

Hesketh Meadow Action Group:
brief summary of events leading up to and including events of the Public Inquiry

**Breakdown of issues and events at the Public Inquiry held at Leigh Sports Village
Tuesday 4th May until Friday 7th May 2010**

What is a Village Green?

A “Village Green” is a piece of land, which “a significant number” of local people from a defined locality or neighbourhood, have predominantly used “as of right”, for lawful sports and pastimes, without permission, without secrecy and without force for a period of 20 years or more.

Background:

Application: Mrs Jan Johnston on behalf of Hesketh Meadow Action Group abbreviated as **HMAG**

Objector: **Wigan MBC (WMBC)** and **Wigan Cultural and Leisure Trust (WCLT)**

Inspector: **Mr. Alan Evans, QC** of Kings Chambers abbreviated as **AE**

Barrister for the Objector: **Mr. Philip Petchey, (PP)** QC of the Inner Temple, London
Village Green (**VG**)

March 2009, it came to the notice of local people that it was the intention of Wigan MBC to close Lowton High School, Golborne High School, Gilded Hollins School and Lowton J & I and build a purpose-built school on the land known as Lowton Civic Hall or alternatively Hesketh Meadow. This school was to house 1700 pupils. Also, there was a health centre planned for 4000 patients, a Sure Start nursery and other associated buildings. GH school ran a successful campaign to keep their school open and this was subsequently given a reprieve and excluded from this proposal.

Approx May 2009 an invitation was sent to interested parties to meet on the Meadows to listen to invited speakers, and to see whether local people felt perturbed by these plans. Even though it was a rainy, cold day, the turn out was good and a large amount of residents attended this event.

This was the start of the formation of HMAG. We held regular meetings at local venues, and eventually formed a Committee and adopted a constitution which lists agreed rules and objectives etc. We also opened a bank account with two signatories required for any cheques. We also applied to the join the Lowton and Golborne Township Forum which was accepted and JJ became the representative of HMAG at the Forum’s regular meetings.

2009/2010 Consultation events held by Wigan MBC. Despite lots of people attending these events, none of our concerns or questions were ever answered and it seemed whatever was said, it was clear that it was going to be ignored including the issue of access from Newton Road, down Hesketh Meadow Lane (which is only from 5m to 6.5m wide), and the resulting problematic traffic issues.

Involvement of the Local Community

The HMAG started distributing leaflets through the doors of local inhabitants with details of our secretary's and chairperson's addresses, where donations could be sent. We also held community nights where the money went to the fund and in total we have raised to date, over £5,400, some of which came from small grants from local groups.

Permission signs on site

In approx July 2009, Wigan MBC placed up to 9 signs around this land, stating the people could only use the HM site with their prior permission. They also installed Dog Fouling signs "Scoop the Poop" - but removed the dedicated dog fouling bin on HM lane and did not replace it with an alternative! There was also "No horse riding" signs put in place. When asked about these signs later at the PI they said they were ordered by the Education Dept "to inform local people of change of use for this land"

Village Green Application

Due to the installation of the signs, the HMAG decided that we had to look at a way of protecting this land, and subsequently decided to apply for VG status.

September 2009 questionnaires and Village Green application

We arranged and produced over 500 questionnaires and went knocking on doors and used the local network of friends and contacts of the people of HMAG. The questionnaires and many of the documents were taken off the internet from firstly the DEFRA site and Planning Sanity site. It was important that the questionnaires also had a map attached to them, and as well as signing the document, people had to also indicate where they live or lived on the map, and sign the map as well.

The Village Green application form was completed and, together with 127 questionnaires, was taken to Wigan MBC and handed in to the Borough Solicitor. Before this could be accepted, we had to go to another solicitor and swear on oath that I was the person on the VG application which cost us £10. At this stage a very simple process.

Hints on writing your witness statements

It is very important to include as much historical evidence as possible: "I remember the date because it was my son's 5th birthday and he is now 35"; "My friend had just lost her husband, etc in December 1981"; to say what the site means to you, how far you live from it, did you move to the area because of the open space, what organised events have you attended on the site, how many people you see when walking on the site. Talk about your dog and when you had it and for how long etc. Try and provide as much photographic evidence you can get your hands on.

Please be aware that cutting across the land to get from point A to B does not count as legal sport or pastime. Short route to bus stop etc. doesn't count. Blackberry picking, walking, courting, spectator sports, kite flying etc plus many others all are okay.

Remember: do your homework, check the facts, ascertain where your boundaries are!!!!

Amended Village Green application in April 2010

After further research, it became clear that our application had to be amended, as we had inadvertently included the land where the sub-station was, for the electric supply in the area. This removed the electric company from the original objectors list. We also decided who from our members would be most suitable to attend the PI and give verbal evidence for the applicant, and answer any questions submitted by the objector. We finally submitted 31 written witness statements, of which 19 people were to act as attendees at the PI.

Locality and neighbourhoods

It is important that application of a VG can clearly show on a recognised map the boundary of their locality or neighbourhood, and we decided to use the parish Boundary of Lowton St Mary's, which is split into two, with Lowton St Mary's Pennington to the right of the church, and Lowton St Mary's Lowton to the left of the town of Leigh.

Accordingly, some of the properties in the first set of questionnaires were removed from the amended application and another 9 were added from new witnesses within the neighbourhood. This brought the 127 down to 107 approx. Of these, 92 people had used the land for more than 20 years. A "significant number" cannot be defined in law. It could be as low as single figures but basically the bigger the area you include as your area, the more people would have had to have used the land. Think of it as ratio of residents versus users of the land.

That is not to say other people cannot use the VG but ideally the users should predominantly come from the neighbourhood closest to the VG site.

Public Inquiry

Wigan MBC decided to employ the services of Mr Philip Petchey, QC from the Inner Chamber, London who had been involved in the Heathrow's 5th terminal application.

As Wigan MBC being the land owner and the registration authority, they discharged their duties as Registration Authority to Forbes Solicitors, Blackburn and it was this Company who instructed Mr. Alan Evans as the Inspector to the PI. It is AE's duty to listen to both sides of the application and cover any points of law, and eventually make his decision, whether the application is accepted or rejected.

Actual Public Inquiry Events

The venue was to be held at the Leigh Sports Village in Leigh, and everyone attended on time on Tuesday 4th May. PP felt that the PI would be finished by Wednesday evening and announced this at the opening of the PI - which the Inspector thought was very optimistic.

The applicant usually goes first in the PI hearings and subsequently we brought in the first of the witnesses. PP spent roughly over 1 hour cross-examining each person. It was clear that he was trying to find a piece of land which our witnesses had not used predominantly,

Hesketh Meadow Action Group:
brief summary of events leading up to and including events of the Public Inquiry

the access from Newton Road (the Nib) and the land surrounded by trees off HM Lane (the Orchard).

Another point he was trying to ascertain was, whether they had ever interrupted a formal football game (“Deference”). This was to prove that teams who had booked the football pitches took preference over the VG witnesses, which would have given up our “as of right”. Obviously everyone said they did not interfere with play, but out of politeness, concern and health and safety issues, in case someone got injured.

Silence is Golden – only answer questions you are asked

All our witnesses gave excellent evidence, but it is worthwhile taking care that they are comfortable with “silences” in questioning and do not offer other information not raised previously. Eg “I am involved with an Old St Mary’s resident’s assoc”. This could imply that there was an area of Old St Mary’s and PP seized any opportunity of questioning on these additional issues given by our witnesses.

The first and second day of the PI ran until the closure of the Sports Village from 10.00 in morning until 7.00 at night, with a 9.30 start on Wednesday, 5th May.

We then got the chance, after PP, to question any of our witnesses, to clarify anything which might have not been covered in the evidence to PP.

Thursday, 6th May, the Objector brought forward 6 witnesses, all Wigan MBC employees, whose past or present responsibility had included some involvement in the management of the HM field. One of these people was unavailable on this day.

Hesketh Meadows history of land – very briefly

The land was reclaimed and was totally funded by a grant of the then government. The houses were demolished and the railway was filled in and as this land was not needed by the council at that time, it was grassed over and planted with trees.

Public Open Space

Wigan MBC were claiming that all this land was under the auspices of the Leisure Dept and as such in 2003 when Wigan Culture and Leisure Trust was created, that this land was transferred to the WCLT. This included many of their other buildings such as libraries, sports centres, Lowton Civic Hall and in fact the building we were in that day, Leigh Sports Village. These trusts were set up all over the country and in Wigan’s case, from a consultation paper from Price Waterhouse.

The benefits of a Trust means in real terms all the buildings are managed by WCLT which has charity status, and therefore only pays 20% rates, whereas previously they would have been subject to full rates.

Rates go to central government, and are distributed back out to Councils etc, as part of the grants process.

Wigan MBC Witnesses and Evidence

Of the six witnesses for Wigan, one could not attend, two stated in their opinion that all the land was under the jurisdiction of the Leisure Dept, two others thought that the land to the right of the access path to the Bridleway was under the Planning Dept. Another person was not asked this question by either side.

The Inspector asked for an extended lunch recess whilst the Wigan staff returned to Wigan to try and locate documentary evidence which would help clarify this matter. He asked whether there was a Policy document that covered this transfer or any other written evidence which dealt with the Public Open Space or Playing Fields strategy.

PI reconvened at 2.35 and Wigan returned with a booklet which was sent out to schools at that time, which was trying to increase the usage of the school playing fields for sports events out of school hours. Only schools and the local football teams were consulted and this referred to Education rather than Leisure.

They also brought back rates ledgers which showed the auspices of the land in questions together with a map from 2006 (bearing in mind the Trust was set up in 2003).

The map clearly identified that the land, which had previously been part of the old railway line, and therefore included all the Nib (access point from Newton Road) all the way down the pitches, was in fact, still under the jurisdiction of the Planning Dept and the land to the left of this line, ie behind Civic Hall, was still under Wigan MBC Leisure Dept.

Wider implications of Trust Land - very important point

Land taken over by a Trust as parks or recreation land become “unrestricted use by members of the public” and on the surface this looks good for the inhabitants of your Council. In real terms, it could mean that after the statutory two year period, when you can still apply for a Village Green, after you last used that land, “as of right” you will be prevented from applying for a VG status. Basically you become a trespasser on the land, and you have assumed permission of the council but not the right to use it.

Evidence produced late Tuesday evening by PP caused a great deal of concern. To allow Councils to defeat a claim by quietly granting consent from one internal body to another, without advising the users and local inhabitants that they had done so, would create a loophole by which Councils can terminate any potential claim, simply by waiting 2 years. This cannot be just or equitable and cannot be what was intended when the legislation was drafted. The intention was to enable local communities to register their Village Greens. To create a way by which their claims can be scuppered by Councils on this basis, would be wholly and fundamentally wrong.

The Inspector asked Mr. Petchey was he trying to use this point to defeat this application. He said “no of course not” even though he had submitted this document (it would have had

Hesketh Meadow Action Group:
brief summary of events leading up to and including events of the Public Inquiry

national implications throughout the country and would have basically put the virtual end to VG applications). The Inspector said, very seriously, "I thought not".

If this had been allowed to be put forward, then it would have been very difficult to succeed in this application, as the land would have been transferred in 2003 - had it been registered correctly. The application and defence of the application would have been the fact that this information had not been communicated to the people and probably would have involved human rights etc, as it was a loss of their rights without them knowing about it.

End of Public Inquiry

The PI was eventually closed at around 3.30 on the Friday after the closing statements of PP and our closing statements. Lots of legal arguments were referred to which are too technical to try and describe within this document. Clarification was sought on several points by the Inspector on both sides.

Final Decision and Report

Due to a heavy schedule of business commitments, Mr. Alan Evans will not be available to write the report until July of this year, so until then we have to just wait for the decision, but at least we know we have tried our best with the limited resources available to us.

Further Legal Advice

There is no reason in law that stops more than one Village Green application being submitted, providing it covers a different portion of the land or is a different application from another person. If accepted by the Council it will again have to go through the same process of deciding the fate of the piece of land in question. The longest this tactic was used was up to 12 years on a piece of land down the South of England.

Legislation is trying to be put through Parliament to stop these multiple applications but as far as I am aware, it has not been passed yet.

TIPS for internet users

Please check out Planning Sanity site and if you need legal assistance, join Open Space Society (£40) and contact Earthrights who can provide assistance at reasonable rates.

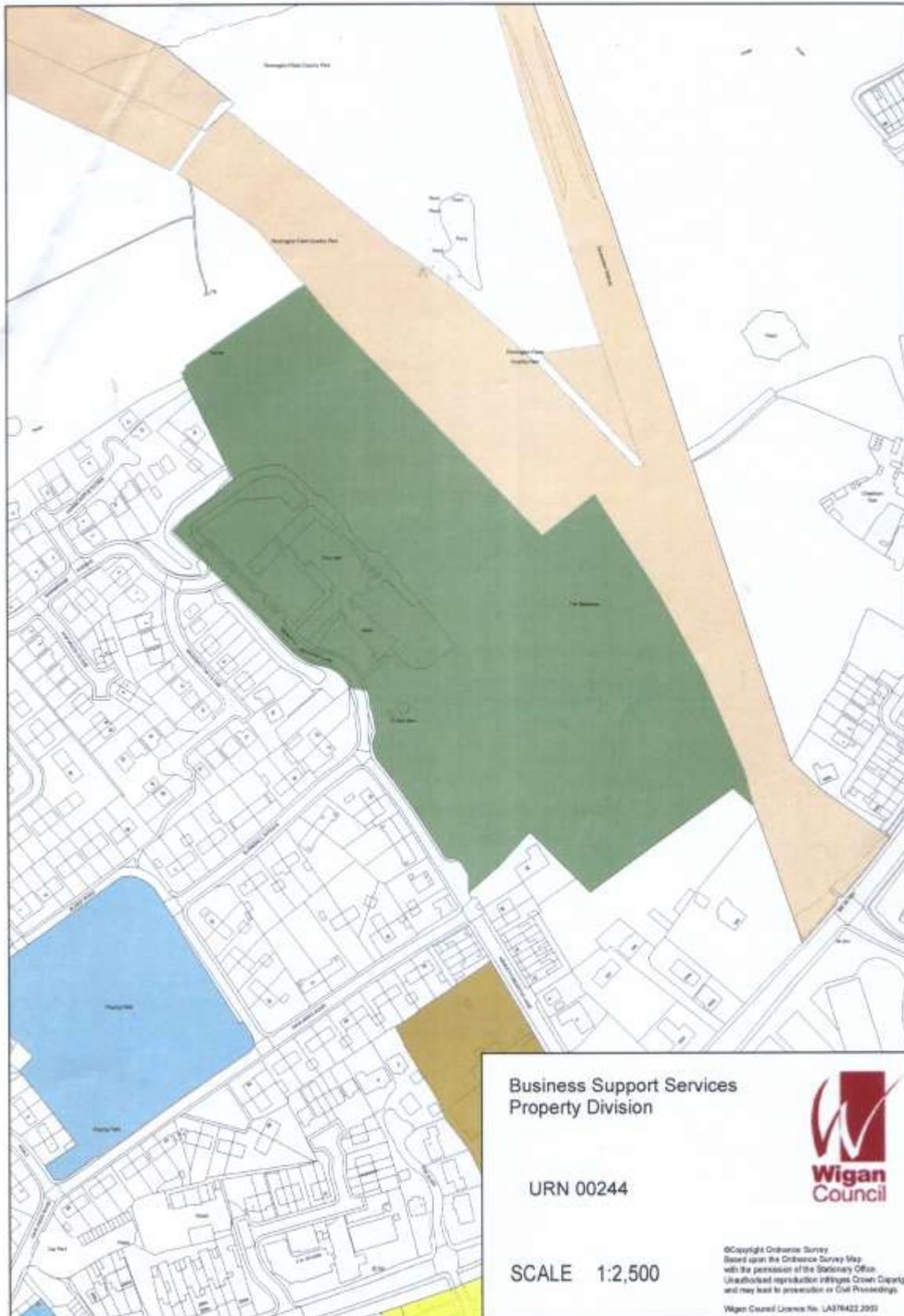
Jan Johnston,
Chairperson, Hesketh Meadow Action Group.

www.heskethmeadowactiongroup.co.uk

Disclaimer.

Please note that this paper is a personal interpretation of the events as they occurred and whilst every effort has been taken to remain truthful of the facts and events, please be aware that there is no legal accuracy that can be relied on in this document. Therefore we would recommend that anyone contemplating a VG application seeks their own legal advice prior to submission. This document is created with the intention of passing on the information we have gathered and hope it might be of use to other people who find themselves in the same situation.

Hesketh Meadow Action Group:
brief summary of events leading up to and including events of the Public Inquiry



Brown Land - Planning - Triangular plot off Newton Road, "The Nib"
Green Land, Leisure
As per map in 2006.