

Application for registration of land at Fulford Cross, York becoming a village green on 31st August 2003

Response to the objection of the City of York Council

Objection 1 – Relevant period

The evidence submitted includes statements from current and past residents of Fulford Cross testifying to the continuous use of the land over a period of time exceeding the twenty years required. Statements are accompanied by photographic evidence, and many of these residents will be happy to make further statements to an enquiry if necessary. None of the current and past residents we spoke to reported the school making any use of the land during the twenty year period. We would like to know what kind of use is being claimed. Certainly, if there has been any use by the school of the green, it has been at most rare and minimal, and has not impeded the continuous use of the land by local residents.

Objection 2 – The use of the land ‘as of right’.

The council’s maintenance of the land including grass cutting, the planting of trees and erecting of play equipment does not undermine the use of the land ‘as of right’. On the contrary, following the House of Lords judgement *Regina v City of Sunderland (respondents) ex parte Beresford (appellant) [2003] UKHL 60*, encouragement by the landowner of the use of the land by improvements of this kind reinforce the impression of members of the public that their use is as of right.

We would like to know on what occasion the council has given permission for use of the land, or ‘removed unauthorised occupiers’, as none of the current or past residents of the neighbourhood we have spoken to recall ever being given permission to use the land for any purpose, or being discouraged or prevented from using the land. On one occasion a resident notified the school that a Jubilee party was to take place on the land, but they received no reply. A landowner’s silent passive acquiescence in persons using his land cannot have the same effect as permission communicated to those persons (*Regina v City of Sunderland (respondents) ex parte Beresford (appellant) [2003] UKHL 60*).

Objection 3 – Locality

The land has been consistently used by residents of Fulford Cross, a neighbourhood within Fishergate ward, York. Fishergate ward is clearly an ‘administrative unit known to law’. Fulford Cross represents a distinct neighbourhood by virtue of its isolation from other residential land and its strong community spirit, as detailed in my original application.

30th May 2004