

Bristol City Council

Public Rights of Way and Greens Committee

29 September 2014

Report of: Service Director: Legal

Title: Application for land described in the application as "Tackley Green (former Territorial Army land) "Grassland to the rear of (odd) numbers 1-33 Heyford Avenue around OS grid ref ST60707550" to be registered as a town or village green made under the Commons Act 2006

Ward: Eastville

Officer Presenting Report: Anne Nugent, Team Leader, Legal Services

Contact Telephone Number: 0117 922 3424

RECOMMENDATION

Refuse the application to register Tackley Green (Grassland to the rear of (odd) numbers 1-33 Heyford Avenue) as a town green for the reasons set out in the Inspector's Report dated 25 February 2014 and the Inspector's Supplementary Note dated 16 June 2014.

Summary

This report relates to an application for land described in the application as "Tackley Green (former Territorial Army land) "Grassland to the rear of (odd) numbers 1-33 Heyford Avenue around OS grid ref ST60707550" (called Tackley Green) to be registered as a town or village green made under the Commons Act 2006

The significant issues in the report are:

As set out in the report

Policy

1. There are no specific policy implications arising from this report.

Consultation

2. Internal

Not applicable

3. External

The Landowner and the Applicants have been provided with the Inspector's report dated 25 February 2014. And the Inspectors Supplementary Note dated 16 June 2014.

Context

4. The Council as registration authority received an application to register land described in the application as "Tackley Green (former Territorial Army land) Grassland to the rear of (odd) numbers 1-33 Heyford Avenue. Around OS grid ref ST60707550" (the application land) as a town green made under the Commons Act 2006 dated 13 March 2013.
5. A map of the application land is attached as Appendix A, the Inspector's report is attached as Appendix B, a Map of the proposed amended application land is attached as Appendix C, The Applicants further evidence is attached as Appendix D and the Inspector's Supplementary Note is attached as Appendix E.
6. At the meeting on 27 January 2014 the Committee had resolved that the matter be referred to an Independent inspector, who provided written recommendations to the Commons Registration Authority (the CRA) in a Report dated 25 February 2014 (the Report). In the Report the Inspector recommended that the application should be refused in whole on the basis that the use of the application land during the relevant period has been 'by right' and not 'as of right'.
7. Prior to the PROWG Committee Meeting on 31 March 2014, the Applicant's submitted an amended map with the proposed amended area of application land coloured yellow.
8. At the meeting on 31 March 2014 the Committee resolved that the determination of the application to register the application land as a town green be deferred until the next meeting to allow further discussions between the Applicants and their witnesses.
9. The Applicants submitted further evidence. This evidence particularly related to the use by local inhabitants of the garage forecourt on the

application land. The CRA referred this evidence to the Inspector for comment.

10. The Inspector reviewed the evidence submitted. From the Inspector's Supplementary Note dated 16 June 2014 (appendix E), it is clear that the Inspector was not persuaded to change her recommendations, and in particular noted that the garage forecourt represents such a small proportion of the overall application site that it is *de minimis* and it would make no sense to register it in isolation.
11. The Inspector also commented that furthermore, from the evidence submitted, the use of the forecourt for lawful sports and pastimes did not appear to be by a 'significant number' of local inhabitants and would not warn the landowner that a right to use it as a town or village green was being asserted.
12. The Inspector's Supplementary Note was circulated to the parties.
13. This report was submitted to the Committee on 21 July 2014, the Committee resolved to defer the determination of the application until the next meeting due to the illness of the lead Applicant.

Proposal

14. This Committee on behalf of the Council (as statutory Commons Registration Authority) has a statutory duty under the Commons Act 2006 and the regulations made thereunder to determine objectively whether or not the land in question should be registered as a Town or Village Green within the meaning of the Act.
15. Officers have previously assessed the evidence (as set out in the appendix to the report submitted to the Committee on 27 January 2014) and considered that the application should be rejected. This assessment has been confirmed by the Inspector's Report and her Supplementary Note. Despite the lengthy delay no further evidence has been submitted by the Applicants.
16. Officers consider that the Committee should accept the Inspector's recommendation and reject the application for the reasons set out in the Inspector's Report dated 25 February 2014 and the Inspector's Supplementary Note dated 16 June 2014.

Other Options Considered

17. No other options have been considered. It is a matter for the Applicants to

satisfy the Commons Registration Authority (CRA) that all the elements of the statutory test have been shown. Based on the Inspector's Report the Applicants have not satisfied that test. If the Committee decides not to follow the officer recommendation, it must have sufficient reason for reaching a conclusion different from that of the officers.

Risk Assessment

18. Whilst legal challenge in cases of this nature is the exception rather than the norm, it must be pointed out to members that there are, nonetheless, legal risks associated with this decision.
19. However, these risks are mitigated against by the Council's demonstration of a fair and transparent process in its determination of the application and a decision based on a detailed consideration of the evidence.

Public Sector Equality Duties

20. Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
 - i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
 - iii) Foster good relations between persons who share a relevant

protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –

- tackle prejudice; and
- promote understanding.

Legal and Resources Implications

Legal

21. The City Council in its capacity as Commons Registration Authority has responsibility under the Commons Act 2006 to determine whether the land or a part thereof should be registered as a green.

The Law

22. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority (CRA) to register land as a town or village where it can be shown that:

“A significant number of inhabitants of any locality, or any neighbour within the locality, having indulged as of right in law sports and past times on the land for a period of at least 20 years”.

23. In addition to the above, the application must meet the test under Section 15(2) of the Act i.e. use of land has continued “as of right” until at least the date of the application.

24. The applicant must establish that the land in question comes entirely within the definition of a town or village green, in Section 15(2) of the Act. The Registration Authority must consider on the balance of probabilities whether or not the applicants have shown that:

“a significant number of inhabitants of the locality or neighbourhood indulged in lawful sports and pastimes as of right on the land for a period of at least twenty years; and they continue to do so at the time of the application.”

25. In its capacity as Registration Authority the City Council has to consider objectively and impartially all applications to register greens on their merits taking account of any objections and of any other relevant considerations. Wholly irrelevant considerations must be left out.

“As of right”

26. User “as of right” means user without force, secrecy or permission (*nec vi nec clam nec precario*). User as of right is sometimes referred to “as if by right” and must be contrasted with use “by right”.

"By right"

27. User "by right" means that users already have a statutory or other legal right to use the land for those purposes. Such users are not trespassers. Land is not used "as if right" for lawful sports and pastimes if user is by right. If land is held on trust for the purpose of recreational use and enjoyment by the general public or a section of the public including the users of the land it has been suggested (although not definitively decided) that the beneficiaries of the trust are entitled to use the land for sports and pastimes and cannot be regarded as trespassers. The case law is discussed by the inspector in her written advice.

"Appropriation"

28. Local authorities are creatures of statute. They can only lawfully act for the purposes and in the ways that statute permits them to act.
29. Local authorities have been given powers to appropriate, or re-allocate, land from one statutory purpose to another – see section 163 Local Government Act 1933.
30. The current provisions are those found in section 122 Local Government Act 1972, as amended by the Local Government, Planning and Land Act 1980. The Act gives a local authority power to appropriate land that is no longer required for the purpose for which it was held immediately before the appropriation.

Procedure

31. The application has been made under Section 15(2) of the Act 2006. The regulations that govern this procedure are the (Commons Registration of Town or Village Greens) Interim Arrangements (England) Regulations 2007.
32. The Committee must have sufficient reason for reaching a conclusion different from that of the Independent Inspector.

Legal advice provided by: Anne Nugent, Legal Services.

Financial

33. Revenue

In the event of any subsequent legal challenge any costs over and above those normally met from existing revenue budgets can be met from the central contingency.

34. Capital

There are no policy implications arising from this report.

Financial advice (Revenue) provided by: Tony Whitlock, Finance

Land

35. There are no policy implications arising from this report.

Financial advice (Land) provided by: Lois Woodcock, Property

Appendices

Appendix A- Map of application land

Appendix B- Inspector's Report February 2014

Appendix C- Map of proposed amended application land

Appendix D- Applicant's further evidence

Appendix E- Inspector's Supplementary Note June 2014

Local Government (Access to Information) Act 1985

Background Papers:

The application papers/ statement of objections/ response are available for inspection at City Hall, College Green.

Section 15 Commons Act 2006

Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007

Recreation Ground

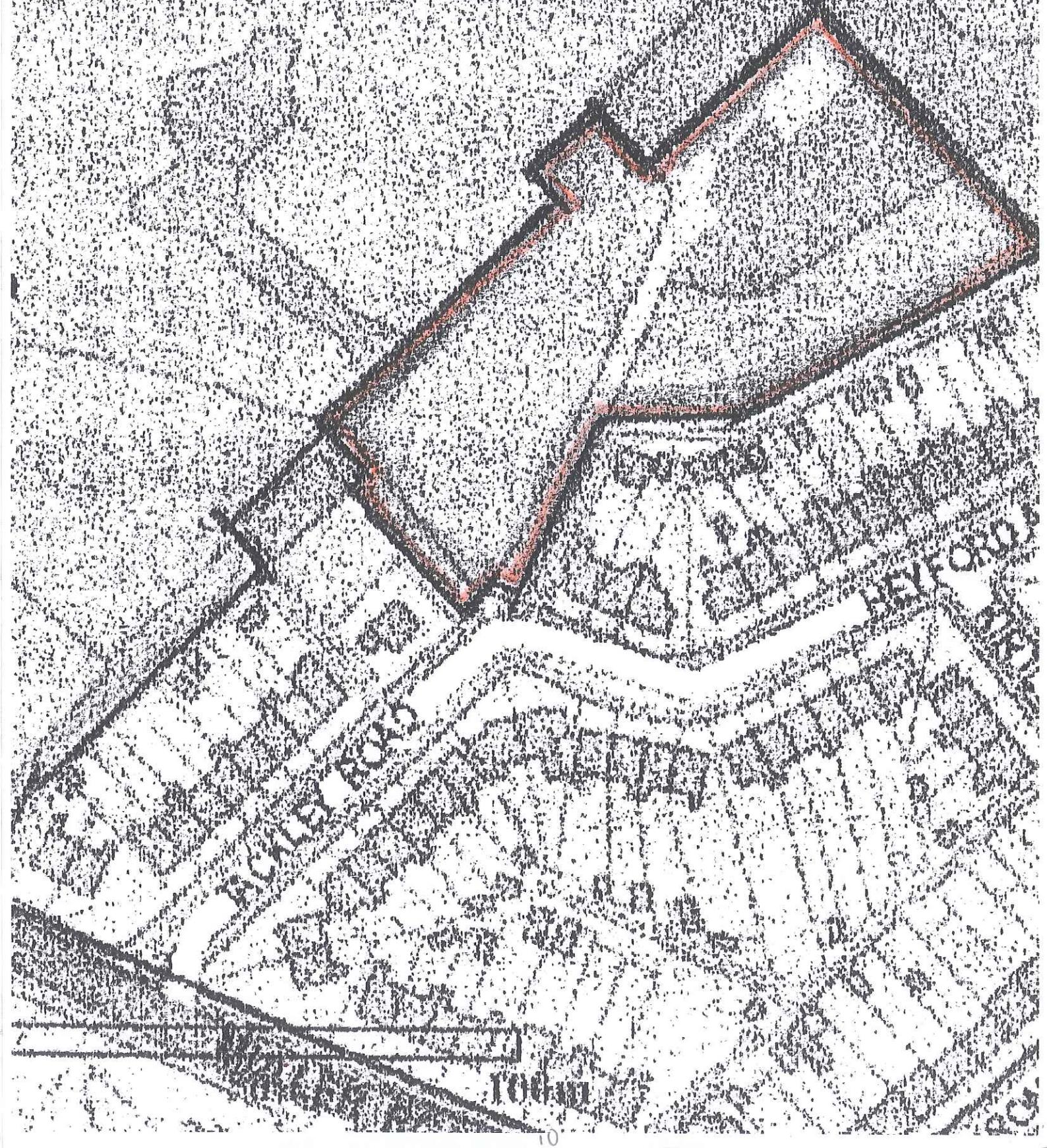
Susan Frost

Rosemary

Jane Stevenson

Dorothy O'Donnell

Spangler



In the matter of an application to register land known as Tackley Green as a town
or village green

INSPECTOR'S REPORT
FOR BRISTOL CITY COUNCIL
25 February 2014

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Introduction

1. I have been appointed as an independent Inspector by the registration authority, Bristol City Council, and asked to report with recommendations in respect of an application to register land known as Tackley Green, to the rear of odd numbers 1 – 33 Heyford Avenue around Grid Reference ST60707550, Bristol as a new town or village green. Strictly were the site to be registered it would be a 'town green' rather than a 'village green' in my view, but the requirements for registration and the legal incidents of town and village greens are identical, and in this Report I shall simply refer to 'town and village green' or 'TVG'.
2. Where documents are referred to in this Report, they are identified by tab number in accordance with the bundle of documents provided to me on behalf of the registration authority or, in the case of the documents submitted by the landowner, by enclosure number.
3. The application was made by Mrs Susan Flint, Mrs Ruth Gering and Mrs June Sherborne ('the Applicants') on 3 April 2013 and was registered by the authority on 8 April 2013. It was accompanied by 35 evidence questionnaires from local residents. The Applicant submitted a plan of the land to delineate the boundaries of the land applied to be registered ('the application land') with the application which is not entirely clear, but there does not seem to be dispute as to the boundaries and a clear version of the plan is evidence in enclosure 1 of the objection (Plan ref: 'Tackley Road 1').
4. The freehold owner of the whole of the application land is Bristol City Council ('the Objector') (see Land Registry Title Numbers GR21347 and part of BL114423). The Objector submitted a Statement of Objection which is undated, and was accompanied by 19 enclosures. The Applicant responded to the Notice of Objection.

5. Section 15(1) of the Commons Act 2006 ('CA 2006') provides that any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies. The parties agree that the relevant subsection in the context of this application is (2).
6. Section 15(2) applies where:
 - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application.
7. The Applicant must prove that the statutory test is met on the balance of probabilities and the relevant period of at least 20 years runs backwards from 3 April 2013.
8. There one matter in issue in respect of whether the test for registration in s. 15(2) Commons Act 2006 is met, which the Objector regards as a 'knock out blow' to the application:
 - (i) Whether use of the application land has been 'by right' as opposed to 'as of right' by virtue of appropriation to open space purposes.
9. Given the nature of the matter in issue, I consider that the registration authority is in a position to determine the application on the papers, and it is not necessary to hold a non-statutory public inquiry to hear oral evidence. Neither do I consider it necessary for me to make a site visit to the application land.

Whether use of the application land has been 'by right' as opposed to 'as of right'

Factual Background:

10. For these purposes, the land may be seen in two parts as shown on the Objector's plan ref 'Tackley Road 4' (at enclosure 5).
11. The whole of the land was part of a wider area purchased by Bristol City Council on 9 March 1938 (see Objector's plan 'Tackley Road 2'). This followed a meeting on 8 June 1937 in which the Members were asked to decide whether they intend to purchase the land for use as a public open space (since the owners were considering an application to build on it at the time) (see minutes at enclosure 6 of the Objector's evidence). The minutes record on p. 321 that the "Committee have given the matter careful consideration and are of the opinion that the land should be purchased to provide facilities for recreation and the playing of organized games." The recommendation is "to agree to the purchase of the land as a public open space" (p. 327).
12. On 5 January 1938, the Town Clerk wrote to the Ministry of Health stating that it is proposed to acquire the land under the provision of s. 164 of the Public Health Act 1875 as amended by later enactments (enclosure 7). It is further stated: "Should it be found desirable or necessary to let portions of the grounds to particular clubs or bodies, application will be made at a later date for permission to appropriate the land for these purposes".
13. The ensuing sale of the land is documented in the conveyance at enclosure 8 of the Objector's evidence. At p. 4 of the conveyance, the land being acquired is described as:

"All those pieces or parcels of land (being certain land which has been scheduled as a public open space by the Town Planning Committee of the Corporation) containing 33.221 acres etc. . . "

14. After initial purchase, the land must be considered in three separate parts.
 - (i) The rectangular shaped piece of land on the eastern part of the application land; and
 - (ii) The remainder bulk of the application land (1.78 acres); and
 - (iii) Forecourt area
15. The remaining bulk of the land was sold by Bristol City Council to the Territorial Army and Air Force Association of the County of Gloucester. The major part of this land, and all that is within the application land, was subsequently repurchased on 31 October 1967 by the City Council. The decision to re-purchase this land was considered at a meeting of the full Council on 13 July 1965. The Report of the Planning and Public Works Committee to the full Council stated that the Committee "have provisionally agreed to purchase for public open space purposes the freehold interest of approximately 1.4 acres of land at Tackley Road, Eastville..." (enclosure 14). The minutes of the full Council meeting record that the Council approved and adopted that recommendation (see p. 59).
16. The rectangular shaped piece of land remained in the Council's ownership throughout but was leased by Bristol City Council to the Gloucestershire Territorial and Auxiliary Forces Association on 1 December 1948 for a term of 75 years from 24 June 1949 (enclosures 9 and 10). The lease was terminated on 31 October 1967 at the same time as the re-purchase of the remaining bulk of the land (see Deed of Surrender, enclosure 16).
17. On 13 June 1965, Bristol City Council granted a lease of a small area within the application site comprising of a garage forecourt to the Territorial and

Auxiliary Forces Association for the County of Gloucester for a term of 42 years from 31 October 1967, in conjunction with leasing the garage itself which is outside the application land (enclosure 18). The lease was surrendered on 31 October 1994 (enclosure 19).

Legal Framework:

18. Although the discussion was *obiter*, the House of Lords gave strong guidance in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889 that user which is under a legal right is not user 'as of right' for the purposes of s. 15(2) CA 2006 (see [3] & [9] per Lord Bingham; [11] per Lord Hutton; [29] – [30] per Lord Scott; [62] per Lord Rodger; and [72], [87] – [88] per Lord Walker).
19. Lord Bingham set out the position as follows:

"In this context it is plain that 'as of right' does not require that the inhabitants should have a legal right since in this, as in other cases of prescription, the question is whether a party who lacks a legal right has acquired one by user for a stipulated period." (at [3])
"Such use [pursuant to a statutory right to do so] would be inconsistent with use as of right" (at [9]).
20. It was accepted by the parties in *Barkas v North Yorkshire County Council* [2012] EWCA Civ 1373 that *Beresford* is authority for the proposition that there is a distinction between a use of land 'by right' and a use of land 'as of right'. The Court of Appeal dismissed the submission that there is no additional requirement that the user must not be 'by right' in the *nec vi, nec clam, nec precario* definition of 'as of right' (at [38] per Sullivan LJ). Rather, if local inhabitants are indulging in lawful sports and pastimes on land 'by right' and not 'as of right' an application to register that land as a TVG will fail (see [42] – [45] per Sullivan LJ and see also *R (on the application of Malpass) v The County Council of Durham* [2012] EWHC 1934 (Admin) at [41]).

21. The registration authority should note that the Supreme Court has granted permission to appeal the Court of Appeal's decision in *Barkas*, but the hearing has not taken place yet. The registration authority is entitled to determine the application in accordance with the law as it currently stands.
22. There are a number of circumstances where land potentially may be used 'by right' as opposed to 'as of right'. The following are of relevance to this case:
 - (1) Where land is held under an express statutory trust under s. 10 Open Spaces Act 1906. Land may so be held if it is either acquired under s. 9 Open Spaces Act 1906 or is appropriated for the purposes of s. 10 Open Spaces Act 1906 under the general power now contained in s. 122(1) Local Government 1972 (formerly s. 163 Local Government Act 1933). Where there is an express appropriation for the purposes of s. 10 Open Spaces Act 1906 so that the land is held in trust to allow its enjoyment by the public as an open space, it appears settled that the land is used 'by right' and not 'as of right': see *Beresford* at [30] per Lord Scott and [87] per Lord Walker and *Barkas* at [27] per Sullivan LJ.
 - (2) Where land is not held under a statutory trust in the strict sense, but land has been appropriated for the purpose of public recreation or open space. This circumstance finds form in [87] of Lord Walker's opinion in *Beresford*. It is *obiter*, but as stated by Sullivan LJ in *Barkas* (at [33] – [34]): "Lord Walker clearly regarded "appropriation" for the purpose of public recreation as being of critical importance. He emphasised that the undisputed evidence in Beresford did not establish, or give grounds for inferring "any statutory trust of the land or any appropriation of the land as open space" (emphasis added): see paragraphs 88, 89(a) and 90 of his opinion ... While they are not binding ... Lord Walker's observations are highly persuasive, and I can see no sensible reason for drawing a

distinction between land held under section 10 and land which has been appropriated for recreational purposes under some other enactment." Sullivan LJ went on to hold that there is no practical distinction between land which is initially acquired for open space purposes and land which has been appropriated for open space purposes from some other use. Thus, it appears settled that land that is appropriated for public recreation or as open space under an enactment other than the Open Spaces Act 1906 will also be used 'by right' and not 'as of right'.

- (3) Where land is held under a statute other than the Open Spaces Act 1906, if the statute properly construed confers a right on the public to use land for recreational purposes. In such circumstances, it appears settled that, subject to the interpretation of the particular statute in question, the public's use of that land will be 'by right' and not 'as of right' (see *Barkas* at [26] and in relation to interpretation of particular statutes, [35] – [37]).
23. It follows from the foregoing that, in the case of open space land, if a subsequent appropriation to an inconsistent purpose occurs, the land will no longer be held for the public's benefit as an open space and subsequent user will not necessarily be 'by right'.
24. In relation to the evidential test to be applied to whether or not land is held on trust as open space, the following principles may be summarised. Local authorities are creatures of statute and their powers to acquire, hold and use land are governed by statute. Thus, as was common ground in the recent High Court case of *R (on the application of Stephen Malpass) v The County Council of Durham* [2012] EWHC 1934 (Admin) (at [41]), even if there is no unequivocal evidence spelling out under what authority land is held, it is proper to assume that the holding of it is lawful provided that the use to which the land is put is permitted by some appropriate enabling legislation (and see, for example, *Attorney-General v Poole Corporation* [1938] Ch 23 cited

by Lord Scott in *Beresford* at [30]). What was said by Lord Scott in *Beresford* at [30] is as follows:

"Is it necessary in order for open space land to have been acquired under the Act [the Open Spaces Act 1906], for it to be expressly so stated, whether in the deed of transfer or in some council minute? Attorney-General v Poole Corporation [1938] Ch 23 is interesting on this point. The open space land in question had been conveyed to Poole Corporation

"in fee simple to the intent that the same may for ever hereafter be preserved and used as an open space or as a pleasure or recreation ground for the public use."

There was no express reference in the Conveyance to the 1906 Act but the Court of Appeal thought it plain that the Act applied. Indeed counsel on both sides argued the case on the footing that that was so (see Sir Wilfrid Greene MR, at p 30). It seems to me, therefore, that the 1906 Act should not have been set to one side in the present case simply on the ground that in the documents relating to the transfer to the council no express reference to the 1906 Act can be found. It would be, in my view, an arguable proposition that if the current use of land acquired by a local authority were used for the purposes of recreation and if the land had not been purchased for some other inconsistent use and the local authority had the intention that the land should continue to be used for the purposes of recreation, the provisions of section 10 would apply (c/f counsel's argument in the Poole Corporation case, at p 27). But your Lordships cannot take the argument to a conclusion in the present case."

25. Further, whether an appropriation to open space purposes has in fact occurred will be a matter to consider on the balance of probability having

regard to all the evidence (see *Malpass* at [45]). The presumption of regularity applies where there is no evidence one way or the other as to whether part of the formal process of appropriation in fact took place, so that if a particular document is ‘missing’ from the evidence base, it will be presumed to have existed, unless rebutted by a party: see e.g. comments of Vivian Chapman QC acting as independent Inspector reporting on the land that formed the *Barkas* challenge (at [122] of his Report¹).

Application of the Law to the Facts:

The rectangular shaped piece of land on the eastern part of the application land

26. I find that there is overwhelming evidence that the rectangular shaped piece of land was purchased by the Council as part of a wider area on 9 March 1938 for use as a public open space.
27. It appears that the statutory power relied on is s. 164 of the Public Health Act 1875 as amended by later enactments. This gives a local authority power to acquire land or to provide recreation grounds, public walks, pleasure grounds and open spaces and to manage and control them.
28. I consider that this statute properly confers a right on the public to use land for recreational purposes and thus the public’s use of the land was ‘by right’ and not ‘as of right’ (*Barkas* at [26]). Despite the absence of reference to the Public Health Act 1875 in the conveyance, I consider it proper to apply a presumption of regularity that the Council is holding the land lawfully under the 1875 Act in accordance with the minutes of the Committee meeting of 8

¹ See

<https://www3.northyorks.gov.uk/n2cabinet comm/planningandregu /reports /20101008 /07heldredalepla/07heldredalepla.pdf> (accessed: 28 November 2012)

June 1937 and the Town Clerk's letter to the Ministry of Health of 5 January 1938.

29. The public's right to use the land for recreation ceased when it was leased to the Territorial Army from 24 June 1949 since the land was appropriated to an inconsistent purpose (namely use by a specific group of individuals for army training). However, following surrender of the lease on 31 October 1967, which was more than 20 years before the application to register the land as a town or village green was made, the land reverted to its previous status as a consequence of the continuity of the freehold owner, and thus again was available to the public to use for recreational purposes 'by right'.

The remainder bulk of the application land (1.78 acres)

30. I find that there is overwhelming evidence that the remainder bulk of the application land was purchased by the Council from the Territorial Army on 31 October 1967 for public open space purposes. Despite the lack of reference to a statutory trust under s. 10 Open Spaces Act 1906 or any other enactment in the conveyance, I consider it proper to apply a presumption of regularity that the Council has been holding it for public open space purposes lawfully, in accordance with the recommendation which was accepted by full Council on 13 July 1965.

31. Accordingly, since appropriation to 'open space purposes' or the holding of land for such purposes is sufficient to imply a statutory trust and render any use of the land by the public 'by right' in accordance with *Beresford* at [87] and *Barkas* at [33] – [34] (coupled with the application of s. 164 of the Public Health Act 1875 to the rectangular piece of land), I find that the public's use of the land during the 20 year period is 'by right' and not 'as of right' and the application must fail.

Garage Forecourt

32. That leaves the issue of the garage forecourt which was leased to the Territorial Army until 31 October 1994 i.e. during the first few months of the 20 year period. Following surrender of the lease, that part of the application land reverted to control by its freehold owner, Bristol City Council. The garage forecourt, access track and oil store (which is outside the application land) were subsequently leased to others e.g. to the Avon District Outdoor Activities Club (from 25 April 2007).
33. I note that the Applicants wish the registration authority to consider registering this part of the application land alone even if the remainder were to fail the statutory test for registration. Even if this part of the application land has not been held by Bristol City Council for public open space purposes at all during the relevant period, I do not consider it is capable of registration alone because (i) the Applicants have failed to show that use of it would not be predominantly as a means of access to the open space and thus more characteristic of a public right of way than a green (which appears the more likely scenario); and (ii) in any event, it represents such a small proportion of the overall application site that it is *de minimis* and it would make no sense to register it in isolation. I accept the Objector's submission that it would be impossible to separate this small proportion of the land from the rest of the site and therefore it would be arbitrary to register only the forecourt and the trackway.

Conclusions and Recommendations

34. My conclusions are:

- (1) The application should be refused in whole on the basis that the use of the application land during the relevant period has been 'by right' and not 'as of right'.

35. My recommendations are:

- (1) That my Report should be made available to the Applicant and to the Objector, together with final confirmation of the date of the meeting at which the registration authority will reach its decision. The Applicant and Objector should be informed that this meeting does not present an opportunity for the parties to re-state their cases or seek to put in further evidence, unless truly exceptional circumstances are made out.
- (2) That the decision on the application is for the registration authority which must exercise its own discretion, save that it must not take into account issues relating to any balance of advantage or disadvantage flowing from registration or non-registration of the land as a TVG.
- (3) That in reaching its decision on the application it can properly have regard to my overall conclusions and reasoning, as well as any advice from officers.
- (4) That subject to that advice and any late representations received, the application should be refused in respect of the entire site and for the reasons set out in this Report and summarised in my Conclusions above.
- (5) This application is governed by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (since the registration authority is not one participating in the pilot scheme). Under Regulation 9(2), the registration authority is required to give written reasons for the rejection of an application. If the registration

authority accepts my recommendations and reasons, its reasons should be stated to be “the reasons set out in the Independent Inspector’s Report of 25 February 2014”.

ANNABEL GRAHAM PAUL

Francis Taylor Building
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EC4Y 7BY

25 February 2014

Land at Tackley Road,
Bristol BS5 6UQ

- Tackley Road TVG
- Repurchased by BCC on 31/10/1967
- Purchased by BCC on 9/3/1938

Path (um)

Hall

17

15

16

HEYFORD AVENUE

22

5

2

EI

25

15

SITE PLAN : To ensure boundary accuracy, please refer to deeds.

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Ordnance Survey 100023406.



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STRATEGIC PROPERTY

Plan No : Tackley Road 4
Prop ID Ref : n/a
Polygon Ref : n/a
Scale : 1:1,000
Date : 29th July 2013



CORPORATE SERVICES

Strategic Property
Floor 7, B Bond, Smeaton Road, Bristol, BS1 6EE
Tel : (0117) 903 7620
www.bristol.gov.uk

Additional statement

I first became acquainted with the piece of land early in 1991. In July of that year I moved into #47 Heyford Avenue.

I then roamed around locally, acquainting myself with the surroundings and so frequently passed crossed or otherwise viewed the garage forecourt and track to the gate. There was almost always some one or more people moving about on that land, many more on fine days and especially at weekends.

Local children used the forecourt and track for cycling, scooting, playing with wheeled toys. Often small groups would set up a game of cricket. There was no period of time when activity was prevented or restricted – the only deterrent sometimes being bad weather. These activities continue to the present time.

Susan Flint 8/6/2014

23rd April 2014

To Whom It May Concern:

Re: Tackley Green, Eastville, Bristol BS5

We moved into 15 Heyford Avenue in 1975 and one of the reasons we bought the house was the beautiful green space behind our rear access lane. At that time the green was used for a variety of events, as was the forecourt/hard-standing in front of the garages. On many evenings and at weekends during the spring and summer we would watch the activities taking place over our garden fence, which in those days was only waist high (theft was not so much a problem then!).

Following the birth of our two children, we found that the green space played an integral part in their development. Throughout the 1980s and early 1990s our children would participate in a variety of games and activities both on the grass and on the hard-standing. These activities included learning to ride a bicycle (when it was not safe for them to be on the highway), scooter riding, roller-skating and skateboarding (including making 'jumps' for the skateboard), football, tennis and cricket – when the garage doors were used as goals and the brick pillars as wickets. My son particularly liked to use the hard-standing for his remote controlled car.

We have used the area for family picnics, treasure hunts, nature study, kite flying, running, walking and just relaxing. Our friends loved to visit bringing their children over to play, as it was a friendly and relatively safe environment for them to be in.

The area continues to be used in a similar fashion today, as well as by the army of dog walkers who daily exercise their animals. We enjoy watching the cycle-cross events on a Sunday morning and we have also seen a circus skills group practising there. Several local residents take a keen interest in keeping the area clean and regularly carry out a 'litter pick'.

The grassed area and the hard-standing are well used by the community and to the best of our knowledge, have been so for nearly forty years. Our grandchildren (aged 6 and 5 years) visit us a couple of times a week and always ask to play on the green. They particularly enjoy playing Frisbee and watching the butterflies, which appear to congregate around the perimeter of the hard-standing and on the garage doors. There is no doubt that both the grassed area and the hard-standing is an important focal point for local residents and for those who spent their childhood there as well. It still gives us pleasure watching the various activities and seeing everyone getting the best out of the area.

Richard Monks

R. Monks

Marion Monks

M. Monks

Having lived in Illeyford since 1953 years, Tackley Green has been a big part of our lives.

My 4 children 2 boys 2 girls have played on the forecourt daily, it was a god send during the school holidays as one knew it was a safe place for them to be, they played football, Tennis, beside many group activities with their friends, if they went out of the front door they would call on their friend & automatically use the track in order to get to the forecourt to play rounders or other games. That would have been from 1969-1983. I myself played there as a child, then it was the turn for my grandchildren who also liked to ride their bikes & scootess up the track onto the forecourt from 1988-2001. Since then another generation has taken over, the Great Grand children who also like to ride their bikes & scootess on the forecourt. So you see it has been a friendly & safe haven for many

years for many people.

They once had a Marque for a blessing, instead of a christening on the green, how about that! for several years Nov 5th after always celebrated there, enjoyed by all the community. I walked my dog on the forecourt as it help to keep her claws short, as I no longer have her, my walking days are over. but I still enjoy watching other dog owners meeting on the forecourt to walk their pets as I did. People also go there to pick blackberries, play golf, fly kites & throw freesbies, knowing it to be such a joy, why would anyone want to deprive us of it?

M.J. Evans

MRS. M.J. EVANS

25.4.14.

To whom it may concern.

My partner & I, both in our 40s, moved to Heyford Avenue 7 years ago. We use the area around the Tackley Road garages ourselves for playing frisbee, football, ball throwing, croquet & cricket. With cricket stumps and a goal being painted on the shed door, these are frequently used by a variety of budding cricketers & footballers. There are a mix of young & old, a variety of G&E and male/female. The hard standing area in front of the garages is also great for putting BBQs on in the sun as it doesn't damage the grass.

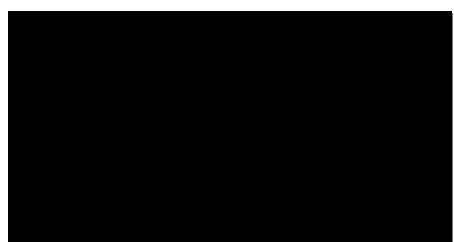
As I use the back bedroom as a study I get to watch the wide range of people using this area. Not only for Sport but also for fitness & just sitting around chatting. The Bristol Outdoor Club are often up there assessing their canoes.

Our nieces practised riding their bikes up on the ~~so~~hard-standing - a useful flat space. It is also used by the cyclists to organise their bikes in the annual cyclocross race. As the evenings get lighter so this area is used extensively after school or work, as well as during the day, particularly by dog walkers.

This is a very important area to local people & is well used.

Please contact me if you would like more information.

Thanks Helen Rossington
Steve Bullson



Kelly Paterson & Richard Smith

15 April 2014

To whom it may concern

RE: Tackley Green

We have been using this beautiful green space directly behind our house regularly since we moved here 14 years ago. In fact, the reason we moved here was specifically because of Tackley Green and the opportunities for community activities, plus proximity to the local school, Glenfrome Primary, which is just across the road and which uses the Green for Forest School activities, amongst other things.

We have used the hardstanding outside the garages intensively since we had our children (aged 10 and 7). They have benefitted from this space at every stage of their development: whilst learning to walk; using tricycles; scooting and learning to cycle there. We also play tennis, basketball and football there. It is a social hub: my children meet their friends there, and they have even made new friends whilst playing there too. It is a central part of their world.

I regularly see other families and young adults using the hardstanding in the same way that we do, and also for cricket, football, scooting, cycling and so on. A local circus skills group uses the hardstanding and the green area to practice. This is in addition of course, to the dog walkers, runners, cyclists, kite flyers, cyclocross events, orienteering, relaxation, picnics, children's parties and so on that happen on the green.

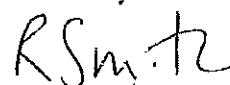
We consider it to be a vital and integral part of the local community and the hardstanding area is the focal point of those activities.

Please feel free to contact us for more information.

Best wishes

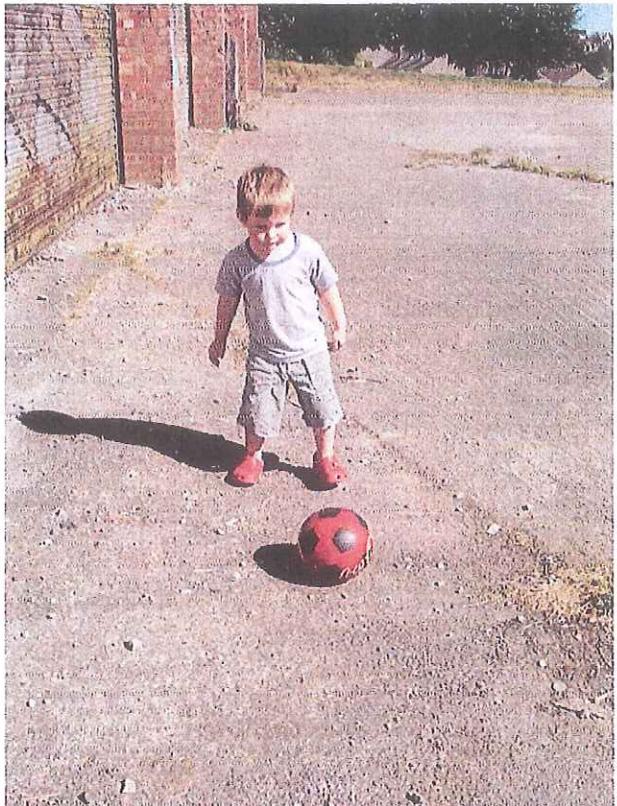


Kelly Paterson
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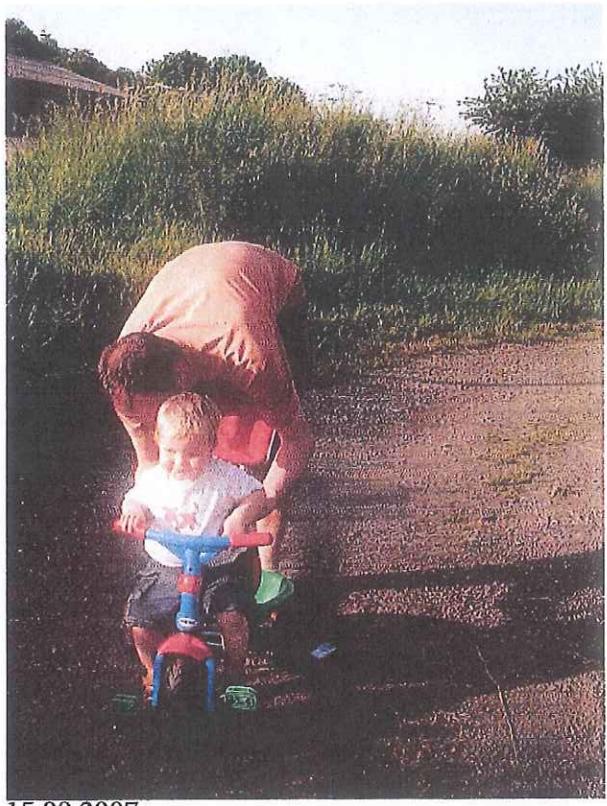


Richard Smith

Photos re track& forecourt	Date	Subject
Smith& Paterson	28/04/2006	Toddler + Dad on forecourt
Smith& Paterson	28/04/2006	Toddler + Dad on track
Smith& Paterson	22/08/2006	Toddler + Dad on forecourt
Smith& Paterson	30/05/2006	Toddler + Mum on forecourt
Smith& Paterson	15/09/2007	Toddler + ball on forecourt
Smith& Paterson	01 March 2014	Boy + ball on forecourt
Day family		2011 Cyclocross
Day family		2009 Unicycling
Day family		2009 Unicycling



15 09 2007



15 09 2007

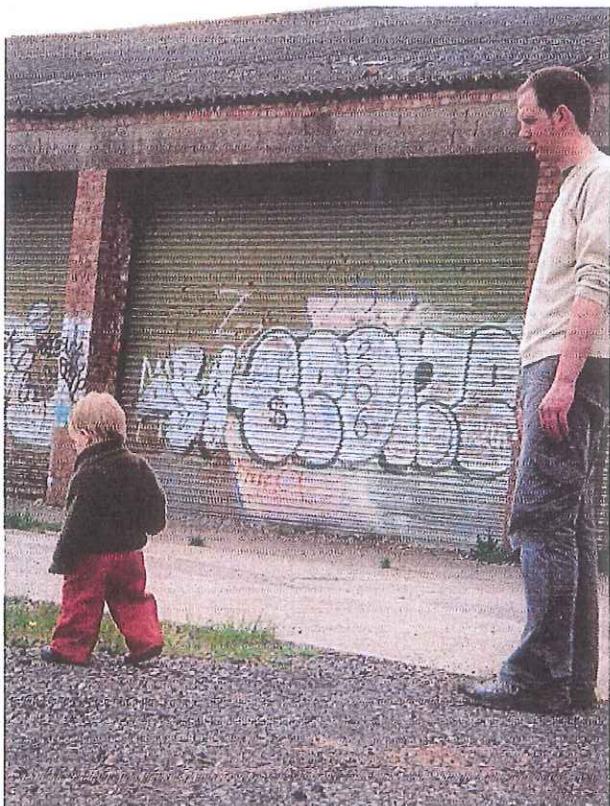


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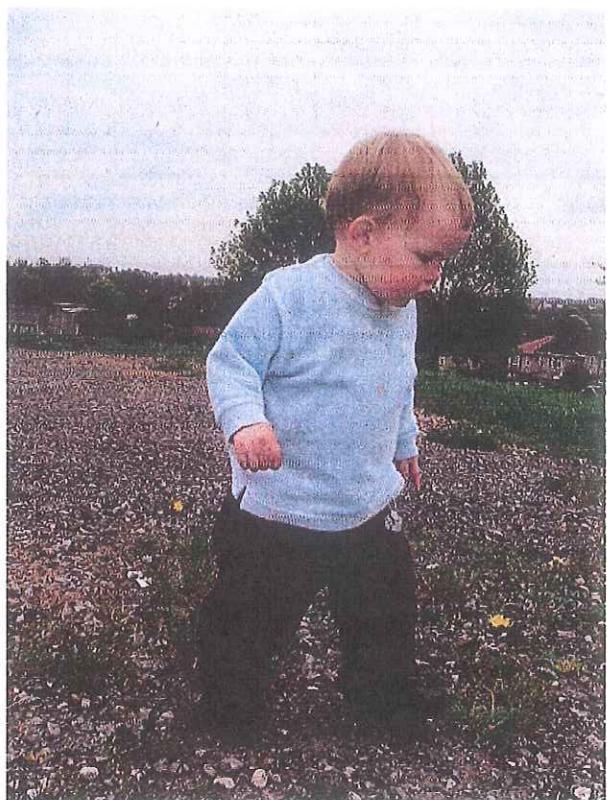


02 2014





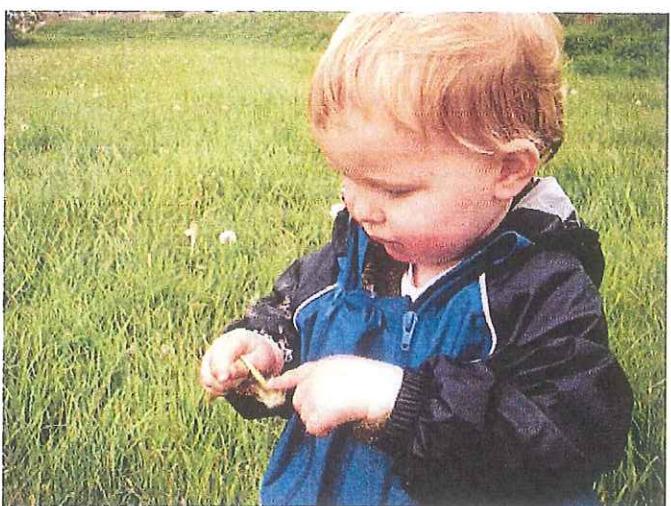
28 04 2006



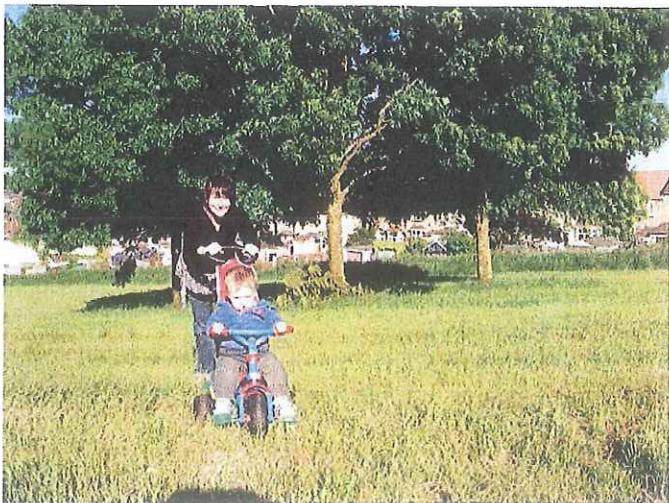
22 08 2006



28 04 2006



15 05 2006



30 05 2006



30 05 2006







**In the matter of an application to register land known as Tackley Green as a town
or village green**

INSPECTOR'S SUPPLEMENTARY NOTE

1. I have reviewed the further evidence submitted by the applicant which attests to the use by local inhabitants of the garage forecourt at Tackley Green.
2. I do not consider that it changes my recommendations set out in my report of 25 February 2014, in particular that the garage forecourt represents such a small proportion of the overall application site that it is *de minimis* and it would make no sense to register it in isolation.
3. Furthermore, from the evidence submitted, the use of the forecourt for lawful sports and pastimes would not appear to be such as to be by a 'significant number' of local inhabitants and would not bring home to the landowner that a right to use it as a town or village green was being asserted.
4. The registration authority should also note that, since my report was written, the Supreme Court has handed down judgment in R (on the application of Barkas) v North Yorkshire County Council [2014] 2 WLR 1360. This confirms that where the public have a right to use the land for recreational purposes, their use of it is 'by right' and not as trespassers. It should be noted that Lord Scott's comments in Beresford cited in my report (in particular at paragraph 24) were expressly disapproved by the Supreme Court. However, this does not change my advice. My conclusions in paragraphs 28 – 29 and 31 are in

line with the Supreme Court's reasoning in Barkas (as they were with the Court of Appeal judgment in that case, which was cited in my report).

ANNABEL GRAHAM PAUL

**Francis Taylor Building
Inner Temple
EC4Y 7BY**

16 June 2014