DETAILED STATEMENT OF GROUNDS

1. The Claimants' case is that the Inspector erred in law in holding that the erection of signs within the 20 year period saying *No public right of way* did not make the use of the land for lawful sports and pastimes *contentious* and accordingly not *as of right*. The Claimants further say that the Inspector erred in holding, on the facts of the case, that Hill Top Road was capable of being a *neighbourhood*. By reason of these errors of law – which the registration authority adopted – the decision is flawed and should be quashed.

As of right

2. The evidence showed that, at the access point to the land from the south, a sign was put up by the landowner saying:

NO PUBLIC RIGHT OF WAY

3. It should be noted first of all that the sign was at the access point which is the one used by the residents of Hill Top Road. This was at the beginning of a track around the edge of the land which local people had claimed as a public right of way and of a diagonal track across the land which had not been claimed as a public right of way. (Going around the land in the opposite direction from the claimed footpath was a long established footpath, which the sign would not have been taken as relating to.)

4. The sign is to be construed objectively i.e how it would have been interpreted by a reasonable person reading it who might have been minded to go on to the land.

Accordingly the Inspector fell into error where at paragraph 369 he considered what the purpose and intention of the landowner was in putting up the signs:

> *... I find that the purpose of the sign was to prevent FP111 and the diagonal path from acquiring the status of public rights of way. First, the case of the landowner in relation to the modification order was that it had no objection to general public recreation across the meadow, but only to the creation of public rights of way ...*[1]

and at paragraph 384 where he said:

> *The 1989 "No public right of way" signs were erected in an attempt to prevent FP111 and the diagonal path from becoming public rights of way and did not purport to,* ***were not intended to****, and did not in fact restrict general use of the Meadow for recreation by local people.*
> (emphasis added).

5. This point, which was raised in the representations made by the Health Authority Objectors in their representations to the registration authority on the Inspector's Report was not directly addressed by the Inspector. The further representation on behalf of Paul Deluce in this matter emphasise (relying on *R (Lewis) v Redcar and Cleveland Borough Council*[2] that the wording of notices should not be considered in the abstract and that the surrounding context should also be considered, but this does not address this point. It does appear that Paul Deluce did accept that an objective approach should be adopted i.e what fell to be determined was what was, in the factual context,

> *... the message which [the notices] ... would appear to a reasonable landowner to be likely to convey ...*

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1 The Claimants do not accept the Inspector's summary of the landowner's position in respect of the modification order. It was its position that *The Health Authority has* ***never had a policy to discourage*** *the use of the site as open space by members of the public* ... (emphasis supplied)

and

As stated above, the Authority ***has not objected*** *in the past to the site as open space by the public* ... (emphasis applied). This point was made in the Health Authority Objectors' representations to the registration authority on the Inspector's Report (see paragraph 50) but was addressed neither by the Inspector nor in the response on behalf of Paul Deluce.

Moreover the Inspector had evidence before him as to the concern which the landowner had about dog faeces affecting the value of the hay crop on the land, and as to notices being erected in respect of dog walking.

2 [2008] EWHC 1813 (Admin).

6. It is the Claimants' case that the introduction of the concept of the reasonable landowner into the equation – i.e that the task of the decision maker is to determine the message that a reasonable landowner would have understood the signs to be conveying to a reasonable person reading the sign who might be minded to go on to the land – is an unnecessary complication; the reasonable landowner's appreciation would have been the same as that of a reasonable person reading the sign.

7. Viewed objectively, the *NO PUBLIC RIGHT OF WAY* sign clearly rendered contentious any general access on to the land by the residents of Hill Top Road. Nothing in the factual context affects the position: e.g. the reasonable person reading the sign would have had no basis to consider that although the landowner did not wish him to use either the path around the meadow or the diagonal path, he had no objection to his using the land generally for the indulging in of lawful sports and pastimes. Viewed objectively, rendering "footpath" use contentious was also rendering "lawful sports and pastimes" use contentious. This is essentially a matter of law; it was not open to the Inspector to conclude that the use was not rendered contentious. The registration authority in its response to the pre-action protocol letter focus on what the Inspector decided that signs were directed towards (paragraph 369 of his Report) rather than his conclusion on contentiousness (paragraph 372); if, as would appear, it is saying that the Inspector was entitled to conclude that the use was not rendered contentious, it is wrong to do so.

Neighbourhood

8. The Claimants draw attention to the following:

(1) Paul Deluce – who gave evidence as to his use of the land – does not live in the neighbourhood as defined. Accordingly if the land were registered on the basis accepted by the registration authority, he would not be entitled to use the land for his own recreational use, the landowner being entitled to bring legal proceedings to prevent such use as being trespass.

(2) It was not Paul Deluce's case that Hill Top Road was a neighbourhood on which registration of Warneford Meadow should be based and Professor Kerry Patterson and Dr Graeme Salmon (who both live in Hill Top Road) on his behalf gave specific evidence that it was not such a neighbourhood. Although it is accepted that a registration authority is not bound to reject an application if it rejects an applicants' identified neighbourhood, it is submitted that considerable weight attaches to the fact that in the proceedings Paul Deluce did not identify Hill Top Road as a neighbourhood and, positively, had evidence that it was not a neighbourhood. This serves to emphasise that the use came from a wider area that Hill Top Road. Of the 31 witnesses at the public inquiry, 11 lived in Hill Top Road, of the 64 written statements, 23 were by persons who lived or had lived in Hill Top Road.

(3) There are no facilities such as shops, schools or churches which are specifically referential to Hill Top Road. Accordingly one indication of what signifies an appropriate neighbourhood – identified by the Inspector in relation to Paul Deluce's suggested Divinity Road neighbourhood, the absence of which was a reason for rejecting it as a neighbourhood – was lacking in relation to Hill Top Road.[3]

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[3] The Inspector nowhere in his Report expressly "discounts" the evidence of use that he considered from those who lived beyond Hill Top Road and paragraph 379 suggests that he considered in the context of whether the use had continued for 20 years, general use rather than use by the inhabitants of Hill Top Road.

9. It is the Claimants' case that what the registration authority was required to do was (1) to identify the area where those who used the claimed town or village green lived and (2) consider whether the area so identified constituted a neighbourhood. In the present case a different and erroneous approach has been adopted. The Inspector identified as far as he was able on the evidence before him where those who have used the land lived (although he has not sought to categorise this area with any precision), but rather than then to address step (2) his approach was to see whether there was within that area an area which could be described as a neighbourhood.

10. The short point made by the Claimants is that there has to be a "fit" between the area from which the users of the claimed town or village green come and the neighbourhood which is capable of founding such a claim. If no such fit is required, it follows of course that most of the evidence of use that the Inspector heard and the majority of the written evidence statements which he considered were irrelevant to the application on the basis of which it was upheld. The result is that the majority of the users of the land whom the Inspector heard would, if the land were registered, have no entitlement to use the land and could be excluded from it as trespassers. It is accepted and averred that it flows from the approach identified above that there may be land which has been subject to some informal recreational use for a period of 20 years or more and where that use has been *as of right* but where a claim to register such land will fail because the use is not properly referable to any neighbourhood: the present case being one such in point. Parliament must be taken to have contemplated such a result by requiring that use be referable to a neighbourhood. The requirement having been required, *neighbourhood* needs to be given a sensible and not an artificial meaning.

11. The Inspector accepted in his Further Report that the point that arose was an important one and on which there is not as yet any clear guidance from the courts.[4]

12. The response of the registration authority in its reply to the pre-action protocol letter is to say that the Inspector's conclusion was one which was reasonably open to him on the evidence. By implication it does not accept that there is any requirement of law for there to be a "fit" between the neighbourhood relied upon and where the users come from. It is the Claimants' case that it is wrong not to do so.

[4] See paragraph 12.