying Woodlea as a family home, we had many happy years there. congratulations on your third daughter, no doubt you have your hands full!

After moving from Somerset we went to Kent and rented for 6 months and bought our present house in Jan 2011. Our address is Coldblow Farmhouse, Woodchurch, Ashford, Kent TN26 3PJ. Tel 01233 860631.

I can understand the reasons behind applying for Village Green status to avoid the land being built on. We were very surprised to hear of the application for housing outside of the village boundary. Bear in mind there was a Village Design Statement produced a few years before we left Woodlea. I do not know if it is still valid as guidance to be used by Planners. It states the land between Greyfield Road and the Woods is important to the village and its setting.

One could argue that the land owned by the co-op should be built on before the land at the back of Woodlea and Woodlea bottom as it is more like infilling.

We were at Woodlea from 1993 to 2010. During that time we walked our dog across the field to Greyfield Farm. We kept ponies at the Farm and are friends of Mr and Mrs Candy. We had permission of Mr Candy and also latterly, after Mr Candy sold his cattle, of the Farmer (also a friend of ours) who kept sheep on the land, to walk our dog across the land and we used to look over the sheep for him

Very occasionally we used to ride our pony in the field with Mr Candy's permission.

During our time at Woodlea we did not use the field for any other recreational purpose. I am not aware of any fireworks or other parties or events ever being held there. Other people used to walk their dogs in the field. I cannot recall the field ever being used for anything other than agriculture.

The use of the land for agriculture is significant to the farming business of Greyfield Wood Farm, and during our time in High Littleton this has always been its primary use.

With best wishes in your endeavours.

Kind regards

Nicky and Peter Kingwill  
and family.

**Subject:** Village Green

**Date:** Friday, 20 September 2013 10:02:58 British Summer Time

**From:** Chris

**To:** 'Rachel Tidcombe'

**CC:** 'Bridget Rylance'

Sorry for the late reply Rachel – got back last night from a week's boogy-boarding in Cornwall.

We find it difficult to make any more clear statements about our use of the fields other than those we have made in our previous statements. However in reply to the Shepherd's objection we can say the following:-

We lived in "Greenwood" opposite the North west corner of the fields between 1971 and 1986. We had 3 sons, and in that time we all frequently used the field. We never asked permission. After 1986 we lived for 3 years in Hallatrow, moving back here to "The Old Bridge" in 1990. Whenever it snowed we would sledge and snowball across it, as shown in the photos we have previously passed to you, but not just in the years of those photos.

Certainly Robin Candy was primarily a dairy farmer up to 2001, but would move the cows from field to field. I have picked mushrooms there in September several times before 1986, probably with no cows in there at the time. We have found a couple of photos from spring 1978 which clearly show an empty field, and an open gate. I'll forward them to you separately.

Chris





**YOUR  
DOG  
CAN SCARE  
OR HARM  
FARM  
ANIMALS**

**PLEASE PUT IT ON A  
LEAD NEAR LIVESTOCK**





JACOB REES-MOGG, MP  
MEMBER OF PARLIAMENT FOR NORTH EAST SOMERSET

HOUSE OF COMMONS  
LONDON  
SW1A 0AA

COPY

Ms Jane Neech,  
Woodleigh Bottom,  
Greyfields Road,  
High Littleton,  
Somerset, BS39 6YA.

26 September 2013

*Jane Neech*

Thank you for coming to see me at my recent advice centre in Keynsham.

It was good to have the opportunity to see you again and to talk about the Village Green Consultation and your decision to pursue the tree preservation order.

You appear to have a well argued case and I know this will be taken into account when the final decision is made by Bath and North East Somerset Council.

With every good wish,

