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Your Ref: EJS/15079C  
Our Ref: P2 MM.cw 6024.45  
Date: 01 October 2010

Dear Ernest

**APPLICATION TO REGISTER LAND AT PEMBROKE ROAD AS A VILLAGE GREEN**

Further to my e-mail today timed at 12:13 p.m. together with attachment, please find enclosed a hard copy of our Objection Statement.

Please acknowledge safe receipt.

Yours sincerely

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## STATEMENT OF OBJECTION

### **STATEMENT OF OBJECTION ON BEHALF OF JOHN GERARD COLEMAN AND GILLIAN DIANNA COLEMAN RELATING TO AN APPLICATION SUBMITTED BY ADRIAN RICHARDSON ON 1 JULY 2010 TO REGISTER LAND AT PEMBROKE ROAD AS A VILLAGE GREEN**

We wish to object to the above application on behalf of John Gerard Coleman and Gillian Dianna Coleman who together own the land to which this application relates.

1. The Registration Authority (RA) must determine this matter under Section 15(2) of the Commons Act 2006 (the Act). In this regard, the RA is reminded of the comments of Lord Bingham in R (Beresford) v Sunderland City Council (2003) UKHL:-

*"It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision makers consider whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limits of 20 years' indulgence or more is met".*

Whilst the above case pre-dates the Act, the onus is still on an applicant to prove that all of the tests under Section 15(2) of the Act are met.

2. The decision of the RA is subject to judicial review and when determining this matter, the RA must act in accordance with "Wednesbury" principles and have full regard to the Human Rights Act 1998, in particular Protocol 1 (right to protection of property) and Article 6 (right to a fair trial). The RA will also be aware of the comments of Pill LJ in R v Suffolk County Council, ex parte Steed (1996) where he stated that,

*"It is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town or village green".*

3. The background and history in this matter is such that it would be right and proper for the RA to proceed with **considerable** caution when making findings in this case.
4. Since 2004 there have been a number of planning applications, which will be clear from the extensive planning history. It will also be clear from the planning documentation that residents have been strongly opposed to the land being developed for residential purposes, which the objector believes is driven by the fact that there will be an element of social housing. Whilst objections were made by residents in connection with vehicular traffic, visual impact (overlooking and noise), and drainage, no objections were raised alleging loss of any recreational space, which would have been the case if this land was being used as alleged in the applicant's statement.

5. The objector does not accept that all of the tests in Section 15(2) of the Act can be met. The objector does not accept the allegations made in connection with the application. The objector considers that the application has been made in another attempt to frustrate the proposed development, which is the subject of the latest planning application, which has been submitted in connection with this land.
6. Whilst the objector considers that there might have been some occasional use, it does not accept that the land has been used on a continuous basis for a period of 20 years in such a character and degree of frequency over the whole of the 20 year period to indicate an assertion that there has been a continuous right under the Act.
7. The objector makes no admission about the locality and whether a significant number of users come from that locality.
8. The objector does not accept that the land has been used as alleged in the applicant's statement. The burden of proof is on the applicant to satisfy the RA that all of the ingredients under Section 15 (2) are met.
9. If the RA is not minded at this stage to dismiss the application then it must provide the objector with an opportunity to cross examine the applicant in respect of its statement and any other interested parties and in this regard the objector will also produce evidence to show that all of the elements under Section 15(2) of the Act can not be met and accordingly reserves its position in this regard.

**Dated 1 October 2010**