APPENDIX C

I am responding to the notice about the application mentioned below, reference HL/CA02. The notice invites emails to be sent to Liam Henry at legalservices@northumberland.gov.uk, but your council's server does not accept emails to that address (see attached). I am therefore trying again with a slightly different address. Please may I ask you to confirm receipt, and to refer this email to him?

The Society wishes to object to the application from Corbridge parish council in relation to the Market Square, Corbridge, under paragraph 9 of Schedule 2 to the Commons Act 2006.

Paragraph 9 requires that the application show that "throughout the period of 20 years preceding the date of its provisional registration the land was, by reason of its physical nature, unusable by members of the public for the purposes of lawful sports and pastimes", nor allotted as a green. That is intended to be a demanding test: it is not a matter of whether the land was used as a green, but was there something which physically made the land unusable for sports and pastimes. The explanatory notes to the 2006 Act explain that: "This provision seeks to avoid an application under paragraph 9 seeking to adduce witness testimony as to the actual use made of the green prior to the date of provisional registration, which may be unhelpful so long after the period of use." It therefore provides that a town or village green (or part of it) is to be deregistered only if it was unusable during the 20 year period. It is mistaken, therefore, to revisit the question of whether the land was rightly or wrongly registered under the Commons Registration Act 1965. Instead, one must look for some physical impediment to the use of the land for sports and pastimes: the explanatory notes helpfully suggest that, "for example, if buildings on the land precluded such use". Similarly, one might hypothesise about land which was a marsh, or throughout the period covered by discarded materials in a scrap yard, or occupied by a pit containing noxious waste — these would all physically render the land unusable. Arguably, a field which was cultivated annually with a cereal crop might also qualify. But a lawn on which there was a sign 'private: keep off the grass' would not qualify, because the sign would confer no physical impediment, even if one might infer that the lawn was, in social terms, unusable.

So far as the raised area within the application land is concerned, which is set aside with the war memorial, seating *etc.*, the answer must be that this area was, and remains, incapable of satisfying the test — the land is dedicated to modest recreational use, it cannot be said for a moment that it is or was physically unusable for sports and pastimes, and it does not satisfy the test for deregistration.

As regards the remainder of the application land, there is again no physical obstruction to use as a green. While cars have habitually been parked in this area, it was perfectly possible for the land to have been used for sports and pastimes, such as kicking a ball around, or taking a sketch of the market square. We see this area as analogous to the lawn with the 'private: keep off the grass' sign: while cars may from time to time have parked on parts of this area, they did not render the land physically unusable, they merely caused some interference with the potential use of the land. A user would have been able to use that part of the application land which remained unoccupied. The extent of the application land which was unoccupied will have varied from moment to moment, and day to day: at times, the square would have been empty, devoid of traffic, and at others, busy and full with parked vehicles: there was no permanent physical impediment across the whole of this part of the application land. It is not relevant, for example, that a user might have been exposed to some hazard from passing cars — whether or not that is correct (in a market square with low traffic speeds), such hazard does not render the land physically unusable, it only diminishes the attractiveness of the land for sports and pastimes, but that diminution is irrelevant to the statutory test.

The Society recognises the desire of Corbridge parish council to review the use of the market square in Corbridge, and that it feels constrained in its options by the designation of much of the land as a town or village green. However, we think that this application is mistaken in two respects: firstly, it does not meet the statutory criteria, and is founded in an assumption that, if the land was mistakenly registered, then Schedule 2 to the 2006 Act must provide a remedy — but it does not.

And secondly, that the key to any redesign of the market square is deregistration of the green. On the contrary, we believe that the designation gives valuable protection to the square from inappropriate development, and any redesign should respect and build on the designation.

regards

Hugh Craddock

Hugh Craddock

Case Officer

Open Spaces Society

25a Bell Street

Henley-on-Thames

RG9 2BA

Email: hugh@oss.org.uk

www.oss.org.uk

Tel: 01491 573535

Please note that I work Mondays, Wednesdays and Thursdays

(Registered in England and Wales, limited company number 7846516

Registered charity number 1144840)

#FindOurWay

Only ten years left to save unrecorded public paths

– support this vital work now.