

**BRISTOL CITY COUNCIL**

**PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE**

**9 OCTOBER 2006**

**APPLICATION FOR REGISTRATION OF LAND AT SOUTH PURDOWN  
LOCKLEAZE AS A TOWN OR VILLAGE GREEN UNDER THE COMMONS  
REGISTRATION ACT 1965 AS AMENDED BY THE COUNTRYSIDE AND  
RIGHTS OF WAY ACT 2000**

(Report of the Head of Legal Services)

**(WARD: LOCKLEAZE)**

**APPLICANTS: SUSAN FLINT, C/O 12 TACKLEY ROAD,  
BRISTOL BS5 6UQ**

**MICHAEL YORK SMITH, 20 DORMER ROAD,  
BRISTOL BS5 6XQ**

**JUNE SHERBORNE, 12 TACKLEY ROAD,  
BRISTOL BS5 6UQ**

**RUTH GEARING, 21 SOUTH HAYES,  
BRISTOL BS5 6UB**

Objector: (1) Bristol City Council, in its capacity of freeholder of the  
application site;

**Purpose of Report**

1. TO SEEK APPROVAL TO THE APPOINTMENT OF AN INDEPENDENT INSPECTOR :
  - (a) to determine whether an oral hearing is needed;
  - (b) to establish whether the land in question comes within the definition of a town or village green to be found in the Commons Registration Act 1965 as amended, and;
  - (c) to accordingly make a recommendation to the committee.

## Background

2. The Applicants applied on the 19 of July 2006 for registration as a green of land located at South Purdown in Lockleaze. The application was advertised during August, with a deadline for objections of 6 October.

The application is accompanied by a plan showing the subject land to be found at Appendix 1 to this report.

3. The Applicants' statement in support of their application is at Appendix 2 to this report, and is based on their contention that the land became a green during 2006 by its actual use by the inhabitants of the immediate neighbourhoods comprising polling districts LZD, LZDI and part of polling district LZO in the locality of the electoral ward of Lockleaze as shown on the map A outlined in red, for lawful sports and pastimes as of right for not less than 20 years. This application is supported by 139 completed evidence questionnaires
4. The freehold of the land is owned by the City Council whose objection to the application, drafted on behalf of the Director of Children's and Young People's Services, is to be found at Appendix 3 to this report. In essence, the City Council (in its capacity of land-owner) is of the opinion that because the land is public open space it should not be registered as a green.

## Conclusion

5. This committee on behalf of the Council (as registration authority) has a statutory duty to determine objectively whether or not on the balance of probabilities the land in question should be registered as a town green, within the meaning of the Commons Registration Act, in the light of all the evidence and legal submissions provided by Applicant and Objector in support of their respective view points, and of any other relevant factors.
6. In view of the contentious and complex nature of the application, appointment of an independent Inspector having the relevant expertise, who would make a recommendation to the committee, is the most appropriate course of action. This would be in line with the advice of the Open Spaces Society and with the City Council's past practice.

## Consultation

None.

## Appendices

Appendix 1	The Applicants' plan.
Appendix 2	Their statement in support of their Application.
Appendix 3	Bristol City Council's Objection to the application.

## Legal Implications

The City Council in its capacity of Commons Registration Authority has a statutory duty under the Commons Registration Act 1965 to determine in accordance with the rules of natural justice whether the land should be registered as a green.

For an application to register a green to be successful, the applicants must prove on the balance of probabilities that that land in question comes within the following definition of a "town or village green" to be found in Section 22(1) of the Commons Registration Act 1965, as amended by Section 98 of the Countryside and Rights of Way Act 2000:-

"(1A) Land falls within this subsection if it is land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either –

- (a) continue to do so, or
- (b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions."

(NB No period has yet been prescribed in pursuance of sub-section 1A(b)).

In its capacity of 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.

## **Resource Implications**

Financial: These expenses would be met by the Department of Central Support Services.

Land: The City Council is freeholder of the application land.

Personnel: None.

**Recommended -** that the committee approve the appointment of an independent Inspector to report to the committee, and to make a recommendation as to whether or not to register the land as a green.

## **LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 Background Papers**

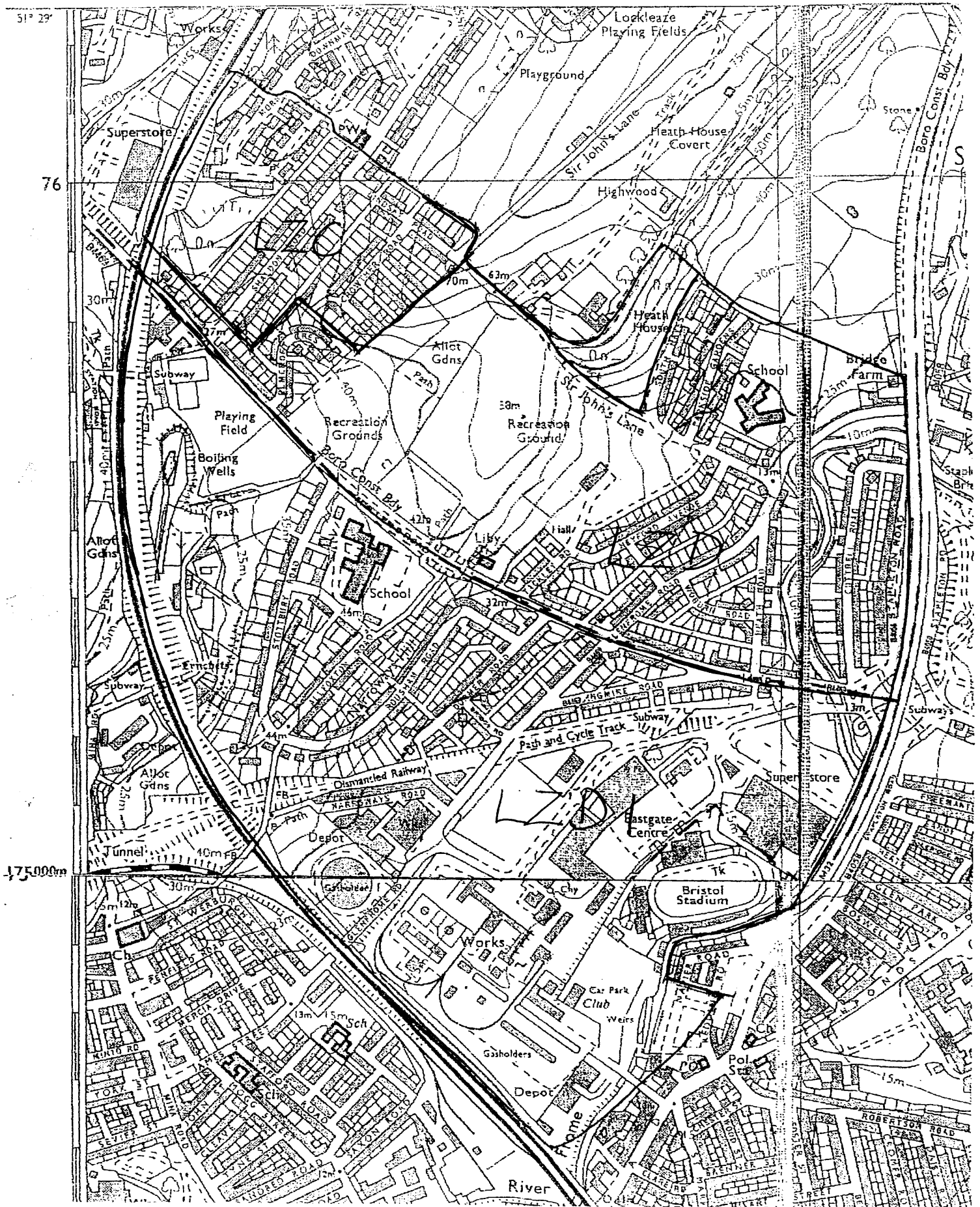
Application with evidence in support (of which a full copy is on deposit in the main entrance of the Council House)

Documents appended to the Objection

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**PLEASE NOTE:**

Some of the following Appendices are unavailable electronically and have therefore been scanned onto the system. If you require a hard copy of this document please contact the report author direct whose name and telephone number is displayed on the front page of the report.



## COMMONS REGISTRATION ACT 1965. SECTION 13

APPLICATION FOR REGISTRATION OF LAND WHICH BECAME A  
TOWN OR VILLAGE GREEN AFTER 2ND JANUARY 1970

Form 30

## STATUTORY DECLARATION IN SUPPORT

Application is hereby made under the third arm of the Commons Registration Act 1965 section 22 (1), for registration of the land edged in green, which is shown on the plan marked as 'exhibit B'. The land is known locally as South Purdown and is situated in the Electoral ward of Lockleaze in the City of Bristol.

The shown land is bordered on the northeast by Sir John's Lane, on the southeast by the lane at the rear of houses in Heyford Avenue to approximately in line with No 33 Heyford Avenue, thence in a north-westerly direction to the northeast corner of the building known as the TA (Territorial Army) building. Thence south-westerly along the line of the rear of the building for a distance of approximately 63m, thence south-easterly for approximately 10m, thence south-westerly to the northeast corner of the land containing the Territorial Army Hall. Thence following the boundary of the land believed to be owned by the Territorial Army, the lane to the rear of houses on Tackley Rd, and the grounds of the public library to Muller Road. Thence north-westerly along Muller Road to the boundary of 283 Muller Rd, thence north-easterly to the boundary of the allotment gardens, south-easterly approximately 45m and in a generally south-westerly and south and north-easterly direction following the boundary of the allotment gardens to Sir John's Lane as shown on the map and edged in green.

The land is largely unfenced with access from Sir John's Lane, from the lane to the rear of Heyford Avenue, from Tackley Road, by a flight of steps from Muller Road (part of PROW number 217) and from several access points along Muller road. There are also gated access points from the lane between Elmcroft Crescent and Crowther Road and from Crowther Park. Several public rights of way traverse the land across which may be way-leaves to statutory undertakers.

The land already had a long history as public open space at the time it was purchased by the Bristol City Council in 1938 and has been used in the manner of a Town Green ever since.

The area is maintained and areas of grass are cut by the City Council. Some areas are left uncut for periods to encourage development of biodiversity. Some decade or so ago a hedge was planted running in a northeast-southwest direction along an old field line. This hedge and several trees form prominent horizon features on the ridge which is a major feature, constituting an important viewpoint. The land carries designations as wildlife corridor, forms part of a Conservation area, is public open space, contains a ridge, and is much valued by local residents who carry out a wide variety of activities and leisure pursuits on the land. These include walking for pleasure, walking for exercise, walking with dog, jogging, picnicking, family play, playing with children, playing with grandchildren, student socialising, enjoying the wildlife, enjoying the fresh air, enjoying the peace, relief of stress and tension, sitting on the grass, admiring the views, cycling, mountain biking, kite flying, watching hot air balloons, nature watching, nature walks, bird watching, painting, ball games such as cricket, football, football training, French cricket, rounders.

Community activities include or have included fireworks, bonfire nights, marching band practice, majorettes practice, scouts, cubs, Territorial Army cadet exercises, and educational purposes.

Seasonal activities include blackberry picking, elderflower and berry picking, dandelion picking, tobogganing, and sledging.

Also shown within is evidence that this use has been 'as of right', and that permission has been neither sought nor given. At no time during the past twenty-year period has access been denied. Photographs of the land (enclosed) show the land being used for lawful sports and pastimes.

This evidence is given in support of the application made to register the land shown on exhibit B as a Town green under the third arm of the Commons Registration Act 1965 section 22 (1).

The locality is shown in Exhibit A.



Bristol City Council ("the Council") through its Director of Children and Young People's services makes these representations in its capacity as freeholder of the land at South Purdown ("the Site") which is the subject of this application for Town and Village Green Registration.

The Council contends that this land was acquired as a Public Open Space and that, therefore, it cannot and should not be registered as a Town and Village Green.

The Council additionally argues that it has, throughout the period in question, exerted and demonstrated control over the Site and that consequentially, the applicants fail in their attempt to show an unpermitted usage.

The Council is not aware of any third party representation to the registration authority in response to the application's advertisement.

#### The Council's Freeholder interest in the Site

The City Council of Bristol has been the freeholder of the Site since 9 March 1938 when the Site was purchased free from encumbrances from Thomas Cottrell Dormer and Others. The land was unequivocally obtained as an Open Space, being described in the Conveyance as:

*"being certain land which has been scheduled as a public open space by the Town Planning Committee of the Corporation."*

Appendix 1 comprises a copy of the Conveyance dated 9 March 1938. The maintenance of the Site is currently the responsibility of the Council's Culture and Leisure Services Department.

#### The History of the Site

The Site was acquired for the purposes of public open space. The history of its usage reflects this status: the public have been permitted unfettered access consistent with the use of it as open space.

Under the Local Government Act 1972 s122(2A) the Council has the power to appropriate land when the land owned by the Council ceases to be used for the primary statutory purpose for which it is currently held (here, open space) and is instead used for a different statutory purpose (here, education). However, the Council cannot appropriate any open space land without first advertising their intention to do so and considering any objections made. Accordingly, a statutory notice advertising the proposed loss of public open space was placed in the Bristol Evening Post

on the 16<sup>th</sup> and 23<sup>rd</sup> February 2006 (see appendix 2) and the drawings displayed in the reception of the Council House. Twenty four letters/emails of objections were received and duly considered. The appropriation of the land is ongoing.

Following the Development Control (Central Committee) meeting on 19 April 2006 and the ODPM's scrutiny of the proposal, and their letter stating that they would not call the scheme in for a Public Inquiry, planning permission was granted for the provision of three grass sports pitches on South Purdown; on 1 June 2006 (Application Number: 05/04175/FB) attached at appendix 3.

### **Open Space**

The Open Spaces Act 1906 s10 provides:

*"A local authority who have acquired any estate or interest in or control over any open space... under this Act shall, subject to any conditions under which the estate, interest or control was so acquired-*

- (a) hold and administer the open space.....in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose; and*
- (b) maintain and keep the open space.....in a good and decent state...."*

Open space is defined in s20 and includes "land ...which ...is used for purposes of recreation...."

The Council, in the conveyance of the Site does not expressly refer to the 1906 Act, but this is not necessary. In *Attorney General v Poole Corporation* [1938] Ch23, land was conveyed to be used as an open space. The Court of Appeal considered that it was plain that the 1906 Act applied, despite their being no express reference to it in the conveyance itself.

As mentioned above, section 122 of the Local Government Act 1972 relates to land which has been acquired by the principal council and deals with the power to appropriate land of various descriptions including "open space". Lord Scott of Foscote in *R v City of Sunderland ex parte Beresford* (at paragraph 28 – extract at appendix 4) indicated that where land is appropriated pursuant to s122 this would plainly override any public rights of use of an "open space" that previously existed: *"Otherwise the appropriation would be ineffective and the statutory power frustrated."*

Lord Scott goes on to indicate (at paragraph 52 – extract at appendix 4) that *"the statutory scheme under the Local Government Act 1972, whether or not the Open Spaces Act 1906 or section 21(1) of the New Towns Act 1981 are applicable, excludes the operation of s22(1) of the Commons Registration Act 1965"*.

The same point was discussed more recently in the case of *Oxfordshire County Council v Oxford City Council and Another*. Here the question arose as to whether the statutory powers allow a local authority to appropriate Open Space land for housing and then to dispose of the land free from any recreational rights of the local inhabitants. Lord Scott at (paragraph 89 – extract at appendix 4) indicated that if this was not the case then the statutory powers allowing Local Authorities to purchase land as Open Space land would be rendered pointless.

### **Conclusion**

It is submitted that the Site was acquired for the purposes of open space as evidenced by the Conveyance and that land which is acquired as open space is not capable of registration as a Town and Village Green following the dicta of Lord Scott. The grant of planning permission and subsequent development of the Site should not be interfered with by the proposed application to register the Site as a Town and Village Green and the application should therefore be refused.