

**From:** [REDACTED]  
**To:** [A66Dualling](#)  
**Subject:** Documents - Brough Hill Fair  
**Date:** 06 November 2023 14:59:54

---

Good Afternoon,

Apologies for the extremely late nature of these submissions.

I will try to tidy up the 'letter' - I wanted to get the content to you. Could I ask that you please don't publish the letter until I have provided a new copy?

thanks

Please find attached:

1. Letter from Friend Families and Travellers to the SoS.
2. *The Importance of Place in our Heritage: Brough Hill Fair*; John Heywood.
3. Wyld v Silver;
4. Email From Rachel Smith
5. Tamara West: *Intersecting Lives: The Brough Hill Fair as Biography-in-Pieces*
6. Summary of concerns (letter 6th November)

Secretary of State for Transport

15<sup>th</sup> September 2023

RE: The proposed rerouting of the A66 through the site of the Brough Hill Fair

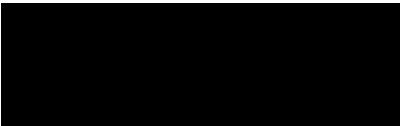
Dear Mark Harper MP

We are a national charity seeking to end racism and discrimination against Gypsy, Traveller and Roma communities. We write to you regarding the proposal to reroute the A66 through the site of the Brough Hill Fair, and to emphasise the importance of finding an alternative site that meets the needs of the Romany Gypsy and Irish Traveller communities, for whom this ancient horse fair is an integral part of their intangible cultural heritage.

Annual horse fairs such as Brough Hill have origins as far back as the 1300s in the United Kingdom. They are a rare gathering opportunity for Gypsies and Travellers. It is at these horse fairs that community members can engage in the nomadic element of their ethnic culture, while earning a living in the traditional ways of horse trading and the selling of handmade crafts. Horse fairs are where Gypsies and Travellers meet with family, form new relationships and share stories and community news. Without horse fairs like Brough Hill, of which few remain, the cultures of Gypsy and Traveller communities in the United Kingdom could disappear.

The Equalities Impact Assessment for the development of the A66 raises the fact that Gypsies and Travellers will be adversely affected, however a suitable alternative site has not been identified, only one that is wholly unsuitable. We urge that both the cultural importance and historical significance of Brough Hill Fair for Gypsies and Travellers are taken into consideration when deciding whether or not to approve the proposed development, and to consider the objections and points raised over the proposed new site.

Yours sincerely



Sarah Mann  
Director

[gypsy-traveller.org](http://gypsy-traveller.org)



HOME

NEWS

ENVIRONMENT

POLITICS

LIFESTYLE

BUSINESS

REGION



Home > Lifestyle > Culture, Language and Religion

# The importance of place in our heritage: Brough Hill Fair

A National Highways plan to expand the A66 presents an existential threat to Brough Hill Fair, a gathering of deep cultural significance



by [John Heywood](#) — 23-09-2023 07:05

AA

in [Culture, Language and Religion](#), [Cumbria](#), [Human Interest](#) Reading Time: 6 mins read



HOME

NEWS

ENVIRONMENT

POLITICS



Privacy

LIFESTYLE

BUSINESS

REGION



**The fate of a centuries-old Gypsy and Traveller horse fair in Cumbria is hanging precariously in the balance, pending a crucial government decision regarding National Highways’ proposal to expand the A66. This proposed expansion threatens to obliterate the current site of the much-loved Brough Hill Fair.**

Campaigners are expressing deep concerns over what they perceive as National Highways’ inadequate consideration of the fair’s profound cultural significance. Furthermore, the absence of a viable alternative site in the proposal raises questions about its vulnerability to potential legal challenges.

## The importance of place

The value of cultural heritage knows no boundaries, and its safeguarding is an obligation we owe to every community, especially those whose heritage has too often been overlooked.

Place is an indelible thread woven into the fabric of heritage and community. It serves as a conduit for cultural identity, a keeper of history, a catalyst for community cohesion, and a source of economic and social prosperity. The significance of place extends beyond mere physical space; it encompasses the very essence of who we are as individuals and communities.

The importance of a sense of place becomes even more pronounced in deprived or marginalised communities. To preserve and cherish these places is to safeguard the richness and diversity of our cultural heritage, ensuring that future generations can continue to draw inspiration from the profound importance of place in shaping our world.

## National Highways plans and Brough Hill Fair

Rooted in history dating back to the 1300s, Brough Hill Fair holds immense cultural importance, not only for the Gypsy and Traveller community but also for the broader region. Over the years, the fair has found its place in various locations in and around Brough.



endeavour necessitates the use of the current location of the cherished Brough Hill Fair.

In early August, a panel of government experts reviewed National Highways' £1.5bn proposal for the A66 extension. Subsequently, they submitted their findings to transport secretary Mark Harper. Now, the fate of this long-standing tradition lies in his hands, as he has three months to deliberate upon their recommendations. Regrettably, this means that this year's Brough Hill Fair, scheduled for the end of September, may very well be the last of its kind, pending the decision's outcome and the campaign's efforts to preserve this cherished event.



Photo courtesy of Alan Mawdsley

## A living cultural heritage rooted in the land

Emphasising the importance of the site's heritage in an interview with *Travellers Times*, John Henry Phillips, a respected Romani archaeologist, author, and presenter of Channel 4's *The Great British Dig*, eloquently underscores the vital importance of recognising and preserving the cultural heritage of Romani Gypsies – a heritage that is often overshadowed or neglected in policy and decision-making processes.

Phillips highlights that the cultural heritage of Romani Gypsies is woven with traditions,



LIFESTYLE ▾ BUSINESS ▾ REGION ▾

the land they inhabit. It is a heritage that is both tangible and intangible, a 'living' heritage that continues to evolve and thrive.

He emphasises that events like the Brough Hill Fair are paramount for the Romani Gypsy community, serving as vital opportunities for them to come together, just as they have for centuries, to practise, preserve, and share their cultural heritage. These gatherings are not just social events but essential for the survival of a heritage deeply intertwined with their way of life.



CUMBRIA

## Learning Through the Natural World – celebrating Charlotte Mason

BY EILEEN JONES 29 AUGUST 2023

# Intangible cultural heritage as important as physical remains

Furthermore, Phillips asserts that the Brough Hill Fair is no less a part of the historic environment than physical archaeological remains, which are traditionally valued and protected. He challenges decision-makers to recognise that intangible cultural heritage, like the practices and traditions of the Romani Gypsy community, holds equal importance and deserves protection and support.

In conclusion, he urges the secretary of state and the government to acknowledge and uphold their responsibilities towards Gypsies and Travellers by assigning the same value to their cultural heritage as they would to any other heritage asset. This call for recognition and preservation reflects the broader movement to ensure that all cultural heritages, regardless of their nature, are safeguarded and celebrated as integral parts of our shared human heritage.

HOME NEWS ▾ ENVIRONMENT ▾ POLITICS ▾



Privacy

LIFESTYLE ▾ BUSINESS ▾ REGION ▾



Postcard

## An ancient and sacred fair

In the same article in *Travellers Times*, Billy Welch, spokesperson for Appleby Fair and the Brough Hill Fair Community Association, says, “Brough Hill Fair is ancient and is sacred to Gypsy people. It has been part of our culture for generations”. He accepts that the road is necessary and the fair will have to find a new site, but stresses that the location they’ve been offered – squeezed between the new dual carriageway and an industrial scale farm and cement works – is unsafe, unacceptable, and discriminatory. He goes on to add that, without an adequate alternative site, this “will lead to the death of the Fair and another blow to the Gypsy way of life”.

In a world where the significance of place is undeniable, whether it be in the preservation of cultural identity, fostering community cohesion, or driving economic prosperity, there emerges a stark reminder of its sometimes unequal distribution. It is crucial to remember that heritage encompasses the living traditions that define who we are. To overlook the cultural heritage of marginalised communities is to diminish the richness of our shared human tapestry.

As the government’s decision on the fate of the Brough Hill Fair is awaited, we must heed the voices of those like Billy Welch, who aptly describe its significance as “ancient” and “sacred”. For the Romani Gypsy community, its loss would not only be the end of a cherished fair but also a further undermining of a way of life deeply intertwined with cultural heritage.

[HOME](#)
[NEWS](#)
[ENVIRONMENT](#)
[POLITICS](#)



Privacy

[LIFESTYLE](#)
[BUSINESS](#)
[REGION](#)

Brough Hill Fair is being held between 29 September until 2 October. A rally is being held on 1 October in Brough village.



Previous Post

It may be good for narrow, but is 'Military Keynesianism' good for Britain?

Next Post

We need your help!

The press in our country is dominated by billionaire-owned media, many offshore and avoiding paying tax. We are a citizen journalism publication but controversially generated 'photo' on show at Lancashire Photography Festival. If you believe in what we do, please consider subscribing to the Bylines Gazette from as little as £2 a month 🙏



### John Heywood

John is an historian, writer and broadcaster and formerly programme manager at the historic Queens Mill in Castleford. He is passionate about combining heritage and community in order to regenerate forgotten towns and cities. He is also the curator of the popular History and Heritage Yorkshire Twitter account.

X

### Related Posts



A brief history of goth fashion – from all-black to pastels

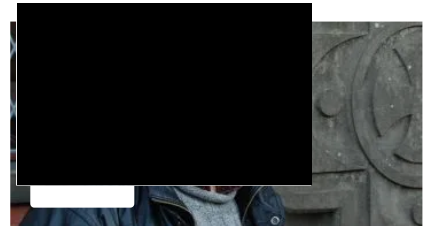
BY CATHERINE SPOONER

🕒 26 OCTOBER 2023



Sketching a year in Lakeland

BY EILEEN JONES 🕒 16 OCTOBER 2023



Obituary: Jan Needle, provocative children's author and screenwriter

BY ANDREW ROSTHORN

🕒 9 OCTOBER 2023





For educational use only

## \*169 Wyld and Others v Silver.



Positive/Neutral Judicial Consideration

### Court

Court of Appeal

### Judgment Date

12 July 1962

### Report Citation

[1960 W. No. 3057.]; [1962] 3 W.L.R. 841

[1963] 1 Q.B. 169



Court of Appeal

Lord Denning M.R. , Harman and Russell L.JJ.

1962 May 31; June 1, 4; July 12.

*Market—Right to hold—Incorporeal hereditament—Franchise—Implied grant from Crown—Recital in private Act that inhabitants of parish entitled to hold “fair or wake” on certain lands annually—“Fair”—“Wake”—“Market”—“Fair or wake”—Meaning—Right not exercised in living memory—Whether existence established—Whether enforceable only by Attorney—General—Whether transferred to parish council by [Local Government Act, 1894 \(56 & 57 Vict. c. 73\), s. 6 \(1\) \(a\)](#) — [39 Geo. 3, c. cxviii](#) .*

*Injunction—Relator action—Public right—Right vested in inhabitants of parish—Franchise of fair—Whether public right—Whether Attorney—General necessary party to enforcement by declaration or injunction.*

*Local Government—Parish—“Powers, duties and liabilities of vestry” transferred to parish council—Right of inhabitants to hold fair on certain land—Whether “buildings, lands or hereditaments”—Whether “powers”— [Poor Relief Act, 1819 \(59 Geo. 3, c. 12\), s. 17](#) — [Local Government Act, 1894, s. 6 \(1\) \(a\)](#) .*

*Evidence—Statute—Recitals in private Act—Whether conclusive.*

A private Act of Parliament of 1799 recited that the inhabitants of the parish of Wraysbury were, by ancient usage, entitled to hold a fair or wake on the Friday in Whitsun week annually upon a certain part of the waste lands of the parish, and enacted that the commissioners appointed by the Act for the purpose of making an \*170 inclosure award should be empowered to appoint a parcel of the waste lands “as near as may be to the place where such fair or wake hath been most commonly held” for the purpose of holding the fair or wake thereon. It further enacted that the surface of the appointed parcel should not be disturbed.

By their award of 1803 the commissioners allotted three adjoining parcels to named recipients “subject to holding the same annual fair or wake thereon and for which compensation hath been made.” The allotment was followed by a declaration of the future right of the inhabitants to hold the fair or wake as previously and it recited the bar against disturbance of the surface. No fair had been held in the village within living memory; the last recorded occasion of its occurrence was May 29, 1875.

One of the three parcels was acquired by the defendant in 1958 with a view to developing it as a building site. The abstract of title made available to him commenced in April, 1900, and contained no reference to the right reserved by the inclosure award. The local planning authority gave outline permission for the erection of five dwellings, and the detailed plans were later approved. By March, 1959, the preparatory work on the site had progressed sufficiently for it to be observed by parishioners.

The plaintiffs, suing on behalf of themselves and other inhabitants of the parish, claimed a declaration that the inhabitants were entitled to hold an annual fair on the plot acquired by the defendant and that the defendant was not entitled to disturb the soil or erect any building on it, an injunction restraining the defendant from disturbing the soil or erecting buildings, and ordering that he remove all materials and erections placed on the plot:-

Held:

(1) that the recitals in the Act of 1799 and award of 1803 were sufficient evidence of the right of the inhabitants to hold an annual fair or wake on the defendant’s plot of land (post, pp. 181, 189, 196); and that that right was not capable of being lost by disuse or waiver but could only be taken away by Act of Parliament (post, pp. 181, 189, 199).

*Per* Harman and Russell L.J. In the absence of evidence to the contrary, a recital in a private Act is strong, though not conclusive, evidence of the truth of a matter long beyond the reach of living memory (post, pp. 187, 194).

A “fair” involves marketing, and owes its origin to a royal franchise, and a “wake,” attributable to customary law, is a gathering of people for sports and pastimes without marketing; “fair or wake” means a fair to which the characteristics of a wake have become attached; the term is thus well understood in law and the right claimed therefore not too vague (post, pp. 180, 187, 194).

(2) That the right to hold the fair or wake was not a “hereditament” transferred to the churchwardens and overseers of the parish by section 17 of the Poor Relief Act, 1819 ,<sup>1</sup> which concerned hereditaments capable of being purchased, hired or taken on \*171 lease (post, pp. 182, 190, 196); nor was it one of the “powers” of the vestry transferred to the parish council by section 6 (1) (a) of the Local Government Act, 1894<sup>2</sup> (post, pp. 182, 191, 197). Accordingly, the right was not one which could be enforced by the parish council.

(3) That the Attorney-General, although a competent party, was not an essential party to the action; and the action was properly constituted as a representative action (post, pp. 183, 191, 198).

*Bromley v. Smith*(1826) 1 Sim. 8 , and *Prestney v. Colchester Corpn. and Attorney-General* (1882) 21 Ch.D. 111 applied.

(4) That, since the plaintiffs had shown that the right still existed and that it was vested in the inhabitants, they were

entitled to an injunction restraining the defendant from doing any act or thing, or raising any building or structure which would prevent or hinder the carrying on of the fair on his plot.

Decision of Lloyd-Jacob J. [1962] Ch. 561; [1961] 3 W.L.R. 1303; [1961] 3 All E.R. 1014 affirmed.

APPEAL from Lloyd-Jacob J.

By a private Act of Parliament of 1799 ( 39 Geo. 3, c. cxviii ), certain open and common fields, common meadows, commons and waste grounds within the parish and manor of Wraysbury in the county of Buckingham were directed to be divided, allotted and inclosed, such division, allotment and inclosure to be determined by named commissioners, which determination was set out in an inclosure award enrolled in the Court of Common Pleas in 1803.

The Act of 1799 recited that the inhabitants of the parish were, by ancient usage, entitled to hold a fair or wake on the \*172 Friday in Whitsun week annually upon a certain part of the waste lands of the parish and enacted that the commissioners should be empowered to appoint a parcel of the waste lands “as near as may be to the place where such fair or wake hath been most commonly held” for the purpose of holding the fair or wake thereon to the end that the inhabitants should for ever after have the same right to hold the fair or wake annually on the same day upon the appointed parcel and enjoy and exercise all the rights and privileges thereon as they had had and to which they were accustomed in respect of the waste land to be enclosed prior to the passing of the Act. It further enacted that the surface of the appointed parcel should not be disturbed.

By their award the commissioners allotted three adjoining parcels, identified under numbers 277, 278 and 279, to named recipients “subject to holding the same annual fair or wake thereon and for which a due compensation hath been made by the said commissioners on the quantity of earth of the said allotments, the said three several allotments being the situation and place as near as may be where such fair or wake have most commonly been holden.” That allotment was followed by a declaration of the future right of the inhabitants to continue to hold the fair or wake as previously, and it recited the bar against disturbance of the surface.

Of those three parcels, No. 277, which was some four acres in extent, was purchased by public subscription and conveyed in 1930 to the Wraysbury Parish Council for the benefit of the inhabitants and that it should be preserved as an open and accessible pleasure place subject to the right preserved by the inclosure award in respect of the annual fair or wake. Since that conveyance, the area had been developed by the erection of a village hall and the establishment of a children’s playground in the north and southwest corners respectively, and further adapted by the provision of a table area suitable for cricket pitches. The three parcels together were named Wraysbury Green in the map annexed to a justice’s award dated 1840, but in more recent times parcel No. 277 alone had been considered as the “village green.”

The next adjoining parcel, No. 278, had, for at any rate the last 30 years, been owned by the local tennis club and had been laid out with hard courts and a pavilion for use by the members.

The third parcel, No. 279, approximately one acre in area, was acquired by the defendant, Albert Edward Silver, in two lots by conveyances in October and November, 1958. The abstract of title made available to him commenced in April, \*173 1900, and contained no reference to the right reserved by the inclosure award. In December, 1957, prior to the date of acquisition by the defendant and consequent upon a public inquiry held as a result of an appeal to the Minister of Town and Country Planning, permission for the erection of one house upon the parcel had been granted. That was not proceeded with and in June, 1958, the local planning authority gave outline permission for five dwellings to be erected thereon. The first plaintiff, Robert Stodart Balganie Wyld, submitted an objection in writing for consideration at the public inquiry in which he drew attention to the liability of flooding of the site at certain seasons, but he omitted any reference to the inclosure award or to the incompatibility of the proposed use of the site for building with the bar against disturbance of the soil which that award and the Act from which it stemmed both contained. At the date of the defendant’s acquisition of the plot a few portable wooden buildings and a concrete platform, upon which at some time a caravan had been placed, were on the site; but there was nothing observable to passers-by which would indicate that any difficulty would be experienced in preparing the site for use as a temporary market.

A certified copy of the “Windsor and Eton Express” of May 29, 1875, referred to the Annual Pleasure Fair being held in Wraysbury in that month. But it was not in dispute that as at Whitsun, 1960, no fair had been held in the village within living memory.

Early in 1959 the defendant’s detailed plans of the five bungalows and garages which he proposed to build on the site were passed by the appropriate planning authority, and by March, 1959, preparatory work at the site had progressed sufficiently for it to be observed by parishioners. By a letter dated March 18, 1959, the clerk to the parish council drew the attention of the defendant to the terms of the inclosure award. A week later the clerk to the planning authority also wrote to the defendant and advised him to consider his position in the light of the prohibition contained in the award. The defendant took steps to cause a special parish meeting to be convened by securing six local government electors to demand it, and on June 22, 1959, the meeting was held. By an overwhelming majority of 301 to 11 (with 18 abstentions) the inhabitants present resolved to protect their full rights under the inclosure award and called on the parish council to act in that respect. Despite those warnings the defendant continued his building operations.

*\*174*

In January, 1961, by which date the present proceedings had already been instituted, the parish council refused to take the action to implement the resolution of the special parish meeting which was being urged on them by a body of parishioners calling themselves the Wraysbury Association. At the parish council election held in May, 1961, all five candidates supported by the Wraysbury Association were returned. The writ in this action had been issued on November 18, 1960, and on January 17, 1961, the court on motion had granted an interim injunction.

By their statement of claim the plaintiffs on behalf of themselves and all other inhabitants of the parish of Wraysbury claimed against the defendant: (1) a declaration that the inhabitants of the parish were entitled to hold an annual fair or wake on the Friday in Whitsun week on certain lands in the parish including the plot marked as No. 279 on the plan annexed to the Wraysbury inclosure award; (2) a declaration that, on the true construction of the award, the defendant was not entitled to break up the soil or erect any building on the plot; (3) an injunction restraining the defendant from breaking up the soil or erecting buildings; (4) an order that the defendant remove all erections and materials placed on the plot since March 1, 1959; and (5) damages. They claimed that the inhabitants had a right at common law (such right to be inferred from ancient usage) as modified and regulated by the private Act of Parliament and the inclosure award to hold the annual fair on parcel No. 279. In the alternative they claimed that by virtue of the private Act of Parliament the inhabitants had a statutory right to hold the annual fair.

The defendant denied that the inhabitants had ever had a right to hold the annual fair or wake and contended that the Act itself did not confer any right but merely operated to make provision for the exercise of such right (if any) as existed prior to the passing of the Act. He contended that any right which the inhabitants might have possessed had long since been released, waived or abandoned. He also objected that the action was not maintainable by the plaintiffs.

Lloyd-Jacob J. <sup>3</sup> declared that the inhabitants of the parish of Wraysbury were entitled to hold an annual fair or wake on the Friday in Whitsun week on certain lands in the parish including the plot of which the defendant was the owner or occupier. He further declared that the defendant was not, upon the true *\*175* construction of the inclosure award, entitled at any time or times to dig any gravel or break up disturb or remove or take away any of the soil in or upon or from that plot, or to erect any building or to lay any timber, soil, dung of other filth whatsoever upon it. He gave liberty to the plaintiffs to apply for an injunction in the above terms and for a mandatory injunction compelling the defendant to restore the plot to its previous condition.

The defendant appealed, and the plaintiffs cross-appealed on the ground that, if a customary right was not established, the right was a statutory one.

*H. E. Francis Q.C.* and *D. S. Chetwood* for the defendant. There are three grounds of appeal. First, the plaintiffs failed to call sufficient evidence to establish the right claimed. Secondly, even if the right exists, the plaintiffs are not the persons to enforce it. Thirdly, the right is obsolete and has no practical use, and should not therefore be enforced by injunction.

There is a distinction between a market and a fair. Every member of the public has a right to sell goods of the class dealt with in a market, and the fact that no toll was payable in this case suggests that the right was to a market rather than to a fair. Further, the fair, if it ever existed, degenerated in time into a wake, which was an occasion for merry-making on the vigil of a

saint and cannot be the subject of a franchise. The recital in the Act of 1799 refers in fact to a wake. All that the evidence in this case establishes is that a wake was held; it does not establish that there was ever a right to hold a fair.

Parliament in 1799 only granted such right as previously existed over the waste of the manor. The Act did not create a new statutory right, but simply allotted land for the exercise of such common law right as then existed. A recital in a local Act is not conclusive evidence of the existence of such a right: *Merttens v. Hill*.<sup>4</sup> There is no distinction for this purpose between a local Act and a private Act. Although a clear recital is strong evidence of the facts recited, this recital is ambiguous. It contains two propositions, one of law, one of fact. The question of fact is whether it was a fair or a wake which was held, and in 1962 it is impossible to give any answer. There could have been no franchise to hold a wake. A right to hold a wake could have been acquired by custom. It has not been proved whether this was a franchise to hold a fair or a customary right to hold a wake.

This action is not maintainable by the plaintiffs for the \*176 following reasons. First, whether the right be customary or statutory or a franchise it is vested in the parish council. It is not known whether the original franchise, if any, was granted to trustees for the inhabitants or to the inhabitants as a corporation, but section 17 of the Poor Relief Act, 1819, vested all parish property in the churchwardens and overseers: *Haigh v. West*.<sup>5</sup> It was afterwards transferred to the parish council by the *Local Government Act, 1894, s. 6 (1) (c)*. The right to bring an action to enforce it is thus vested in the parish council: *Attorney-General and Spalding R.D.C. v. Garner*.<sup>6</sup> Nor can the inhabitants by action compel the parish council to enforce their right. Secondly, the inhabitants of a parish are a class of the public, and any right which they may have can only be enforced by the Attorney-General; the preponderance of authority is that he is a necessary party: *Evan v. Avon Corporation*<sup>7</sup>; *Stoke Parish Council v. Price*<sup>8</sup>; *Weir v. Fermanagh*.<sup>9</sup>

This right is of no practical value, and should be regarded as obsolete. To grant an injunction to enforce it would be oppressive: *Shelfer v. City of London Electric Lighting Co.*<sup>10</sup>; *Collins v. Cooper*.<sup>11</sup> Because of the non-exercise of the right, the defendant purchased this land in the belief that no such right was attached to it. That fact does not of itself destroy the right, but it has a bearing on the remedy to which the plaintiffs are entitled. Four-and-a-half acres of land vested in the parish council are available for the holding of a fair, and the obvious place for this is the village green. Although abandonment does not affect a franchise right this is not proved to be a franchise right, and *Hammerton v. Honey*<sup>12</sup> shows that where the claim to such a right is based on custom a long period of non-user is strong evidence that that custom never existed. [*Walker v. Murphy*<sup>13</sup> and *Great Eastern Railway Co. v. Goldsmid*<sup>14</sup> were also referred to.]

*E. I. Goulding Q.C. and Oliver Lodge* for the plaintiffs. The plaintiffs claim a statutory franchise of fair over this land. Alternatively, they are entitled on their pleadings to say that they have established a right at common law or by custom to hold a fair or wake. The result is the same.

\*177

There are two ways of reading the Inclosure Act of 1799. Read as a whole, the land is subject to the right. Read section by section, the common law right is extinguished and the right re-enacted. The current of authority is that where a statute has modified a common law right the courts lean in favour of a new statutory right. On the true construction of this Act a new statutory right was created, and all previous rights over the waste were extinguished: *New Windsor Corporation v. Taylor*.<sup>15</sup> The recitals in the Act are strong evidence of the facts recited. An Act of Parliament is the most solemn instrument known to the law. Indeed, the defendant founds his own title upon this Act; but for it, the land would still be part of the waste of the manor. Further, the commissioners appointed under the Act allotted larger portions of land by way of compensation where this right existed. The defendant cannot both approbate and reprobate.

It is suggested that all that can be inferred from the Act is that there was a wake, not a fair in the legal sense. That cannot be presumed without evidence. "Fair" has a technical meaning in law, and Parliament is not to be presumed to have used the word otherwise than in that sense: see *Collins v. Cooper, per Bruce J.*<sup>16</sup> The Act on its true construction is not limited to a wake, but applies both to a fair and to a wake. The law recognises customary recreational rights: *Hall v. Nottingham*.<sup>17</sup>

There is no basis here for the contention that the right has been waived. *Great Eastern Railway v. Goldsmid*,<sup>18</sup> the only case on waiver in this context, shows that rights conferred by a private Act can be waived, but that decision can be distinguished on, inter alia, the following grounds: First, it concerned the City of London, a corporation possessing machinery for dealing with its rights. The inhabitants of Wraybury, unlike the City of London, have no common seal. In a practical sense, a waiver by them cannot be imagined. Secondly, in *Goldsmid's* case, 366 years had elapsed since the last exercise of the right. The

inhabitants of Wraysbury are not in any case bound to use their right continuously. Moreover, a legal right, such as this is, is enforceable irrespective of notice.

So far as the alleged transfer of the right to the parish council is concerned, section 17 of the Poor Relief Act of 1819 did not automatically vest any property in the council. It only vested in the council within the scope of the Act, i.e., with an assurance. \*178 If there had been an automatic conveyance, the words “shall be conveyed, demised and assured” would have been unnecessary. This point was not argued in *Doe d. Jackson v. Hiley*.<sup>19</sup> [*Doe d. Higgs v. Terry*<sup>20</sup> and *Haigh v. West*<sup>21</sup> were also referred to.] So far as “buildings, lands and hereditaments belonging to such parish” are concerned, this has been popularly construed as referring to parish property. But there is a distinction between property held for the relief of the poor, or for the purpose of maintaining highways vested in the parish, and something vested eo nomine in the inhabitants. Further, “buildings, lands and hereditaments” would not include an incorporeal hereditament such as a right to hold a fair. None of the cases refer to incorporeal hereditaments.

Moreover, this right is not included in “powers” in section 6 of the Local Government Act, 1894 .

[LORD DENNING M.R. This section should be looked at in the sense of property, with which, if anything, we are concerned. We are not concerned here with powers.]

”Property” includes all rights recognised by law. “Powers” include such things as calling parish meetings - local government functions.

The defendant’s argument depends upon the definition of “vestry,” but section 75 shows that “vestry” and the inhabitants of the parish are synonymous.

The argument that the Attorney-General is not a necessary party to this action is assisted by *Attorney-General and Spalding R.D.C. v. Garner*,<sup>22</sup> although no safe guidance is to be obtained from the judgment of Channell J. The Attorney-General will be the proper plaintiff where (a) the right is not of the nature of property or (b) it is the entire community, not a mere section of it, which is affected - as in the case of a highway - or (c) the relief sought is the execution of a charitable trust. See *Bromley v. Smith*,<sup>23</sup> per Sir John Leach V.-C. In *Willingale v. Maitland*<sup>24</sup> no one demurred on the ground that the Attorney-General was not present. [Reference was also made to *Hammerton v. Honey*,<sup>25</sup> *Prestney v. Colchester Corporation and Attorney-General*<sup>26</sup> and *Bedford v. Ellis*.<sup>27</sup> ] In *Stoke Parish Council v. Price*<sup>28</sup> North J. did not consider the question of a suit by representative inhabitants.

*Francis Q.C.* in reply. The evidence here is insufficient to establish even a franchise right. The recital is ambiguous: see also the marginal notes. No mention is made of this franchise in the report of the Royal Commission on Market Rights of 1888.

Although if the right is a customary one it would not matter whether it was to a fair or to a wake, it was not suggested below that it was a customary right. If it was, it has been superseded by the Act and a right given by a private Act can be lost by abandonment: *Great Eastern Railway Co. v. Goldsmid*<sup>29</sup> ; *Dewhurst v. Salford Union*.<sup>30</sup>

The inhabitants of a parish are a class of the public: *Weir v. Fermanagh*<sup>31</sup> ; *Attorney-General and Spalding R.D.C. v. Garner*<sup>32</sup> is wrong on these points. *Bromley v. Smith*<sup>33</sup> concerned a representative action brought on behalf of householders. In neither *Willingale v. Maitland*<sup>34</sup> nor *Hammerton v. Honey*<sup>35</sup> was the point argued, though *Willingale v. Maitland*<sup>36</sup> was a representative action. The question in *Prestney v. Colchester Corporation and Attorney-General*<sup>37</sup> was whether there was there a public or a private trust. *Bedford v. Ellis*<sup>38</sup> was an action on behalf of a class of traders with a preferential right to the use of a market. North J. in *Stoke Parish Council v. Price*<sup>39</sup> considered the right in question to be a public one - that is the significance of the case - and in *Evan v. Avon Corporation*<sup>40</sup> a trust for the inhabitants of a particular place was held to be a public trust. Once it is established that the right is a public right, only the Attorney-General can sue to enforce it.

So far as remedies are concerned, it is open to any inhabitant with a proprietary right to ask the court for damages - damages can be obtained for any interference with it. If the right is a private right, damages are its proper remedy.

*Cur. adv. vult.*

\*180

July 12. The following judgments were read.

LORD DENNING M.R.

In the eighteenth century the inhabitants of the village of Wraysbury in Buckinghamshire had a right by ancient usage to hold a fair or wake on the waste lands of the parish. It is so recorded in an Act of Parliament. This fair or wake was held on the Friday in Whitsun week in every year. It had its origin, no doubt, in the vigil which used to be held on the eve of a festival in the church. The fair was a gathering of buyers and sellers. The wake was the merry-making which went with it. There can be no doubt that this right of the inhabitants was a customary right to which the courts would give effect: see *Hall v. Nottingham*.<sup>41</sup> It was part of the local law which could not be got rid of by abandonment or disuse but only by Act of Parliament: see *Hammerton v. Honey*.<sup>42</sup>

In 1799 the parish of Wraysbury, like so many parishes in England, became the subject of an Inclosure Act, and in 1803 the inclosure commissioners made their award. Under it the waste lands of the parish were enclosed by fences and allotted to individual owners. But special provision was made by the Act and the award so as to preserve the right of the inhabitants to hold their fair or wake. The commissioners set out and appointed a piece of land specially for the purpose, and the Act itself enacted that upon it the inhabitants “shall for ever hereafter have the same right to hold such fair or wake annually.” This seems to me to have conferred a statutory right on the inhabitants, and the former customary right became merged in the higher title conferred by Parliament: see *New Windsor Corporation, v. Taylor*.<sup>43</sup> It, too, was part of the local law, and, just as the customary right could not be got rid of except by Act of Parliament, nor could this new statutory right.

The piece of land so set out by the commissioners was nearly six acres in extent. It was all pasture, near to the church and manor house, and it occupied an island site bounded by roads and a watercourse. The ownership of the soil of these six acres of “the Green” was allotted as to four-and-a-half acres to Joseph Adkins, three-quarters of an acre to James Herbert, and three-quarters of an acre to Samuel Mills, but they took it subject to the right of the inhabitants to hold the fair or wake on it, and on this account the commissioners made due compensation to them by allotting them a bigger quantity than they otherwise \*181 would have done. Special provision was made to ensure that these six acres were kept as open ground suitable for the fair or wake to be held upon it. It was enacted by the Act and repeated in the award that “no person or persons whomsoever” was to have any right to dig gravel, remove soil, erect a building or lay any filth on it. This prohibition seems to me to apply to the owners of the land as well as everyone else. It still leaves it open to the owners to use it as pasture for animals. It was described as pasture in the award of 1803 and no doubt the commissioners contemplated that it would always be used as such. It was called “the Green,” as are so many village greens in England, simply because it was grassy land on which the inhabitants had a right to disport themselves.

During these last 160 years things have changed. There has not been a fair or wake on Whit Friday in the village during this century. and the Green has changed a good deal. The four-and-a-half acres which were allotted to Adkins are owned by the parish council and cricket is played there. The three-quarters of an acre which was allotted to Mills has been turned into tennis courts. The three-quarters of an acre which was allotted to Herbert has stood derelict. But now the defendant has bought this derelict piece, and he wishes to build on it. He has got planning permission to put up five bungalows with garages on it. But the inhabitants have risen up in arms against him, or at any rate some of them have. They say that his piece of land is part of the land set out for their fair or wake, and no one must build on it so as to interfere with their holding it. True it is that no fair or wake has been held there within living memory. But no matter. They have a right, they say, to hold it on this piece of land if they wish to do so and no one shall gainsay them. and they come to the Queen’s courts to enforce their right.

Needless to say, after so long a period of disuse, the inhabitants must establish their right with clearness and certainty, but I must say they have done it. They have produced an Act of Parliament of the year 1799 and the inclosure award of 1803. Those clearly show the right of the inhabitants, and there is no reason to suppose they have lost it. I know of no way in which the inhabitants of a parish can lose a right of this kind once they have acquired it except by Act of Parliament. Mere disuse will not do. and I do not see how they can waive it or abandon it. No one or more of the inhabitants can waive or abandon it on behalf of the others. Nor can all the present inhabitants waive \*182 or abandon it on behalf of future generations. They have no common seal and cannot do any corporate act of waiver. They stand in a very different position from a corporation like the City of London, such as was considered in *Great Eastern Railway v. Goldsmid*.<sup>44</sup>

In my judgment, therefore, the inhabitants of Wraysbury still have the right to hold a fair or wake on this piece of land on the

Friday in Whitsun week. It was originally a common law right, which is now merged in a statutory right. and it is covered by the amended pleading in this case. But the question remains how and by whom it can be enforced.

It is said that the right is now vested in the parish council and can only be enforced by that council. This argument was developed on two grounds. First, it was said that the right was in 1819 transferred to the churchwardens and overseers of the parish and in 1894 transferred from them to the parish council under [section 5 \(2\) \(b\) of the Local Government Act, 1894](#) . This point depends entirely on whether the right of the inhabitants to hold a fair comes within the words “buildings lands and hereditaments belonging to such parish” in section 17 of the Poor Relief Act, 1819 . I do not think that it does. That Act was only dealing with buildings, lands and hereditaments which could be “purchased, hired, or taken on lease” or could be “accepted, taken, or held.” It applied to corporeal hereditaments belonging to the parish, such as the lane in [Haigh v. West](#),<sup>45</sup> or even perhaps to some incorporeal hereditaments such as a right of way annexed to the village hall. But it did not apply to the right of the inhabitants to hold a fair or wake. Such a right is not “land,” nor is it a “hereditament.” So it remained vested in the inhabitants.

Secondly, it was said that the right was one of the “powers of the vestry of the parish,” and as such was transferred to the parish council in 1894 under [section 6 \(1\) \(a\)](#) of the Act of 1894. The word “vestry” means the inhabitants of the parish: see [section 75](#) . So this point depends entirely on whether the right to hold a fair was one of the “powers” of the inhabitants. I do not think that it was. The right was “property” of the inhabitants but not a “power” of the inhabitants as those words are used in the Local Government Acts of 1888 and 1894. In my judgment, therefore, this right was not transferred to the parish council under section 6 (1) (a) but remained in the inhabitants.

**\*183**

Next it was said that a few of the inhabitants could not sue by themselves but that they had to relate the facts to the Attorney-General and persuade him to sue. I do not doubt that the Attorney-General *could* have sued. He was a competent party. But I do not think he was an essential party. One or more of the inhabitants can sue to enforce the right of all, stating that they do so on behalf of themselves and all others. Even if they are in a minority in the parish they can sue, for the majority cannot overrule the minority in such a matter. The majority cannot excuse the wrong, nor deprive the minority of their remedy by suit: see [Bromley v. Smith](#),<sup>46</sup> *per* Sir John Leach V.-C.<sup>47</sup> There was a case when a single labourer inhabiting the parish of Loughton in Essex sued to enforce the right of all the inhabitants to cut wood from Epping Forest, and no one denied that his action was competent even though the Attorney-General was not present: see [Willingale v. Maitland](#).<sup>48</sup> Likewise, three freemen of the borough of Colchester sued to enforce the rights of all freemen, without joining the Attorney-General, and it was held they were entitled so to do: see [Prestney v. Colchester Corpn. and Attorney-General](#).<sup>49</sup> Those cases seem to me to apply here. It would be different, of course, if the inhabitants desired to enforce not their legal rights but the execution of a charitable trust. Then, of course, it would be essential for the Attorney-General to be a party to the suit, because the Queen, as *parens patriae*, superintends the administration of all charities: see [Wellbeloved v. Jones](#),<sup>50</sup> *per* Sir John Leach V.-C.<sup>51</sup> So, also, if it was not merely the inhabitants of a parish whose rights were injured, but the public generally, then, in the absence of special damage, the Attorney-General would be the only person who could sue: see [Tottenham Urban District Council v. Williamson & Sons](#).<sup>52</sup> But where, as here, it is simply the rights of the inhabitants of a parish which are infringed, then it is competent for one or more of the inhabitants to sue on behalf of themselves and all others without the Attorney-General - and without even the parish council, for the parish council itself has no right to sue: see [Stoke Parish Council v. Price](#).<sup>53</sup> I pay no attention to [Attorney-General and Spalding R.D.C. v. Garner](#)<sup>54</sup> because it is very unsatisfactory.

**\*184**

There is only one remaining question, and that is, what is the proper remedy? This is not a question of damages, because these people have not suffered any damage. Nor can damages be claimed in a representative action. It is a question of a statutory right. Unless we are to give the defendant freedom to ignore the right of the inhabitants, we must enforce it by the only means at our disposal, namely, by the grant of an injunction. Surely I need not remind you of what Holt C.J. said in [Ashby v. White](#)<sup>55</sup> : “If a man has a right he must of necessity have a means to vindicate and maintain it. ... When a man has but one remedy to come at his right, if he loses that, he loses his right.” It is said the inhabitants do not sincerely wish to hold a fair or wake. They only wish to stop the defendant from building. Assume this to be so. We cannot go into the motives for enforcing a legal right. If it exists, we must enforce it. Then it is said to be hard on the defendant because he bought the land in ignorance of the rights of the inhabitants. So be it. It is one of the risks which he must take. Then it is said that the remainder of “the Green” will be affected. The hut of the parish council will have to be taken down and the tennis courts



removed. It does not follow that that will be the consequence. It may be that arrangements can be made whereby they will not interfere with the holding of the fair. But, even if it be the consequence, we in this court must uphold the rights of the inhabitants, confirmed as they have been by the Act of Parliament itself. We cannot pass them by, as the defendant would have us do.

I would affirm the declaration granted by the judge and grant an injunction in the terms suggested by Mr. Goulding, namely, an injunction to restrain the defendant, by himself, his servants or agents or otherwise, from erecting any such building or doing any such other act or thing upon the said allotment as would prevent or interfere with the holding of the said fair or wake thereon or on any part thereof. The exact form of relief can be discussed after my brethren have given their judgments.

HARMAN L.J.

In this action four persons, proved to have been on the electoral roll of the parish of Wraysbury in the county of Buckinghamshire, and inhabitants of that village, claim against the defendant a declaration restricting the use by him of certain land in the parish of which he is the owner. The claim arises out of a right said to be vested in the inhabitants of the parish to *\*185* hold an annual fair or wake on that parcel of land. By his judgment given on November 1, 1961, Lloyd-Jacob J., after a trial lasting four days, declared that the inhabitants of the parish “are entitled to hold an annual fair or wake on the Friday in Whitsun week on certain lands in the said parish, including the allotment numbered 279 on the plan annexed to the Wraysbury inclosure award dated June 17, 1803, made pursuant to the Act of Parliament, 39 Geo. 3, c. cxviii , <sup>56</sup> of which said allotment the defendant is now the owner or occupier.” <sup>57</sup> Against this order the defendant appeals on four grounds, which are as follows: “(1) That there was no evidence on which the judge could find that the inhabitants of the parish have or ever had the right to hold such annual fair or wake on the said lands including the said allotment or alternatively that such finding was against the weight of the evidence. (2) That if such right ever existed, the judge ought to have found that it had been waived. (3) That if there was such a right and it had not been waived, either it became and is now vested in the parish council of Wraysbury under the [Local Government Act, 1894](#) , and is enforceable only at the suit of such parish council or it is a public right and is enforceable only at the suit of the Attorney-General. (4) That in any case, having regard to all the circumstances, such right ought not now to be enforced by injunction.”

It will be convenient to deal with these in the order in which they are stated in the notice. It is true that there was no oral testimony given that the inhabitants of the village had ever held a fair or wake on this plot. The plaintiffs have, however, in my judgment, a formidable body of documentary evidence on the subject. First, there is a private Act of Parliament, 39 Geo. 3, c. cxviii , an Inclosure Act for the waste of the manor of Wraysbury, by which, after reciting that the inhabitants of the parish “are by ancient usage entitled to hold a fair or wake ...” it was enacted as follows: “Be it therefore enacted, that it shall be lawful for the said commissioners, and they are hereby authorised and empowered to set out and appoint such part or parcel of the waste lands, as near as may be to the place where such fair or wake hath been most commonly held, for the purpose of holding such fair or wake thereon, as they in their judgment shall think sufficient and necessary, and that the said inhabitants of the parish aforesaid shall for ever hereafter have the same right to hold such fair or wake annually, at the same day *\*186* and time, upon such part or parcel of the said waste lands as shall be so set out and appointed by the said commissioners as aforesaid, and have proper and sufficient egress and regress for persons resorting to the same, and shall enjoy and exercise all such other rights and privileges thereon as they have had and were accustomed and of right ought to enjoy and exercise upon and over the said waste land before the passing of this Act.” Secondly, there is the inclosure award duly made, on June 17, 1803, in pursuance of the Act of Parliament and enrolled in the Common Pleas at Westminster, thus having the force of an Act of Parliament. This document reads as follows: “They the said commissioners by virtue and in further pursuance of the powers or authorities in the said Act contained” - that is the Act I have just read out - “have set out and appointed and by these presents do award for the purpose of holding a certain annual fair or wake on the Friday in Whitsun week in every year to which by ancient usage the inhabitants of the said Parish of Wyrardisbury otherwise Wraisbury are intituled all those three several allotments (numbered respectively on the said plan hereunto annexed 277 278 and 279) hereinafter particularly described and awarded to Joseph Adkins Samuel Hugh Mills and James Herbert respectively subject to holding the said annual fair or wake thereon and for which a due compensation hath been made by the said commissioners in the quantity of each of the said allotments the said three several allotments being the situation or place as near as may be where such fair or wake hath most commonly been holden and the said commissioners do hereby award order direct and declare that the said several inhabitants of the said parish shall for ever hereafter have and enjoy the same right to hold such fair or wake annually at the day and time aforesaid on the said three several allotments hereinbefore set out and

appointed for that purpose with proper and sufficient egress and regress for persons resorting to the same and shall enjoy and exercise all such other rights and privileges as they have had and were accustomed and of right ought to have enjoyed and exercised upon and over the waste lands within the said parish before the passing of the said Act.”

Thirdly, there is to be found in a book published in 1862 by the local historian, one Gyll, the following passage: “The fair which used to be held on the Common, or Wraysbury Green, in 1799, on a parcel of ground allotted for it, is now kept opposite the George Inn on a Friday in Whitsuntide pursuant to ancient custom; time has shorn it of its glories, and it is like \*187 the trees of the locality, stunted and almost bare of foliage. However it constitutes a variety, and an element of happiness and utility in the sequestered hamlet, while the show of some pottery and Sheffield ware, with an occasional monkey or wild beast, make up the sum of rural festivities.”

Fourthly, in an issue of the local newspaper, the “Windsor and Eton Express” of May 29, 1875, there is the following statement: “The annual pleasure fair was held on Friday in last week, on ground belonging to Mr. T. Cox of the George Inn. There were the usual stalls and shows, and a large number of persons were present,” and it then goes on to relate a “shocking occurrence” happening on that occasion.

Against this there is no evidence, unless it can be said that the last two documents show that the so-called fair was in the nineteenth century not held on the allotted parcels of the waste of the manor but opposite Cox’s inn, wherever that was. It is true that a recital in a private Act is not conclusive evidence of the truth of the recital: see *Neaverson Peterborough Rural Council*.<sup>58</sup> Nevertheless, such a recital, in the absence of evidence to the contrary, must be very strong evidence of the truth of a matter long beyond the reach of living memory. The matter, moreover, goes further than that, for the enacting part of the Act provides that the inhabitants of the parish shall have the same right as they have had and were accustomed to and ought to enjoy before the passing of the Act, which is enough, in my judgment, subject to the ascertainment of what it was that the parishioners previously enjoyed, to confirm it and turn it into a statutory right. Similarly, the award, which has the force of law when enrolled, directs that the inhabitants shall enjoy the right and are to enjoy all such other rights, with an exception to be hereafter discussed, as they were accustomed to have over the waste lands of the parish before the passing of the Act.

The only real doubt then raised arises out of the words of the Act and of the award which described that which was enjoyed by ancient usage in the Friday of Whitsun week as a “fair or wake.” Now it is said that a fair and a wake are distinct privileges, the former arising usually by virtue of the presumption of a lost franchise or charter from the Crown allowing it to be held. A fair is only a market held at rarer intervals. The essential is a concourse of buyers and sellers. Without that there is no fair. A wake, on the other hand, is a concourse for purposes of pleasure \*188 held usually on a feast day following after a vigil connected with the local patron saint or some religious purpose. This is illustrated in *Collins v. Cooper*,<sup>59</sup> where I read from the judgment of Bruce J.,<sup>60</sup> which, although withdrawn in deference to his brother who was his senior, nevertheless was not reversed in this respect at all. “In this case,” he says,<sup>61</sup> “we are asked whether upon the facts stated there was evidence before the justices of the holding of a fair by the defendant in contravention of section 126 of the Walsall Corporation Act, 1890.” Then he says<sup>62</sup> that that section enacts that a fair shall not be held without a licence. “The appellant, on the 24th, 26th and 27th September, 1892, brought on to land in his occupation, in the borough of Walsall, a number of swings, roundabouts, shooting galleries, an electric light apparatus, a wild beast show, a ghost exhibition, a baby show, and various contrivances for the amusement of the people. There is no evidence that the appellant received any money for the use of the land by the proprietors of these contrivances, nor was there any evidence that any goods were offered for sale on the said land, or that there was any buying or selling of goods on the land. The justices, on this evidence, convicted the appellant of holding a fair on the land. In my opinion, there was no evidence to justify this conviction. The word ‘fair’ is a well-known term in law, and it is, so far as I can ascertain, always used in connection with the buying and selling of merchandise, cattle, or other commodities. Lord Coke, in commenting on the Statute of Westminster I, speaks of a mart as a fair, and he says that every fair is a market, but a market is not a fair. It is said in the report on charters and records relating to the history of fairs and markets in the United Kingdom, referred to in the report of the Royal Commission on Market Rights, that the only distinction between a market and a fair seems to be that fairs are larger than markets, and are held only on a few stated days in the year, whereas markets are held once a week or oftener. In the appendix to the report numerous instances are given of charters and records relating to fairs, and in all the cases that I can find the right to hold a fair is a right to hold a fair for the buying and selling of goods or cattle. There is one case alluded to in the report where the Abbot of Abingdon was, in the fourteenth year of King John, summoned to show what right he had in the fair of Ealingford, which the Earl of Albemarle said was to the damage of his fair of Wanting, and the \*189 abbot pleaded that the gathering which he held was a wake, and not a fair; yet he admitted that there was always selling and buying there.”

Here it is said that the owner of this plot of land cannot know to what he must submit and what he may resist, and that, therefore, the whole so-called right is so shadowy as to be unenforceable. I cannot take this view. It seems to me that Parliament in 1799 and the inclosure commissioners in 1803 had a clear view of that for which they were providing, and that it was a type of concourse which to the knowledge, at any rate, of the commissioners had been held on the waste of this manor by ancient usage. The commissioners were directed to localise the meeting in the place in which it had most usually been held, and there does not appear to have been any difficulty about ascertaining this. The meeting was called a “fair or wake,” but I do not find any difficulty in the language. It means, to my mind, a fair having the same or some of the characteristics of a wake. In fact you may call it one thing or the other. It is quite true that the origin of a wake as such is not attributed to a franchise from the Crown but arises from custom, so that different considerations might apply to the two, but so far as I know it is not the law that a fair does not attract to it various of the attributes of a wake. Indeed, it notoriously always has done and is no less a fair for that; witness, for instance, the great pony fair still held year by year on Midsummer Common at Cambridge. In my judgment, therefore, the appellant’s first ground fails, first, because there is plenty of evidence to support the averment, secondly, because the right claimed is not too vague but is well understood in law.

Secondly, if, as I hold, this was in law a fair created by franchise, it cannot be abandoned. It may be confiscated by the Crown by writ of scire facias or - see *Hammerton v. Honey*,<sup>63</sup> per Sir George Jessel M.R. - abolished by Act of Parliament. I am not sure I understand the meaning of the claim in the notice of appeal that the right has been “waived.” I cannot see who can waive such a right. Certainly not some inhabitants on behalf of others, nor I think all the inhabitants for the time being on behalf of their successors. The fact that the right has been allowed to fall into disuse is no ground for saying that a private owner of the soil can override it. In fact, under this very inclosure award the plot of land now owned by the defendant was allotted to his \*190 predecessor, James Herbert, “subject to the said right of the inhabitants ... to hold the said wake or fair thereon on Friday in Whitsun week in every year as hereinbefore is expressed and awarded.” Moreover, this award was of a larger area for the very reason that it was made subject to this right. It does not, in my view, lie in the mouth of the defendant to claim to override the award through which he derives his title, even though under modern methods of conveyancing he had no notice of it before completion.

If, contrary to the judge’s view and as suggested in the plaintiffs’ cross-notice, the words of the Act and the award ought properly to be construed as creating a new statutory right, the only difference I see is that such a right may be waived if there be a person capable of so doing, as, for instance, the Corporation of London in the Spitalfields Market case (*Great Eastern Railway Co. v. Goldsmid*<sup>64</sup>): but this was a right vested in a corporation, a persona ficta capable of waiver; in the present case there is no such person.

Thirdly, it is argued that the right is now vested in the parish council and that that council is a necessary plaintiff. This is in part a new point, and as now presented rests, as I understand it, on the Poor Relief Act, 1819, which has no place in the notice of appeal. This Act, so far as it remains unrepealed, was an Act for appointing overseers of the poor and to provide a place for their accommodation where there was no suitable poorhouse. The overseers were empowered to acquire buildings either by purchase or lease or to provide land for setting the poor to work on, and to let out land to poor inhabitants. In section 17 of the Act they are “empowered to accept, take and hold, in the nature of a body corporate, for and on behalf of the parish, all such buildings, lands, and hereditaments, and also all other buildings, lands, and hereditaments belonging to such parish.” The argument here is that this right to hold a fair is a hereditament belonging to the parish and should, therefore, vest in the churchwardens and overseers of the poor and their successors in trust for the parish and so, by virtue of the [Local Government Act, 1894](#), being parish property, be transferred to the parish council: see [section 6 \(1\) \(c\) \(iii\)](#). I observe that this subsection mentions “village greens,” a cognate subject, no doubt. In my judgment this argument does not succeed. The right to hold a fair is, it is true, of the nature of an incorporeal hereditament, and is a \*191 right of property, but it is not the kind of hereditament, in my opinion, which is contemplated by the Act of 1819, which is dealing with property which can be purchased, hired or taken on lease by the overseers and used for the purposes of the Act. This right cannot be dealt with in any of those ways, for, although the private owner of a fair may perhaps let it on lease, the inhabitants of a parish certainly cannot. Such a right is not properly called a hereditament at all, for it would not descend to the heir.

In the court below this point was rested on the [Local Government Act, 1894](#), which alone is the Act specified in the notice of appeal. The argument runs thus: Under section 75 of the Act of 1894 expressions there used are to have the same meaning as in the [Local Government Act, 1888](#). Under [section 100](#) of the latter statute the word “powers” receives a wide definition, and by section 6 (1) (a) of the Act of 1894 it is provided that the powers of the vestry shall be transferred to the parish council.

But in my judgment, even allowing the 1888 definition, the word “powers” is not apt to include the holding of a fair.

Next, it is said that this is a public right enforceable only in an action by the Attorney-General at the relation of the inhabitants. If this right were a charitable right, there might be validity in this point, for, when charitable property is threatened, the inhabitants of a village are no doubt considered a section of the public and may require the protection of the Crown, in the person of the Attorney-General, exercising her power as *parens patriae*. The present, however, is not a charity, and it seems to me that the books are full of cases where representative actions of this kind have been brought without the Attorney-General being a party, as, for instance, *Bromley v. Smith*,<sup>65</sup> where the headnote reads: “A few of a large number of persons may institute a suit, on behalf of themselves and the rest, for relief against acts injurious to their common right, although the majority approve of those acts, and disapprove of the institution of the suit; and the Attorney-General need not be a party to it.” See also *Prestney v. Colchester Corpn. and Attorney-General*,<sup>66</sup> where, indeed, the Attorney-General was a party as a defendant in an action by certain freemen of a borough to take the net rents of certain borough property for themselves. Here it was held on demurrer (I quote from the headnote): “An action to establish such rights as aforesaid may be brought by parties claiming to be entitled \*192 without an information by the Attorney-General.” The question is discussed by Hall V.-C.,<sup>67</sup> where he comes to the conclusion stated in the headnote. The question was left open in *Bedford v. Ellis*.<sup>68</sup> It may be noted that the Attorney-General’s presence, was not thought necessary in the leading case of *Goodman v. Saltash Corpn.*,<sup>69</sup> where the inhabitants of certain tenements in a borough established in a representative action a customary right to an oyster fishery.

If then, as I hold, this right still exists and is vested in the inhabitants, I cannot see that it can be denied to them by refusing them the only relief available. It would be idle and only fruitful of future dissension merely to declare the existence of the right, and, in my judgment, the plaintiffs are entitled to an injunction restraining the defendant by himself, his successors in title and so forth: see *Imperial Gas Light and Coke Co. v. Broadbent*,<sup>70</sup> where the first paragraph of the headnote reads as follows: “If a plaintiff applies for an injunction in respect of a violation of a common law right, and the existence of that right, or the fact of its violation is denied, he must establish his right at law, but having done that, he is, except under special circumstances, entitled to an injunction to prevent a recurrence of that violation.” Lord Kingsdown, concurring, said<sup>71</sup>: “I believe that the court of Chancery could have pursued, in this case, no other course than that which it actually has pursued. The rule I take to be clearly this: if a plaintiff applies for an injunction to restrain a violation of a common law right, if either the existence of the right or the facts of its violation be disputed, he must establish that right at law; but when he has established his right at law, I apprehend that unless there be something special in the case, he is entitled as of course to an injunction to prevent the recurrence of that violation.” In this court the plaintiffs were content with an injunction to the effect that the defendant, etc., be restrained from doing any act or thing or raising any building or structure which would prevent or hinder the carrying on of the fair on his plot. This, no doubt, will severely curtail its use but not wholly inhibit it. In the court below, the declaration made (which would have been the foundation of an injunction if applied for) was in wider terms. There it was assumed that the saving clause in the award applied to the holders of the allotted plots as well as to everyone else. This is a curious \*193 point. The words are “no person or persons whomsoever shall,” etc. These words were easy to understand so long as the ground allotted for the fair remained part of the waste land of the manor, as was apparently contemplated by the Act of Parliament; they covered both the lord of the manor and the copyholders; but the inclosure commissioners did not in this respect follow the Act, for, as appears from the award, they allotted the three plots made subject to the award to three persons, one of them the predecessor in title of the defendant. On the whole it seems to me that the three plots, having been allotted to these three persons, ceased to be waste of the manor and, though subject to the right of the inhabitants to hold the fair once a year, are in other respects the property of the allottees, who may use them as they choose so long as they do nothing to interfere with the fair. Otherwise they could not plough or manure the land and it would be useless to them. To what use the defendant could put his plot is a matter, as I see it, not for us but for the planning authorities, subject only to this, that our injunction will preserve it as suitable for a fairground on the Friday of Whitsun week year by year.

RUSSELL L.J.

The defendant was a builder in a not very large way of business. In the village of Wraysbury he found a vacant plot - about three-quarters of an acre - which was for sale and for which planning permission for the erection thereon of five bungalows had recently been given by the Minister after a public inquiry. He bought the plot for £2,000, with a view to building and selling five bungalows; the price, of course, reflected this potentiality. The usual searches and inquiries revealed nothing to

throw doubt on the situation, nor did the title. The plot was rather untidy or overgrown; it was bounded by the road, by a watercourse, and by a strip of land enclosed and containing private hard tennis courts. Beyond that strip was the village green with cricket pitch and village hall - some four acres. Across the road was a village recreation ground. The inhabitants would seem to have ample space for communal activities. It seems likely that no amount of inquiry in the neighbourhood would have revealed to the defendant the possible existence of the right over the plot now claimed, unless he had inquired of one Reffell, member of an ancient Wraysbury family. He started to clear and trench the ground for building; this was observed by Reffell, who reminded the clerk to the parish council of the inclosure Act and award; and the first warning was given to the defendant of this alleged ancient right to hold a fair or wake on the Friday in Whit \*194 week on this plot, the tennis court plot, and the four acres vested by purchase in the parish council which is known as the village green. The evidence suggests that no such right had been exercised on any part of those three plots for over 100 years - certainly not over the appellants' plot.

When in those circumstances the defendant finds himself restrained from the use of his land for the purposes for which he paid the particular purchase price, at the suit of four inhabitants whose leading purpose and motive is to prevent the building which the competent authority has approved in the interests of town planning, and with no hope of remedy under his ordinary qualified covenants for title, he has my unqualified sympathy, in no way lessened by the additional circumstance that the parish council has declined to take proceedings for the same purpose. If I could find a way to decide in his favour I should be happy to do so. Alas, I cannot.

The right asserted by the plaintiffs is based upon the local Inclosure Act of 1799 and the consequent award of 1803. The purpose generally was to rationalise the various and obscure rights and titles of individuals and commoners in the waste of the manor and common meadows and to enable that waste to be put to more productive use by awarding the full ownership of parcels thereof to the lord of the manor and others. The statute and award, so far as relevant at this stage in my judgment, have already been read by Harman L.J. The award allotted the land in question, plot 279, to the ownership of one Herbert. Plot 278 was allotted to the predecessor of the tennis club owner. Plot 277 was allotted to the predecessor in title of the owners who, in 1930, conveyed it to the parish council as village property and is what I have referred to as the village green.

The first question is whether there is any sufficient evidence that an ancient right existed in 1799 which now continues exercisable over, inter alia, plot 279. The evidence, and the sole evidence, of such a right is to be found in the recital in the statute of 1799. Such a recital in a local statute, although very strong evidence (particularly when the lord of the manor would be a prime mover in the legislation), is not conclusive. The defendant argues that in the present case the evidence as a whole points away from the right. First, it is said that the recital itself displays uncertainty and is therefore unreliable. It refers to a right or title to hold a "fair or wake." These are different things. A fair involves marketing (though pastimes may be added); a right to a fair must owe its origin to a royal franchise; it is not of its nature \*195 a right over property of another but a right of the nature of a local monopoly to conduct a market. A wake is an occasion for sports and pastimes without marketing; it is attributable to customary law; of its nature it is a right over property of another - e.g., waste of the manor. The statute (it is argued) in terms is uncertain what is the nature of the so-called right. Is it a right to a fair or to a wake? Moreover, the award in places refers to "wake or fair," and the marginal notes refer to "wake." How then can it be reliable evidence that there was any right at all? Further doubt (it is argued) is cast on the existence of any right by the history of such activities as might be described as fairs or wakes. The evidence contains only three references. Mr. Lewis, in his evidence, recalled a fair in 1895 "holden in front of the George public house" by which, as he said, he meant "in the forecourt" of that inn. Plainly this was not on the allotted land. The local newspaper of 1875 reported the holding of the annual pleasure fair on Friday in Whit week "on ground belonging to Mr. T. Cox of the George Inn. There were the usual stalls and shows. ..." A local historian, Gordon Gyll, of an ancient Wraysbury family, in his history published in 1862 and dedicated to the Prince Consort has a note which Harman L.J. has already read and which I need not repeat. There seems no reason to suppose that any part of the plots allotted by the award was either the land "opposite" the George Inn in 1862, or the land belonging to the proprietor of the George Inn in 1875, any more than it was in 1895 the forecourt in front of the George Inn. Evidence of user, therefore, it is argued, suggests rather that the right alleged has never been asserted against any part of the ground allotted in 1803 for the purpose; on the contrary, that, when activities of the general nature in question took place, they took place near, but not upon, the allotted ground which had been awarded to private owners. In those circumstances it is argued that the recital in the statute should not, on the weight of evidence, be taken in 1960 as sufficient to establish the existence of any ancient right in 1799.

While there is some force in these arguments, I cannot be persuaded by them. In the first place, in my judgment the phrase

“fair or wake” should not be construed so as to demonstrate doubt as to the nature of the right. I think that the proper construction is that it relates to a fair, and that the addition of the words “or wake” are a mere reflection of the fact that probably by then the elements of “happiness” and “festivity” which commonly accompany the marketing involved in a fair had \*196 so far outweighed the element of “utility” (I select Gyll’s words) that to the casual observer it would have largely the appearance of a wake.

Secondly, the evidence of “user” (which, incidentally, serves to support the view of a fair rather overweighted by the pleasure aspect) is not at all strong in the direction suggested. Adherence to the precincts of the George Inn of an occasion (according to Gyll) much diminished in size from its origins would be acceptable both to the publican and to those attending, and is by no means indicative of a doubt in the minds of the inhabitants as to their rights over the ground allotted by the award.

I consider, therefore, that there is sufficient evidence to establish the existence of a right in the inhabitants in 1799 to hold a fair or wake, which right was by statute and award related to the allotted land in 1803. In addition, and alternatively, I consider that the statute and award together may be regarded as creating such a right - and in this connection I construe “fair or wake” in the same manner as above. It enacts that the inhabitants shall “for ever hereafter” have the same right; as was pointed out, this would prevent a repeal of the Crown franchise on which the ancient right was presumably based, and the right would therefore be a new statutory right.

It is then argued by the defendant that the plaintiffs are not entitled to bring these proceedings, the proper plaintiff being the parish council, which has apparently resolved not to do so. This argument is put under two alternative heads based on statutory provisions. The first head is this: [section 5 \(2\) \(c\) of the Local Government Act, 1894](#) , is in the following terms: “As from the appointed day the legal interest in all property vested either in the overseers or in the churchwardens and overseers of a rural parish, other than property connected with the affairs of the church, or held for an ecclesiastical charity, shall, if there is a parish council, vest in that council, subject to all trusts and liabilities affecting the same, and all persons concerned shall make or concur in making such transfers, if any, as are requisite for giving effect to this enactment.” To show that this right was property vested in the overseers or the churchwardens and overseers of the parish in 1894, reliance was placed on section 17 of the Poor Relief Act, 1819 . It was said that the right claimed came within the phrase “such churchwardens and overseers of the poor and their successors, *shall* and may and they are hereby empowered to accept, take and hold, in the nature of a body corporate, for and on behalf of the parish, all \*197 such buildings lands and hereditaments” (i.e., those which should be purchased, hired or taken on lease by them by the authority and for any of the purposes of that Act) “and also all other buildings, lands and hereditaments belonging to such parish.” At first sight it seems likely that this last passage relates only to property connected with the subject-matter of every other part of the statute, viz.: provision for poverty. But authority shows it to have a wider scope. This was assumed in *Doe d. Jackson v. Hiley*<sup>72</sup> and *Doe d. Higgs v. Terry*,<sup>73</sup> which were accepted by this court in *Haigh v. West*<sup>74</sup> as correct decisions; thus; section 17 does cover an automatic vesting of parish property not concerned with the relief of poverty. But the present right is not property which is capable of being turned to account, since it is a right in each member of the fluctuating body of inhabitants from time to time to offer goods for sale or to disport himself in manner consistent with the law. It seems to me that it is quite incapable of vesting in anyone except the inhabitants. How could the sum of their rights vest in the churchwardens and overseers (or in any trustee)? Just as in the case of a churchway in favour of the inhabitants of a parish - a customary right well known to the law - any such vesting would be quite without meaning or sensible effect. I agree with the narrower view that in the context of the section “all other buildings etc. belonging to such parish” means such property as is capable of being purchased, hired or taken on lease, which this right in the inhabitants plainly is not, but I also hold on the rather wider grounds which I have indicated that section 17 cannot be stretched to cover the present case. [Section 5 \(2\) \(c\) of the Act of 1894](#) consequently has no application.

The other argument that the parish council is the proper plaintiff is based on [section 6 of the Local Government Act, 1894](#) , which created parish councils. That section transfers to the parish council “the powers, duties and liabilities of the vestry of the parish”, with certain exceptions. By definition ( [section 75](#) ), vestry” means the inhabitants of the parish whether in vestry assembled or not. By further definition ( [section 100 of the Local Government Act, 1888](#) , incorporated by section 75), “powers, duties and liabilities” includes all such conferred or imposed by or arising under any local Act, and “powers” includes “ *rights* , jurisdiction, capacities, privileges and immunities.” So, \*198 it is argued, there is a right of the inhabitants (perhaps, incidentally, arising under a local Act) which, upon the parish council coming into office, was transferred to that council. In my judgment the same general considerations as apply to the argument under the Act of 1819 apply to this argument, and such a right in the inhabitants as is now in question is not to be regarded as transferred to the parish council by

section 6 of the Act of 1894.

The next point taken by the defendant was that the Attorney-General was a necessary plaintiff. I do not doubt that this point is misconceived. Here there is in the inhabitants a proprietary right of a sort, not shared with all the members of the public, and though it may be that the Attorney-General would be a competent party, I see no ground for holding him to be a necessary party. This case is distinguishable from those in which an individual sought to enforce the trusts of municipal property, such as *Evan v. Avon Corporation*<sup>75</sup> or *Weir v. Fermanagh*,<sup>76</sup> and cases there referred to. It is distinguishable also from cases where the plaintiff had no proprietary right, such as *Devonport Corporation v. Tozer*.<sup>77</sup> In *Hammerton v. Honey*,<sup>78</sup> where individual inhabitants sought to enforce a customary right of recreation over certain property, neither counsel nor Sir George Jessel M.R. suggested that the Attorney-General was a necessary party. *Stoke Parish Council v. Price*<sup>79</sup> is no authority that in the present case the Attorney-General should be plaintiff. The decision was simply that the parish council could not sue without the Attorney-General since it had no proprietary right; it was not decided that an inhabitant could not sue in a representative action (without the Attorney-General) to prevent interference with the asserted right of the inhabitants to draw water from the spring in question. (I observe, in connection with an earlier point, that it was not there suggested that this right in the inhabitants to draw water was vested in the parish council either by virtue of section 17 of the Act of 1819 combined with section 5 of the Act of 1894, or by virtue of section 6 (1) (a) of the Act of 1894) For this view I do not rely upon that expressed in *Attorney-General and Spalding R.D.C. v. Garner*,<sup>80</sup> that the Attorney-General can only be concerned where the subject-matter is the concern of the whole community: I agree with Palles C.B. in the *Fermanagh* case<sup>81</sup> \*199 that that is too widely stated. Channell J. in referring to the *Stoke Parish Council* case<sup>82</sup> misunderstood it as relating to a right in the public at large. His decision was however correct that the parish council were the proper plaintiffs as having a proprietary right in the herbage (a right which could be turned to account), though it was not necessary for him to decide whether this came to the parish council via the Act of 1819 or direct under the Act of 1894.

Accordingly in my judgment this action is properly constituted as a representative action and neither parish council nor Attorney-General are necessary parties.

The question was to some extent canvassed whether the right had been abandoned or lost through non-user but I am clear that this could not be so.

The last point argued was that there should be no question of any injunction but merely a declaration of the right of the inhabitants in respect of this plot of land. This cannot I think, be right. It would be inviting individual action. It may be that the appropriate relief would be an injunction ordering the appellant to restore the plot to the condition in which it was when he was first notified of this claim that is to remove prior to next Friday in Whit week the walls and other obstructions which he has put on the land since such notification and a negative injunction restraining him from doing upon the land that which will result in making it inconvenient for the exercise of the right in question thereon on any Friday in Whit week. But on the form of relief we will hear argument.

I have not yet referred to the later parts of the provisions of the statute and award which concern the allotment of land for the fair. There has already been read those parts of the statute which state that the inhabitants of the parish aforesaid shall “for ever hereafter have the same right to hold such fair or wake annually at the same day and time upon such part or parcel of the said waste lands as shall be so set out and appointed by the said commissioners,” and it then continues “and shall enjoy and exercise all such other rights and privileges thereon as they have had and were accustomed and of right ought to enjoy and exercise upon and over the said waste land before the passing of this Act save that no person or persons whomsoever shall at any time or times from and after the passing of this Act dig any gravel or break up disturb remove or take away \*200 any of the soil in upon or from the said parcel of waste land so to be set out and appointed as aforesaid or erect any building or lay any timber soil dung or other filth or annoyance whatsoever upon the same or any part or parcel thereof unless it be for the better and more commodious enjoyment of such annual fair or wake and then only during the time of holding the same.”

It was not suggested by the plaintiffs that the award was ultra vires in its allotment of ownership of the soil of the fair plots in part to the predecessor in title of the defendant. The later part of the statutory provisions seems to proceed on the footing that the lands allotted for the fair would not be enclosed and awarded to private owners since in terms it preserves to the inhabitants over those lands all their other rights over the waste but with such other rights cut down in the manner introduced by the phrase “save and except.” The whole of this part of the statute - copied also into the award - seems to me inconsistent with an award of the ownership of the fair plots to other people: and I observe that the actual award to the defendant’s

predecessor is not expressed to be subject to any right in any person other than the inhabitants right to hold an annual fair. The result is it seems to me quite uncertain. I do not for my part consider that that which is in terms an exception from the exercise by inhabitants of rights over the waste as such should be held to apply to the owner of the soil who has become such under the award or to affect his rights as such owner. The respondents in this court were not minded to press for an injunction in terms of the saving and exception. I do not think they are entitled to it. I think they are entitled to prevent only that which will interfere with the holding of the fair on the plot once a year. As an example I think it would be permissible for the defendant to remove soil so as to lay flat concrete foundations for (say) 12 caravans and use the site for that purpose provided that they were removable and removed annually to make room for the fair. If (with the appropriate planning permission) 12 caravans for about 364 days in the year take the place of five bungalows for 365 days this would be an appropriate outcome of expensive litigation which has successfully asserted an ancient and outmoded right against a plot of land which has not been necessary to its exercise for over 100 years (if ever) and cannot conceivably ever be necessary to its exercise again.

[The court granted an injunction restraining the defendant by himself, his servants or agents or otherwise from erecting any \*201 building or doing any such other act or thing on his plot as would prevent or interfere with the holding of the fair or wake thereon and ordering him to remove all such things placed on the plot by him, and to fill up all such excavations as he had made on it as would prevent or interfere with the holding of the fair thereon.]

#### Representation

Solicitors: Jaques & Co. for Barrett & Thomson, Slough ; Gillhams for Boyes, Turner & Burrows, Staines .

*Appeal dismissed with costs. ([Reported by MICHAEL GARDNER, Esq., Barrister-at-Law.] )*

#### Footnotes

- 1 Poor Relief Act, 1819, s. 12 : “... it shall be lawful for the churchwardens and overseers of the poor of any parish, with the consent of the Inhabitants Thereof In Vestry Assembled, to Take into Their Hands Any Land or Ground Which Shall Belong to Such Parish, or to the Churchwardens and Overseers of the Poor of Such Parish, or to the Poor Thereof, or to Purchase or to Hire and Take on Lease for and on Account of the Parish, Any Suitable Portion or Portions of Land within or Near to Such Parish, Not Exceeding Twenty Acres In the Whole; ...” S. 17 : “All buildings, lands and hereditaments which shall be purchased, hired or taken on lease by the churchwardens and overseers of the poor of any parish, by the authority and for any of the purposes of this Act, shall be conveyed, demised and assured to the churchwardens and overseers of the poor of every such parish respectively, and their successors, in trust for the parish; and such churchwardens and overseers of the poor, and their successors, shall and may and they are hereby empowered to accept, take and hold, in the nature of a body corporate, for and on behalf of the parish, all such buildings, lands, and hereditaments, and also all other buildings, land, and hereditaments belonging to such parish; ...”
- 2 [Local Government Act, 1894, s. 6 \(1\)](#) : “Upon the parish council of a rural parish coming into office there shall be transferred to that council:- (a) the powers, duties and liabilities of the vestry of the parish except - (i) so far as relates to the affairs of the church or to ecclesiastical charities; and (ii) any power, duty, or liability transferred by this Act from the vestry to any other authority: ...”
- 3 [\[1962\] Ch. 561](#); [\[1961\] 3 W.L.R. 1303](#); [\[1961\] 3 All E.R. 1014](#) .
- 4 [\[1901\] 1 Ch. 842](#); [17 T.L.R. 289](#) .
- 5 [\[1893\] 2 Q.B. 19, C.A.](#)
- 6 [\[1907\] 2 K.B. 480](#); [23 T.L.R. 563](#) .



7           (1860) 29 Beav. 144 .  
8           [1899] 2 Ch. 277 .  
9           [1913] 1 Ir.R. 63, C.A.  
10          [1895] 1 Ch. 287; 11 T.L.R. 137, C.A.  
11          (1893) 68 L.T. 450, D.C.  
12          (1876) 24 W.R. 603 .  
13          [1914] 2 Ch. 293 ; [1915] 1 Ch. 71, C.A.  
14          (1884) 9 App.Cas. 927, H.L.(E.).  
15          [1899] A.C. 41; 15 T.L.R. 67, H.L.(E.).  
16          (1893) 68 L.T. 450, 452, D.C.  
17          (1875) L.R. 1 Ex.D. 1 .  
18          (1884) 9 App.Cas. 927, H.L.(E.).  
19          (1830) 10 B. & C. 885 .  
20          (1835) 4 Ad. & E. 274 .  
21          [1893] 2 Q.B. 19, C.A.  
22          [1907] 2 K.B. 480; 23 T.L.R. 563 .  
23          (1826) 1 Sim. 8 .  
24          (1866) L.R. 3 Eq. 103 .  
25          (1876) 24 W.R. 603 .  
26          (1882) 21 Ch.D. 111 .  
27          [1901] A.C. 1; 17 T.L.R. 139, H.L.(E.).  
28          [1899] 2 Ch. 277 .  
29          (1884) 9 App.Cas. 927 , H.L.(E.).  
30          [1925] Ch. 655; 41 T.L.R. 151 , C.A.  
31          [1913] 1 Ir.R. 63, C.A.  
32          [1907] 2 K.B. 480; 23 T.L.R. 563 .  
33          (1826) 1 Sim. 8 .

- 34 (1866) *L.R. 3 Eq. 103* .
- 35 (1876) *24 W.R. 603* .
- 36 (1866) *L.R. 3 Eq. 103* .
- 37 (1882) *21 Ch.D. 111* .
- 38 [1901] *A.C. 1*; *17 T.L.R. 139, H.L.(E.)*.
- 39 [1899] *2 Ch. 277* .
- 40 (1860) *29 Beav. 144* .
- 41 (1875) *L.R. 1 Ex.D. 1* .
- 42 (1876) *24 W.R. 603* .
- 43 [1899] *A.C. 41*; *15 T.L.R. 67, H.L.(E.)*.
- 44 (1884) *9 App.Cas. 927, H.L.(E.)*.
- 45 [1893] *2 Q.B. 19, C.A.*
- 46 (1826) *1 Sim. 8* .
- 47 *Ibid.* 10-11.
- 48 (1866) *L.R. 3 Eq. 103* .
- 49 (1882) *21 Ch.D. 111* .
- 50 (1822) *1 Sim. & S. 40*.
- 51 *Ibid.* 42-43.
- 52 [1896] *2 Q.B. 353, C.A.*
- 53 [1899] *2 Ch. 277* .
- 54 [1907] *2 K.B. 480*; *23 T.L.R. 563* .
- 55 (1703) *2 Ld.Raym. 938* , 954.
- 56 *Inclosure Act, 1799* .
- 57 [1962] *Ch. 561*; [1961] *3 W.L.R. 1303*; [1961] *3 All E.R. 1014* .
- 58 [1901] *1 Ch. 22* ; [1902] *1 Ch. 557*; *18 T.L.R. 360, C.A.*
- 59 (1893) *68 L.T. 450, D.C.*
- 60 *Ibid.* 452.

- 61 Ibid. 452.
- 62 Ibid.
- 63 (1876) 24 W.R. 603 .
- 64 (1884) 9 App.Cas. 927, H.L.(E.).
- 65 (1826) 1 Sim. 8 .
- 66 (1882) 21 Ch.D. 111 .
- 67 (1882) 21 Ch.D. 111 , 118 et seq.
- 68 [1901] A.C. 1; 17 T.L.R. 139, H.L.(E.).
- 69 (1882) 7 App.Cas. 633, H.L.
- 70 (1859) 7 H.L.Cas. 600 .
- 71 Ibid. 612.
- 72 (1830) 10 B. & C. 885 .
- 73 (1835) 4 Ad. & E. 274 .
- 74 [1893] 2 Q.B. 19, C.A.
- 75 (1860) 29 Beav. 144 .
- 76 [1913] 1 Ir.R. 63, C.A.
- 77 [1903] 1 Ch. 759; 19 T.L.R. 257, C.A.
- 78 (1876) 24 W.R. 603 .
- 79 [1899] 2 Ch. 277 .
- 80 [1907] 2 K.B. 480; 23 T.L.R. 563 .
- 81 [1913] 1 Ir.R. 63, C.A.
- 82 [1899] 2 Ch. 277 .

(c) Incorporated Council of Law Reporting for England & Wales



Abbie North &lt;abbie@mhplanning.org&gt;

---

## Brough Hill Fair

---

Rachel Smith &lt;rsmith@cjassociates.co.uk&gt;

20 September 2023 at 14:51

To: Abbie North &lt;abbie@mhplanning.org&gt;

Cc: A66 NTP &lt;A66NTP@nationalhighways.co.uk&gt;, Michael Hargreaves &lt;michael@mhplanning.org&gt;, "will@georgelloyd.com" &lt;will@georgelloyd.com&gt;

Afternoon Abbie

Many thanks for your email below and apologies for the delay in responding to you.

In relation to your first point on article 36 of the draft DCO, it was in the second version of the draft DCO (at Deadline 2 – you can see the tracked changes at **[REP2-006]**) that the text in this article was altered from consultation with the GRT Community being undertaken by the SoS to being undertaken by National Highways (the undertaker, as you say) instead. This followed discussions at Issue Specific Hearing 2 (see Item 5.0 and particularly page 57 of our Post Hearing Submissions **[REP1-009]**) and a specific request from the SoS for this wording to be included, which we actioned at this early stage of the Examination. The GRT Community therefore had the majority of the Examination to raise any concerns it had with this drafting, as this requirement for National Highways to consult with the GRT Community in article 36 remained in place up to and including the final version of the draft DCO submitted into the Examination **[REP9-013]**.

With regards to your point on intangible cultural heritage (**ICH**), National Highways provided responses to the GRT Community's Deadline 4 submission regarding ICH in Appendix F of our Post Hearing Submissions for Issue Specific Hearing 3 and in our Summary Statement on Brough Hill Fair Relocation **[REP6-023]** and then updated at **[REP7-156]**. In their capacity as a statutory consultee, Historic England were consulted throughout the pre-Application and Examination periods by National Highways on, amongst other things, the heritage sections of the Environmental Statement (**ES**) and the Environmental Management Plan (**EMP**), including updates made to both documents submitted during Examination and the supplementary documents concerning ICH referenced above. We have no record of Historic England stating they were not competent to comment on the ICH aspects of the ES, EMP or the supplementary documents referenced above, nor did they raise any concerns on this particular matter during the pre-Application or Examination periods.

We consider that both of these points are issues that have already arisen and been discussed at length throughout the Examination. We would like to remind the GRT Community that the current determination period is not an opportunity to re-open those (or any other) issues that have already been considered and debated in front of the Examining Authority during the Examination.

We will, of course, make sure that Bill and Billy continue to receive relevant updates directly, alongside yourself and Michael.

Kind regards,

Rachel

[Quoted text hidden]

Chapter Title: Intersecting Lives: The Brough Hill Fair as Biography-in-Pieces

Chapter Author(s): Tamara West

Book Title: European Roma

Book Subtitle: Lives beyond Stereotypes

Book Editor(s): Eve Rosenhaft, María Sierra

Published by: Liverpool University Press. (2022)

Stable URL: <https://www.jstor.org/stable/j.ctv2crj1sr.12>

---

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



This book is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License (CC BY-NC-ND 4.0). To view a copy of this license, visit <https://creativecommons.org/licenses/by-nc-nd/4.0/>.



Liverpool University Press is collaborating with JSTOR to digitize, preserve and extend access to *European Roma*

## Chapter 4

# Intersecting Lives: The Brough Hill Fair as Biography-in-Pieces

Tamara West

Brough Hill Fair was recognised as the biggest in the North, nothing but illness keeping any Romany away from it. It was the meeting place of all our people, and certainly a fair attended by dealers from all parts of the British Isles.<sup>1</sup>

Brough Hill Fair was one of the largest and most well-known horse and cattle fairs in Britain, central to the lives of several different communities at the time. The above quote, taken from Silvester Gordon Boswell's *The Book of Boswell: Autobiography of a Gypsy*, demonstrates that it was of key significance to Romani families. Boswell was writing retrospectively, at a point in time when Brough Hill Fair was no longer in operation. However, we can see his comments echoed in a newspaper article of November 1949:

Year after year, these same families meet at Brough Hill, and when this event is over return to their own rounds of fairs and shows until September sends them back to the bleak common again. One feels that even if there were no horses to sell, the festival of Brough Hill is now

---

1 Silvester Gordon Boswell, *The Book of Boswell: Autobiography of a Gypsy*, ed. John Seymour (London: Gollancz, 1970), 121.

so ingrained in their nature that they would come again just for the sake of reunion.<sup>2</sup>

The fair attracted locals, day trippers, drovers, farmers, armies looking to buy horses, and all manner of traders and performers. Indeed, there had been a market at Brough, in the north of England, since 1330, and a royal charter was conferred in 1549 to hold a longer sale. Held at the end of September, the fair was often accompanied by the wet and windy conditions that became known as “Brough Hill Weather”. In part due to its remoteness, it was a notorious fair, providing entertainment – both legal and illegal – to the masses who made the journey there from near and far for a short time away from their daily working lives. In the words of one newspaper article written in the 1920s, there was “a crudeness and sordidness about Brough Hill that does not mend with the passage of years. The old slogan, ‘There are no brothers on Brough Hill,’ finds expression on every inch of it”.<sup>3</sup>

Despite this remoteness, it was nevertheless accessible to different parts of the country, being on the route of an old Roman road and a later postal road. Its northerly location meant it attracted drovers from Scotland, who would drive their cattle down to the fair, just as it served local farmers who could drive sheep and ponies down from the fells. Over the years the focus of the fair shifted from cattle to horses, and during Victorian times, with the spread of the railways, it became something of a day out for people who would attend the fair for entertainment. Train companies ran special passenger services to the fair with people “packed like sardines”.<sup>4</sup> Schools in the area were usually given the day off, with school logbooks detailing the all-encompassing nature of the fair.<sup>5</sup> Despite some success post-Second World War, the fair declined and has not been in operation now for over 50 years.

This chapter focuses on Brough Hill in the first decades of the twentieth century, at a time when the fair was both at its height as a visitor destination and on the wane in terms of its traditional economic function as a horse fair. It is also at this point that the visual documentation of the fair and the people who attended begins to be particularly rich. The chapter initially explores the content of ethnographic archives in which we are able to find photographs and descriptions of well-known British Romani families visiting Brough Hill, for example members of the Lees, Herons and Boswells. These are used as a starting point to explore Romani presence at the fair and also to examine how it was carefully framed by others, asking what was left just beyond their viewfinder. Instead of re-presenting

---

2 Sidney Moorhouse, “Brough Hill Fair”, *Sport & Country*, 2 November 1949.

3 “Frolic and Frauds at Brough Hill Fair”, *The Penrith Observer*, 6 October 1925.

4 *The Mid Cumberland and Westmorland Herald*, 6 October 1906.

5 Appleby School logbooks, Kendal Archives, WDS 71.

the stories and people in those archives, this chapter aims to look instead for other descriptions and depictions of the fair. It does this in order to examine that which was left out, those messier everyday spaces which can be glimpsed through first-hand accounts, newspapers, postcards and reports. These show that Romani people were inseparable from Brough Hill Fair in terms of culture and commerce, but also in experiences and memories across different communities. They also show that while there were clearly distinct spaces and identities, there were also some areas of fluidity. The contention here is that the viewing of a more panoramic snapshot of the fair presents us with a multifaceted understanding of Romani and non-Romani presence, of identities and interactions that move beyond a binary division of belonging and non-belonging. To do this the chapter necessarily departs from the notion of a central figure or family, many of which have already been externally pieced together and documented by others. Instead of binding together traces of a whole life or a specific practice, it foregrounds instead the mosaic created by found, fleeting pieces of different lives.

The notion of the importance of gaps and silences, or the subject-in-pieces, is a concept often applied to oral history and to qualitative research, where an argument is made for the importance of what is not said, what is absent and for the necessity of including these as key elements of a complex whole.<sup>6</sup> This can also be understood in terms of an absence-presence of a person or people, in memories, histories or archives.<sup>7</sup> Here it is applied to an understanding that multiple histories, actions and interactions might converge, albeit temporarily, in a certain place, but that these narratives are necessarily incomplete and fade in and out, presenting a view of the whole via fragments. Better perhaps than a subject or a biography in pieces, we might call it a kaleidoscope of instances of lives jumbled together in the container that is Brough Hill. Certain histories are always less evenly documented, lives obscured due to class, gender or ethnicity. Jodie Matthews asserts more specifically in relation to British Romani histories and archives that they exist as an absent presence in that they were there, but their presence is not made explicit.<sup>8</sup> By shifting the focus towards a

---

6 Stephen Frosh, "Disintegrating Qualitative Research", *Theory & Psychology* 17, no. 5 (2007): 635–53; Avery F. Gordon, *Ghostly Matters: Haunting and the Sociological Imagination* (Minneapolis: University of Minnesota Press, 1997). See also Sarah Mills, "Cultural-Historical Geographies of the Archive: Fragments, Objects and Ghosts", *Geography Compass* 7, no. 10 (2013): 701–13.

7 For a discussion of absence-presence, see Lars Frers, "The Matter of Absence", *Cultural Geographies* 20, no. 4 (2013): 431–45; Avril Maddrell, "Living with the Deceased: Absence, Presence and Absence-Presence", *Cultural Geographies* 20, no. 4 (2013): 501–22.

8 Jodie Matthews, "Where Are the Romanies? An Absent Presence in Narratives of Britishness", *Identity Papers: A Journal of British and Irish Studies* 1, no. 1 (2015): 79–90.



landscape image of the fair, we can also explore some often overlooked lives and practices that took place. One example of this is fortune telling as a space of economic practice and of individual agency, but also a gendered and a working-class space (in terms of the majority of people who had their fortunes told), and as a practice that was both heavily romanticized and criminalized. Here we can explore the distinct spaces of identities and interactions such as Roma and non-Roma, performer and audience, trader and buyer. However, we can also perceive the blurring and uncertainty of these identities and identify a point where these intersected and became part of the fair and of the wider context of working-class and peripheral lives at the time.

### Portraits: People on the Periphery

As we have already seen, Brough features in Boswell's account, where he details travelling to different fairs across the year:

Then on to Brough Hill, where a city of wagons, carts, accommodations and tents, belonging to all types and classes of people, assembled for this fair. There could be found on this hill Romanies and Travellers from England, Wales, Scotland and Ireland.<sup>9</sup>

Boswell's autobiography was published in 1970. In it Boswell, who was born in 1895 and died in 1977, details his long and eventful life and recounts visiting horse fairs, horse dealing, working in circuses, serving in the British Army during the First World War and trading as a scrap merchant. Later in his life Boswell was a central figure in the saving of Appleby Horse Fair, also in Cumbria and relatively close to Brough, when it was under threat of being abolished in the 1960s.<sup>10</sup>

Another factor in Boswell's account – and indeed his life – is his knowledge of, and the regular inclusion of stories about his family in, the archives and journals of the Gypsy Lore Society. It is not my purpose here to go into any depth about the specific members or histories of this society, as there are already several critical explorations.<sup>11</sup> However, a brief

---

9 Boswell, *The Book of Boswell*, 121.

10 For a detailed account of Appleby Horse Fair and of Boswell's role, see Andrew Connell, "There'll Always Be Appleby". *Appleby Gypsy Horse Fair: Mythology, Origins, Evolution and Evaluation* (Kendal: Cumbria and Westmoreland Antiquarian and Archaeological Society, 2019).

11 See, for example, Ken Lee, "Belated Travelling Theory, Contemporary Wild Praxis: A Romani Perspective on the Practical Politics of the Open End", in *The Role of the Romanies Images and Counter Images of "Gypsies"/Romanies in European Cultures*, ed. Nicholas Saul and Susan Tebbutt (Liverpool: Liverpool University

context is essential in order to understand the sources drawn upon in this chapter. The Gypsy Lore Society (GLS) was founded in 1888 with the aim of bringing together those interested in studying Romani lore and peoples, and ran until 1892. It was revived in 1907, and based in Liverpool until 1973. The GLS and its ethnographic studies in the early part of the twentieth century were imbued by a colonial approach as its members chased, catalogued, recorded and pictured their “gypsy subjects”. The archive they created and filled with notebooks, articles, reports and photographs had as its focus what they considered to be prime examples of “real” Romanies. Here they displayed an obsession with racial profiling and pedigrees.<sup>12</sup> The GLS at this time sought to document and preserve the language, stories and customs of what they saw as an endangered people. As David Mayall comments, “The Gypsy lorists combined a faith in the scientific classification of people into races with the folklorist enthusiasm for obscure and disappearing people and ways”.<sup>13</sup> They also sought to paint themselves into a romantic picture of their own making, of a travelling life to which they could choose to temporarily have a privileged access, gaining insights and being invited into a secretive “other” world. As a result of this, we have an in-depth archive of people and practices. However, any object created and curated by the GLS also needs to be viewed as limited by virtue not only of its ethnographic aim – to document what they considered to be exemplars of an imagined pure, authentic Romani culture – or of their inherent colonial and racist perspective, but also of their desire to portray their subjects as being necessarily apart from society and as occupying an often romanticized space.

Boswell’s account contains invaluable first-hand information in relation to his life, to horse fairs, to the wider life of a horse dealer, and – especially relevant to focus of this chapter – to the meeting of families at Brough. The account is not without aspects of nostalgia for childhood, and not without an external narrative framing, as any edited life story necessarily is. Boswell had previously published work in the *Journal of the Gypsy Lore Society (JGLS)*, which had already followed and provided accounts of the Boswell family. Boswell’s autobiography was told to and edited by John Seymour, himself very much versed in the studies of both the GLS and *JGLS*, and attuned to an earlier perspective centring on the romanticization of Romani people and a nostalgia for a “lost” rural life.<sup>14</sup>

---

Press, 2004), 31–50; Ken Lee, “Orientalism and Gypsylorism”, *Social Analysis* 44, no. 2 (November 2000): 129–56; David Mayall, *Gypsy Identities, 1500–2000: From Egipcians and Moon-Men to the Ethnic Romany* (London: Routledge, 2004), 187–214.

12 See Thomas Acton, “Scientific Racism, Popular Racism and the Discourse of the Gypsy Lore Society”, *Ethnic and Racial Studies* 39, no. 7 (2016): 1187–1204.

13 Mayall, *Gypsy Identities*, 188.

14 Martin Shaw, *Narrating Gypsies, Telling Travellers: A Study of the Relational Self in Four Life Stories* (Umeå: Institutionen för Moderna Språk, Umeå Universitet, 2006).

Boswell details meeting up with different families at Brough Hill. For example, he tells us that it was at Brough Hill that he first met Oliver and Julia Lee and their family Relli, Lilly, Mena and Kissie. Oliver Lee was photographed by Fred Shaw for the GLS at Warcop, near Brough, in October in 1911 and we find later images in the GLS archives of his daughter Relli Lee – later Relli Heron – as a fortune teller.<sup>15</sup> The GLS photographs taken by Shaw at Brough between 1911 and 1913 provide faces to several other names. Amongst others, we are met by the cavalcade of Herons passing through Brough Hill, by Oscar, Polius and Wani Heron (see Fig. 12), by Wiggi Lee and family outside their *vardo*, by Peter Lee and his family, and by Saiera Heron and her daughter seated in front of a wall, cooking pots before them.

In addition to photographs, accounts by GLS members who travelled to the fair also give an indication of some of the practices being undertaken, such as horse trading and fortune telling. Letters from Scott Macfie and William Ferguson tell us that in Brough, “There were many Lees, Herons & Boswells busy selling horses”.<sup>16</sup> In his diaries the Reverend George Hall mentions meetings in 1912 with Peter Lee and Iza Heron, as well as with Amos Boswell, who is detailed as coming up to Brough to deal horses, and his wife Patience, a fortune teller.<sup>17</sup> In 1913, Hall again details the Romani trade in horses: “Our Romany friends seemed to be getting through a fair amount of business so far as an onlooker could see”, and once again mentions Amos Boswell.<sup>18</sup> Amos’s name can also be found in several newspaper articles. Indeed, members of the Boswell, Heron and Lee families all made it into the pages of local and national publications. Often these and similar short reports on the well-known Romani families we see in Shaw’s images convey a sense of timelessness or ritual, and they usually refer to a “King of the Gypsies” or “Romany leader”. For example, in 1927 *The Leeds Mercury* reports on the death of Amos Boswell, describing him as an “Old Chief”.<sup>19</sup> A few years later, in 1936, the *Daily Mail* reports on William Heron’s death, describing him as “probably the best known horse dealer at the annual horse fairs”. Among the mourners listed were Oscar Heron (brother), and Mr and Mrs Oscar Heron, his son and daughter-in-law, and Noah Heron were also present.<sup>20</sup>

---

15 University of Liverpool Special Collections (ULSC), SMGC Shaw P.38 (Oliver Lee, 1 Oct 1911); SMGC Shaw P.235 (Gypsy fortune teller, Relli Heron [al. Young] daughter of Oliver Lee, Cinderella – 26 Jun 1927).

16 William Ferguson to Scott Macfie, 6 October 1910, ULSC GLS A14 (Letter books to RASM July–Dec 1910).

17 George Hall, diary entry 30 September 1912 (Brough Hill Fair), University of Leeds Gypsy, Roma and Traveller Collection (ULGRTC), Hall Diaries.

18 George Hall, diary entry 30 September 1913, ULGRTC, Hall Diaries.

19 *The Leeds Mercury*, 14 July 1927.

20 *Daily Mail*, 12 September 1936.



Fig. 12 Oscar and Polius (sons of William and Jane) and Wani Heron (daughter of Noah and Rodi Heron), Brough, 1 October 1911. (University of Liverpool Special Collections, SMGC Shaw P32)

The GLS photographs of families, and indeed of the fair itself, are defined by a contextual emptiness. A photograph of 1913, for example, foregrounds rows of caravans with little in the background or surroundings to suggest anything other than a Romani presence (see Fig. 13). Even when the subjects are active, they are still enclosed; a 1913 image of Owen and Conrad, sons of Goliath Heron and Oti Gray, has them in a space which suggests they are trading, but which again has no hint of the fair that, as we will see in the next section, was at the time equated to the wild west.

That is not to say that there was not a separate physical space. Most of the Romani visitors to the fair did occupy a separate site at the fair in terms of camping and living quarters, as is clear from the descriptions in other accounts. Boswell also tells us that the encampment was a separate area:

On the hill we had our own site on the Warcop side, just through the gate against the wall, and I noticed that for many years this site was never used by any other people than the Romanies – the women using their tents and wagons for their palmistry business during the Fair.<sup>21</sup>

The mention of the palmistry business is important, however (and will be returned to in the next section) as it implies the link to the wider fair.

---

21 Boswell, *The Book of Boswell*, 122.



Fig. 13 Brough Hill Fair, 29 November 1911. (University of Liverpool Special Collections, SMGC Shaw P.28)

The issue, then, is not that the images depict a separate Romani encampment area and living space, which of course existed and contained within it the family and community activities that took place during the fair and that were central to Romani economic, social and cultural life and heritage. Rather it is the implied isolation from and lack of interaction with – or contribution to – any of the other spaces of the fair that is problematic. One particular scene, a Shaw image from 1911 (Fig. 14), shows as usual a field with a row of caravans in the foreground. Unlike the other images, this one allows us to finally glimpse the fair in the background. The tops of the fairground carousels are visible in the distance, a hint that there is something beyond the desolation of the hill. However, the scene itself remains populated only by a few handfuls of people.

The GLS provides us with no images of the “thick of the fair”, no sense of Brough Hill as other sources picture it. Despite this focus, there are sentences which inevitably have to return the people to the fair, albeit with some disappointment that they couldn’t wholly confine them to a demarcated space: “You couldn’t get at the Gypsies: the women were dukkering for dear life, and the men were busy in the fair”.<sup>22</sup> The economies of the fair – financial, social, cultural – inevitably had to intrude into the idealized accounts. Even so, these are measured and confined as best they can be. So, even when we do find a description of

<sup>22</sup> R.A. Scott Macfie to Augustus John, 1 October 1909, ULSC, GLS A29.



Fig. 14 Brough Hill Fair. (University of Liverpool Special Collections, SMGC Shaw P:78)

the fair itself as spectacle, it is one which harks back to something left over from a wonderful past:

It was amazing to see a huge concourse of thousands of people & thousands of horses in the middle of the hills with not a house in sight ... Yet it is a survival of our old English life; and, as a sight, simply amazing ... I had no idea that anything so splendid had been left to us.<sup>23</sup>

George Hall, too, is keen to make the point that the fair, despite external change and progress, retains an authenticity: “happily, however, the distance of Brough Hill from the large centres of population has prevented the annual gathering from changing its character to any marked extent, or from degenerating into a so-called pleasure fair”.<sup>24</sup>

These photographs, and the accounts which accompanied them, can only offer us a cropped image of the diverse lives of the fair and with them the activities and overlapping spaces that had significance and meaning across different communities. They are lacking a sense of the shared spaces and the wider context of everyday, often peripheral, lives and activities. Through the investigation of other sources relating to Brough Hill Fair, we can begin to explore the wider significance not only of Romani presence,

---

23 R.A. Scott Macfie to Eric Otto Winstedt, 2 October 1909, ULSC, GLS A29.

24 George Hall, diary entry 30 September 1913.

but also the site of the fair itself as indicative of shared – and distinct – identities and narratives.

### Landscapes: Spectacles and Economies

And this is the recipe for a “Bruff” Hill Fair; Take equal parts of horses, gipsies, horse-dealers, farmers, and “potters”; thicken with miscellaneous humanity, and flavour strongly with fortune-tellers, quacks, “sharps” and “flats”, and a general assortment of the riff-raff to be found between Trent and Tweed; scatter into the mixture caravans, refreshment booths, gipsy tents, Aunt Sallies, roundabouts, and any old catch-penny lots you may have at hand, stirring in Bedlam and Babel until the composite mass is fairly thick. Then plaster it generously over half a mile of gently rising landscape on one of the peaceful foothills that nestle in the shadow of the rugged Pennines in the south-eastern corner of Westmorland, twenty miles from nowhere.<sup>25</sup>

This newspaper article describing Brough Hill was written in 1911, so around the same time that the GLS images discussed above were taken. The vivid description enables us to pan out from Shaw’s quiet, tidy images, and let the whole hotchpotch of the fair to come into view. The article also includes photos of people at the fair described in captions as “Potters”: “The ‘Potters’ shown in our illustrations are the professional tourists who travel the country in two-wheeled, titled shandridans ... Brough Hill Fair is the great annual gathering of the potter clans, most of the families having a horse or two for sale”. Here the Romani visitors to the fair, and other Gypsy and Traveller communities there, are still evidenced as occupying a separate, distinct space, just as the GLS and other accounts had described them as doing. They are also clearly an integral part of the fair itself – part of the mix, of the above-quoted “recipe” of “equal parts”. There is a spatiality to the fair which is ordered but also fluid.

Equally, when other newspaper articles describe a separate Romani area, it is nevertheless as a wider component of the landscape of the fair. For example, an article from 1864 tells the reader that “The first company met with on reaching the hill was the potters’ encampment along the wall. There was a long row of tops of carts forming the sleeping tents and homes of this migratory tribe”. Further along there are refreshment tents, all manner of stalls and then, of course, right in the middle “the business of the horse fair was being transacted to the very great danger of both buyers, sellers,

---

25 W. Carter Platts, “A Glimpse of a Famous Horse Fair”, *The Illustrated Sporting and Dramatic News*, 7 October 1911.

and spectators”.<sup>26</sup> The Romani presence is constantly separated as different from, and then reintegrated as a key element of, the whole. Here, Romani may well be the “potters” in the tents, they might also be the “horsey types” who sell ponies, or the “van-dwellers” who are described as part of the fair, the “hawkers” or “itinerant dealers” who trade in all manner of goods, the fortune tellers both in tents and also walking around the fair or the performers entertaining the crowds, just as they are a part of the crowds themselves.<sup>27</sup> In short, then, they are, as this 1912 article describes the scene, part of a whole fabric of “Rows and rows of tents, booths, stalls, vans, cheap Jacks – giving people ninepence for fourpence – hurdy gurdy men and tambourine lasses, rural visitors and friends, dealers of all kinds, buyers, sellers, drovers, pick-pockets and other shady characters”.<sup>28</sup>

It is through newspaper accounts, as biased or sensationalist as they were, that a more vibrant picture of the life of the fair emerges, and of the people briefly contained and thrown together within it. Often a “wild west” metaphor is applied; in 1906, *The Leeds and Yorkshire Mercury* pictured the horse dealers “bear[ing] down on unsuspecting crowds like scalp-hunting Apaches swoop down on their victims”. This same article reports that “the bustle of Brough Hill, with all its inaccessibility, is something western, astounding”.<sup>29</sup> And a report of the following day describes the fair in the year the “German Gipsies” mentioned in the next chapter of this book came to visit:

Cheap Jacks and quack doctors elbowed with sacred and secular vocalist, hawkers of almost every commodity from ice cream to oil paintings, thimble-riggers and three card sharps; while the proprietors of roundabouts, shooting galleries, cocoanut shies, and the rest of “the fun of the fair” that goes to make pandemonium, filled all the spare corners, while the gipsies – both native and German – were much in evidence, and plied their trade of fortune-telling whenever a fair member of the crowd could be induced to show her hand – and a bit of silver.<sup>30</sup>

Here, then, we have a quite different picture of the fair at the time. It is a place of entertainment and trade, where you could buy anything and anything was supplied, right down to Methodist tents catering for the needy.<sup>31</sup> Photographs from the time often concentrated on the entertainment spaces of the fair and on large crowds, quite far removed from the sleepy GLS images. Postcards showed scenes of crowds gathered in

---

26 *The Carlisle Journal*, 4 October 1864.

27 *The Penrith Observer*, 15 October 1912 and 6 October 1925.

28 *The Penrith Observer*, 24 September 1912.

29 *The Leeds and Yorkshire Mercury*, 2 October 1906.

30 *The Leeds and Yorkshire Mercury*, 3 October 1906.

31 David Kerr Cameron, *The English Fair* (Stroud: Sutton Publishing, 1998), 116–17.





Fig. 15 General view of the crowds at Brough Hill Fair.  
(Beamish People's Collection)

front of makeshift entertainment wagons, or montages of different attractions including horses, Romani caravans and crowds.<sup>32</sup> Large crowds and fairground attractions are also evident in several photographs of the fair taken in 1912.<sup>33</sup> In one we see in the foreground a carousel surrounded by people, women and men, and by horses, standing in the thick of the crowd; off in the background, we can make out further attractions, the tops of other stalls or tents.

Another (Fig. 15), taken from a distance, shows even bigger crowds, the site so packed out that it is difficult to see where the fair begins and ends. The same collection has a photograph entitled "General view of the fairground at Brough". In the same frame we see the carousel and crowds in the background, and in the foreground a caravan and woman, with people all around (Fig. 16).

The fair was an event that enabled people from different areas and social spheres to come together. It also took place at a time when issues of vagrancy were of key concern to the police force and wider Victorian and Edwardian society. Here the Vagrancy Act defined and criminalized those

32 Postcards, Kendal Archives, WDX882/1/2/130 (1910), WDX882/1/3/63 (Brough Hill Horse Fair), WDX882/2/2 (Postcard Bundle incl Brough Hill Fair).

33 Roland Scott Collection, National Fairground Archive, University of Sheffield; Beamish People's Collection, Beamish Museum.



Fig. 16 General view of the fairground at Brough Hill Fair.  
(Beamish People's Collection)

loitering, sleeping rough or begging, but it was something of catch-all term that could criminalize any public behaviour or activity deemed disorderly. Several arrests at Brough Hill Fair were made under the Vagrancy Act, even though the people arrested were not necessarily vagrants but a mix of people who had travelled to the fair and gambled, got drunk or got themselves into some other dodgy incident.<sup>34</sup> The fair, then, was a complex space, where both the practices of the fair-goers and the policing of them were set within a specific temporality.

Fortune tellers, more so than horse dealers, occupied these complex spaces of in-betweenness. They were confined to a Romani area of the fair, as Boswell tells us in the earlier quote, using their tents and wagons for palmistry. However, even within that space they became a key destination and experience for visitors to the fair. As Boswell continues: "Trips would come from Blackpool, Morecambe, Manchester and Lancaster and business was brisk. Hands could be read by real Gypsies, and I have seen as many as forty families, all Romanies, along this wall, with their palmistry tents".<sup>35</sup> In these tents and caravans they hosted all manner of visitors eager to

---

34 Guy Woolnough, "Policing Brough Hill Fair 1856–1910: Protecting Westmorland from Urban Criminals", in *Rural-Urban Relationships in the Nineteenth Century: Uneasy Neighbours?*, ed. Mary Hammond and Barry Sloan (London: Routledge, 2016), 32–45.

35 Boswell, *The Book of Boswell*, 123.

have their fortunes read. Outside, claims were posted about the skills or fame of the occupants, with large advertisements describing the fortune tellers as “Gipsy Sarah’s Eldest Clever Granddaughter”, “Gipsy Sarah’s Only Daughter” or informing the visitor of the prestige of other clients, such as “Palmist to Royalty”. Fortune tellers also went into the thick of the fair, as is evidenced by images from other fairs at the time.<sup>36</sup> At horse race meetings such as Epsom (a place which has its own history of Romani presence and activism) they were visited in the hope they might foretell Derby race winners as well as everyday fortunes, as old Pathé footage shows.<sup>37</sup> They were also part of the make-up of the travelling shows that were a key component of the horse fairs. A local Cumbrian newspaper article from 1932 entitled “‘Dukkerin’, An Old Showman’s Tale” tells a tale about a fortune teller, “old Leandia, who was travelling with us”.<sup>38</sup>

In the newspapers, fortune telling is described as belonging to the rest of the slightly dubious dealings at Brough. However, it also appears as a practice that lies at the heart of the fair, one of the activities people actively want to go there to experience:

If people cannot get rid of their cash at a flash jewellery stall, or in connection with some alien stunt, they cheerfully part with it to the dusky ladies who purport to look into the future for them. “What’s in a name?” said Shakespeare, A lot, apparently, if the name happens to be “Gipsy Lee”, for there were about half a dozen “original Gipsy Lees” on the ground.<sup>39</sup>

An article exploring Brough Hill 20 years later again has the fortune tellers as an integral element of the fair: “The usual fortune-tellers were there, with rival bearers of a famous gipsy name offering huge rewards to anyone proving the claim to be false”.<sup>40</sup> The same article references families having travelled from Blackpool, where they told fortunes to visitors to the popular seaside town.

Just as horse dealers travelled to each fair, so too would their mothers, sisters, wives and daughters. Diaries from the GLS, as mentioned above, refer to Amos Boswell’s wife Patience being a fortune teller. In an example from another source, the account of a fairground worker published in the 1930s, the writer refers to a conversation at Hull fair with the fortune

---

36 See, for example, a Rowland Scott Collection photograph of Nottingham Goose Fair 1910, which depicts two fortune tellers next to the hustle and bustle of the entertainment area: <http://cdm15847.contentdm.oclc.org/cdm/singleitem/collection/p15847coll3/id/69009/rec/6> (accessed 3 August 2020).

37 British Pathé, *Derby Crowds 1930–39* and *The Last of the Gypsies Meeting*, both 1929.

38 J.S. Fisher, “‘Dukkerin’, An Old Showman’s Tale”, *The Courier*, 27 April 1932.

39 *The Penrith Observer*, 6 October 1925.

40 Moorhouse, “Brough Hill Fair”.

teller “Madame Cavendish”, whose husband is described as making money as a hawker and horse dealer.<sup>41</sup> Some fortune tellers of the time became hugely famous. Corlinda Lee reportedly told the fortune of Queen Victoria. Corlinda had been married to a well-known Romani horse dealer and entrepreneur, George “Lazzy” Smith, and she toured with his famous “Gipsy Balls” in the mid-1800s. She was buried, in 1900, as “Queen of the Gypsies” in the necropolis in Glasgow.<sup>42</sup> Urania Boswell became the famous “Gypsy Lee”. She was the wife of another famous horse dealer, Levi Boswell, whose death in 1924 was widely reported by the newspapers, in which he was described as “King of the Gypsies” and said to have attended and traded at horse fairs across the country. Her death, the manner of which she had of course herself foretold, was reported not only in newspapers but also on film reels of the time which show packed streets lined with people watching as her horse drawn casket passes.<sup>43</sup> National newspapers reported that her funeral had been watched by 20,000 people and local newspapers reported on how she attended local fairs.<sup>44</sup>

Closer to Brough, in the north-west of England lived the famous “Gypsy Sarah”, and her daughters and granddaughters who followed in her footsteps. Sarah Boswell told fortunes in Blackpool, Lancashire, a Victorian seaside resort that once drew huge crowds. Her death was widely reported in local papers, informing the readers that she would have been 99 the month she departed, and had lived in Blackpool Sand Hills for 77 years, telling fortunes to visitors.<sup>45</sup> The papers continued to carry stories and fortune telling advertisements, detailing how her crown had passed to her daughter or granddaughter – for example, granddaughter Daisy Boswell, who on the death of her mother, Ada (Sarah’s daughter), became “queen”.<sup>46</sup>

Fortune telling, no matter how much it captured the Victorian imagination, was also a highly precarious activity that was criminalized, as “pretending to tell fortunes”, under the Vagrancy Act and often disproportionality penalized. Fortune telling was first made a criminal offence under Witchcraft laws, and then from Edwardian times onwards under vagrancy laws (the Vagrancy Act of 1824 and subsequent amendments). It was associated with Romani people and, by the nineteenth century, with more criminal classes (where fortune telling was seen as a front for other

---

41 Philip Allingham, *Cheapjack: Being the True History of a Young Man’s Adventures as a Fortune-Teller, Grafter, Knocker-Worker, and Mounted Pitcher on the Market-Places and Fair-Grounds of a Modern but still Romantic England* [1934] (Pleshey: Golden Duck, 2010), 150.

42 See, for example, <https://www.glasgow-necropolis.org/profiles/corlinda-lee/> (accessed 3 August 2020).

43 British Pathé, *As Befits a Romany Queen*, 1933.

44 *Daily Herald*, 29 April 1933; *The Wells Journal*, 28 April 1933.

45 *The Derby Daily Telegraph*, 4 March 1904.

46 *The Lancashire Daily Post*, 6 June 1901.

crimes). Moreover, it affected people who were mostly working class and female.<sup>47</sup> Gipsy Sarah also had difficulties with the law in her fortune telling career. A few months after Brough Hill Fair in 1877, *The Carlisle Journal* reported “a raid upon gipsy fortune tellers at Workington” in Cumbria. A policeman noticed the camp had been visited by a large number of young women and sent a police sergeant’s wife and a servant to investigate: they found Sarah Boswell, and her daughter Emma, telling fortunes in exchange for money. Both women were charged with vagrancy and imprisoned for one month with hard labour.<sup>48</sup> Daisy Boswell, Sarah’s granddaughter, also had various troubles, as detailed in several newspapers in January 1909. Here we are told that “a Blackpool gipsy named Daisy Boswell, who was described as a granddaughter of Gipsy Sarah, of Blackpool, was summoned for pretending to tell fortunes at St Annes”.<sup>49</sup> We also learn that Daisy had calling cards on which was printed: “One of Gipsy Sarah’s granddaughter. Patronised by the King”.<sup>50</sup> The court condemned her to two months’ imprisonment with hard labour. On 9 December 1931 Daisy received her own obituary in the newspapers, just as her grandmother had, when *The Yorkshire Post* reported on the “Gipsies’ Royal Queen. Funeral of Daisy Boswell at Blackpool”.

The newspapers were often peppered with stories of fortune tellers on trial, for example that of Delia Young Morpeth in 1888. Delia, described as “a gipsy, of whom it is stated that her family had been gipsies for generations”, was camped in a village where hundreds reportedly came to see her to have their fortunes told. The defence was that “the prisoner and her family told fortunes at Blackpool during the season for 20 years”; however, she was found guilty and ordered to pay a fine of £5 and costs, or spend two months in prison (in this case the fine was paid).<sup>51</sup> There are several more, reported on with glee in the newspapers. Many others though would not receive any newspaper coverage or have obituaries which bestowed on them the titles of “Gipsy Queen” as Sarah, Daisy and Gipsy Lee or Corlinda had. While certain sites, such as fairs, provided a more fluid space and opportunity, wider everyday life and activities remained precarious.

---

47 Alana Piper, “Fortune Telling”, in *A Companion to the History of Crime and Criminal Justice*, ed. Jo Turner, Paul Taylor, Sharon Morley and Karen Corteen (Bristol: Policy Press, 2017), 92.

48 *The Carlisle Journal*, 7 December 1877.

49 *Derby Daily Telegraph*, 20 January 1909.

50 *The Herald*, 30 January 1909.

51 *The Herald*, 17 March 1888.

## The End of the Fair

One old man, perhaps the oldest attender of the fair, was heard to declare that during the 78 years of his life he had attended Brough Hill about 140 times, and he never saw it so thin before. Many who formerly attended for business came only for pleasure.<sup>52</sup>

In the late 1800s Brough Hill Fair was already seen as being past its imagined heyday. Railways and industrialization had changed it irrevocably, as lamented by the above excerpt from a local newspaper article written in 1864. By the beginning of the twentieth century there is a perceptible nostalgia for the spectacle of the fair, a sense that it was a glimpse into a past ever fading from view, ever in danger, a wild west that could not last. In 1911 the horse fair was being described as an experience that would soon disappear:

[A]s everyone knows, improvements effected in petrol cars and motor wagons have already displaced horse traction to an appreciable extent ... those who, not already having witnessed the spectacle, wish to see – and hear – a great typical English horse fair in something approaching the full tide of stir and bustle, should make the most of their earliest opportunity ... the horse fair is doomed to fade within the next few years into comparative insignificance.<sup>53</sup>

The spectacle had necessarily always been a part of the fair. It was a place for all manner of lives and livelihoods. These livelihoods were still being made, decline or not, in the first part of the twentieth century. Horses were traded, goods sold, shows performed and fortunes told. The fair was a vibrant social and economic space, even if that economy had already shifted away from livestock. The experience of the fair continued, although its image began to crystallize not only as a romanticized portrait of a fading rural idyll, but at the same time as a vilified throwback to less progressive times, drawing with it a prejudiced perception of undesirable people and practices. Here, according to the British Home Office, “Fairs are almost without exception of no importance from the commercial point of view, and are in fact anachronisms which become continually more objectionable as modern traffic conditions develop and the standard of sanitation increases”.<sup>54</sup> This is echoed in letters and debates that centred around the abolition orders issued by the Home Office in the 1920s, in

---

52 *The Carlisle Journal*, 4 October 1864.

53 Platts, “A Glimpse of a Famous Horse Fair”.

54 Home Office Memo, 1 February 1923, National Archives, Kew (TNA), HO 45/442887.

which it was argued that fairs had degenerated into events solely for “low class dealers and gipsies”.<sup>55</sup>

We can perceive here a moment where the loss of economic (horse and cattle trading) value had fragmented the fairs’ meaning, centrality and relevance across communities. Many smaller fairs met their demise, or their transformation into small agricultural shows. It should be noted, though, that in the 1920s several petitions against abolition orders were organized. These insisted that the fair was essential for local communities and economies; Ormskirk Fair is a case in point.<sup>56</sup> In other places, larger, well-known fairs such as Stow or Lee Gap were maintained. Decades later there followed the aforementioned “saving” of Appleby Horse Fair in which Boswell, alongside other members of communities involved with the fair, played such a central role. This led to the fair becoming stronger, precisely because of its centrality to the social life and cultural heritage of Gypsy, Romani and Traveller communities, as well as the large visitor numbers and visitor economy from outside of these communities it continues to attract each year.<sup>57</sup>

Brough Hill retained its draw and its function, at least for a while. The 1949 newspaper article cited at the beginning of this chapter remained positive:

The pessimists may still talk of the days when a hundred or so horses changed hands within the two days, but the pageant of Brough Hill is still undiminished, The fair is too indelibly fixed in the minds of potter-folk, local inhabitants and visitors who never fail to attend it, to allow the passing of these things to extinguish its glory.<sup>58</sup>

It was extinguished, however, and by the 1970s it was all over.

While the GLS images referred to in the first section of this chapter captured and preserved the faces and activities of several Romani families and their histories at Brough Hill Fair, they also isolated them from the fair, fetishizing and fixing them in a colonial gaze. The outside was minimized because the outside was troublesome, messy and diluted the “purity” of their subject by placing them in a real economic and social sphere. To concentrate only on an imagined “true” Romani and their “pedigree” was to blur everyday life and meaning into the background, and with it the

---

55 Statement of Superintendent of Lancashire Police, Ormskirk, 31 March 1922, TNA HO 45/11048, 138645/8.

56 Home Office correspondence about the abolition of the Ormskirk fair, TNA HO 45/11048, 138645.

57 For a sense of the history, memories and importance of Appleby Fair see, for example, <https://www.travellerstimes.org.uk/heritage/memories-appleby-fair> (accessed 3 August 2020).

58 Moorhouse, “Brough Hill Fair”.

significance of the presence of Romani actors – both visible and invisible – at the fair. It also contributed to the obscuring of wider everyday Romani and non-Romani working-class presences and activities. The site of the fair, and the often precarious lives and livelihoods it was a brief container for, was more vibrant and complex than this. As we see in reports and images from the time, it was a kaleidoscope that presented different pictures and colours each time someone viewed it – of romanticized lives and times, of entertainment and excitement, of struggles and persecutions, of the small individual instances of everyday lives reflected back to create a picture in pieces.





## Michael Hargreaves Planning

5 High Street  
Swaffham Prior  
Cambridge  
CB25 0LD

[REDACTED]  
[REDACTED]

The Rt Hon Mark Harper MP  
Secretary of State for Transport  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

6<sup>th</sup> November 2023

Dear Sirs,

I write on behalf of the Brough Hill Fair Community Association (BHFA) to introduce and provide commentary on new and relevant evidence that has emerged since the Examination closed, and to urge the Secretary of State to consider very carefully whether the provisions and plans contained in the DCO in relation to the Brough Hill Fair are lawful.

We recognise and apologise for the very late stage of these representations. However, a review of the documents and evidence has revealed serious flaws in the approach that has been taken by the Applicant in relation to the Brough Hill Fair Rights, which, as noted by the ExA during the Issue Specific Hearings, threaten to cause the Secretary of State a serious headache if and when he is required to exercise his powers under Article 36.

We would request that careful consideration is given to the following points, and that the SoS amends the Draft Development Consent Order as follows:

1. The Brough Hill Fair Site to be included in the Cultural Heritage Chapter of the EMP, and appropriate consideration made in terms of reasonable alternatives to the road route;
2. The Brough Hill Fair site is included in the book of Reference as 'Special Category Land'.

### Ancient Public Right

The Ancient Public Right to hold the Fair has been enjoyed over centuries, and has played a significant role in shaping the Historic and Cultural Landscape of the North Pennines. Its reconstruction and representation in this process as a 'Gypsy and Traveller Fair'<sup>1</sup> has allowed the Applicant to delegate responsibility for advocating for the Fair Rights to a vulnerable minority community on the one hand, and to diminish and deny rights that are held by the

---

<sup>1</sup> TR010062-000870-'s Responses to the Relevant Representations Part 4 of 4 November 2022.pdf; p193

Public at large by reliance, specifically, on the culture and circumstances of the Gypsy people on the other.

A distinct pattern can be traced throughout the interactions between the BHFCA and the Applicant in this process. It reflects a systematic and consistent failure to consult effectively, not only with the people most affected by the proposals to destroy the existing Fair site, but with appropriate competent expertise. The request that was made by the ExA for Article 36 to require direct consultation between the SoS and the BHFCA in the process of adopting the alternative site has not been implemented.

There has been significant and persistent difficulty in coming to an agreement as to the exact nature, and geographical extent of the Brough Hill Fair Rights throughout the process of the Project Design and Examination.

Early communications from the National Highways Project Team sought assistance from the BHFCA to identify other examples in which Fair Rights have been threatened by development and relocated, and what stipulations might be applied in relation to the characteristics of a replacement site.<sup>2</sup> But by the time of Issue Specific Hearing 2, Robbie Owens, on behalf of the Applicant had come to a view that *'we don't purport to be and clearly can't be the arbiter of whatever the legal rights are in relation to Brough Hill Fair.'*<sup>3</sup>

The Brough Hill Fair Rights are Rights of a Public Nature, granted by a Charter by Edward III in 1329, and exercised every year since that date. They are confirmed in the 1947 Transfer Agreement between Veteripont Estates and the Ministry of Defence for Land at Warcop.

Once *'one of the largest and most well-known horse and cattle fairs in Britain, central to the lives of several different communities at the time,'*<sup>4</sup> the Fair attracted *'locals, day trippers, drovers, farmers, armies looking to buy horses, and all manner of traders and performers'*<sup>5</sup> in its time. A search in historic newspaper archives offers glimpses into the rich and colourful history of the Fair, whilst articles in 'Country Living' and 'Sport and Country' record the arrival of *'coach parties from all over the North'*<sup>6</sup> well into the 20<sup>th</sup> Century, putting the name of the local village *'on the lips of perhaps fifteen thousand people.'*<sup>7</sup>

Once a rich and abundant meeting place for people from all walks of life who travelled from near and far to be part of its social, cultural and economic exchange; the Fair has dwindled in the past decades; kept alive only by the faithful annual return of Romani people, who are, as Tamara West has written, *'inseparable from Brough Hill Fair in terms of culture and commerce, but also in experiences and memories across different communities.'*<sup>8</sup> So it has become that whilst the Fair has been enjoyed over centuries by all sectors of the British

---

<sup>2</sup> Email from Rachel Smith; 20<sup>th</sup> April 2021

<sup>3</sup> 1:29:38: [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-000934-transcript\\_ISH2\\_session3\\_01122022.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-000934-transcript_ISH2_session3_01122022.pdf)

<sup>4</sup> Intersecting Lives: The Brough Hill Fair as Biography-in-Pieces Tamara West; p107

<sup>5</sup> Intersecting Lives: The Brough Hill Fair as Biography-in-Pieces Tamara West; p108

<sup>6</sup> Brough Hill Fair Moorhouse, Sydney Sport & Country; Nov 2, 1949; 188, 3753; British Periodicals pg. 366

<sup>7</sup> AT\_BROUGH\_HILL\_FAIR\_BUSINESS\_and pleasure among the fells - 1902.pdf

<sup>8</sup> Intersecting Lives: The Brough Hill Fair as Biography-in-Pieces Tamara West; p109

Public, it is the Gypsy community who find themselves now, unwillingly, left all but alone to defend the Ancient Public Right to hold the Fair.

It is true that the Brough Hill Fair is of very significant cultural value to the Gypsy Community. The alternative site that has been offered for the Fair is not safe, and not suitable, and we do not anticipate that the Applicant will be able to produce any scheme that will make it so.

Alongside other Interested Parties<sup>9</sup> we have raised issues in relation to the threat the project poses to the Fair, and the associated Intangible Cultural Heritage of the Gypsy Community since before the Examination began. We requested, at ISH3 that the Fair be included in the Cultural Heritage section of the EMP, and that the site be included in the Book of Reference as 'special category land.' We have made multiple representations drawing attention to the legislation relating to Equality; Heritage and Human Rights that must be engaged in this process.

However, it has become apparent that no appeal based on the Human and Cultural rights of the Gypsy people would ever be sufficient to persuade the Applicant that the Brough Hill Fair Rights should be accorded its proper status in this process. Rather, the Applicant has relied explicitly on the culture and circumstances of the Gypsy Community to justify the exclusion of the Fair from all procedural safeguards that could, and should, have been implemented.

#### Article 36.

Article 36 of the Draft DCO provides the mechanism by which a replacement site for the Brough Hill Fair should be adopted, and the existing site released from the Brough Hill Fair Rights.

The BHFCA has expressed serious concerns, throughout the process of the Examination that the phrasing in Article 36 is insufficient to guarantee a suitable alternative site, or, if this first hurdle may be overcome, the effective transfer of the rights to hold the Fair to that alternative site.

The original version of Article 36 provided that:

*'(1) For the purposes of the authorised development the undertaker may transfer the Brough Hill Fair rights to the replacement Brough Hill Fair site and release all other Order land from the Brough Hill Fair rights in accordance with the provisions of this article, on a date to be determined by the undertaker.*

*(2) Paragraph (1) does not take effect until—*

*(a) the Secretary of State has, following consultation with the relevant local planning authority and the relevant local highway authority, certified as being appropriate for the purpose a scheme for the provision of the replacement Brough Hill Fair site;'*

---

<sup>9</sup> Warcop parish Council; Eden Council; TAN

The issue was discussed at Issue Specific Hearing 2, and the ExA noted that given that the Gypsy Community are clearly not satisfied that the replacement site offered is suitable for use for the Fair, the SoS could be faced with a ‘headache’ when required to discharge or approve the under Article 36. He requested that Article 36 be amended to ensure that the SoS would have the opportunity to speak directly to representative of the Gypsy Community during the process as follows:

*‘We could end up in a situation where the Secretary of State in facing to discharge or give approval under Article 36 is faced with a headache, if you like where the Gypsy and traveller community are not happy with this site. It just seems to me that a simple fix for this is that under to a 36, to a the Gypsy and Traveller community should be consulted upon that it’s a Secretary of State has following consultation with the relevant planning authority and the relevant local highway authority (1:38:26 ) but not the Gypsy and traveller community, or at least the representative of the Gypsy and traveller community ought to form part of that consultation, should it not if having listened to the Gypsy Traveller community, the Secretary State is still minded to grant to discharge this and grant the site then so be it at least he will have had that opportunity to have spoken to them at that stage. Is that fair? (1:39:09)*

*‘It just it seems to me that the that this article in transferring the Gypsy community from one site to another avoids talking to him about it from the Secretary State. So I think that’s something that I would certainly welcome. And I look forward to an updated iteration.’ (1.40.11)*

At page 57 of its ‘post-hearing note’ for ISH 2, the Applicant has stated that:

*‘the Applicant was asked to consider amending article 36(2)(a) to include consultation with representatives of the Gypsy and Traveller community regarding the scheme for the provision of the replacement Brough Hill fair site to be certified by the Secretary of State. The Applicant has reflected on this request and is minded to amend article 36 to provide for consultation with representatives of the Gypsy and Traveller community on the scheme to be certified by the Secretary of State. The Applicant will make the appropriate amendments in the next iteration of the draft Order to be submitted at deadline 2.’*

**The amended version of Article 36 does not create provision for direct consultation between the SoS and the Gypsy Community as requested by the ExA.**

Instead, as shown at 36(2)(b)(i) below; the Applicant has removed the explicit requirement for the SoS to consult directly with the LPA and the Local Highway Authority altogether, and has instead included a clause which requires the ‘Undertaker’ (i.e. National Highways) to prepare the scheme for the replacement site following consultation with ‘*such persons as the undertaker reasonably considers represents the interests of the persons who enjoy the Brough Hill Fair rights;*’

*36.—(1) Subject to paragraph (5), the undertaker must not take exclusive possession of any part of the existing Brough Hill Fair site for the purposes of constructing the authorised development*

*until the Secretary of State has—*

*(a) approved a scheme prepared by the undertaker for the provision of the replacement Brough Hill Fair site; and*

*(b) certified that—*

*(i) the approved scheme has been satisfactorily implemented by or on behalf of the undertaker; and*

*(ii) the replacement Brough Hill Fair site is suitable and available for use by the persons who enjoy the Brough Hill Fair rights.*

*(2) The scheme for the provision of the replacement Brough Hill Fair site mentioned in paragraph (1) must—*

*(a) provide for the replacement Brough Hill Fair site to be laid out such that it is a suitable replacement for the existing Brough Hill Fair site, in terms of—*

*(i) including facilities that are at least as equivalent to those of the existing Brough Hill Fair site at the time this Order came into force;*

*(ii) making appropriate provision for safe access to and from the replacement Brough Hill Fair site for vehicles, horses and persons;*

*(iii) making appropriate provision for the treatment of the boundaries of the replacement Brough Hill Fair site, to secure the safe use and enjoyment of the site and having regard to the use and amenity of adjacent land; and*

*(iv) setting out the intended arrangements for maintenance and management of the facilities, access and boundaries mentioned in paragraphs (i) to (iii) above, having regard in particular to safety and security considerations; and*

*(b) be prepared by the undertaker following consultation with—*

*(i) such persons as the undertaker reasonably considers represents the interests of the persons who enjoy the Brough Hill Fair rights;*

*(ii) the owners and occupiers of land adjacent to the replacement Brough Hill Fair site;*

*(iii) the relevant planning authority; and*

*(iv) the local highway authority.*

There are a number of obvious issues with this approach.

The Applicant insists that it has carried out appropriate consultation with the Gypsy Community already in coming to its conclusions as to the suitability of the Bivvi Site. By the Applicants own admission, this has been directed towards persuading the BHFA that the replacement site is appropriate.<sup>10</sup> As evidenced by the ‘Supplementary Consultation on Brough Hill Fair’ between March – April 2022, the Applicant became aware at an early stage that the Bivvi Site is not a suitable replacement for the existing Fair site. As is clear from Table 3<sup>11</sup> in the Applicant’s Post Hearing Submission for Deadline 5 – ‘Replacement Sites Considered for Brough Hill Fair’ [Document Reference 7.32, REP5-029]; ‘Option 2’, which

---

<sup>10</sup> See p55 - <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR010062/TR010062-001085-National%20Highways%20-%207.3%20ISH2%20Post%20Hearing%20Submissions.pdf>

<sup>11</sup> Copy attached

is the site against which the Bivvi Site was assessed, failed to meet four of the eight criteria National Highways had identified for suitability, including, crucially, highway safety and site size. Option 2 was not a 'reasonable alternative' for the purposes of this assessment. The supplementary consultation was not designed to identify a suitable replacement site, but to provide the Applicant with a poorer alternative against which to present and discuss the Bivvi Site. National Highways relies consistently and explicitly throughout the project documents on exactly this comparison. It is not appropriate to assess and justify the Bivvi Site against a site that was never remotely capable of providing the replacement site. The site needs to be assessed against objective criteria to determine its capacity to accommodate the Fair. Principal amongst these is the issue of Safety.

The BHFCA, alongside the Heron Family, have consistently and repeatedly expressed a firm and considered view that there is no mitigation or landscaping scheme that could possibly ensure that the Bivvi Site is safe for use for the Fair. It is not clear what further consultation between the Applicant and the BHFCA on this issue can possibly achieve.

Article 36(2)(iii) requires that the Scheme should ensure that the scheme for the replacement site is suitable in terms of:

*(iii) making appropriate provision for the treatment of the boundaries of the replacement Brough Hill Fair site, to secure the safe use and enjoyment of the site and having regard to the use and amenity of adjacent land;*

In response to concerns we have raised about safety of the alternative site the Applicant has said:

*6.1.10 In any event, the Applicant considers that the ongoing management and maintenance responsibilities in relation to the proposed new BHF site, information on which is to be provided by the Scheme required to be approved under article 36 of the DCO, cover its obligations in relation to risk and safety and give confidence that the final detailed design of the replacement BHF site will take into consideration the views of the Gypsy Community, the owners and occupiers of adjacent land and the views of the relevant planning authority and local highway authority. Furthermore, the Secretary of State's function of approving the required Scheme relating to the BHF site under article 36 of the DCO would include consideration of safety issues as part of overall maintenance and management issues<sup>12</sup>*

The Applicant recognised that it would need to commission a Risk Assessment of the site, and instructed a surveyor for that purpose.

As the Brough Hill Fair Summary Statement shows,

*8.1.4 In relation to paragraphs 3.2-3.3 of [REP6-040], and in relation to the meeting on site with the surveyor and representatives of the Gypsy Community, the Heron family and the Applicant, it became apparent that the dynamic of the meeting was not conducive to a*

---

<sup>12</sup> [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-001794-National%20Highways%207.37%20Summary%20Statement%20on%20Brough%20Hill%20Fair%20Relocation\\_Rev%202\\_Clean.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-001794-National%20Highways%207.37%20Summary%20Statement%20on%20Brough%20Hill%20Fair%20Relocation_Rev%202_Clean.pdf)

*constructive assessment. As noted, the meeting was paused and continued later without the surveyor. ...*

At 3.5.2 to that document it is clear that rather than engaging an alternative competent expert to assist when it was clear that the first surveyor was not appropriate, the Project Team carried out the risk assessment itself:

*The Applicant's project team has undertaken a detailed Operational Risk Assessment and has worked with both the Heron family and the Gypsy Community representatives to identify all the risks associated with the replacement BHF site.*

The Heron Family engaged a competent expert to conduct a risk assessment.<sup>13</sup> This showed that the site cannot be made safe by any detailed design scheme.

I wrote to Rachel Smith, who has been leading the work in relation to this matter on behalf of the Applicant on 5<sup>th</sup> September to ask whether there is a reason why the amendment requested by the ExA had not been made.

Ms Smith responded as follows:

*'In relation to your first point on article 36 of the draft DCO, it was in the second version of the draft DCO (at Deadline 2 – you can see the tracked changes at [REP2-006]) that the text in this article was altered from consultation with the GRT Community being undertaken by the SoS to being undertaken by National Highways (the undertaker, as you say) instead. This followed discussions at Issue Specific Hearing 2 (see Item 5.0 and particularly page 57 of our Post Hearing Submissions [REP1-009]) and a specific request from the SoS for this wording to be included, which we actioned at this early stage of the Examination. The GRT Community therefore had the majority of the Examination to raise any concerns it had with this drafting, as this requirement for National Highways to consult with the GRT Community in article 36 remained in place up to and including the final version of the draft DCO submitted into the Examination [REP9-013].'*

It appears from Ms Smith's response that the reason why the Applicant did not implement the amendment requested by the ExA was that it did not fully understand it.

The consequence of the decision by the Applicant conforms clearly to the pattern that has emerged in this process. The Gypsy Community has been denied the right to participate effectively in the process of preparing the relevant scheme.

Most problematically, perhaps, Article 36 relates explicitly and only to the 'Bivvi site'. There is no mechanism in the Article to determine what should happen if (and when) it becomes clear that the SoS will not be able to approve a scheme. This will leave us in a situation where there is no alternative site, and no mechanism to provide one, so the Applicant will not be able to take possession of the existing Fair site and the road build will not proceed.

**Could the Secretary of State explain what will happen if he is unable to approve a scheme for the replacement Site?**

---

<sup>13</sup> Risk Assessment



## Special Category Land

Section 120(4) Planning Act 2008 (part 1 of schedule 5) provides for a Development Consent Order to extinguish rights on land.

Section 131(3) requires that where the land is ‘*any land forming part of a common, open space or fuel or field garden allotment;*’ ‘*an order granting development consent is subject to special parliamentary procedure.*’ The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 defines such land as ‘special category land’.

The Government’s ‘*Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land*’<sup>14</sup> explains, at paragraph 2 to Annex A that:

*‘2. Special parliamentary procedure requires those elements of a development consent order covering the compulsory acquisition of special land to be subject to further scrutiny by Parliament before it can come into effect.’*

At Issue Specific Hearing 2,<sup>15</sup> the Applicant was asked by the ExA to elaborate on the reasons why the existing Brough Hill Fair Site had not been included in the book of Reference as ‘special category land’, and thereby afforded the additional procedural safeguards provided for in legislation.

The Applicant provided a response to this question at pp56/57 of its Post Hearing Note.<sup>16</sup> The decision not to treat the Brough Hill Fair site as ‘special category land’ appears to turn on an interpretation of “open space”, and ‘*whether or not it can be said to be “used for the purposes of public recreation.”*’

To quote the Applicant in full:

*‘The Applicant was asked to provide further detail as to why it considers that the site of the existing Brough Hill Fair is not ‘open space’ special category land within the meaning of section 131(12) of the Planning Act 2008 as stated in paragraph 7.3.1 of the Statement of Reasons [APP-299].*

*“Open space” is defined in section 19(4) of the Acquisition of Land Act 1981 as “any land laid out as a public garden or used for the purposes of public recreation, or land being a disused burial ground.”*

*The site is neither laid out as a public garden nor comprises a disused burial ground, so the key characteristic to consider is whether or not it can be said to be “used for the purposes of public recreation”.*

---

<sup>14</sup> [https://assets.publishing.service.gov.uk/media/5a748a8ce5274a7f9902904a/Planning\\_Act\\_2008\\_-\\_Guidance\\_related\\_to\\_procedures\\_for\\_the\\_compulsory\\_acquisition\\_of\\_land.pdf](https://assets.publishing.service.gov.uk/media/5a748a8ce5274a7f9902904a/Planning_Act_2008_-_Guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf)

<sup>15</sup> See from 1:43:43 onward - [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-000934-transcript\\_ISH2\\_session3\\_01122022.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-000934-transcript_ISH2_session3_01122022.pdf)

<sup>16</sup> <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR010062/TR010062-001085-National%20Highways%20-%207.3%20ISH2%20Post%20Hearing%20Submissions.pdf>

*Considering the legal authorities that have addressed questions of when land can be said to be used for the purposes of public recreation:*

- *The characterisation of land as open space is not dependent on the legal basis upon which the public make use of the land (R v Doncaster Metropolitan Borough Council Ex p. Braim (1989) 57 P. & C.R. 1).*
- *The use of the land for the purposes of recreation must have an element of continuity of use. Whilst the ability to exclude the public from the land or for certain parts of the land, is not inconsistent with it being “open space” (Burnell v Downham Market Urban District Council [1952] 2 QB 55, at 66), the definition nonetheless suggests an ongoing, rather than occasional, if regular use.*
- *It would be surprising if the use of land for an annual fair or similar event had the effect of rendering it open space. Such an interpretation would risk for example, the site of a popular music festival, the location of an annual sporting event or other regular events being considered to have changed the character or use of private land such that they become “open space”.*
- *It is not clear that activities carried out at the Brough Hill Fair can be characterised as “public recreation”. Whilst recreation is a broad concept it isn't clear that the range of activities carried out at the fair, when viewed in their totality are recreation, or are carried out by the public at large.*
- *The Applicant is content to add a brief note to the Explanatory Memorandum in its next iteration at deadline 2, confirming that the site of the Brough Hill Fair is not special category land.*

The decision not to include the Brough Hill Fair Site as ‘special category land’ conforms clearly to the pattern emerging in decision-making by the Applicant throughout this process that consistently leads directly to consequences which deny the Gypsy Community the benefit of effective procedural oversight, meaningful participation or relevant competent expertise.

We have reviewed the reasons given by the Applicant above, and make the following observations:

1. The Applicant seeks assistance for its position in ‘*R v Doncaster Metropolitan Borough Council Ex p. Braim (1989) 57 P. & C.R. 1*’.

‘*Doncaster*’ confirms that where the rights of access to the land are those of the public as a whole, the land may be defined as ‘open space’:

‘(2) *the rights were those of the public as a whole and not merely the inhabitants of the locality;*’

‘*I am satisfied that the rights which everyone believed to exist were those of the public as a whole and not merely the inhabitants of the locality; and, as I understand it, Mr. Whybrow accepts that in so far as there were rights, they were not rights of this limited class.*’

The Applicant states that ‘*it isn’t clear that the range of activities carried out at the fair [...] are carried out by the public at large*’ to suggest, presumably, that the fact that those members of the public who most frequently exercise the Brough Hill Fair rights in recent years are members of the Gypsy Community undermines the claim to ‘public rights.’ This is clearly erroneous. We have provided an article<sup>17</sup> about the history of the Brough Hill Fair. It is clear that the right to hold and attend the Fair are rights of a public nature, which have been exercised since the 1300s by people from a broad spectrum of society. The fact that those who have chosen to exercise in recent years may fall into a particular class is not relevant to the nature of the rights as ‘public’ rights. There is nothing to prevent any member of the public from exercising the right to hold or attend the Fair.

2. The Applicant has stated that ‘*It is not clear that activities carried out at the Brough Hill Fair can be characterised as ‘recreation’*’. This is simply a failure of imagination, and a deficit in cultural awareness on the part of the Applicant. Mr Welch has described the social and recreational value of the Fair to those who enjoy the opportunity it presents to reconnect with friends and family around a campfire.

3. The Applicants reliance on *Burnell v Downham Market Urban District Council [1952] 2 QB 55* to substantiate a contention that the definition requires an ‘*ongoing, rather than occasional use*’ is surprising.

*Burnell v Downham Market Urban District Council [1952] 2 QB 55* appears to contradict, rather than support this position, confirming, in summary, that:

- (a) It is not essential that the use of the land by the public should be "perpetual;"
- (b) The right of the public to the free and unrestricted use of the land is not inconsistent with a right of closure, or a right to exclude the public from certain portions of the land.

We would respectfully suggest to the Secretary of State that the fact that the public right to the use of the land is limited to four days of each year is emphatically overwhelmed by the fact that it has been established, and indeed exercised, every year since around 1330 in relation to the question of whether the use is sufficiently regular to support its inclusion as special category land.

### Cultural Heritage

The BHFCA requested that the Fair be included in the Cultural Heritage Chapter of the EMP at Specific Issue Hearing 2.

Had the Fair been included, the Applicant would need to have considered ‘reasonable alternatives’ to the route – including the ‘Billy Welch Straight Line’.

Historic England recommended including a separate topic/theme in the Historic Environment Research Framework, to include the historic landscape and specifically the Intangible Cultural Heritage associated with the Fair.

---

<sup>17</sup> *Intersecting Lives: The Brough Hill Fair as Biography-in-Pieces* Tamara West

Once this Heritage Asset had been included in the research framework, LA104 and LA106 required that a competent expert was consulted to assess the significance of the asset, to determine whether it should be included in this Chapter.

The Applicant has directed itself that:

*8.9.4.71 The recognition of what may be considered as 'Intangible Heritage' can, in itself be challenging, although in the A66 Route Corridor the Appleby Horse Fair is widely recognised (See Section 8.9.3.139), even if its social and cultural context to the Romani communities is not fully understood by the wider population. What may be less visible or accessible are associated sites known to the Romani. This may include: traditional camping grounds used by those travelling to and from the Appleby Horse Fair<sup>316</sup> and related ancillary information. **Such knowledge is likely to be lost as legislation and other changes impact on the Romani:***

*'The places where my family would frequently set up camp are now mostly inaccessible, as the commons, verges and drove roads that used to provide us with space are enclosed'<sup>317</sup> (Bowers, 2022).*

*8.9.4.72 The impact from the Project on the Romani/Traveller community is assessed in ES Volume 1 Chapter 13: Population and Human Health and the Equalities Impact Assessment (EQIA). **The scale of impact is not one which is expected to result in more than a negligible change to the Intangible Heritage of the community. Mitigation is therefore not proposed.***

The fact that the ICH of the Romani people is already under significant threat from other circumstances is not an appropriate baseline for this assessment. The vulnerability of the asset should mean that the Applicant must be *more* careful to avoid further harm rather than less.

I wrote to Rachel Smith from the NH project team to ask which competent expert was consulted to come to this conclusion. She has said:

*With regards to your point on intangible cultural heritage (ICH), National Highways provided responses to the GRT Community's Deadline 4 submission regarding ICH in Appendix F of our Post Hearing Submissions for Issue Specific Hearing 3 and in our Summary Statement on Brough Hill Fair Relocation [REP6-023 and then updated at REP7-156]. In their capacity as a statutory consultee, Historic England were consulted throughout the pre-Application and Examination periods by National Highways on, amongst other things, the heritage sections of the Environmental Statement (ES) and the Environmental Management Plan (EMP), including updates made to both documents submitted during Examination and the supplementary documents concerning ICH referenced above. We have no record of Historic England stating they were not competent to comment on the ICH aspects of the ES, EMP or the supplementary documents referenced above, nor did they raise any concerns on this particular matter during the pre-Application or Examination periods.*

Historic England's remit does not include the Intangible Cultural Heritage. The Applicant does not deny that a competent expert was required to be consulted, but asserts that Historic England was that expert.

This is incorrect.

The Applicants Summary Statement on Brough Hill Fair states that:

*4.1.1 The Applicant notes that the Gypsy Community raised concerns in relation to the consideration of the intangible cultural heritage of the BHF at Issue Specific Hearing 3 and in its Deadline 5 submission [REP5- 031]. The issue of intangible cultural heritage has not been raised by any party prior to that point either during the Examination or during the Applicant's pre-application statutory consultation.*

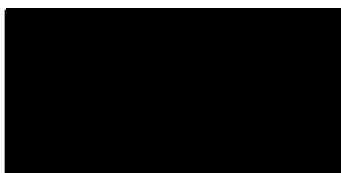
The ICH was recognised and included in the Historic Research Framework, and the Applicant states that it consulted with competent expertise to assess its value *before we made these comments at Issue Specific Hearing 3.*

It is difficult to reconcile the statements above, that a) the issue of the ICH had not been raised during the pre-application stages, and b) competent expertise was consulted on the ICH during the pre-application stages.

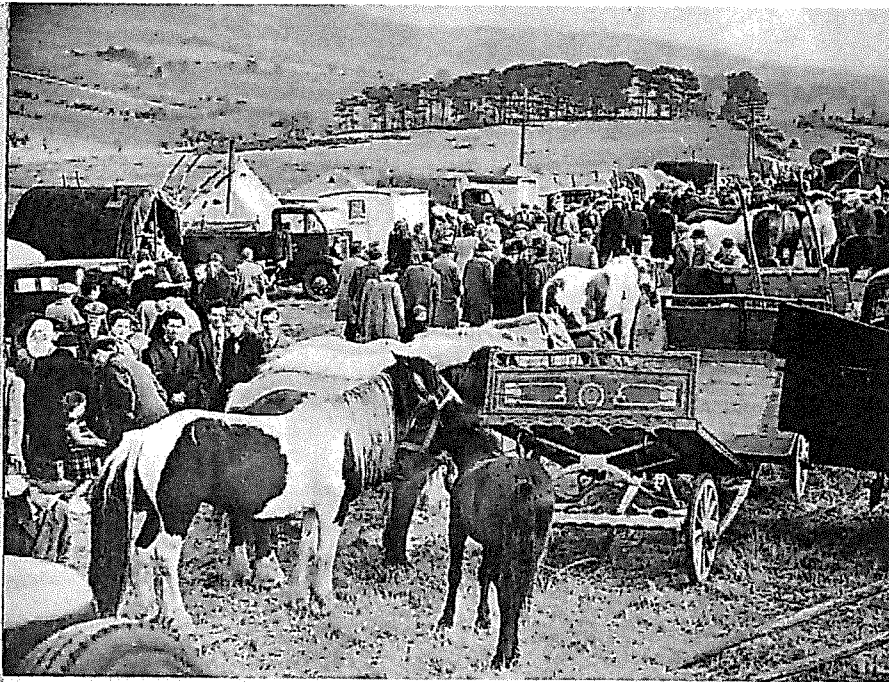
**Can the SoS satisfy himself that appropriate expertise was consulted?**

The Brough Hill Fair Community Association would welcome an opportunity to meet with decision makers to discuss these points further.

Yours Sincerely,

A large black rectangular redaction box covering the signature area.

Abbie North



# Brough Hill Fair

By Sydney Moorhouse

"**H**EIGH—UP!" Such was the warning shout that greeted my arrival on the fairground at Brough Hill, a patch of common beside the road from Brough to Appleby, in Westmorland, and in the very shadow of Cross Fell and its Pennine neighbours. It was the signal for me to jump aside as a bronzed youth dashed

past and exhibited the prowess of a horse to a crowd of prospective customers. No one stands on ceremony at Brough Hill Fair. It is a case of "out of the way"—or get under!

Ever since 1330-31, when Edward III. granted a charter to hold a fair at Brough Hill, the horse-dealers of the North have resorted to this lonely spot on the last day of September and the first of October. At one time great numbers of both sheep and cattle were brought over the old drovers' tracks to this fair, but these disappeared many years ago, leaving the horses unchallenged attention.

For days beforehand the dealers, and fair folk come along and pitch their tents and caravans on the site, making an infiltration which, spread over a period of time, does not reveal its full extent until the fair really starts. By noon of the second day, however, the exodus begins, and then the lonely moorland roads leading across the Pennine to the Eden, Tees and Lune valleys have their contingents of horse-drawn vehicles and much swifter travelling caravan-trailers. Some return north to cross the Border, more go south, and many travel east over the high Stainmore Pass on their way to Barnard Castle, where the next north-country fair is held.

## End of the Summer

Year after year, these same families meet at Brough Hill, and when this event is over return to follow their own rounds of fairs and shows until September sends them back to the bleak common again. One feels that even if there were no horses to sell, the festival of Brough Hill is now so ingrained in their nature that they would come again just for the sake of reunion.

Brough Hill Fair has long been said to mark the end of summer in these wild parts. A local saying speaks of "Brough Hill weather," and refers to the cold drizzle and wet mist that many people associate with the event. The departure of the last caravans is claimed to indicate the approach of winter, and not far away a vagrant once inscribed these words on the walls of the local workhouse: "Brough Hill—black

bottle—cemetery." Recalling this, it is only fair to record that this year Brough Hill failed to live up to its evil reputation and that blue skies flecked with white and cheery shafts of sunshine brought animation to the scene.

In such conditions, Brough Hill Fair is still picturesque enough for all conscience. Indeed, so great has been its post-war appeal that last year the authorities opened out a car park, and this year I noticed coach parties from all parts of the North visiting the historic event. At lunchtime, the market squares of Kirkby Stephen, to the east, and Appleby, to the west, were thronged with vehicles, sure evidence that there is no falling off in popularity of the time-honoured fair.

Unbroken colts and fillies have always been Brough Hill's speciality, and even if the numbers for sale are greatly reduced in this age of mechanical transport, there were some useful specimens of horse-flesh on view. Gone, doubtless for ever, are the days when foreign armies never failed to have their representatives present, but there was still enough business to warrant the attendance of the dealers, from £30 to £50 being paid for yearlings. These figures, however, represent the net prices, for it is an old custom here to sell for £35 ros. or £36 ros. and give the purchaser ten shillings back—just for luck!



GIPSY FAMILIES from far and near make a point of attending Brough Hill Fair. This group travelled from the Blackpool area.

The greatest demand was for riding-ponies and horses, especially of the pied and coloured variety, whereas the heavier breeds attracted less attention from the farmers. The superseding of the horse by the machine, however, has done more than reduce the number of animals for sale. It has changed the dealers' own method of arriving at Brough Hill. I counted less than one family in ten using the old-fashioned meagre horse-drawn wagon; the remainder had arrived in luxurious trailer caravans pulled by modern high-powered cars. I visited one of these



PIPE PREFERRED: This has nothing to do with cigarette shortages. Many generations of fair-folk have smoked pipes.



PARTY FROCKS and parasols were the fashion among the children, who spent most of their time on the roundabouts.



**BAREBACK** and with a halter instead of a bridle, a youngster is ridden up and down in front of possible purchasers.

luxury homes on wheels; its many conveniences would have startled those who pitched their tents at Brough Hill only a few years back. Yet, paradoxically enough, although many of these super-houses were fitted with up-to-date cooking appliances, the gleam showed how little they were used. Indeed, the owner still squatted outside, preferring the wood fire or open brazier to the comforts within. Brough Hill customs die hard!

Modernity, too, has crept into the dress of the new generation of fair-folk. Grandma

may still puff her pipe on the steps of the caravan and look as though she has been carved from well-seasoned mahogany, and mamma still display the startling array of gold teeth and trailing locks of jet-black hair, but the next generation prefers the latest hair-dressing styles and walks jauntily in well-tailored riding habit or beflowered dress. An even younger generation was flaunting its party frocks and carrying little parasols to make Brough Hill Fair worthy of its title of the "Potters' Ascot."

#### The Fashion Parade

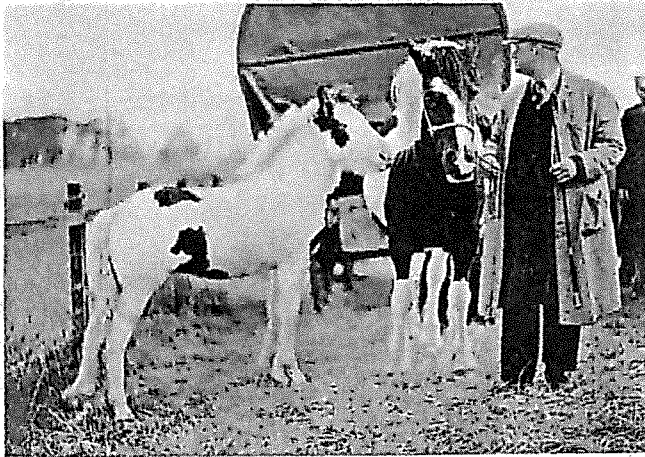
Even when one got away from the almost ceaseless careering of horses along the one lane between the tents and caravans—a procedure that always seems full of danger and yet never appears to cause accidents—and marvelled at the fashion parade of the fair folks' wives and daughters, there was much to entertain. The usual fortune-tellers were there, with rival bearers of a famous gipsy name offering huge rewards to anyone proving the claim to be false; a few roundabouts for the youngsters seemed to do a roaring trade—until one noticed the prevalence of party frocks and parasols!—and always there was a great crowd listening to the modern version of the soothsayer who among other things, cheered us all by prophesying there would be no war for



**CHANGING HANDS:** These two horses, both of whom are apparently wall-eyed, were sold for £30 each.

Britain in the next hundred years, and pleased or displeased, according to our fancies, when he forecast a complete change of government in the next three months!

The pessimists may still talk of the days when a hundred or so horses changed hands within the two days, but the pageant of Brough Hill is still undiminished. The fair is too indelibly fixed in the minds of potter-folk, local inhabitants and visitors who never fail to attend it, to allow the passing of these things to extinguish its glory.



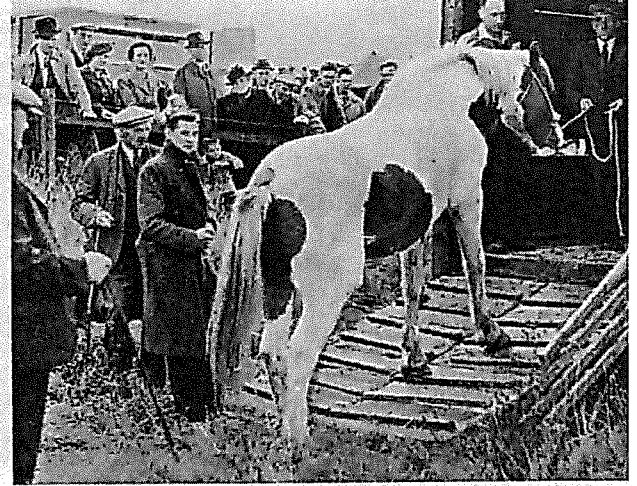
**PIEBALD** and skewbald horses of all types, traditionally associated with fairs and fair-folk, were not lacking at Brough Hill.



**THE HEAVIER SORTS**, of which this trio are examples, were not so numerous nor so much in demand as they once were.



**PAUSE FOR REFRESHMENT:** Mrs. Kelly, the only woman horse-dealer present, brought a group of useful animals over from Ireland.



**TO A NEW HOME:** A skewbald goes quietly up the ramp into the transport which will take him to a farm a few miles away.

However honest he may be, the golfer will find plenty of opportunity of being cynical at his own expense as he turns over the pages of past years. How neatly and precisely are the successes inscribed! the pretty little rows of fours, with here and there a sparkling three or a decent five. Perhaps, if it is a team match or a competition, the whole result is set out. And it may be seen by a study of inks and pens that the record was made at the earliest possible moment. During a run of good play the diary is properly kept up day by day. The bad days, on the other hand, are hastily scrawled in pencil, and several games are entered at one and the same time.

A golfing diary can be pleasantly combined with a golfing scrap-book. Snapshots and groups and even menus can be pasted in. They are not only rather entertaining in themselves, but this is the only way of preventing them from being lost or, at all events, cracked and crumpled beyond repair. In my own diary I kept laboriously, at the end of the book, a list of all the courses I had played on and all the team matches in which I had taken part, with a regular balance sheet of holes and matches won and lost. It appears that by the end of 1903 I had played in 103 team matches. With the matches of sixteen years to be added on—five of them, to be sure, blank years, save for two matches in Macedonia—I am inclined to think I must be nearly a record-holder in this respect, though, alas! I cannot prove it. I have so much amused myself by looking at my old diary that I feel half disposed to begin again. But I know I shall not. On the appointed day I should be beaten by 7 and 6, and then I should postpone the beginning till another day. Nevertheless, I strongly recommend other people to start at once.

## BROUGH HILL FAIR

By CONSTANCE HOLME.

NOT many fairs, surely, are held in the open country on the King's highway, and a probable Roman way at that? They occur mostly within the precincts of town or village, often in the time-honoured sanctuary of the market square. We are still accustomed to put sheep on our greens and to chaffer for cattle in our streets, carefully railing off our more aristocratic doorsteps and gravelled drives. Fair Day brings with it even now its faint reflex of a childish thrill, when we wake in the early morning to the endless padding of little feet. Still we look for the droves passing down dappled under the Spanish chestnuts, which are flaring and fine with the fangles of autumn or verdant and candled in the month of May. The consciousness of general inconvenience, which creeps upon us with the years, has not yet urged us to active protest. That our forefathers chose to hold their fairs between the houses and under people's noses still seems sufficient reason why they should continue to flourish under ours. Scarcely in our time will this rather troublesome practice be abolished. As yet the tradition that brings man and stock into the safety and conviviality of the nearest town seems too strong to break.

But there is no pandering to either of these human desires at the famous and ancient horse fair of Brough Hill. Its home is on the high allotment lands above the little double town, rolling away like a cloud on the north-east to the fells of Hillbeck, Wareop and Dow Crags. For centuries it has been held on that high, bare place, where there is not so much as a tree, and generally under such wild and wet conditions that "Brough Hill weather" has passed as a synonym into the language. Brough-under-Stainmore—"the borough under a stony hill"—is itself more ancient than any fair. Once an important station on the Maiden Way, and with its ruined castle raised on the site of the original Roman fort, it testifies to the enormous tenacity of a human community in maintaining itself in the same place. The road slides out to the east into the lonely places of Stainmore, and on the west climbs towards Appleby over the long gradient of Brough Hill.

The fair hangs from either slope of the summit like a black ribbon hung dangling across a mound. On one side of the road is a grassy border lined with traps and cars, and, banked above it, on the other is a wide space crowded with horses and folk, cheap-jacks, booths and stalls. From the pony rings, with their bursts of excitement, to the potters' encampment and the swings, this natural stage is all one stirring, shifting mass. The road, too, is packed with horses and folk, horses tied head and tail, horses showing their paces to possible buyers, motor cars snoring their way through, and hawkers driving their light, shallow, raking carts as if the Father of Darkness were at their heels.

It is an old fair, the small beginnings of which date as far back as 1329; but it is an old fair for young stuff. Once it included sheep and cattle, and even woollen goods, as well as horses of a lighter type. Now, however, it is mainly for working horseflesh in the rough—Clydesdale, pony and stout cob. The made horse, indeed, is in the minority all through. The raw ponies from the fells, which provide the chief amusement of the day, come in from their wild homes in unaltered droves. Bunched nose to nose in mobs of bay and rusty black, these long-tailed, unshod youngsters cling together like some captured and hustled clan. From time to time one is cut out and paraded to yellings and crackings and hasty scuttlings of the hampered crowd; but once it's free it goes back to its bunch like the loosed needle to the Pole. They are small, but strong, hardy,

sure-footed, fearless and fast. The best type of pony from this country, when properly bred and made, cannot be beaten for endurance, sagacity, docility and pluck.

But horses, and mostly loose horses, are thick as flies on this mile-long stretch, ending with the Shetland ponies in the potters' camp. It seems almost as if they might be had for the asking, but that is hardly the way of things at Brough Hill Fair. Its sinister reputation may be yielding to more respectable methods, but the wise buyer will still keep his hands in his pockets until he is perfectly sure. It is true that the quality of the crowd has changed, and that the three-card man may possibly hide no longer between the booths. Numbers of those present are sightseers from a distance, and well clad farmers' sons replace the roughriders of the past. But always through the veil of the new generation the old face keeps peeping through. Still you may see that peculiarly wastrel type which seems to have no name, whose eternal attraction is the horse. The old fair still draws the famous characters of the countryside—the sporting peer, the well known breeder, the horse judge, the Master of Hounds. And still pervading all is the potter, lean and lithe, with his coloured neckcloth under his dark face, his dare-devil driving and his painted cart, and his light, furtive step that seems always as if it walked the earth unshod.

The potters grow richer perhaps, but it is in very little else that they seem to change. Still they keep intact the alien type which excites in us always the some thrill of mystified interest. Still their encampments show the same mixture of muddle and beauty, the same flashes of colour strange to English eyes. Wherever they halt, group their vans and light their fires, the same enthralling picture springs into being. They live in a world of their own, from which the huge mass of those of us outside must seem like indefinite figures on some distant planet. It is a world of vivid contrasts in an embattled ring—of warm light circled by a mighty dark; of freedom that is yet always more or less under the ban of the Law; of the blue and orange of baggage coverings and the rusty black of kettles and tripods; of vans, green, scarlet and gold, with silver axles, curtains of orange silk; of black velvet bodices, dark faces, bright necklaces, jet braids. And never does this strange-coloured cosmos show to greater advantage than on a Northern moor. In the silence and high loneliness it makes for itself a marvel of human comfort, in the shadows brilliance, in the wild a home.

It is the wild things and the lone and the old things that the mind carries away with it for its growing store. Not the tame, treed country that greets you as you travel South, but the bare uplands hard against the sky. Not the fine Clydesdales peacefully trailing home, but the rough ponies which know what the night is like between the fells. Not the busy motor car and the sightseer "from below," but the coloured camp on the hill-top and the Romany who walks the Roman road as though his feet were bare.

**The 25th Division in France and Flanders,** by Lieutenant-Colonel M. Kincaid-Smith. (Harrison and Sons, 1s. net.)

THE division is the largest embodied unit of the Army. Each division that took part in the European War had its own individuality; its peculiar reputation: was known by its cryptic divisional sign—the horse-shoe, the rectangle quartered. It were to the interest of the Army to emphasise the distinction; it were to the interest of military history to preserve the individuality. One welcomes, therefore, *The 25th Division in France and Flanders*, by Lieutenant-Colonel Kincaid-Smith, believing it to be the first though doubtless not the last of semi-official records of units that played a stirring part in the great drama which has now closed. We say "semi-official": the book as produced is written in a semi-official style. There is here no descriptive word-painting of battles; no elaboration: it is the work of a soldier; such, we conceive, being the province of the historian, would be out of place. But it is an exact, a compact, an easily understood, a detailed and a valuable record. The 25th Division was raised during the later months of 1914, proceeded to France in September, 1915, and took part in most of the major fighting until June, 1919, when, owing to lack of reinforcements, it was disbanded. It consisted of battalions of the South Wales Borderers, the Loyal North Lanes Regiment, the Cheshires, the Wiltshires, the Worcesters, the Royal Irish Rifles, the Lancashire Fusiliers, the South Lanes Regiment, and the Border Regiment. Its casualties were heavy: 45,801 in all, of which the great number of 20,315 were missing. The book is conveniently arranged. The Battle Order of the division on July 1st, 1916, is followed by a chapter on the Battle of the Somme, which recounts in precise language and considerable detail the movements and several actions in which the 25th Division took part during that memorable engagement. Various units of the division, companies and even platoons are mentioned by name, together with their leaders. This seems on the whole a good plan, for although a great deal of fine work must remain unrecognised for lack of any living recorder and other reasons, so much is placed on record and will serve to perpetuate or to jog the memory in days to come. A list of the honours won in the battle follows, together with a brief description in each case of the deeds for which they were awarded. In regard to this, we will only suggest that the method of selecting "some of the more notable acts of gallantry" for perpetuation may conceivably prove a trifle invidious, since, as everybody knows, no small share of a successful recommendation consisted in the writing of it. The only practical suggestion we have to offer for the guidance of those who may contemplate producing a similar work of reference—and it is to be hoped there are many—is that an index, or at any rate a list of contents, be included. For the rest, *The 25th Division* may be taken as quite a pattern of what such a book should be.



## AT BROUGH HILL FAIR.

### BUSINESS AND PLEASURE AMONG THE FELS.

Brough Hill is at Warcop—and not, as might be supposed, at Brough,—and the people of Warcop are disposed to think it somewhat hard that all the advertisement to be derived from the name of the great Westmorland horse fair should be lost to them through its being named after a village which is two or three miles away. One may therefore at least mention Warcop in association with the fair. This little village is five miles from Kirkby Stephen and is almost hidden away among the fells of the Pennine range, which rise around in bold eminences. The river Eden runs through it, and attracts trout-fishers to linger in a place where the inhabitants are prepared to welcome more visitors. The terraced lines of the entrenchments of a Roman camp still remain on the rising ground in the neighbourhood. A maypole stands upon the village green, as in the merriest days of merry England; and on every St. Peter's Day the children go to church with their heads beset with flowers, which they leave to be hung up within the building until a new St. Peter's Day and new spring flowers come round with a new year. Such is the old-time character of the village in which the largest horse fair of the North is held every 30th of September and 1st of October. Who shall describe the excitement, the pressure, the disturbance of the usual course which the fair brings upon this rural community? All the bedrooms of the village are occupied by visitors, some of whom have come to sharpen their superior knowledge of human nature against the patient wits of shepherd lads and farm servants, and to carry off as much Westmorland money as they can discover to come back street in Manchester, Sheffield, or Leeds. For weeks past the villagers have been conversing with growing excitement the gathering population of nomadic tinkers in the lanes around, and have been telling one another that never before have so many gipsies and "potters" collected for the fair so far in advance of its opening. It is said that in a single day a policeman, courageous and resolute though in plain clothes, drove seventeen different parties of lane-campers into the village of Soulby and obliged them to rent camping grounds in the regular fashion. But Brough Hill Fair not only gives the inhabitants of Warcop a good deal to talk about; it gives them also a great deal to do. Frightened travellers going from house to house at the eve of the fair in search of sleeping accommodation were irrelevantly shown remnants of loaves and cakes covering the floors, with the explanation, "These are all for the Hill tomorrow." It was, however, far beyond the capacity of Warcop to send to the Hill all the food which it was known would be required there, and in fact Warcop's modest contribution was lost amidst the forty or fifty refreshment tents and bars from Penrith, Appleby, Kirkby Stephen, Brough, and other towns and villages. But Warcop had all to itself the glory and the excitement of receiving at its railway station the visitors and the horses bound for the fair, and the inhabitants have the satisfaction of knowing that during the last two days the name of their village has been frequently on the lips of perhaps ten thousand people.

The mist lay white and thick upon the fells, and clouds scurried over the sky before a smart breeze. But if the sun hid himself, it was only

vision on that side of the hill reserved for "stags," or unbroken horses, of which there may be any number from five hundred to a thousand. These are in a wild state and easily terrified, and the proceedings are anything but diversion for them. Indeed if the policeman who charged someone the other day with terrifying lions had been at Brough Hill during the last two days his hands would have been full of "cases" for the remainder of his life. The ponies, fresh from the moors of Galloway and the fells of Cumberland and Westmorland, are rounded into groups by their owners, and by no other restraint but the crack of the whip they are—more or less successfully—kept in their respective herds all day. Sometimes the members of a group are panic-stricken and try to stampede, but as they all wish to go in different directions they make little progress any way, and the animals at the centre get crushed and kicked on all sides. A man with long fawn coat adorned with great pearl buttons comes along and indicates one of the wild creatures with a motion of his cane. The groom is ordered to get the animal out and put him through his paces, and it is here that the fun for the spectators begins. The young man goes into the alarmed group fully dressed and with the utmost coolness. He makes a dash for the animal required and seizes it by the mane, but it throws him off with a furious toss of the head, in the utmost surprise that he should have dared to touch it, and then butts him away minus his hat, his coat nearly off, and his appearance hot and dishevelled. He returns with assistance, pinches the pony's nose between his finger and thumb, while another groom clings to the mane and hangs suspended. But the pony carries them both into the centre of the frightened group and, releasing himself, breathes defiance from distended nostrils. The grooms are put on their mettle, and, careless of danger, they dash into the mass of pawing and rearing colts and capture their victim once more. Two of their friends cling to his tail, they get him away from his comrades, and what with pinching his nose, hanging on to his mane, and setting two or three men to restrain him by the tail, after an heroic wrestling match and in spite of all his valiant and fiery tossings of the head, they get him upon the ground and halter him. After seeing five men holding on to the tail of a colt and dragged along helplessly one is the more able to appreciate the strength of the witch who robbed Tam O'Shanter's mare of her stump. When the pony has been haltered he is to be raced through a crowd of shouting men and boys shaking white handkerchiefs at him, touching him sharply with whips and sticks, and doing all that they know to excite him and make him show his spirit. "Can anybody have a go at him?" asked a pale youth earnestly. "The more the merrier," bawled a stout and jolly farmer, and the pale youth plied his cane and roared himself hoarse with the loudest. And so the terrified pony runs the dread gauntlet, turning his great appealing eye first to one side and then to the other, everybody glad that the groom has the halter rope twisted securely about his hand. Not that there is actual cruelty, for the whips generally are more swished than used; but the ponies are obviously distressed and frightened. The shouts of the crowd are indescribable. Everybody has a say—"Hey, whoa!" "Back!" "Let him go!" "Hey! hey! hey!" and something that sounds like "Wullow! wullow! wullow!" afflict the ear all day long. Sometimes it pleases the humour of a pony to run away with the man holding the halter rope, and then there is much rushing about on the part of the people. The intending buyer gravely pinches the spine of the animal which he fancies, attentively runs his hand down its limbs as if he would not be surprised to hear a crack, lifts its upper lip to examine its teeth, and has its tail plaited so that he may see its quarters. Then he is followed by the poor broken-down ex-horse dealer who likes to delude himself with the vain imagination that he can still buy and sell as in his prosperous days. He reminds you of the clown at the circus who imitates the serious performers. "Don't stand them anywhere," he is saying to the owner, who knows him well enough. "I'll gie ye £10 apiece for them, ready

## BROUGH HILL.

### Its Annual Fair.

(From a Correspondent.)

On the last day of September and the first day of October a horse fair is held at Brough Hill, in Westmorland. Brough Hill lies a few miles from Appleby, a level sweep of common land buffeted by the four winds, where for centuries the northerners have met to barter and beg. Christmas Day and Midsummer are not more definitely marked upon their calendar than the date of Brough Hill Fair. It is part of their speech, signifying many things. "About Brough Hill" means the end of harvest, the time for driving sheep down from the high fells to their winter pastures in the sheltered valleys. Shippers are white-washed and prepared for the long winter of cattle, geese and fowls brought nearer to the home-lead, and bracken stacked for cattle bedding. "Brough Hill weather" describes a day at any time of year when winds blow hard and rattle chimney-pots away. Even the establishment of auction marts and the great demand for horses cannot steal the famous name from their tongues.

#### The Horses

But Brough Hill has earned its solid reputation. In olden times gipsy dealers flocked there for weeks and sometimes months ahead from all parts of Britain, and vast droves of unbroken horses were brought down from the Yorkshire moors. Even now it is a delightful experience to attend the fair, and preferably to watch it the night before, when the droves are arriving in the dark and the gipsies are busy finding a sheltered portion of common for their gaudy caravans. The potters, too, are there, and the card-sharpers, quack doctors, and cheapjacks. The gipsy fires glow brightly, and throw a wild, romantic light on dark, handsome faces and gleaming horseflesh. The rhythmic pitter-patter of little unshod hooves can be heard all night along the roads, an inadequate warning to the motorist who knows nothing about Brough Hill Fair, and who, coming suddenly upon a dark, huddled mass, thinks he has disturbed a legendary pack of elves and grips the steering wheel with a shudder. All through the night there is a humming of mingled sounds: the rattling of new arrivals, cracking of hooves, deep thudding of startled horses. When the neighbouring farmer arrives in the morning the common has the appearance of having sprung a fair, like a bed of mushrooms, while he has slept. Next day business is at its height. Horses are raced up and down before critical eyes, turned and twisted and carefully examined. Some of the purchasers bring saddles, and others ride some bareback. They have often many miles to ride their new property, but such journeys can be taken in easy stages, with a brother who farms here and an uncle who farms there along the homeward road. The little wild ponies cluster in groups, with their shaggy heads to the centre and their long-flowing tails fringing the circle. The noise is louder than ever, and the clear air carries it to the new-comer long before he has the fair in sight.

#### The Gipsies and Cheapjacks.

So the first day passes; but with the departure of the horses the others come to their own. The mysterious gipsies of the night have a frank radiance by day. The women, standing at the doors of their show caravans, dressed in vivid colours, call out to the sightseer to hear a pretty fortune. They have long, slanting eyes, sweeping lashes, olive skins, and irresistible smiles. They will tell a fortune in a monotonous drone, punctuated with terms of endearment and earnest requests to believe a truthful gipsy. The crystal costs an extra shilling. There is a fine dignity and gay

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT



Situation Assessed:			RA No:	Date: 04/04/2023	Review Date: Wednesday, 27 March 2024	
Risk assessed by: R. Wilson			Risk assessment assisted by:			
Number of persons undertaking the tasks > –unknown			Number of other persons possibly affected –unknown			
Risk/Hazard Rating:	<b>HIGH</b>	Extremely high unacceptable risk. Major injury, critical loss of process or damage to property.	<b>MEDIUM</b>	Moderate risk. Non reportable injury, minor loss of process or slight damage to property.	<b>LOW</b>	Insignificant damage to property or equipment or minor injury
<b>RISK RATING</b>						
Hazards Identified: A hazard is something with the potential to cause harm.					INITIAL	RESIDUAL
1.Fire					HIGH	HIGH
2.Traffic Management					HIGH	HIGH
3.Noise					MEDIUM	MEDIUM
4.Animals					HIGH	HIGH
5. Employees and visitors coming on site					MEDIUM	MEDIUM
6. Bio security					HIGH	HIGH
7. Site Security					HIGH	HIGH
8. Children					HIGH	HIGH
9. Sheep Dipping					HIGH	HIGH

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT

### IDENTIFY FACTORS THAT CAN INFLUENCE THE SITUATION

1. Agriculture has the worst rate of fatal injury (per 100,000) of all the main industry sectors, with the annual average fatality rate over the last five years around 21 times as high as the all-industry rate.
2. Every year children are killed on farms.

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION RISK ASSESSEMENT



HAZARD 1.						Potential Mitigation		
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.			
(H) Fire			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. Combustible materials (including 150t of straw and/ or approx. 100 tonne of ammonium nitrate ) are stored within 2 metres of the proposed Brough Hill Fair site.</li> <li>2. Camp fires have always been part of the Brough Hill Fair since it began and Mr Welch stated at the inspection that their culture is to have camp fires on Brough Hill Fair as they cook on the camp fire and not in the caravans.</li> </ol>			<ol style="list-style-type: none"> <li>1. Given the size and construction of the cladding of the building's mitigation would be difficult to put in place especially as we are aware of the culture to have camp fires in such close proximity to these buildings.</li> <li>2. Zero camp fire policy which is controlled by a independent party but we appreciate this won't be acceptable to the Gypys as it is part of their culture.</li> </ol>		

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT



HAZARD 2.						Potential Mitigation
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.	
(H) Traffic Management			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. SAFE stop will be adhered to on the farm but when using certain equipment these may be left running on the site.</li> <li>2. Eastfield Farm, including the haulage yard and ready-mix concrete plant, share the same busy access road highlighted in blue on the attached map. This road is single access and it is only wide enough for one vehicle. Adding the additional traffic, pedestrians, horses, and dogs to this road poses a risk in relation to traffic management.</li> <li>3. Farm traffic is 24/7 silaging, contractors, feed deliveries, the access road (highlighted blue) is a very busy route</li> <li>4. Gypsies movement in and out of the Bivvy site with vehicles/towing caravans/ horse and carts/ exercising horses/children and dogs on the same road and entrance as above. We are aware that the Gypys will be constantly moving on and off site every day for the duration of the Fair. Mr Welch confirmed at the inspection that the gate must be left open at all times to allow the community to easily and safely access and egress from the site and using double gates will not be suitable.</li> <li>5. Eastfield Access is directly adjoining the proposed access to the Bivvy site therefore exacerbating the risk.</li> </ol>			<p>None due to the likelihood and security of the risk.</p> <ul style="list-style-type: none"> <li>• We cannot control the Gypsys access to the site.</li> <li>• We cannot stop operations of the farm / concrete plant / haulage yard</li> </ul>

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT

HAZARD 3.						Potential Mitigation		
HAZARD / RISK	INITIAL RISK RATING	MEDIUM	RESIDUAL RATING	MEDIUM	Controls in place from previous risk assessments or procedures.			
(H) Noise			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. The farm is in operation from between 4am and 10pm, where plant and equipment is in use during these hour, farm machinery constantly working which will have reversing beepers, feeder wagon travelling from the storage shed (10m from proposed Bivvy site) to the dairy cow housing and back numerous times, parlour operations including vacuum pumps, pressure washer and air compressor etc, contractors coming on site.</li> <li>2. Mr Heron starts feeding his stock at 4am every day and the feedstuff are stored within 10m of the Bivvy site so the noise will be most at the boundary of the Bivvy site.</li> </ol> <p>At the time of the fair machinery will be operating in the dark exasperating the risk if there is unauthorised access on the farm.</p>			None because operations cannot cease during these hours and days of the Fair.		

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT

HAZARD 4.								
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.	Potential Mitigation		
(H) Animals			<p>Contributing Factors:</p> <ol style="list-style-type: none"> <li>1. Travellers could bring dogs to site, which if loose could gain access to the farm worrying the sheep and cattle.</li> <li>2. It is understood it is likely that Flashing of horses would be undertaken on Station Road further exasperating the risk with regards to access but also increased the risk of harm to both horse and farm animals.</li> <li>3. Unauthorised persons who enter the cattle buildings and milking facility will be at risk of trampling/kicking/attacks/ serious injury/death from cows protecting their calves.</li> <li>4. Possibility to let cattle/sheep out of their secure housing and end up on the road/lost/injured/severe risk to the biosecurity of the whole farm. Mr Heron is part of the Arla 360 contact which requires the highest standards of biosecurity and animal welfare. This risk puts the whole contract in jeopardy and risk of contaminating the food chain</li> <li>5. Tampering with livestock increase risk of a stampede/suffocation</li> <li>6. Disturbing livestock and spooking causing injury/abortion/death</li> <li>7. Disease risk to humans, salmonella, E.coli</li> </ol>			<p>None because of the culture of the Gypsy community. Mr Welch stated that their culture was to not stay in caravans but to explore the surrounding area.</p> <p>Mr Welch also stated their children our ‘animal lovers’ and would be inquisitive to the animals on the farm.</p>		



# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT



HAZARD 5.						Potential Mitigation
HAZARD / RISK	INITIAL RISK RATING	MEDIUM	RESIDUAL RATING	MEDIUM	Controls in place from previous risk assessments or procedures.	
(H) Employees and visitors coming on site			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. Employees have stated they would be anxious to come to work should the site be approved due to the risk highlighted in the report and likelihood of an accident happening because of the gathering of people.</li> <li>2. Farm employees travelling to and from work dealing with obstruction /dangers causing delays to work and mental health issues.</li> <li>3. Employees trying to do their work with interference from persons not permitted onsite putting the employee at an increased risk of harm/danger/liability. E.g If an unauthorised person if injured/killed the driver of the vehicle/machine could be liable.</li> </ol>			None as the inquisitive culture cannot be controlled nor can operations of the farm / haulage plant concrete plant cease for the duration of the fair.

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT



HAZARD 6.							
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.	Potential Mitigation	
(H) Bio security			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. As a food producing business, Eastfield Farm must abide by strict biosecurity measures especially since they are part of Arla 360 Starbucks contract</li> <li>2. Visitors to the farm are to kept to a minimum to prevent diseases being brought to the farm.</li> <li>3. We need to keep farm access routes, parking areas, yards, feeding and storage areas clean, tidy and free from obstructions at all times. .</li> <li>4.</li> <li>5. Possibility to let cattle/sheep out of their secure housing and end up on the road/lost/ injured</li> <li>6. Tampering with livestock increase risk of a stampede/suffocation</li> <li>7. Potential risk of contamination of milk stored onsite 20k litres which could result in contaminating the whole dairy processing plant and the food chain.</li> <li>8. Risk of contamination of stored animal feedstuffs resulting in health and welfare issues/death</li> </ol>			<p>None because operations cannot cease for the duration of the fair.</p> <p>Fences will not prevent unauthorised access especially as the access to the farm is adjoining the proposed entrance to the Bivvy site.</p>	

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT



	9. Risk of tampering with feeding equipment i.e. molasses tower resulting in injury/death.	
--	---	--

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION RISK ASSESSEMENT

HAZARD 7.						
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.	Potential Mitigation
(H) Site Security			<p>Conflicting factors:</p> <ol style="list-style-type: none"> <li>1. Ready mix concrete plant/haulage yard dangers to unauthorised persons and potential risk of sabotage to plant/ equipment/ trucks and daily operations.</li> <li>2. Tampering with milking equipment/machinery – this could lead to broke equipment which could lead to animal welfare issues and contamination of the food chain.</li> <li>3. Slurry storage which could result in death from accidents/slurry gas- Generation of slurry gases is spasmodic and unpredictable. Reference <a href="https://www.hse.gov.uk/pubns/ais9.pdf">https://www.hse.gov.uk/pubns/ais9.pdf</a></li> <li>4. Risk of injury/death when moving cattle in farm yard, down farm lane or station road</li> <li>5. Potentially unable to carry out milk collections with articulated tankers due to obstruction/danger on Station Road and the farm entrance.</li> </ol> <p>Risk of draining/emptying milk tank</p>			<p>CCTV could be used however will not prevent the risks.</p> <p>None due to any gathering of people will create security issues and security fencing will not prevent unauthorised access as the access to Eastfield Farm is adjoining the proposed Bivvy site entrance. The gate to the Bivvy site could be locked which is not appropriate or acceptable for the Gypsy's.</p>

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT



HAZARD 8.								
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.	Potential Mitigation		
(H) Children			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. Slurry spreading will be undertaken on site. The gates to the reception pit will be open and unattended during working hours as machinery will be going to and from the pit.</li> <li>2. Children and any persons are not to access the site under any circumstances. We understand from Mr Welch that it is part of their culture that their children are inquisitive and will want to explore the farm. Slurry pits and other dangers could appear to be inviting to children and they won't understand or appreciate the dangers of it.</li> <li>3. There are many items that can be climbed on a farm or appear to be a structure of that found on a playground, such as silage pits, feed towers bales, etc. These are within 10 metres of the proposed site..</li> <li>4. The farm has a robotic silage pusher which is operating itself unattended around the farm yard and in and out of the buildings, these are roughly ¾ tonne of machinery which could hurt/crush a child should they be in its way. The robot operates on various routes on the farm running for 23 hours per day every day.</li> </ol>			<p>None because operations cannot cease for the duration of the fair.</p> <p>Fences will not prevent unauthorised access especially as the access to the farm is adjoining the proposed entrance to the Bivvy site and we understand from Mr Welch that their children and inquisitive and will want to explore the surrounding area.</p>		

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION

## RISK ASSESSEMENT

HAZARD 9.						
HAZARD / RISK	INITIAL RISK RATING	HIGH	RESIDUAL RATING	HIGH	Controls in place from previous risk assessments or procedures.	Potential Mitigation
(H) Sheep Dipping			<p>Conflicting Factors:</p> <ol style="list-style-type: none"> <li>1. The dipping tub and holding area is within 2m of the boundary of the Bivvy site.</li> <li>2. Users dipping the sheep will have full PPE on to avoid any harm to them including but not not limited to potential risk of cancer if dip touches skin.</li> <li>3. Once sheep have been dipped, they are held in the holding pen to drainage excess dip. The sheep will shake meaning toxic vapour will disperse into the air including over the boundary into the Bivvy site. This is especially the case when there are approx. 1000 head of sheep in the holding pen.</li> <li>4. See reference <a href="https://www.hse.gov.uk/pubns/ais41.pdf">https://www.hse.gov.uk/pubns/ais41.pdf</a></li> </ol>			<p>Provide full PPE to the attendees to the Bivvy site as the farm cannot not carry out operations because the fair is operational as it is risking animal welfare.</p>

# PROPOSED BROUGH HILL FAIR SITE – BIVVY OPTION RISK ASSESSEMENT



Risk assessment completed by : Rhiannon Wilson

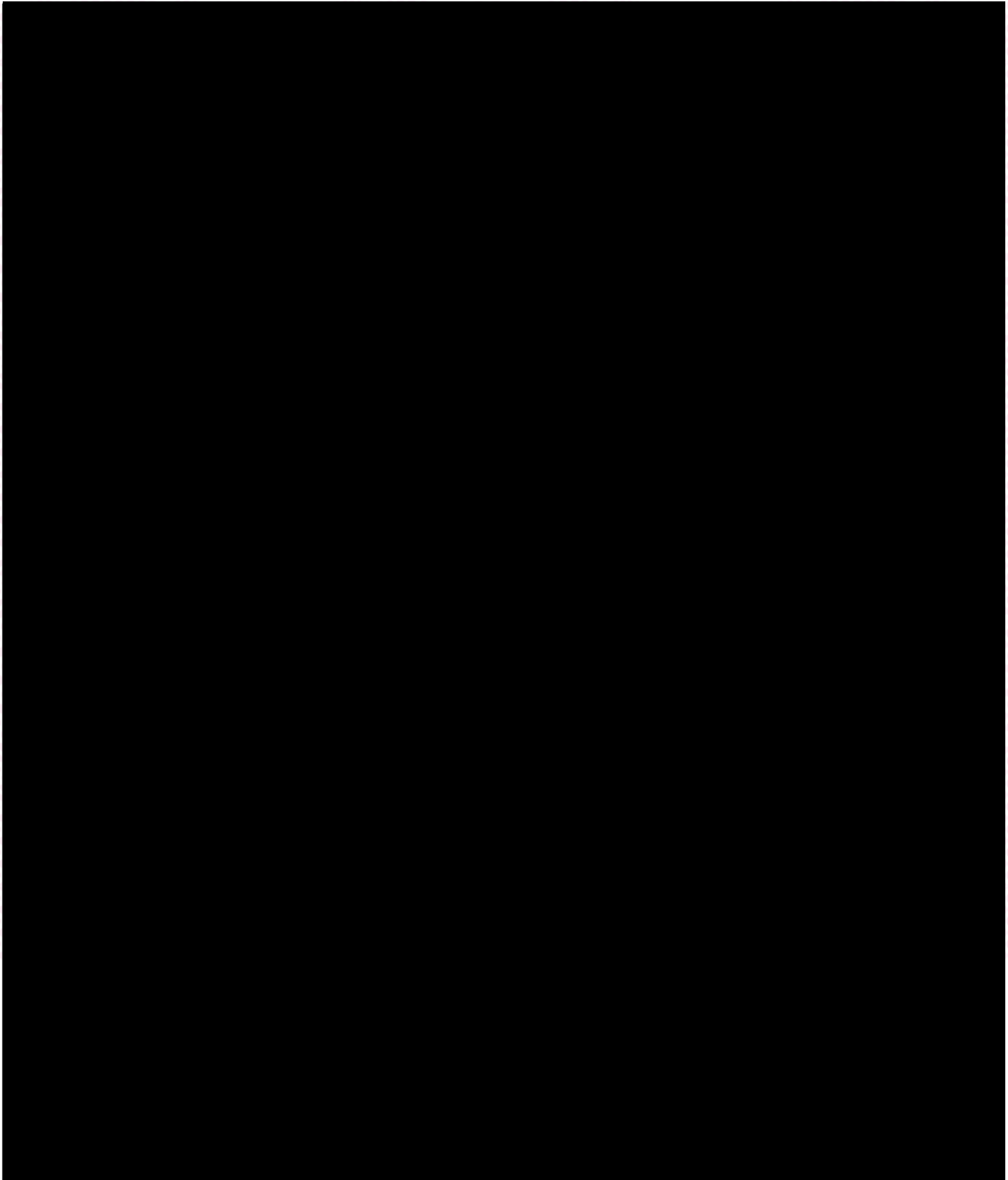
Signature : R Wilson

Date : 04/04/2023

Rhiannon Wilson qualifications attached.



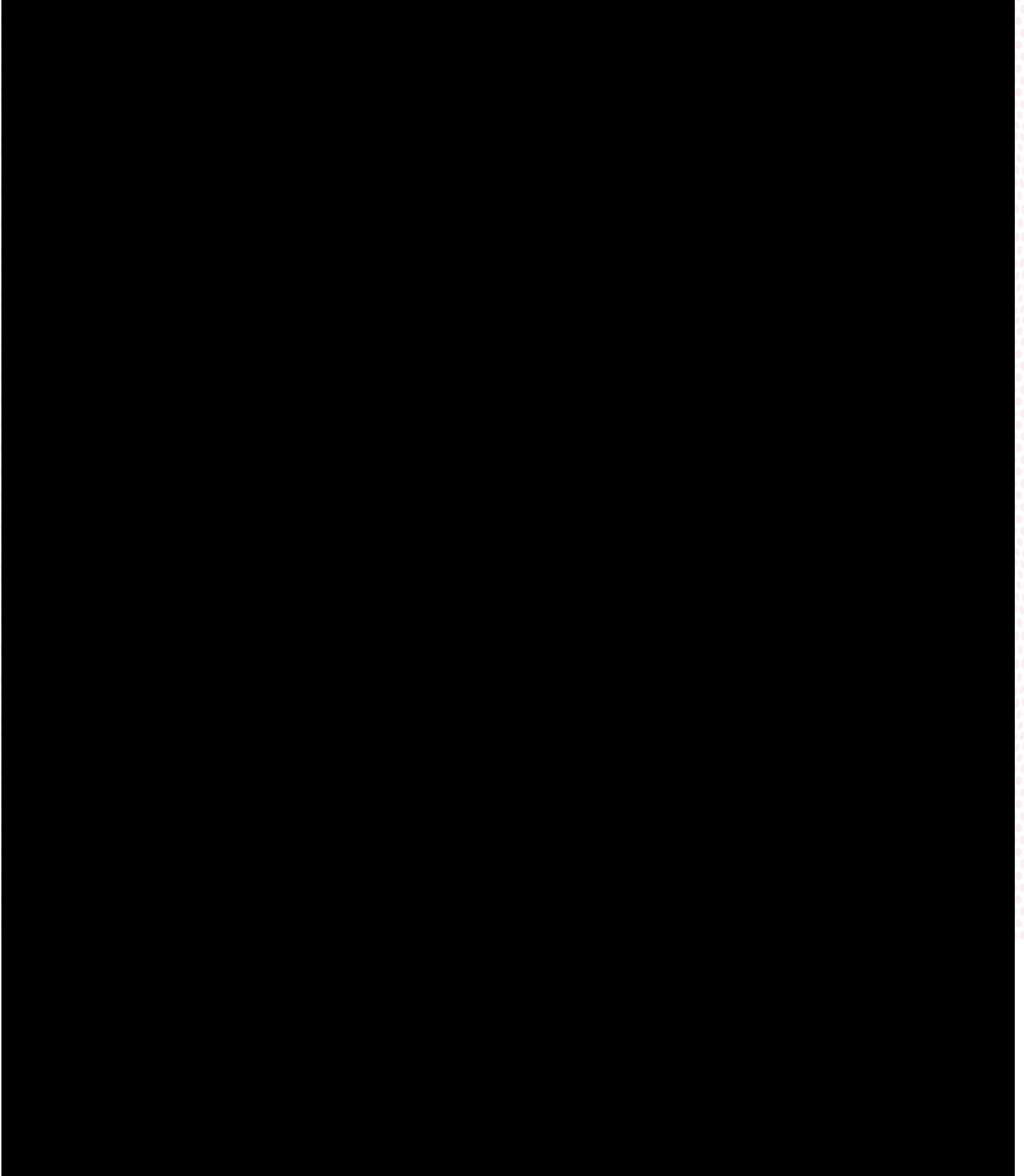
**AIM**QUALIFICATIONS

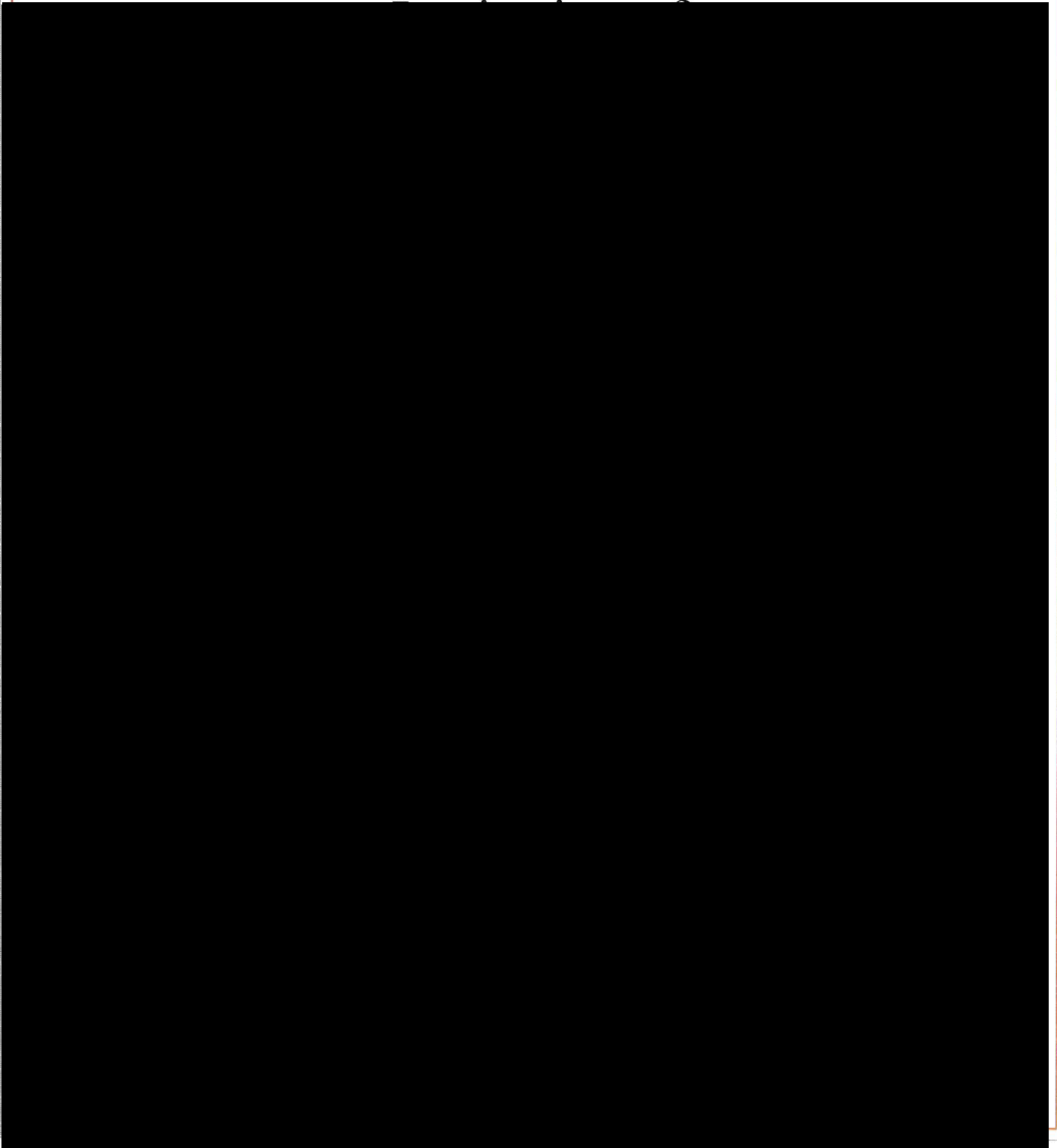


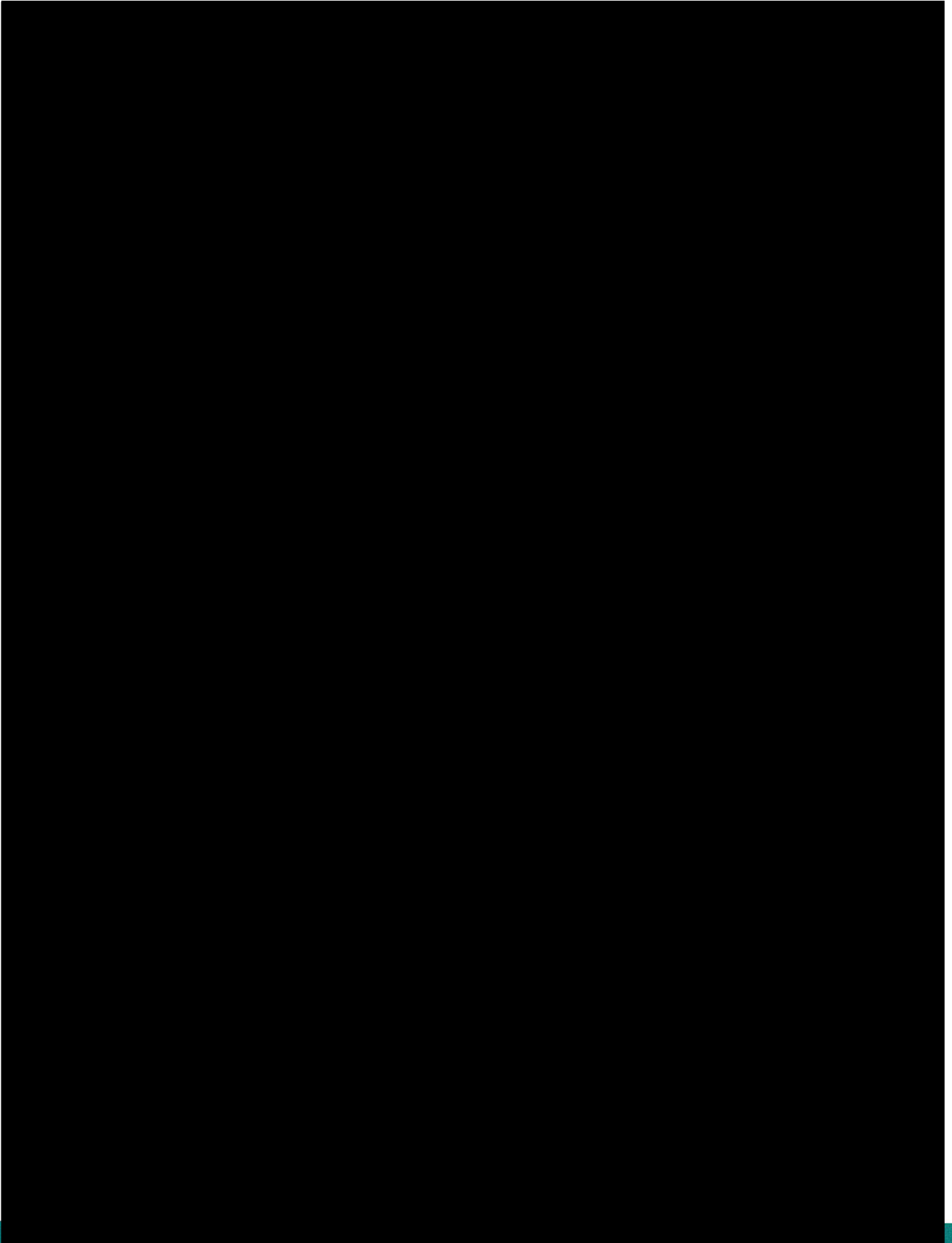
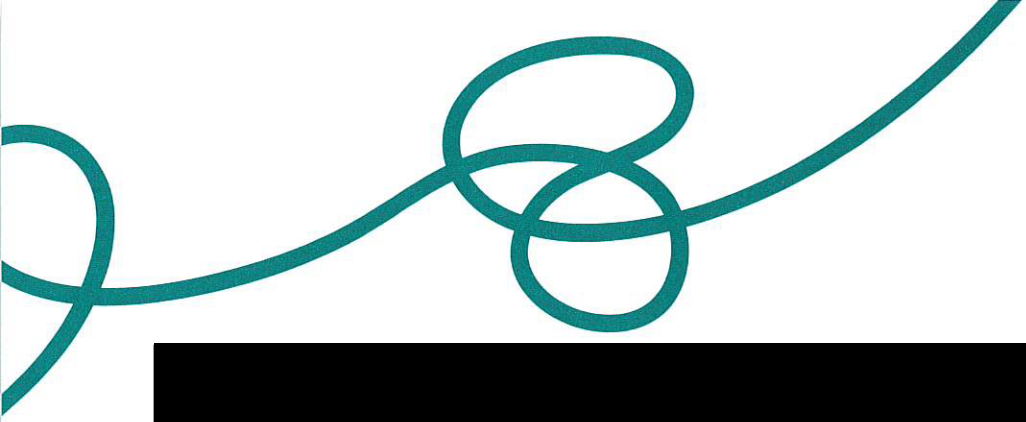


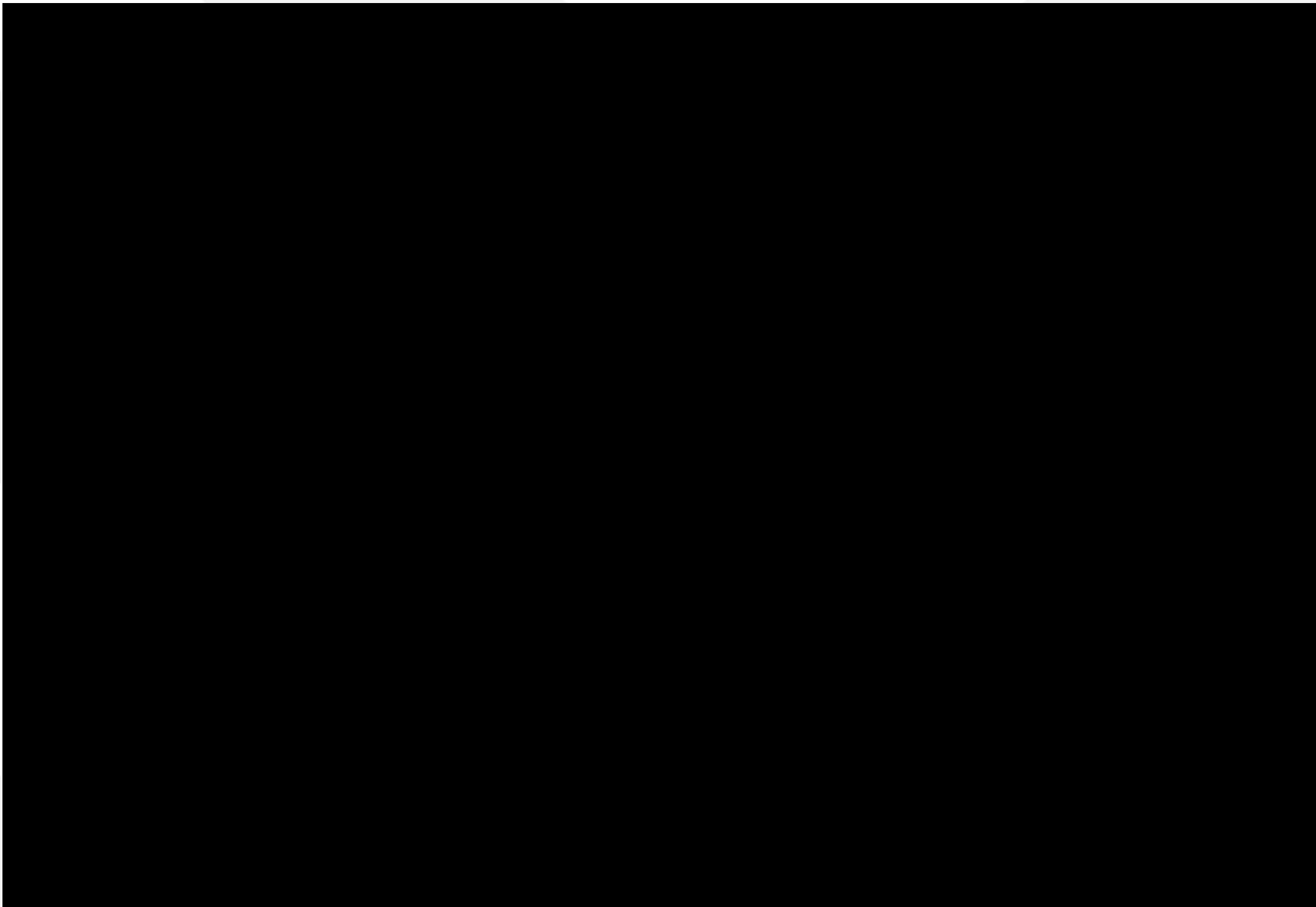


**AIM**QUALIFICATIONS











2-x residential  
property  
access

Haulage  
and Concrete Plant  
access

Proposed  
Brough Hill  
Entrance

Residential  
Property  
entrance

Eastfield  
Farm  
Access

Proposed Brough Hill