

AGENDA ITEM NO. 5

BRISTOL CITY COUNCIL PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE 19 January, 2009

CLAIMED FOOTPATH FROM JOHNSONS LANE, THROUGH WHITEHALL PLAYING FIELDS TO BRISTOL-BATH RAILWAY PATH

(Joint Report of the Director of City Development and
the Director of Central Resources) **(Ward: Easton)**

Purpose of Report

1. To determine an application for a Modification Order under the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a footpath from Johnsons Lane, through Whitehall Playing Fields to Johnsons Road/Bristol-Bath Railway Path, Easton, Bristol.

Legal Framework

2. Bristol City Council as Highway and Surveying Authority is under a statutory duty, as imposed by Section 53(2) of the Wildlife and Countryside Act 1981, to keep the Definitive Map and Statement under continuous review and to determine any valid applications for Modification Orders that it receives.
3. Section 53(5) of the Act enables any person to apply to the surveying authority for an order to be made modifying the definitive map and statement in respect of any of the 'evidential events' specified in paragraphs (b) and (c) of section 53(3). The procedure for the making and determination of applications is set out in Schedule 14 of the Act. It includes the right for applicants to appeal to the Secretary of State against the refusal of the surveying authority to make an order.

Background

4. An application for a Modification Order has been received from a member of the public to modify the Definitive Map by adding a footpath from Johnsons Lane, through Whitehall Playing Fields (aka 'Packers Field') to the end of Johnsons Road where it meets the Bristol-Bath Railway Path, Easton, Bristol. The claimed route is shown on the Location Plan at Appendix A.
5. The relevant statutory provision in this case, which applies to adding a route to the Definitive Map and Statement, is set out in Section 53(3)(b) of the Act which requires the Surveying Authority to modify the Definitive Map and Statement following:
 - (i) *"the expiration, in relation to any way in the area to which the map relates, of any period such that the enjoyment by the public of the way during that period raises a presumption that the way has been dedicated as a public path or restricted byway."*
6. Section 31 of the Highways Act 1980 provides for the presumption of dedication of a public right of way following 20 years continuous use. Subsection (1) states:

"Where a way over any land, other than a way of such character that use of it by the public could not give rise at common law to any presumption of dedication, has actually been enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."

Subsection (2) states that:

"The period of 20 years referred to in subsection (1) above is to be calculated retrospectively from the date when the right of the public to use the way is brought into question, whether by a notice ... or otherwise."

7. The act that brought the public right into question and prompted the claim is stated by supporters of the application to be August 2006, when new fencing was erected around the field. This action effectively prevented the use of the claimed route from this date onwards.

Documentary Evidence

8. The Application to modify the Definitive Map and Statement by adding the footpath as described in paragraph 4 above, was submitted by Mr William Simpson on 23 October 2007. Mr Simpson provided seven items of documentary evidence in support of the application – a copy of the 1966 Definitive Map, Ordnance Survey maps of 1888, 1918 and 1951, the Bristol-Bath A to Z, a report to Development Control (Central) Committee of 14 July 2004 concerning Planning Application No. 03/02802/F/C and an extract from 'The History of Bristol's Suburbs'. This documentary evidence was researched by officers and is reviewed in paragraphs 9 to 19 below, and includes a summary of the planning history of the site.
9. The earliest map reviewed was the First Edition Ordnance Survey Map of 1888 (see Appendix B). This shows a route running southwards from what was then the Midland Railway line around the perimeter of a field and then westwards to meet Johnsons Road. Note that this is not the claimed route, although the most northerly part of the route where it curves to connect with the railway line does reflect a section of the claimed route (points E to D, Appendix A). This is very likely to be the route referred to in 'The History of Bristol's Suburbs' (1977) which states: *"Between Whitehall (near the "Queens Head Inn") and Easton ran, in olden days, a bridle path. Part was destroyed when the railway line was laid, but an unspoiled strip of country lane remained till the beginning of the present century, when it was officially absorbed by Packer's Playing Field at Greenbank."*
10. This same route is depicted on the 1904 and 1918 Ordnance Survey maps (see Appendices C and D), although the route

leading north has been replaced by Carlyle Road and a footbridge is now shown over the railway line.

11. This route was also shown on the map accompanying the sale of Packers 'Recreation Ground' for development in 1914 and was stopped up at Quarter Sessions in 1920 (see Appendices E and F). However, it was still depicted on the conveyance of land to Bristol City Council in 1931 (see Appendix G). This conveyance plan shows an additional route running in an easterly then southerly direction to Johnson Lane, which is similar to the claimed route. However, the spur to Gordon Road is stated on the plan to be a *"right of way reserved to owner and occupier of house coloured green between points 'c' and 'd'."*
12. The latter route, which is very similar to the claimed route, is shown on the 1950 and 1972 Ordnance Survey Maps (see Appendices H and I) connecting the tennis courts to Whitehall Gardens (NB named Johnsons Lane in earlier maps), with a spur to Gordon Road. That there existed a connection through to the footbridge and Johnsons Road is unclear, as the footpath shown on the maps apparently leads to the Allotment Gardens.
13. The published Definitive Map and Statement of 1954 and the review of the Definitive Map published in 1966 do not show the claimed route as a recorded right of way.
14. Aerial Photographs of 1974 and 2005 do not clearly show the claimed route, as the grass is kept short and well maintained, but an indistinct route can be seen (see Appendices J and K).
15. The dates of adoption of Johnsons Lane and Johnsons Road are not shown on the highway records.
16. As referred to above, Bristol City Council acquired the land in 1931. In 1974 the land was assigned to the County of Avon and transferred back to Bristol City Council at local government reorganisation in 1994. The Plan attached at Appendix Q shows the extent of land vested in Avon County Council in 1974. A route similar to the claimed route, with a spur to

Gordon Road, can be seen running within the eastern boundary of plots 14 and 21, i.e. land including the Pavilion and Playing Fields. The City Academy is currently leaseholder of the playing fields under a long lease granted by the Council on 9 July 2004.

17. The land is designated in the local plan (Adopted 1997) as Playing Fields and a wildlife network site. The Bristol-Bath Railway Path is designated both as a greenway route and safeguarded rapid transit route. The planning history of Whitehall Playing Fields is included as background papers to this report and is summarised as follows:

- a) Planning Application 02/04428/F/C – approval was given in 2003 for the redevelopment of St George Community College as the City Academy and included a number of conditions aimed at ensuring enhanced sports facilities in the locality, including rights of managed community access to sports facilities on the Academy site.

- b) Planning Application 03/02802/F/C – approval was given in 2004 for improved sports pitches and ancillary facilities for the Academy as a staged development. Phase 1 included new 2.4m high perimeter fencing and gates, plus coach parking facilities and re-levelling of the pitches; Phase 2 included the erection of a new pavilion and provision of car parking facilities. Reference was made in the report to Development Control (Central) Committee of 14 July 2004 to the concerns of local residents that the proposals represented a loss of public access to open space. In addition that *“the site seems to have been open for general public access over many years, such that an informal path may have evolved, linking Johnsons Lane with the cycle track.”* However, it was also noted in the report that there were signs around the periphery of the site advising that it is private property with no automatic public rights of access and that there are no registered public rights of way running across the site. Planning approval included Condition 11 – a Community Use Agreement – requiring a signed contract to be submitted to and approved in writing by the Local Planning Authority.

18. In summary, the documentary evidence prior to 1931 does not provide evidence of the claimed route. However, a route not dissimilar to the claimed route is shown on the 1931 conveyance, the 1950 and 1972 Ordnance Survey maps, the 1974 Avon County Council Terrier Plan and arguably on the aerial photographs of 1974 and 2005. This evidence shows that a route existed, but does not reveal its status, i.e. whether there were any private or public rights over it. The evidence is also inconclusive as to whether the route connected through to the existing adopted footpath, which extends from point 'E' on the Location Plan at Appendix A (in proximity to the former footbridge) to the top of Johnsons Road.
19. The planning evidence provides little evidence in support of the claim and it is clear that the claimed route was not treated by the Planning Authority as if it were a public right of way and it is not depicted on Plans in association with the developments that took place. The Community Use Agreement as required under Condition 11 will allow public access to the land by licence and not 'as of right', although a route shown on the approved plans is proposed to be dedicated as a public right of way along the western boundary of the site, connecting the Bristol-Bath Railway Path with Johnsons Lane.

Site Visits

20. Officers undertook site visits in April 2004 and December 2008, and a photographic record of this is attached at Appendix L and numbered on the Location Plan at Appendix A. The photographs taken in 2004 show that the perimeter fencing was apparently breached to gain access to the field by the Kings Head Pub (end of Johnsons Lane – see Point A of the plan at Appendix A). The red sign at the top of the path parallel to the Railway Path (see Point Y of the plan at Appendix A) is a notice advising the public not to let their dog foul the land. The gate at this point is unlocked, although the fencing is removed on either side. Photos from 2008 shows the perimeter fencing erected across the access point by the Kings Head Pub and remains of the former fencing. Also the original County of Avon sign, and a recently erected red sign behind the perimeter fencing, can

be seen at the former main access gates to the field from Johnsons Lane. There is evidence of recent damage to railings in this area. Photographs also show the remains of wooden railings to the north of the field, parallel to the perimeter fencing by the tennis courts. This appears to reflect part of the route of the claimed path running between points D, C and B as shown on the Location Plan at Appendix A, although officers were advised by Mr Priest of the City Academy that it was not a path and the structure was erected in the early 1990s by the 'Old Georgians' to keep people away from the football pitch (ref. interview with Mr Priest on 9 December 2008). In addition, this area alongside the perimeter fence included a 'Dugout' for managers.

User Evidence submitted in support of the Application

21. Mr Simpson's Application is supported by 15 Public Rights of Way Evidence Forms, which are included with the background papers to this report. Use of the route is claimed for varying periods of time between 1975 and 2006 (see Summary of User Evidence Forms at Appendix M for ease of analysis). Use of the claimed route has not continued up to the present day as a result of the re-fencing of the site, believed by witnesses to have taken place in 2006.
22. All maps provided with the Evidence Forms are marked to show the claimed route, shown as A-E on the plan attached at Appendix A, which is the route shown by Mr Simpson in his Application. However, approximately 50% of the forms appear to show the route as being accessed from a point near Gordon Road, rather than from the end of Johnsons Lane. Officers have concluded that the route that is claimed by Mr Simpson commences from the end of Johnsons Lane, shown as Point A on the plan at Appendix A, through a gap in the fence (see photographs at Appendix L).
23. The Summary of user evidence at Appendix M shows that a minority of witnesses (3 out of 15) claim continuous use of the route for the relevant 20-year period from 1986 to 2006 (Forms 2, 8 and 15). Two of these witnesses provide evidence prior to

the 20-year period in question (i.e. between 1975 and 1986 - Forms 8 and 15). One witness does not specify the years during which she used the route, although she claims more than 20 years user (Form 3). The other 11 witnesses claim use of the way over a lesser period, i.e. between 1992 and 2006, which nonetheless contributes to the evidence in support of the Application.

24. Other evidence contained in the Evidence Forms is summarised in the Table at Appendix M as follows:

- The evidence of width of the way is stated by the majority of witnesses to be a minimum of 3 feet to a maximum of 3 metres.
- Witnesses believe the status of the way is as Footpath.
- 8 witnesses believe the way has been known as public for more than the 20 years claimed, some believe for 50 to 60 years.
- The claimed way was used by the majority of witnesses on their way to the pub, to walk the dog, to shops, work or for business, social or recreational purposes.
- All witnesses used the route on foot, and two stated use by bike (Forms 8 and 12). 9 out of 15 walked the route daily or weekly (Forms 4, 5, 6, 7, 10, 11, 12, 13 and 15); 4 witnesses walked the route monthly or so during the 20 years claimed – Forms 1, 2, 8 and 9).
- One witness recalls a Notice on the claimed route stating: 'Please do not let your dog foul this area' (Form 7). This witness marked a point on her map to show the location of an unlocked gate alleged to have been erected in May 2005 (shown as Point 'Y' on the Location Plan at Appendix A).
- In respect of obstructions to the way, one witness refers to the route being closed by developers in August 2006 (Form 3) and one states that the field was blocked off totally in July 2006 (Form 5). This same witness marked a location on her map where a gate was put up in early 2005, which stopped people going down the steps (shown as Point 'D' on the Location Plan at Appendix A).

- The majority of witnesses knew or had seen others using the claimed route.
25. Mr Simpson was not able to attend an interview, but has submitted a statement which is shown at Appendix N. Mr Simpson asserts that use of the claimed route was without force and that there is “enough good evidence to suggest that the use of the footpath has been ‘as of right’ for several decades prior to 2006 and that the path is shown on the 1966 and 1972 Ordnance Survey maps. However, as set out in paragraph 23 above, two witnesses provide use of the claimed route between 1975 and 1986 which does not provide evidence in support of the relevant 20-year user period in question, i.e. between 1986 and 2006. Although the claimed route may be shown on Ordnance Survey maps, as explained in paragraph 18 above this only provides evidence that a route existed and does not provide evidence of its status.
26. In conclusion, the user evidence supplied by Mr Simpson in support of his Application provides evidence of use of the route for the 20-year period claimed from 1986 to 2006 and is supported by the additional user evidence set out in his Statement at Appendix N, in the assertion that use of the route was without stealth or force. However, reference to a gate or gates erected and locked at points ‘D’ and ‘Y’ on the plan at Appendix A, do indicate a possible interruption to the 20 years of use claimed. The user evidence is inconclusive on this point. The user evidence is also supported by the documentary evidence as set out in paragraphs 9 to 19 above, which indicates that a route very similar to the claimed route was in existence between 1931 and 1974. However, this route existed prior to the relevant 20-year period of use claimed between 1986 and 2006 and the status of the route is unknown.

Landowner Evidence

27. As referred to above, the title to the land over which the claimed route runs is held by Bristol City Council, and the City Academy were granted a formal long leasehold of the playing field in 2003. The Applicant, Mr Simpson, served notice of the claim on

landowners and occupiers on 23 October 2007, in accordance with the requirement in Schedule 14 of the Wildlife & Countryside Act 1981.

28. The views of the City Academy on the DMMO application are appended to this report (see Appendix O) and are self-explanatory. However, the grounds of the objection are not valid, in that they do not address the legal test of whether or not public rights have been acquired over the claimed route over the 20-year period in question. However, it does refer to the ruling on the Town Green Application, which is attached at Appendix P.
29. Officers' comments on the points raised in the evidence contained in the Inspector's report to the Council (attached to the committee report at Appendix P) are as follows:
 - The recommendation of the Inspector was that the town green application be dismissed on two main grounds: (i) that user was not as a matter of fact sufficient to bring to the attention of the landowner of the Field a claim to a public right; and (ii) that, insofar as the user has occurred it is in law contentious until 1992 if not later. However, this conclusion was based on use of the whole Field as a town green, and not of the specific use of the claimed route.
 - However, the inspector's report did contain reference to access being gained by force to the Field at points corresponding to Points A, Y & D on the Location Plan at Appendix A (see paragraphs 2.1, 5.1, 5.2, 5.4, 5.5, 5.7, 5.8, 5.10, 5.14, 5.17, 5.18, 5.19, 5.31 and 5.36 of the Inspector's report at Appendix P). This includes reference to a hole in the fence at Point A, but no reference to a locked gate at Point Y or D, apart from the evidence of the Head Teacher of Whitehall Primary School (see paragraph 5.26). This is contradicted by the evidence of a former Chair of Governors who states that the gate was locked (see paragraph 5.33). Therefore, the evidence of a locked gate at Point Y or D is inconclusive.
 - There was also reference to the existence and effect of the sign, which is visible at the main vehicular entrance from Johnsons Lane (see paragraph 2.5 of Inspector's report),

which states: *“County of Avon – Private Playing Field/Grounds. Members of the public are warned not to trespass on these grounds. The exercising of dogs is forbidden. Requests for the authorised use of these grounds should be made to the Director of Education.”* (See also paragraphs 5.23 and 5.34 of the Inspector’s report at Appendix P and photos at Appendix L). As referred to in paragraph 16 above, the sign applied to use of the Playing Field, including the claimed path. The evidence provided by Mr Ray Priest, Principal of the City Academy (and formerly of St George’s School) is set out at paragraph 5.20 of the Inspector’s report and is supported by Mr Priest’s Witness Statements to the Town Green Inquiry (held as background papers to this report). There is evidence of repairs to gaps in the perimeter fencing over the years and of signs at various points around the perimeter, which are shown as Points ‘X’, ‘Y’ and ‘Z’ on the Location Plan at Appendix A. The location of these signs were confirmed by Mr Priest in an interview with officers on 9 December 2008. Mr Priest’s evidence is supported by that of others, who also claim to have turned trespassers away from the Field (see paragraphs 5.21, 5.22, 5.23, 5.27, 5.30, 5.32, 5.35 and 5.37 of the Inspector’s report).

- Other evidence indicates that the formal use of Packers Field by the local community and community groups is by licence and not as of right, and occurred between 8 a.m. and dusk, or later by prior agreement (see paragraph 4.2 of Inspector’s report).

30. In his evaluation of all evidence provided to the Town Green Inquiry, the Inspector gave the greatest weight to evidence that had been tested by cross-examination of witnesses and contemporaneous documentation such as receipts, records books and correspondence (see para. 6 of the inspector’s report at Appendix P). The Inspector found that public recreational use of Packers Field had occurred since 1970. However, because of challenges by the groundsmen and others to this use, that this amounted to evidence of continuing trespass which was exacerbated by the deterioration of the perimeter fencing since 1988 and evidence of access to the site

via gaps in the fencing, including in particular at the Kings Head Pub and adjacent to the tennis courts (see paras. 7.1.7; 7.1.9 and 7.3 of the Inspector's report at Appendix P). With respect to Signage, the Inspector accepted that signs were erected on the land forbidding entrance without the consent of the Council, and gave an approximate date of 1988 for the erection of the Avon County Council sign at Point X on the Location Plan at Appendix A (see letter dated 30 June 1988 from Avon County Council to a Gordon Road resident at Appendix R and paras. 7.1.7; 7.2 and 7.3 of the Inspector's report at Appendix P). In conclusion, the Inspector found that use of Packers Field was not 'as of right' and that access to the field was by force (see para. 8.4 of the Inspector's report at Appendix P). As the majority of this evidence was tested by way of the cross-examination of witnesses at the Town Green Inquiry, your officers conclude that on face value the evidence should be considered to be of significant weight and does seriously undermine the claim for a public right of way across Packers Field. Additional investigation by officers has revealed correspondence between the Parks Manager, Bristol City Council and Estates Services, Avon County Council regarding permission for public access across the field, which supports this conclusion (see Appendix S 1-3).

Consultation

31. Informal consultation with footpath societies/user groups has been undertaken and no comments have been received to date.
32. The City Academy and Mr Simpson have been given an opportunity to comment on a draft of this report. No further evidence has been submitted by the City Academy.

Conclusion

33. Committee members must decide on all the evidence before them whether the allegation that the claimed route is a public footpath is substantiated. There must be evidence to show that the route marked with a black line on the plan attached at

Appendix A (points A-E) has been used by the public at large as of right and not by licence during the relevant 20-year period in question. The evidence must be sufficient to raise a presumption that the way has been dedicated as a public footpath and has not been rebutted by any other evidence to show that there was no intention on the part of the landowner to dedicate.

34. The supporters of the claim contend that use of the claimed footpath as a public right of way was brought into question in 2006 when the route was blocked by new perimeter fencing, which effectively prevented public access from that date. The evidence of a locked gate at Points D or Y in 2005 is contradictory and inconclusive. However, evidence of the erection of the Avon County Council sign in approximately 1988, located at Point X on the plan at Appendix A, which was the main entrance to the site for formal and informal access, does provide an earlier interruption during the relevant 20 years of use between 1986 and 2006 which is sufficient to undermine the claim. Members should therefore look for additional evidence of continuous use of the claimed route between 1968 and 1988 and should decide whether the evidence supplied does support an earlier period of 20 years. In your officers' opinion, there is insufficient evidence to support this.
35. Use of the route as a public footpath is claimed by a total of 15 people through user Evidence Forms and is supported by a written Statement supplied by the applicant. Four of the people who completed evidence forms claim use for a period of 20 years or more up to 2006 unhindered and unchallenged, and one of these witnesses claimed use from 1975. No witnesses were employed by the landowner during the 20-year period of use claimed and none stated that they had asked or been given permission to use the route.
36. There must be sufficient evidence to show that the route marked A-E on the plan attached at Appendix A has been used by the public at large, rather than individuals exercising a private right, for such a period to raise a presumption that it has been dedicated as a public footpath and that this evidence has not been rebutted by any other evidence.

37. Officers conclude that on the basis of all evidence available to them at this time and on the balance of probability that there is insufficient evidence to reasonably allege that the presumption of dedication contained in Section 31(1) of the Highways Act 1980 has been raised for the claimed footpath. It appears to officers more reasonable than not to allege that although the evidence shows that there has been public use of the claimed footpath for 20 years or more, that this use is not 'as of right' and is undermined by the evidence of a contrary intention submitted by The City Academy and other witnesses at the Town Green Inquiry. Officers conclude that, taken altogether, this evidence is sufficient to rebut the presumption of dedication.
38. In deciding whether the claim is made out, Members have to decide whether the rights as claimed subsist or are reasonably alleged to subsist. It is the opinion of the Director of Central Resources (Legal Division) and the Director of City Development that, on balance, the rights claimed are not reasonably alleged to subsist.

Options

39. The Committee must consider whether there is sufficient evidence to support the allegation that the presumption of dedication is raised under Section 31 of the Highways Act 1980, following 20 years of continuous use of the claimed route by the public. The standard of proof is the civil one, being a proof of the balance of probabilities; i.e. that it is more likely than not that the allegation of presumed dedication is true. Members must weigh up all the evidence provided and if, on balance, they consider that the claimed public right of way is reasonably alleged, then the presumption is raised. If, on the other hand, Members consider that there is insufficient evidence to support the allegation of presumed dedication; or that the evidence in support has been rebutted by sufficient evidence to show that there was no intention to dedicate; then on balance they may consider that it is more likely than not that the allegation of presumed dedication is false.

40. The onus on the landowners is to produce evidence that there was no intention on their part to dedicate; for example an overt act on the part of the landowner to show the public at large that there was no such intention. Such evidence may consist of notices or barriers, or the locking of the way on one day in the year and drawing this to the attention of the public; or the deposit of a Statutory Declaration under Section 31(6) of the Highways Act 1980 to the effect that no additional ways (other than any specifically indicated in the Declaration) have been dedicated as highways since the date of the deposit.
41. If the Committee considers that the claim is made out - i.e. that there is sufficient evidence to reasonably allege that there has been uninterrupted use by the public over a period of 20 years which has not been sufficiently rebutted by evidence to the contrary - it must resolve to make a Definitive Map Modification Order as requested. Public use of the way must have been without hindrance or permission from the landowner or his agents. The 20 year period must end with the date when use of the path was first 'called into question', which in this case is considered to be 1988 (see paragraph 34 above).
42. Alternatively, if the Committee considers that the claim is not made out, it should resolve not to make an Order.
43. As Members are aware, financial implications must not be taken into consideration when determining this modification order application, as the Council has a statutory duty to make an Order if it believes there is sufficient evidence to support it.
44. Should the Committee decide to make and advertise an Order, authority is given to the Head of Legal Services to prepare and seal an Order to modify the Definitive Map and Statement by including the claimed route as a footpath. A Notice of Making of the Order will be served on all affected owner/occupiers and statutory consultees, advertised in the local press and displayed on site. The Notice will indicate a period during which the public and those affected by the Order will have an opportunity to make formal representations or objections. If any are received, they will be reported back to this Committee at a

future date. If none are received within the time limit specified, the Order may be confirmed as unopposed.

Appendices

- Appendix A: Location Plan
- Appendix B: First Edition Ordnance Survey Map of 1888
- Appendix C: Ordnance Survey Map of 1904
- Appendix D: Ordnance Survey Map of 1918
- Appendix E: Map accompanying sale of land in 1914
- Appendix F: Plan of Stopping Up of path through Packers Recreation Ground – Midsummer Quarter Sessions 1920
- Appendix G: Conveyance H.J. Packer dated 4 July 1931
- Appendix H: Ordnance Survey Map of 1950
- Appendix I: Ordnance Survey Map of 1972
- Appendix J: Aerial Photograph dated 1974
- Appendix K: Aerial Photograph dated 2005
- Appendix L: Photographs from Site Visits of 2004 and 2008
- Appendix M: Summary of User Evidence
- Appendix N: Statement of Mr Simpson received 5 January 2009
- Appendix O: Letter dated 27 February 2008 from Mr Ray Priest of the City Academy
- Appendix P: Report to 25 July 2005 Public Rights of Way and Greens Committee – Packers Field Town Green Application with Inspector's Report appended.
- Appendix Q: Avon County Council Terrier Plan c. 1974
- Appendix R: Letter dated 30 June 1988 from the Director of Education to Mr A T Pointer
- Appendix S: Correspondence between Parks Manager, City of Bristol and Estates Services, Avon County Council regarding a request for public access to the field.

Policy Implications

None arising directly from this report.

Resource Implications

There are no specific resource implications arising from this report, although if an Order is made which receives objections

that are not withdrawn, there would be cost implications if a public inquiry were to ensue. A way added to the definitive map is publicly maintainable only if it can be shown to have come into existence prior to the 1959 Highways Act.

Other Approvals necessary

None

Recommended:

That the application for a Definitive Map Modification Order is refused.

Local Government (Access to Information) Act 1985

Background Papers:

- 1 Wildlife & Countryside Act 1981 (obtainable from HMSO);
- 2 Application for Modification Order dated 23 October 2007 (held by Legal Officer, Statutory Orders, Central Resources)
- 3 Public Rights of Way Evidence Forms and documentary evidence in support of the Application (held by Legal Officer, Statutory Orders, Central Resources)
- 4 Letters of representation, plans and correspondence relating to the claimed route (held by the Public Rights of Way Officer, Traffic Management, City Development).

Contact Officers:

Christine Pouncett, Road Safety, Walking and Cycling Team,
Traffic Management, City Development
Tel. (0117) 903 6841

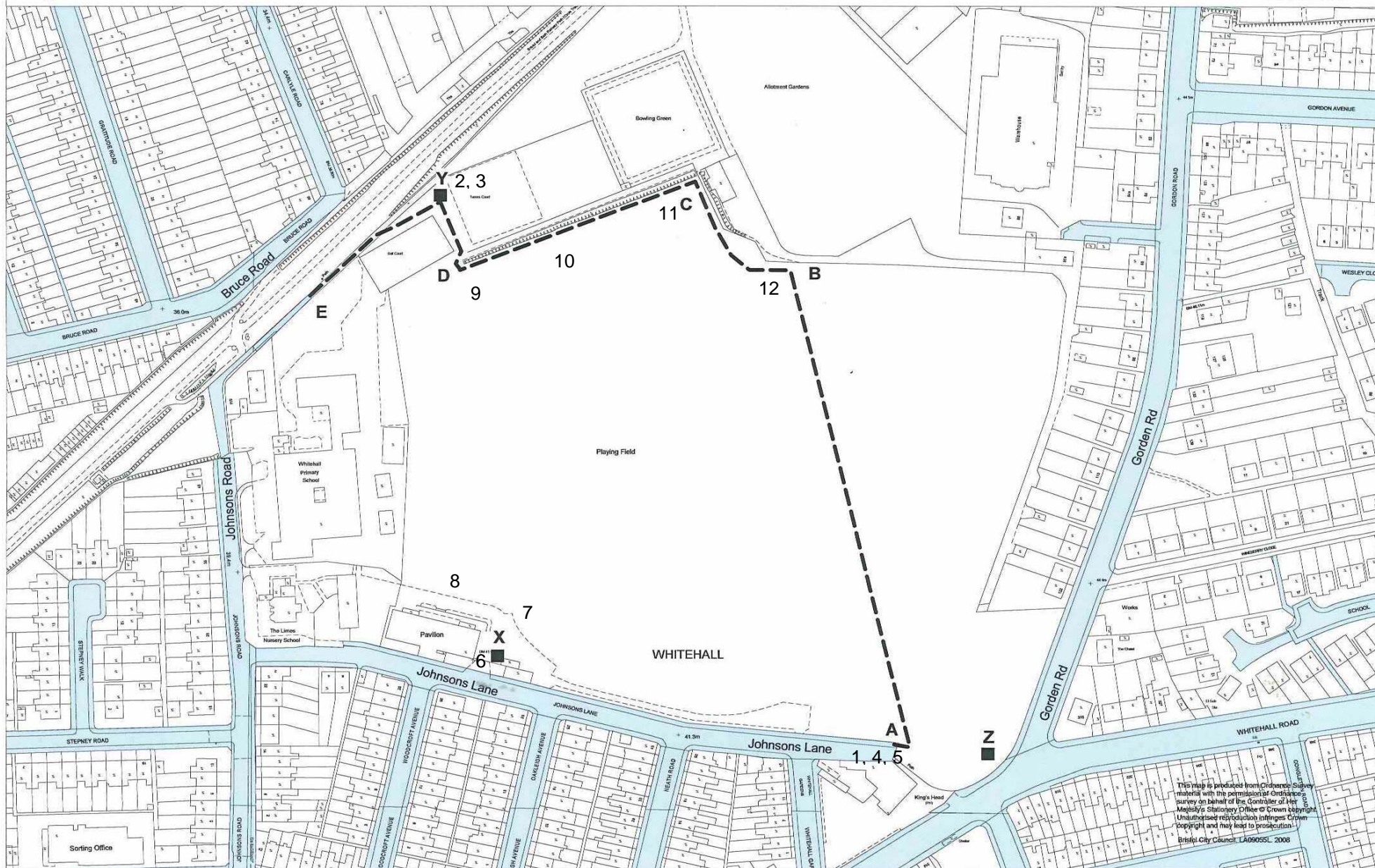
Michelle Darby, Solicitor – Planning and Highways, Central
Resources.
Tel. (0117) 922 2338



■ Notices & Signs
- - - Claimed route

Footpath from Johnsons Lane to Bristol - Bath Railway Path

Not to Scale  NORTH

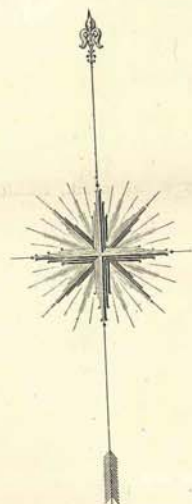




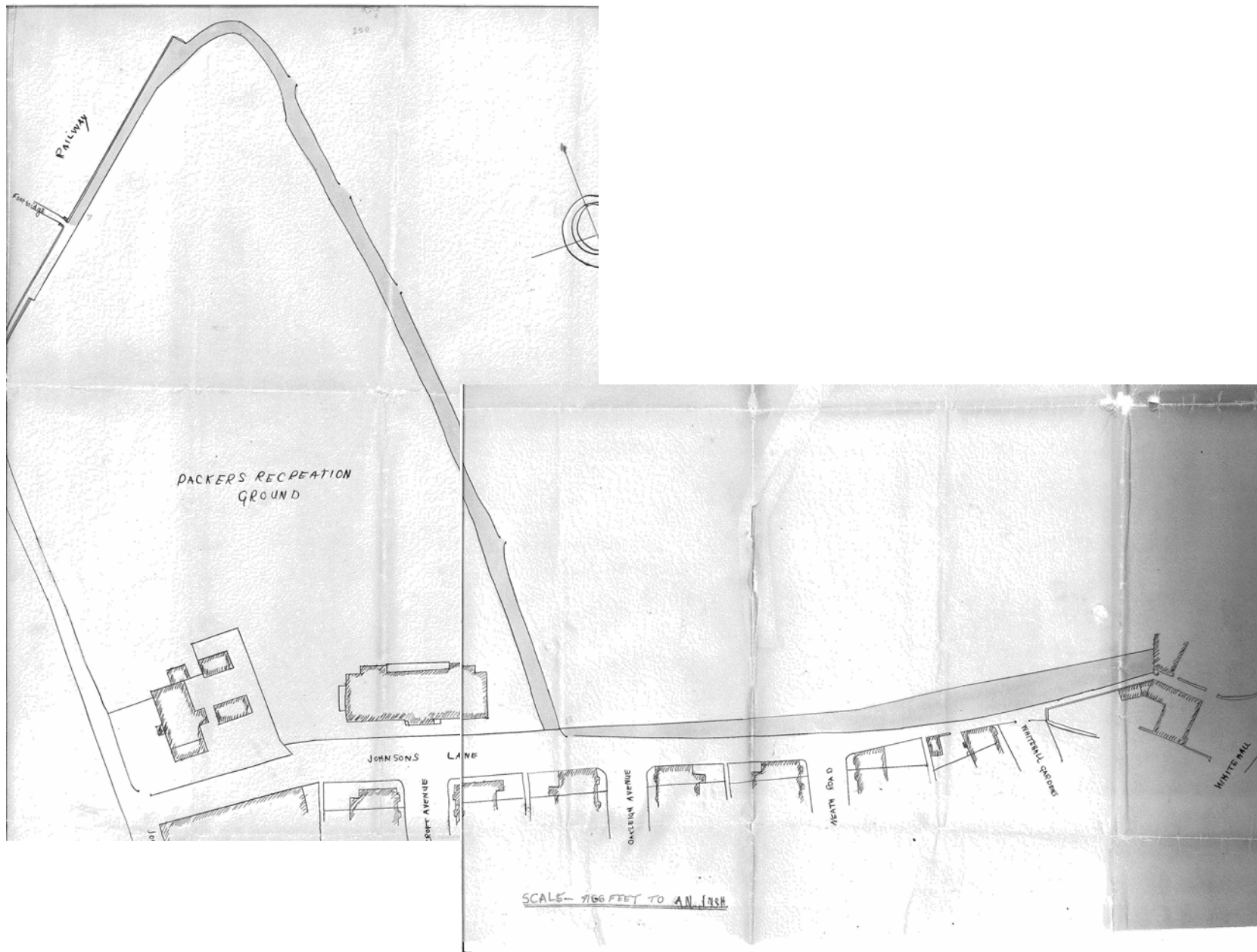
Ordnance Survey Map 1903-04



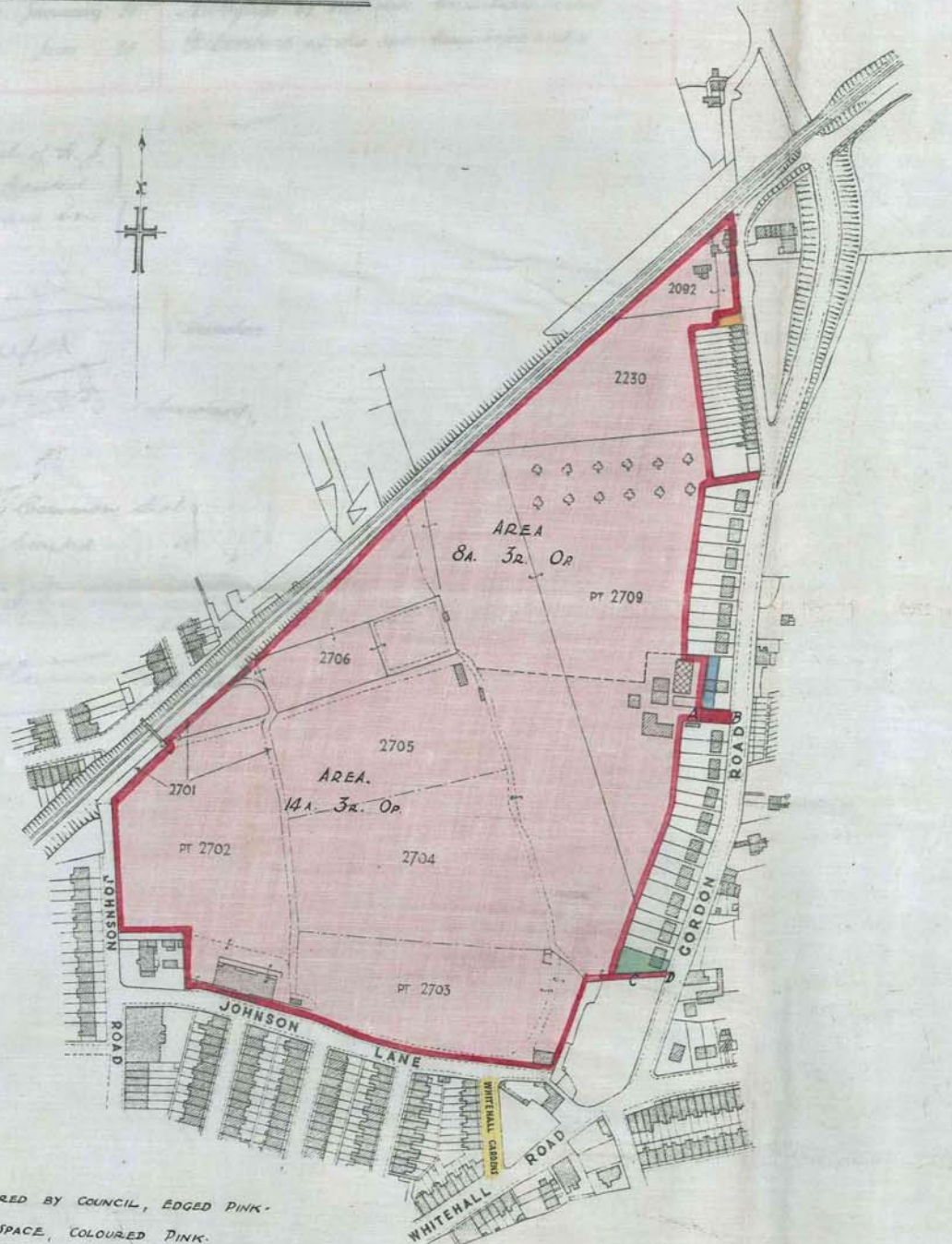
annexed to the Particulars and Conditions of Sale of a
PIECE OF BUILDING LAND
 (coloured Pink in the Plan) situate at
WHITEHALL, ST. GEORGE, BRISTOL,
 to be SOLD BY AUCTION by
Messrs. GEO. NICHOLS, YOUNG, HUNT & Co.,
 on Thursday, the 19th day of February, 1914, at 3 p.m.



*This
 whilst
 is in no*



PLAN REFERRED TO



NOTE. AREA TO BE ACQUIRED BY COUNCIL, EDGED PINK.

AREA FOR OPEN SPACE, COLOURED PINK.

RIGHT OF WAY ONLY, COLOURED BROWN.

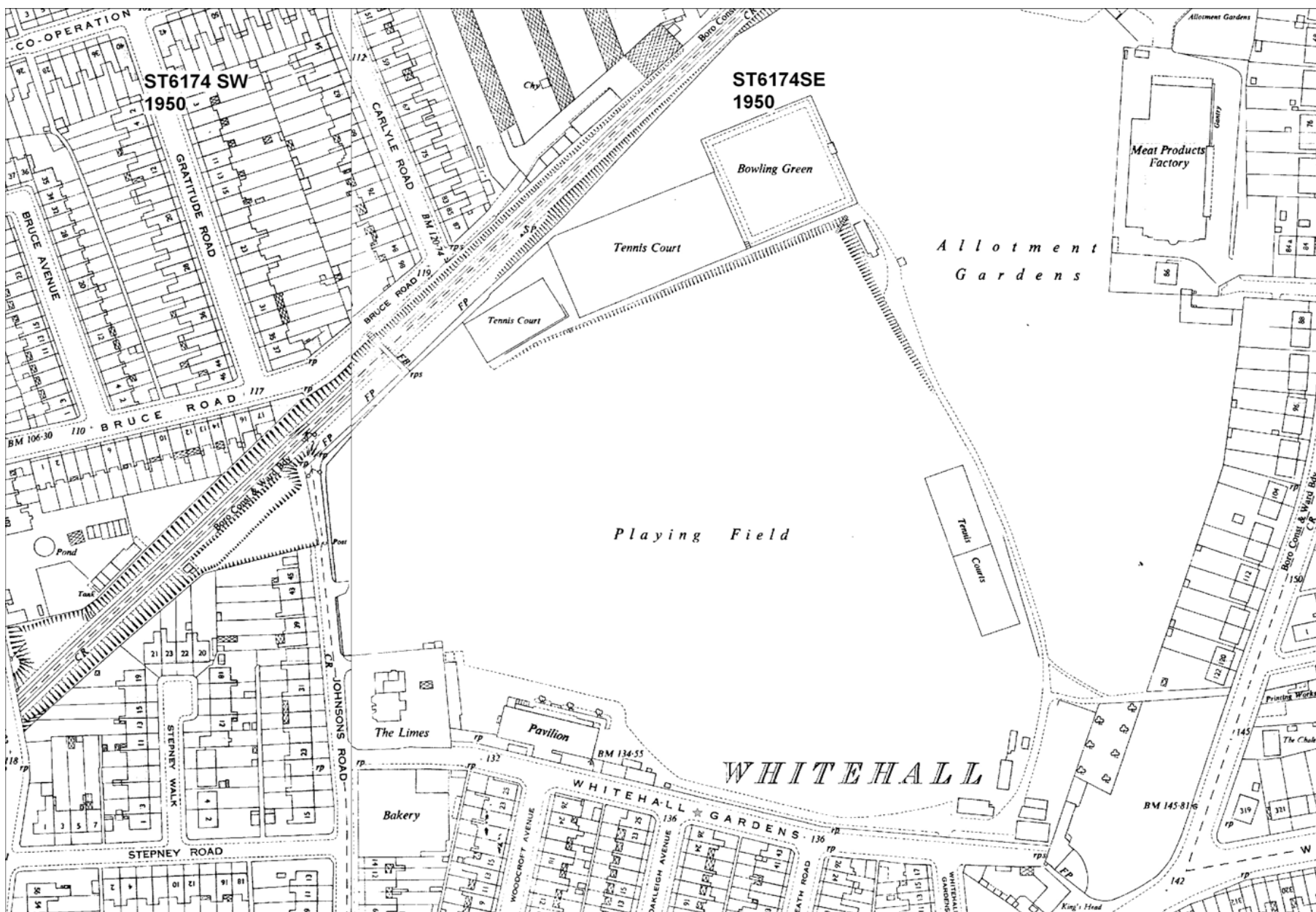
RIGHT OF WAY RESERVED TO OWNER & OCCUPIER OF HOUSE COLOURED BLUE BETWEEN POINTS A & B.

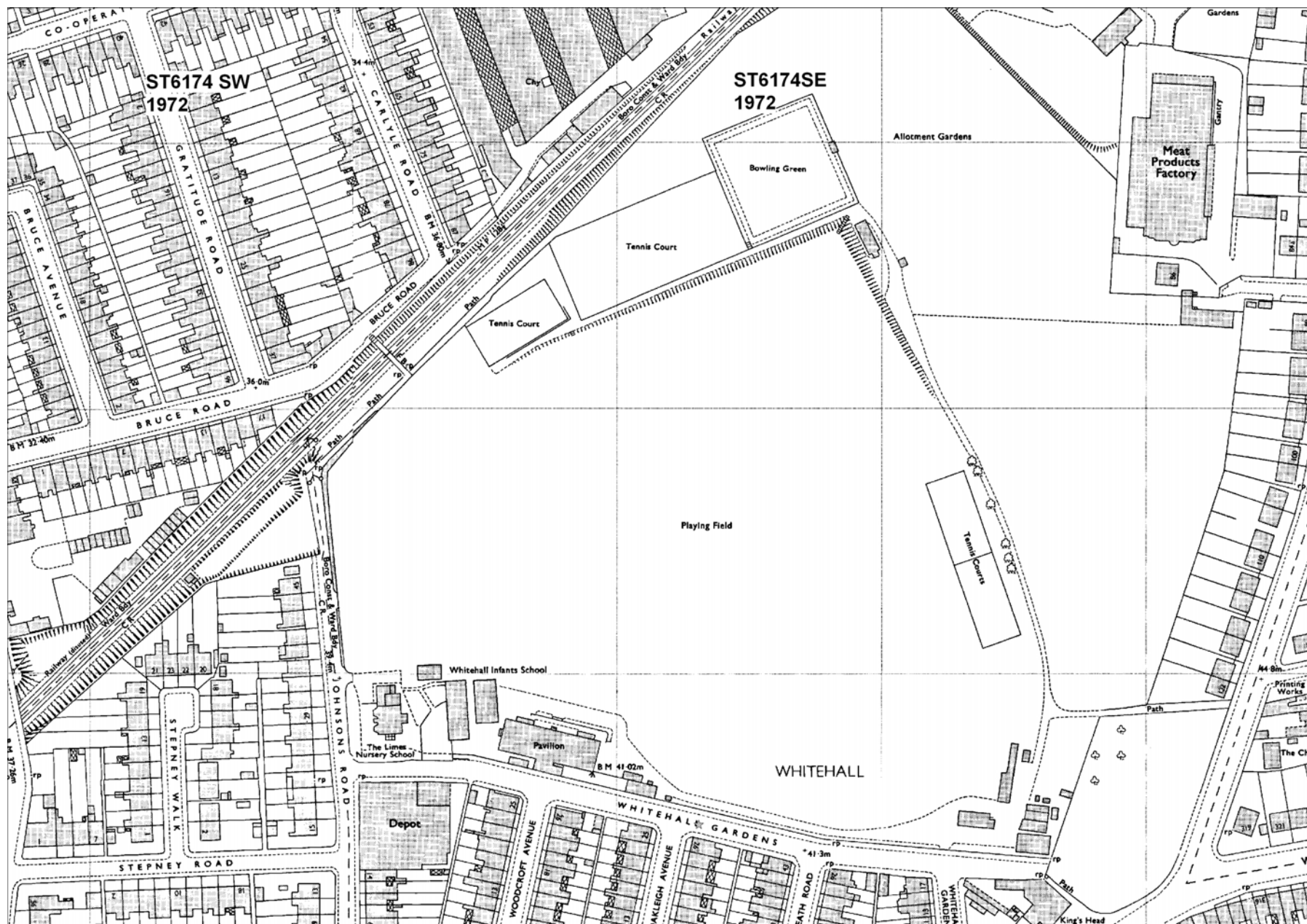
RIGHT OF WAY RESERVED TO OWNER & OCCUPIER OF HOUSE COLOURED GREEN BETWEEN POINTS C & D.

SCALE $\frac{1}{2500}$

Feet 100 200 300 400 500 600 700 800 900 1000 Feet.

CITY-EST.
VALUER
2
V^o 4.6





Aerial Photograph 1974







Photo 1 – April 2004 – GAP IN PERIMETER FENCING, Johnsons Lane/Gordon Road



Photo 2 – April 2004 - Sign at top of parallel path from Railway Path/Johnsons Road



Photo 3 – April 2004 - Gate at top of path parallel to Railway Path – fencing missing



Photo 4 – December 2008 – Perimeter fencing across former access, Johnsons Lane



Photo 5– Dec. 2008 – Remains of previous fencing – by former access point, Johnsons La



Photo 6 – December 2008 – Original Avon Sign and more recent red sign beyond



Photo 7 – December 2008 – Red sign beyond south perimeter fencing to Packers Field



Photo 8 – December 2008 – Evidence of recent damage to railings in vicinity of signs



Photo 9 – Dec. 2008 – Remains of wooden railings parallel to perimeter boundary to north



Photo 10– December 2008 – Location of 'Dugout' between boundary and football pitch



Photo 11 – December 2008 – Continuation of wooden railings parallel to eastern boundary



Photo 12 – December 2008 – End of wooden railings, looking to Gorden Rd/Johnsons La

Definitive Map Modification Order Application - s53, Wildlife and Countryside Act 1981
ANALYSIS OF EVIDENCE

CLAIMED: FOOTPATH from Kings Head Pub, Whitehall - Johnson's Lane to Bristol and Bath Railway Path

FILE REFERENCE

ID3/641

| NAME OF WITNESS | FORM NO | MAP | DESCRIPTION OF ROUTE | BELIEVED STATUS | KNOWN AS PUBLIC | HOW WIDE? | USED BETWEEN (calendar years) | TOTAL No. OF YEARS 'USE | PURPOSE OF JOURNEY | NO. OF TIMES USED PER YEAR | ON FOOT, HORSEBACK, OR OTHER | WHOLE LENGTH OF ROUTE / any diversions/alterations? | STILES / GATES? | WORKED FOR LANDOWNER? | NOTICES? | EVER STOPPED? | EVER TOLD NOT PUBLIC? | OBSTRUCTIONS / LOCKED GATES? | GIVEN PERMISSION TO USE ROUTE? | PRIVATE RIGHT? | KNOWN OTHERS USING ROUTE / other information? |
|-----------------|---------|-----|--|-----------------|-----------------|------------------|-------------------------------|-------------------------|--------------------------------------|----------------------------|------------------------------|--|-----------------|-----------------------|----------|---------------|-----------------------|---|--------------------------------|----------------|---|
| Will Simpson | 1 | √ | Kings Head Pub to Bristol//Bath cycle path | FP | At least 20 yrs | 2m | 1994-2006 | 12 | Pleasure | 12 | Foot | Yes – no diversions | No | No | No | No | No | No | No | No | Yes – (lead claimant) |
| Bridget Fenton | 2 | √ | Kings Head, Gordon Rd to cycle path, Greenbank | FP | - | 3ft | 1986-2006 | 20 | Social | 30 | Foot | Same route – no divisions | No | No | No | No | No | No | No | No | - |
| Jessica Paul | 3 | √ | Kings Head, Gordon Rd to cycle path/Bruce Road | FP | - | 3m (open access) | - | States more than 20 yrs | Recreational / Visit Friends | 4-5 / more recently | Foot | Yes / - | No | No | No | No | No | August 2006 – route closed by developer | No | No | Yes – 3x others |
| Susan Mennear | 4 | √ | Path parallel to cycle path to Kings Head Pub, Stratford Rd | FP | 6 yrs | Not wide route | 2001-2006 | 5 | To pub/ play football / walk dog | Average 3x weekly | Foot | Not always / Not diverted | No | No | No | No | No | No | No | No | Yes – footballers |
| Colette Bourn | 5 | √ | Kings Head Pub, Johnson's Lane to FP parallel to cycle track, Bruce Rd | FP | 7 yrs | 3ft | 2000-2006 | 6 | Shopping, Friends, Walking & Leisure | Daily | Foot | Early 2005 – diversion across tennis courts No / Gate put up early 2005 | No | No | No | No | No | Field blocked off Totally JULY 2006 | No | No | Yes |

Definitive Map Modification Order Application - s53, Wildlife and Countryside Act 1981
ANALYSIS OF EVIDENCE

| | | | | | | | | | | | | | | | | | | | | | |
|------------------|----|---|---|----|-------------------|-----------|---------------------|----|-------------------------------|---------------------------|----------------|--|----|----|---|----|----|---|----|----|------------------------|
| Claire Godden | 6 | √ | Bristol-Bath cyclepath along side of field, then across field to Kings Head Pub | FP | Since early 1980s | 4-5ft | 1992-2006 | 14 | Pleasure and Shopping | 3-4x weekly | Foot | Currently / - | No | No | No | No | No | No | No | No | Yes – 1x / seen others |
| Sandra Willavoys | 7 | √ | FP off cycle track, Bruce Rd, to rear of Kings Head Pub, Whitehall Rd | FP | 60 years | N/A | 1992-2000 2003-2006 | 11 | Pleasure | Daily | Foot | Diverted by gate near tennis courts May 2005 | No | No | Yes - Please do not let your dog foul this area | No | No | 2006 | No | No | . |
| Andrew Smith | 8 | √ | Kings Head Pub, corner Whitehall Playing field to Bristol-Bath cycle path | FP | 30 yrs | 3m | 1975-2006 | 31 | Pleasure and Visiting Friends | 10x / more in early years | Foot/Bike | - / None that can remember | No | No | No | No | No | No | No | No | Yes, many |
| Melanie Friday | 9 | √ | Kings Head Pub to cycle path | FP | 2 yrs | Very open | 2004-2006 | 2 | Pleasure | Several | Foot | Don't know | No | No | No | No | No | No | No | - | . |
| Rebecca Ellis | 10 | √ | Kings Head Pub, to path leading to cycle path | - | . | 1m | 1996-2006 | 10 | Work and Pleasure | Daily | Foot | Yes / Not diverted | No | No | No | No | No | Whole field blocked since Academy became tenant | No | No | No |
| Guy Henderson | 11 | √ | Cycle track to corner Packers Field/Kings Head Pub | - | . | 1m | 1994-2006 | 12 | Pleasure | Daily | Foot | Not always /Not diverted | No | No | No | No | No | No | No | No | Yes |
| James Adamson | 12 | √ | Cycle path to Stretford Rd and allotments | FP | 20+ yrs | 1-1.5m | 2000-2006 | 6 | Pleasure | 70+ | Foot + Bicycle | Yes/Not diverted | No | No | No | No | No | Aug/Sept '05 gates welded across path | No | No | Yes (6 x others) |

Definitive Map Modification Order Application - s53, Wildlife and Countryside Act 1981

ANALYSIS OF EVIDENCE

[illegible]

APPENDIX (5) N

12 Heyford Ave
Eastville
Bristol BS5 6UF

Dear Ms Pouncet and Ms Darby,

As I am not able to come in and meet you in person today this is the statement that I would like to add to the draft report into my application to modify the Definitive Map with a footpath from Johnson's Lane across Whitehall Playing Fields (known colloquially as 'Packer's Field').

There is more than enough good evidence to suggest that the use of the footpath has been 'as of right' for several decades prior to 2006. This is for a number of reasons:

According to the evidence from 15 witnesses, some of whose testimonies date back to the 1970s and 80s, entry onto the field was without force - ie it did not require access through broken fences or locked gates. The balance of evidence suggests that the gate depicted in Appendix L of the report was never locked and thus never forced open. The path is also clearly depicted on the 1966 Definitive Map as well as the 1972 Ordnance Survey Map.

Entry onto the field was also without stealth. The access points were never secret. The path was frequently used, not just by the 15 witnesses who have submitted evidence, but by several generations of local people. And as it was clearly shown on the both the 1966 and 1972 maps one can only assume that its use was encouraged.

Entry onto the field was also without permission. No witnesses recall seeing the sign shown in Appendix L. The sign itself is small and insubstantial. There is also no other or any earlier evidence that license was granted. The first evidence that permission was granted dates from 1988, a full 22 years after the 1966 map. Therefore customary right for the public to use the path had already been established by the time the sign was erected in 1988. There is clear legal authority to support this and this will need oral submissions on complicated law.

There are just three further points I'd like to make in reply to the draft report. One - the City Academy's evidence makes reference to the footpath running across the football pitches. The path in fact does not cross any of the football pitches on Packer's as they were laid out prior to the field re-opening in Spring 2008.

In his evidence the Principal of the City Academy makes reference to the health and safety risk to children from access. The landowner grants licensed access

anyway and licensed access poses the same health and safety problems. Right of way does not cause this.

Also, the wooden railings mentioned at paragraph 20 clearly could not have kept people off the football pitches as they were less than a foot off the ground, so this point is irrelevant.

In summary, this application is a valid one and there is substantial evidence to suggest that the route has been used 'as of right' by local people for several decades.

Yours sincerely,

W Simpson

Raising the aspirations of all young people



BRISTOL'S FIRST ACADEMY

Principal: Dr Ray Priest

27th February 2008

Head of Legal Services
Bristol City Council
College Green
Bristol
BS1 5TR

Dear Sir

Re: Application for a Modification Order – Whitehall Playing Fields.

I acknowledge the application made by William Simpson of 12 Heyford Avenue, Eastville, Bristol in respect of adding a footpath across the Whitehall Playing Fields between The Kings Head Public House, Whitehall and the Bristol and Bath Cycle Path.

On behalf of the governing body who are leaseholders of this land, I would like to lodge a formal objection to the application for a modification order.

The reasons for this objection are as follows:

1. The proposed access across the site would seriously undermine the ability of the Academy to maintain the health and safety of children and users on the site. In running school activities we have a duty of care for the protection of children and this proposed access would deny us the right to prevent access of any individual to the site regardless of the dangers posed to children. There would be easy access to the changing facilities and this would further risk the safety of children.
2. The proposed location of the path cuts across the pitch layout at the site and would therefore impact on the ability to stage sporting matches of any kind. Even when not cutting across the pitches, the proximity to matches would present any users of the proposed footpath with risk of injury caused by cricket balls, footballs and javelins. The Academy would not be able to accept such liabilities for injury caused.

The City Academy, Bristol, Russell Town Avenue, Bristol BS5 9JH

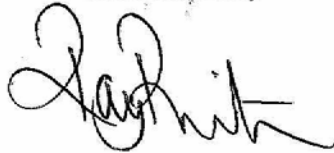
Telephone 0117 941 3800 Fax 0117 954 2857 info@cityacademybristol.org www.cityacademybristol.org

The City Academy, Bristol is a Charitable Company limited by guarantee and incorporated in England and Wales under Company No 04537464

3. In the Town Green Application ruling, it was noted that there was not historical rights to access to the field which constituted a sports facility. The addition of a footpath would contravene this ruling and would prevent the locking of the facility overnight for the security of facilities and local neighbours as currently agreed in the community use agreement.
4. Access of this nature would damage the substructure of the sports pitches installed and would impact on the drainage solution for this site.
5. The proposed route would cross car park access and parking facilities thereby causing risk to personal welfare and property.

I would urge the application to be rejected on these grounds.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ray Priest', written in a cursive style.

Ray Priest
Principal

Agenda Item no. 11

BRISTOL CITY COUNCIL

Public Rights of Way and Greens Committee

25 JULY 2005

**APPLICATION FOR REGISTRATION OF LAND AT PACKER'S FIELD,
JOHNSON'S LANE, WHITEHALL AS A TOWN OR VILLAGE GREEN IN
PURSUANCE OF THE COMMONS REGISTRATION ACT 1965**

(Report of the Head of Legal Services)

(Ward: Easton)

**Applicant: Ms Sandra Willavoys, 11 Whitehall Gardens, Whitehall, Bristol
BS5 7BN**

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

(2) The City Academy of Bristol, St George Campus, Russell
Town Avenue, Bristol BS5 9JH, lessee of the application
site.

Purpose of Report

1. To recommend that the Committee follow the advice of the Inspector in his report dated 12 July 2005 (appended).

Background

2. Ms Willavoys applied on the 13 of July 2004 for registration as a green of land located at Johnson's Lane in Whitehall. The application was advertised in accordance with the Commons Registration (New Land) Regulations 1969 during September 2004, with a deadline for objections of 30 November 2004.
3. At its meeting of 10 January 2005, the Committee, as representative of the Commons Registration Authority, agreed to the appointment of an independent external Inspector to hold a non-statutory Local Inquiry. Such an Inquiry took place at the Council House from 18 – 22 April 2005. The Applicant represented herself, while the Objectors were jointly represented by Counsel. Following the Inquiry, the Inspector accordingly prepared the appended report.
4. The Inspector conducted a full and fair Inquiry, heard all the evidence and legal submissions and concluded that the Commons Registration

Authority should dismiss the Application, as the Applicant had failed to establish that Packer's Field met all the criteria of the statutory definition of a town or village green. His conclusions are to be found at paragraph 13 of his report as follows:

"The Authority should dismiss the application to register Packer's Field, Whitehall, Bristol, because:

- (1) The Applicants have failed to establish any continuous period of twenty years' user of the Field for lawful sports and pastimes between 1970 and the date of the inquiry. This was because:
 - (i) The user was not as a matter of fact sufficient to bring to the attention of the landowner of the Field a claim to a public right;
 - (ii) Insofar as the user has occurred it is in law contentious until 1992 if not later.
 - (iii) The Applicants have not proven that the user was by the residents of a locality, being a locality known to law.
- (3) Insofar as the Applicants must rely on the amended version of section 22 continuing to the date of registration (that is, on the basis of the law as declared by the Court of Appeal in **Trap Grounds**) any continuing user is contentious and hence not as of right.
- (4) I also advise that user has not been by a significant number of the inhabitants of the neighbourhood of Whitehall, within the meaning given to section 22 of the Act as amended."

Appendix

Appendix Inspector's report dated 12 July 2005.

Legal Implications

The City Council **in its capacity of Commons Registration Authority** has a statutory duty in pursuance of 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 statutory definition of a "town or village green".

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.

In the context of this Application, the City Council has maintained a distinction between its respective functions of registration authority, and of land-owner.

Resource Implications

Financial: None

Land: The City Council is freeholder of the application land, while the City Academy is leaseholder.

Personnel: None.

Recommended - that on behalf of the Commons Registration Authority, the committee approve the Inspector's recommendation, and dismiss the Application.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 Background Papers

None

Author: Frances Horner, Senior Solicitor, Legal Division on behalf of the Director of Central Support Services
Tel:: 9222330

APPENDIX

REPORT TO BRISTOL CITY COUNCIL

PACKERS FIELD

RE: AN INQUIRY RELATING TO PACKERS FIELD, EASTON, BRISTOL

AND IN RE: APPLICATION FOR THE REGISTRATION OF PACKER'S

FIELD AS A TOWN OR VILLAGE GREEN PURSUANT TO THE

COMMONS REGISTRATION ACT 1965

REPORT TO BRISTOL CITY COUNCIL

Leslie Blohm

St. John's Chambers,

Small Street,

Bristol

BS1 1DW

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1. Introduction

1.1 I have been instructed to advise Bristol City Council ('the Authority'), the Registration Authority for (amongst others) the area of Easton in Bristol under the provisions of the Commons Registration Act 1965, as to whether it should register an area of land known as Packer's Field, Easton, Bristol, as a town or village green under that Act.

1.2 By an application dated 6th. September 2004¹ Ms. Sandra Willavoys and Ms. Joy Manning made an application to the Authority for the registration of The Packer's Field as town or village green under the 1965 Act. That application was made on statutory Form 30 contained within the Commons Registration (New Land) Regulations 1969. It identified the land that was the subject of the application by means of an annexed plan as that presently known as 'Packer's Field', Easton. By Part 3 of the Form, its 'locality' was described as Whitehall, Bristol. The land was stated to have become a town or village green on 6th. July 2004. The basis on which the application was made was as follows:

"The land became a town or village green under the third arm of the Commons Registration Act 1965 (section 22(1)) by the actual use since 1st. July 1984 by the local inhabitants of Whitehall and Greenbank within the Bristol 5 locality. The land shown on the attached plan has been continuously used (and

¹ The application form is date-stamped the 13th. July 2004 by the Authority. I have taken the date given on the application and exhibits to it, which are attested documents, as being correct.

continues to be used) for lawful sports and pastimes as of right for more than twenty years.”

The reference to ‘the third arm’ of section 22(1) arises because section 22(1) provides for three ways in which land may have become registrable as a town or village green, and for convenience these are usually described as classes a, b or c². The third arm, or class c, is based on twenty years’ user as of right by local inhabitants. The precise definition, which has recently been amended, gives rise to a number of legal difficulties of definition and application. Part 5 of the application runs over a further typed page. To summarise, it describes the land and its boundaries, and states that access has been gained from a footpath leading from the Bristol to Bath cycle track; through an open pedestrian gate leading to Johnson’s Lane, and also from the Gordon Road area to the East. It then describes the activities relied upon as football, cricket, rounders, softball, hockey, baseball and other team games; jogging, exercising, training, dog walking, play, picknicking, kite-flying, cycling, socialising, drawing and sun-bathing.

1.3 Supporting the application and filed with it were some 64 witness statements. Before and during the inquiry itself, further statements have been filed, both in support of an in opposition to the application.

1.4 The Council advertised the application by notice dated 17th. September 2004, and by advertisement in local newspapers. Objections were received to the Application, and at a meeting of the Public Rights of Way and Greens Committee the Authority resolved to hold a non-statutory public inquiry at which evidence

would be received an a Report subsequently delivered to advise the Authority as to whether the Application should be allowed, and registration should take place.

1.5 The City Council, as landowner with a freehold interest in Packer's Field, has objected to the application, as has The City Academy, a charitable company and secondary educational institution based in newly-built premises at Russell Town Avenue. The City Academy is currently leaseholder of the Field, under a lease granted by the City Council on 9th. July 2004. Objection has also been raised by others, including a number of sporting clubs.

1.6 On the 18th., 19th., 20th., 21st. and 22nd. April an inquiry was held by me at The Council House, Bristol, at which I heard oral evidence in respect of the application, and submissions in support and in opposition. Ms. Willavoy appeared in person and was assisted by a number of like-minded people, who both cross-examined witnesses and made statements on her behalf. The City Council, in their capacity as landowner, and The City Academy, were represented by Mr. Philip Petchey of counsel, instructed by Ashworths and Veale Wasbrough, respectively. The Applicants presented their case with clarity, care, and some moderation given that the dispute as to the future usage of Packer's Field that appears to lie behind this application and the objections to it have aroused strong views in the community, and I am grateful to them. Mr. Petchey for his part made his submissions with care and plain expertise, and also assisted the unrepresented Applicants where that was appropriate. I am grateful to him also.

² R. v. Oxfordshire CC ex. p. Sunningwell P.C. [2000] 1 AC 335 at 347.

1.7 I have after the Inquiry concluded received written submissions from the Applicant under cover of a letter dated 27th. April 2005, together with a commentary on 'Evidence of Use'; correspondence between Ms. Willavoys and The Open Spaces Society; further statements from Audrey Smart, Joy Manning , Jean Hickery and Paul Cooke; a commentary on the objections to the Town Green Application, and a Response to objections by Bristol City Council. I have considered all of the submissions made in these documents, and the further evidence submitted.

1.8 A few weeks after the Inquiry was adjourned I had a view of Packer's Field accompanied by the parties. My initial inclination was to have an unaccompanied view, but given that the Field is presently used as a recreation ground for The City Academy, it was understandably felt by The City Academy that I should be accompanied by their representatives. I therefore decided to invite both the Applicants and their colleagues and the principal Objector to accompany me on the inspection. When I attended on the view, it was apparent that Packer's Field was positively teeming with a large number of pupils carrying out various formal and structured games. The Applicants felt that this was an unusual event, and suggested to me that the event had been manipulated or staged for my benefit, given that the extent of the usage of the Field by the Academy, and its predecessor school, has been one of the issues at the Inquiry. Although the usage of the Field on that day was a matter of fact, I have not given it weight in considering the historic usage of Packer's Field.

1.9 From time to time suggestions have been made, and evidence adduced to the effect that I should have regard to the consequences of the advice that I give to the Authority. For the objectors, I have heard it said that the consequences for recreational use in the locality will be grave if the land is not designated a village green and (in consequence, it is said) the City Academy is allowed to develop it in the way they wish. On the other hand I have heard suggestions from the objectors' side, albeit not through Mr. Petchey, that the consequence of a decision in favour of the registration of a town or village green would be unacceptable, both for that educational establishment, and also for those organised bodies who wish to use Packer's Field in the future. It is plain to me that these are matters of real concern to the people who have expressed them. However, they are not material matters for me to consider in deciding upon my recommendations to the Authority, and I have not taken them into account, except where I have been of the view that a witness's evidence may have been coloured by a desire to achieve a certain end in the Inquiry (a failing which where it occurs is more likely to be unconscious than deliberate - I was impressed by just how straightforward in giving their evidence the great majority of witnesses were), rather than simply to recount plain facts in evidence.

2. Packer's Field

2.1 Packer's Field as it is known in the surrounding area is a predominantly grassed area in Whitehall or Easton in Bristol, within which are various playing fields. It is irregular in shape, but I shall describe it as if it were rectangular. It is bounded to the South by a public highway, Johnson's Lane, Johnson's Lane has

the main entrance to Packer's Field, a vehicular entrance, situated on it. At the West of Johnson's Lane is The King's Head public house. There is a suggestion that access to Packer's Field has been gained via a gap in the fence at this location. I would add that I did hear evidence that the South-Eastern corner of the site used to house a small depot for council machinery, since demolished. The Eastern boundary is marked at its Southern end by Gordon Road, another public highway, and for about two-thirds of that boundary by houses adjoining Gordon Road, which back on to Packer's Field. There is an alley which runs off Gordon Road along the Southern side of the Southern-most house in that run of houses, and then along the back gardens of the houses. The boundary fencing is of the concrete-post-and-wire variety. The Northern boundary backs on to (at its Eastern end), public allotments known as Packer's allotments. Vehicular access to the allotments is obtained by a driveway to the North-East corner of Packer's Field. Although the vehicular entrance is gated, there was at the time of the inspection no fencing between the driveway and Packer's Field. Further to the West of the Northern boundary Packer's Field is bounded by two tennis courts, now disused and dilapidated. The Western boundary is framed by Johnsons Road. On the Eastern side of Johnsons Road, and backing on to Packer's Field, is Whitehall Primary School which was built in 1977. To the North-West of the Field, running from South-West to North-East, is the former Bristol to Bath railway line. This is presently in use as a cycle path. The cyclepath runs about ten feet below the height of the disused tennis courts. Johnson's Road is a vehicular highway until it reaches the Northernmost part of the buildings of Whitehall Primary School. It then becomes a bridleway. The bridleway runs into the cycle path, descending Northwards via a ramp. Just before the bridleway reaches the

cyclepath it is possible to turn right off it, and to carry on along a pathway that runs immediately to the South-East of the cyclepath, although at a substantially higher level than it. This path is of some antiquity, being in places walled from the former railway cutting by what appears to be original stonework and ironwork. It is possible to pass directly from this path (having travelled along it for about 25 yards) through a gate into the tennis courts, and thence on to Packer's Field. It is also possible to pass directly from the cyclepath up to the tennis court area, by walking up a steep and overgrown pathway which runs directly up the bank.

2.2 To the South-Western corner of Packer's Field is a grand two-storey building which gives the appearance of having been built in the 1920's, of brick under a substantial slate pitched roof. It appears now to be somewhat dilapidated, with windows boarded up. This is the building referred to as The Old Georgians Pavilion. The application plan omits the Pavilion and the tarmac immediately surrounding it, being a claim in respect of the grassed area of Packer's Field.

2.3 The grassed area of Packers Field is flat. There are currently marked out on it some four football pitches of reasonable size, of which one appeared to be full sized and fitted with rugby posts. Packer's Field is large enough to be marked out with a standard 400 metre / 440 yard athletics oval, and there is a cricket square in the middle of the athletics oval. At the time of the inspection I saw one cricket sightscreen adjacent to Johnson's Lane, together with a discus circle, long-jump run and pitch, and the framework and all-weather batting surfaces for two cricket nets, all of which appeared worn, used and dilapidated.

2.4 One of the issues in the case relates to the security or otherwise of the perimeter fencing to Packer's Field. At the time of the inspection the perimeter was secure, having been recently secured by the City Council.

2.5 Another issue relates to the existence and effect of signage at the premises. At the date of the site view the following signs was visible at the main vehicular entrance, on a pole:

"County of Avon - Private Playing Field/Grounds -
Members of the public are warned not to trespass on these
grounds. The exercising of dogs in forbidden. Requests for the
authorised use of these grounds should be made to the Director
of Education."

3. Issues

3.1 Between the date of the decision that was made to hold the Inquiry, and the hearing itself, the Court of Appeal delivered its decision in the Oxfordshire County Council v. Oxford City Council & Robinson (referred to hereafter as the Trap Grounds case). That decision is presently unreported but can be obtained under reference [2005] EWCA Civ. 175 from appropriate sources. The decision of the Court of Appeal in that case has substantially altered the operation of the 1965 Act in relation to village green applications under section 22, and I shall set out below my understanding of the effect of the law in the light of the Court of Appeal's judgement. However, I understand that a petition has been made to the

House of Lords for permission to appeal the decision of the Court of Appeal. Given that the Court of Appeal's decision is itself controversial and of far-reaching effect, there appears to be a reasonable prospect that the petition for permission to appeal, if not the appeal itself, will be successful. The law is therefore at present in a state of acute uncertainty. I have been invited by Applicants and Objectors to continue with this Inquiry, on the basis first that my findings may assist the Authority in coming to a certain conclusion whatever the final resolution of the Trap Grounds case; secondly on the basis that alternatively, my findings of fact will assist the Authority and the interested parties to consider their position in the light of the further decision of the House of Lords, should there be one.

3.2 In these circumstances I propose to advise the Authority on alternative bases; first by considering whether the application should succeed in the light of the decision of the Court of Appeal, and secondly on the basis of the law as found by Lightman J. at first instance. I shall also advise the Authority as to whether it would be appropriate for them to decide the application now, or whether they would be entitled, and better advised, to wait until the appeal from the decision the Court of Appeal is finally determined.

3.3 Next, I summarise the relevant distinctions between the judgements of Lightman J. and the Court of Appeal in Trap Grounds. In Trap Grounds at first instance, Lightman J. held that:

- (1) An application for registration under the 1965 Act as amended had to show the requisite period of 20 years' user as of right continuing up to the date of the making of the application to register the land.
- (2) If an applicant failed to show the appropriate period of user under the amended statute, he was entitled (in the alternative) to attempt to establish an appropriate 20 year period of user under the un-amended Act, ending on a date before the amendment of section 22 by section 98 Countryside and Rights of Way Act 2000.
- (3) In seeking to establish a village green under the un-amended Act, the applicant could rely on any continuous 20 year period of user commencing after 31st. July 1970, whenever it came to an end.

3.4 Trap Grounds - The Court of Appeal

The Court of Appeal allowed an appeal from the decision of Lightman J., holding that

- (1) after the 30th. January 2001 the un-amended provisions of section 22 of the 1965 Act ceased to have effect. An application for registration of a new village green made after that date must satisfy the requirements of section 22 as amended by section 98 Countryside and Rights of Way Act 2000.
- (2) The relevant date up to which an applicant for registration has to prove that the requirement for 20 years user as of right has been attained is the date on which the Registration Authority makes the final decision whether to register the land as village green or not - not the date of the application, or the date of the informal inquiry, if one is directed.

The consequence of this aspect of the decision is that, in practice, if a view of the facts adverse to the landowner is expressed at the inquiry, then a landowner could bar access to the land at any time before the final decision is made, and bring that evidence to the attention of the Authority, and defeat the application³

The Court of Appeal also disagreed with other aspects of the judgement of Lightman J., notably as regards the effect of registration of land as a village green. Those disagreements are not however pertinent to the present inquiry.

3.5 I therefore propose to consider the issues which arise on the basis:

- (1) first that the original section 22 is the relevant test as regards any period of not less than twenty years relevant continuous user commencing after 1st. July 1970 and ending before 30th. January 2001;
- (2) secondly that the amended section 22 applies to the user for the period of twenty years immediately preceding the application;
- (3) and thirdly that the amended section 22 applies to the user for the period immediately prior to the final decision of the relevant committee of the Authority.

The first two bases of decision are relevant to the basis of the law as set out by Lightman J.; the third relevant to the decision of the Court of Appeal in Trap Grounds.

3.6 I have been supplied with closing submissions in writing both by the Applicants and the Objectors. These summarise the issues between the parties as follows:

³ As recognised by Carnwath L.J. at [94].

- (1) Whether for any continuous period of twenty years after 1st. July 1970, there has been user of Packer's Field (the part shown on the plan annexed to the Application) by local residents;
- (2) It is in general accepted by the Objectors that the sorts of informal usage referred to in the Application are capable of amounting to 'lawful sports and pastimes' within section 22; they do however assert that dog-walking cannot be a 'lawful' sport or pastime in the light of various notices (they say) erected by the landowner forbidding such an activity. I shall state at this stage that although there was some evidence that user had been for the purpose of access, usually to the allotments, and such usage would not be considered as a lawful sport and pastime, being referable to a claim to a lesser right namely a right of way, the significant majority of the user that I heard about is recognised as falling with the definition of sports and pastimes within section 22.
- (3) Whether the usage has been 'as of right'. The objections to usage being of such quality are said to be:
- (i) that usage has been contentious where it has taken place - it has been challenged, and signs have indicated it is contentious;
 - (ii) that access has been gained by breaking through fences or gates;
- and thirdly that the usage has not been sufficiently unequivocal in that it has deferred to usage on the Field by the landowner or its licensees. The objectors assert that such inconsistent use either prevents the necessary degree of acquiescence, or amounts to an 'interruption' of use, thus preventing it from being continuous.

(4) Whether the usage has been by the inhabitants of a locality within the meaning given to that word by section 22 before amendment;

(5) Whether the usage has been by a significant number of the inhabitants of a neighbourhood within a locality within the meaning given to that phrase by the amended section 22.

Although an Inquiry is not litigation in which the parties decide what the issues are for consideration, the issues stated above encompass the true issues that I have had to consider. From time to time I have had to discuss and advise on certain specific legal points that have not been expressly commented on by the parties.

4. History

4.1 Packer's Field is so called because it was, a long time ago, owned by the same business that owned and ran Packer's Chocolate Factory, sited on the other side of the railway line adjoining the Field. That factory remains, and still produces chocolate under the style Elizabeth Shaw. The Packer business may, like other chocolate businesses, have been philanthropic. I have heard it said on behalf of the Applicants that they understood that the Field was given to the City for good local purposes, and that perception may well have influenced the views of local inhabitants as to the propriety of uses to which the Field might be put, and their own rights over it, over the years. The earliest document relating to the Field that I have been shown is a license dated 4th. September 1931⁴ between the City of Bristol and Mr. Tribe, the agent of Brecknell Munro & Rogers Athletic Club which granted the Club a license to use a football pitch and changing

facilities for a rent. The period of the licence was for a year, and Packer's Field appears to have been referred to as 'Packer's Sports Ground'. On local government re-organisation on 1st. April 1974 the Field appears to have become vested in Avon County Council. On further in the mid 1990's the Field vested in Bristol City Council.

4.2 The City Council demised Packer's Field to the City Academy on 9th. July 2004 for a term of 99 years from 1st. September 2003. The lease reserved to the City Council the following right by Part 1 of the Schedule and clause 2 of the lease:

"5. In common with the Tenant and others so authorised for the use by the local community and community groups to use the Premises between the hours of 8.00 a.m. and dusk or later by prior agreement for the purpose of recreational use and organised sports activities PROVIDED THAT any activities organised by the Tenant or by groups authorised by the Tenant shall take precedence over this right and the Tenant shall be entitled to exclude members of the public from any areas set aside for such activities PROVIDED FURTHER THAT no dog walking will be permitted on the Premises and PROVIDED FURTHER THAT no vehicles may be driven onto the grass at the Premises."

⁴ Bristol City Council evidence submitted, encl.7.

4.3 One other piece of relevant history is that the cyclepath from which access might presently be gained to Packer's field only became available as such within the relatively recent past. There was some dispute as to when this was, but a plaque on the site states that the cyclepath was opened in 1979. I also heard evidence that there used to be a footbridge over the railway (which is in a cutting at this location) giving access from Gratitude Road to Johnson's Road. This has at some time been demolished. I heard no precise evidence as to when that might have been, but it seems likely that it was before or at the time of the conversion of the disused railway into a cycle path in 1979.

5. Oral Evidence

5.1 Arrianne Manning of Holmes Hill Road, St. George, had used Packer's Field since September 1989 playing informal children's games. She presently took her young son to play there. When she used the field she entered through the wooden gates at Johnson Lane. She talked to the caretaker and was never asked to leave. Cross-examined, Ms. Manning said that she had moved to St. George last year, having moved from Henbury. Until 2001 she had lived in Woodcroft Avenue, which is opposite the playing fields, having moved there aged 6, in September 1989. She recalled a silver gate down by the primary school, by the allotments, and a gate at the front by Johnson's Lane. Ms. Manning told me that there was a great big black gate by the pavilion. At the end of Johnson's Lane was a hole in the fence by the King's Head. Opposite the pavilion by the cycle track there was nothing there - no barrier. The big black gates were normally open. The cycle track had always been there, as she recalled. She was not aware of the Field

always being a school playing field. St. George's school never used to use it much, only really using it in the most recent years. Pressed on the amount of use she had made of the Field as a child, she told me that her mother had broken her leg when she was 9, and that she had been taken out of school because she had been bullied. She was unwell and suffered from migraines, and so spent a lot of time at home, from where she could see the field. Ms. Manning was schooled at home, and played on the Field at weekends. Whenever she was allowed out she would play at the field. When St. George's school used the field one could hear them coming up the street. They were noisy. She agreed that cricket took place on the weekends in the summer, but she did not notice organised football taking place. Ms Manning never sought to interfere with the games of cricket, and never saw anyone else interfere with them.

Cross-examined about access, Ms. Manning told me that sometimes the gate was open, sometimes it was closed. The caretaker who worked in the pavilion would lock it before he went home. If the pavilion was being used for a social function the gates would be left open, but there was no routine. Most of the time when they were closed they were locked. If they were locked, she and her friends would go up through the hole in the fence.

Ms. Manning agreed with Mr. Petchey that there were activities going on in the Field such as the running club. She used to pay 25p and go running, as did the local children.

The caretaker used to know all of the children who used the Field - there were 18 or 19. They went over to the field because there was no youth club.

Miss Manning lived in Whitehall. Part of it is to the South of Whitehall Road. it was not possible for her to say with precision which roads are within Whitehall

and which are not. She told me that there are shops on Whitehall Road, and a couple of pubs - The King's Head, the White Hart.

5.2 Andrew Smith lived close to Packer's Field over forty years prior to 2004, at various properties in Easton, Redfield and Eastville. As a child he was a pupil at St. George's School and used the Field for school sports. He and his friends would use the Field out of school hours for informal ball games with friends. St. George's Park nearby was not flat, and ball games were prohibited. After his school days Mr. Smith used the Field as a training field at weekends for various Sunday teams. Most recently he played for a team called The Easton Cowboys, who since 1998 have used Packer's Field for training, on at least one night per week, and to play friendly games. Since 2002 Mr. Smith had coached Easton Cowgirls, which is a ladies' football team that trains on the Field. He had never had to climb over or break down a fence to gain access. Although he had seen some organised activities, the majority of the use that he saw had been general recreational activity by local people of all ages, including football, cricket, rugby, dog walking, running, sunbathing, kite flying, walking, rounders and picnicking. He had recently used the entrance by the King's Head pub. Even when the gate is closed there is an access between two fence posts.

Cross-examined by Mr. Petchey, Mr. Smith told me that he had never lived in Whitehall. His parents lived in St. George. He was born 1964 and moved out in 1981, moving first to Stapleton Road, and then moved into Redfield until the late 1990s when he moved to Easton, moving to Horfield in 2004.

5.3 Susan Mennear has lived in Easton for five years. and founded Easton Cowgirls in 2002. The club used the Field for training and informal games for at least one evening a week and once at weekends in the Summer. Between eight and eighteen people would take part. She had seen much in the way of informal recreation by locals taking part - football, cricket, dog walking, kite flying, running, picnicking. Cross-examined, she told Mr. Petchey that she lived in Easton, not Whitehall. Most of the Cowgirls came from Easton - approximately 95% from the BS5 postal area. She told me that the houses to the South of Whitehall Road are in the St. Georges and Redfield areas. She did not ask anyone's permission to use the field because it was being used in a non-organised way. The gates have only been closed on a Saturday or Sunday. They only use Packers during the summer.

5.4 Claire Godden has lived in Easton for thirteen years, and during that period used Packer's Field, with friends, for informal recreation. She gained access through the gates at Johnson's Lane, the gap in the fence at the King's Head, and via the disused railway and the tennis courts. A large community of people from BS5 - Whitehall, Easton and Greenbank used the Field for recreation. Ms. Godden used the Field at least daily. She was aware of formal sports use, particularly at weekend. She had never been told to leave the Field. Easton is exceptional in having a strong sense of community. She thought that one boundary of Whitehall was Johnson's Lane. Whitehall extends to Whitehall Road, then towards town where it becomes Lawrence Hill. It bounds Easton. The electoral ward of Easton includes Whitehall, Greenbank and Easton. There was a

community centre and places of worship; an Easton community allotment; Football and cricket teams.

Cross-examined, Ms. Godden said that in her view Easton is separated from Whitehall by the cycle path. Ms. Godden had only seen primary school children on the Field on their way to school. She had never seen them use the site for PE. She had seen school sports lessons. She had never interrupted an organised sports lesson on the Field; there has always been plenty of space. Ms. Godden could not say whether the sport that she had seen has been with or without permission. She had seen some sport that she knew was without permission, namely the young girls' football club. She had seen organised cricket on the site but did not know who was playing. Ms. Godden told me that the time of day that she used the field varied, in and out of school hours; she worked part-time. She had not seen the academy using the field, but as her job would finish at 2 p.m. that was not surprising.

5.5 Peter Douglas had lived near Packer's Field in Whitehall since 1978. Over that period he had used the Field for general recreation including paragliding. He had seen it used often for recreational sports, and occasionally for organised use. He had always walked in freely, and had never been asked to leave. He lives in the centre of Whitehall. Whitehall School, a primary is to one side; the Whitehall Tavern is on the other. Cross-examined he said that his children discovered the access to Packer's Field via the Railway line. He could get access to the railway line from the back of his house - it was not overgrown, the rails had been removed. He never used this route, but his children did. His recollection was that the fence was more or less as it is now. For as long as he could remember there

had been a gap in the fence, and he used the gap in the fence when the gate was closed. He had never seen a sign prohibiting use. He accepted that he had seen school children playing on the field. He tended to arrive in the evening after 5, or at the weekends, or in the very early morning. He had seen both organised and informal football and cricket on the land at weekends. There are four gaps in the fence that he knew of - the King's Head, the cycle track, the tennis courts, Gordon Road. He could not recall the holes in the fences ever being repaired. Whitehall was a community - it is an area agreed by the people within it. Whitehall could fairly be described as a neighbourhood.

5.6 Michael McCartney lives at Old Salt Box , Swineford, Bristol. He was an an active member of Bristol Sports Council and Bristol & West Athletic Club and was familiar with Packers Field, having been invited to train with Bristol South Harriers. He continued to train there as an athlete, and then as a coach up to 1995. He ceased training at that time, although the Club went on to train for a couple more years. The club used all the ground on a Monday, Tuesday and occasionally Thursday with a grass track cut during the summer, 400 metres. The track was in the middle of the field. The Club has permission from the City Council. It had permission to use the pavilion. It paid for these permissions. It was mostly training. It was a big club with track and field. There were safety issues with discus, javelin etc.

With the local management of fields by schools, Mr. McCartney thought the security deteriorated, passing from caretakers to contractors. From 1947 to 1982 very few people interrupted the training. He noticed people walking around shortly before he retired. Mr. McCartney thought that the Club complained about

public use, to the school. He saw informal games of football taking place in the later years, at the left of the track in front of the pavilion, which was a nuisance if they kicked a ball in the path of someone running. Mr. McCartney saw dog-walking taking place. He thought it inappropriate.

5.7 Brian John Price has lived at Gordon Avenue, Whitehall for 66 years, and is the Vice-Chairman of The Old Georgians' Sports and Social Club, operating out of the Pavilion as they have done for 33 years. He told me that they have over 400 members, and have a number of sports clubs affiliated to them including PAK Bristolians Cricket Club. The land had always been held by the education department of the local authority, and used primarily by St. George's School. In recent years however the perimeter fencing has deteriorated and been vandalised. Recently the perimeter of the site had been restored with new fencing, and no unauthorised access was possible. Notwithstanding this, he said, the fencing had been vandalised shortly after its erection. The School from time to time allowed the Field to be used by others. We occupy the upper floor of the Pavilion; the ground floor is used with toilets and changing activities. The school has to give permission for use of the grounds. Since the arrival of the Sports Academy, they are independent of the Council. The Academy is the 99 year lessor. The last 2 or 3 years, people using the ground to exercise dogs has been prevalent. The Club has been instructed to ensure that the gates are locked when the premises are not used. The wicket gate adjacent to the main gates they have locked. The club is open every evening. Normally during the daytime there is no evidence of many people at all using that ground but on Sunday morning many people were using it. When the club is going about its activity there are groups of young people around.

During the course of every given evening they enter the pavilion and congregate in the foyer which is unmanned. The fire alarm and strip lighting is in the foyer. That has been vandalised. This is a regular occurrence. Mr. Price told Mr. Petchey that the fence along Johnson's Lane was a close-boarded timber fence. It was damaged by storm damage and a chain-link fence erected around the whole site. He did not recall precisely when. The entrance to Johnson's Lane was the only official access; the gates there now have been there for several decades. The Club locked the gates when the Club's activity ended in the evening.

Asked about the location, he said that 'Whitehall' is an elliptic corridor of land going North to South commencing at the end of Russell Town Avenue, and Whitehall Road commences at that point. It runs North 1.5 miles and ends at a fork by the pub at the Speedwell Road. This is what people in the area understand it to be, and this is reflected in the street names. From East to West, all roads running off Whitehall Road form part of the district, although bounded by the railway track. It is bounded by Green Bank, Eastville and Rose Green. To the East of Whitehall Road, the streets referred to yesterday, this end is Whitehall, the other end is St. George or Redfield. The top end of Chalks Road is within, as are the streets running down to Park Crescent. Embassy Road and Elstree Road form part of Whitehall as well. He said that recent fencing had been damaged. As to the older fencing, it would have gone right to way around the field. On Gordon Road it has been there for decades. It has been broken and repaired on many occasions. It takes time for the damage to come to the knowledge of the Council, and then to replace or repair it. Other people who were using the field were there with the knowledge and acquiescence of the Council and the School. He had not seen children playing in the Field so much recently, as the Field has been secured. The

wicket gate lock had recently been superglued. He would describe Whitehall as a neighbourhood.

5.8 James Burrough has lived on Whitehall Road since 1959. His main use of the field has been as a supporter of the Old Georgians FC. He had not been asked to leave. He had from time to time entered through holes in the fencing. There had been many attempts to repair, but to no avail. When the holes were repaired he entered through the main gates. There have been holes in the fence ten or twelve years. He told me that his son had been thrown off the ground by Barry Risdale, about 25 to 30 years ago. Mr. Risdale was fairly strict on anyone using the ground without permission. In earlier days his brother -in-law had been chased off by a groundsman Mr. Maggs who had a dog. He told me that various teams played there such as the Fire Brigade and Bristol Boys. There was an entrance in Gordon Road, but the fence there was torn down many years ago. He told me that he had about 2 or 3 years ago gained access from the cycle track, but it was dangerous. You had to climb up the railway bank which was steep. The path was well-worn and used by the children in Green Bank Over the years he had seen cricket, hockey, and other organised sports on the Field, but not so much in recent years. Apart from organised games he had not seen anything there except children playing and people walking their dogs. His children used to go there and play - the youngest is 38. Mr. Risdale used to chase them off if he caught them. Their cousins would go and play football there, usually at night when the groundsman was not around. The school at Whitehall moved about 30 years ago. He had never seen a school football match. The only organised sports he had seen there in the last ten years was rugby.

Cross-examined by Mr. Petchey he accepted that although he did not see school use in the 1980s, he would not have taken any interest unless there was a match on at the weekend. He told me that It is only in recent years that the holes have started appearing. Before that I would always go in by the main gate. No-one had interrupted organised games. He had seen someone carry out hang-gliding, but he kept well away. Mr. Burrough had seen children playing football. There was a little crowd of West Indian children who played cricket. They never interfered with the organised games. He was not able to define 'Whitehall'.

5.9 Jon Lucas has lived in Kingsley Road Greenbank for the last seventeen years. For the last fifteen years he has had an allotment in the Packer's Allotments to the North of the Field. He used the Field for walking, or for access to the allotment, more regularly in more recent years usually at weekends. He gained access either from the railway path or the allotment site. He had not seen organised sport at weekends. There were usually people on the site with informal recreation. 'Greenbank' is the area surrounding Greenbank Road down to St. Marks' Road. In Mr. Lucas' view it is a neighbourhood.

Cross-examined by Mr. Petchey, he said that he did not live in Whitehall but in Greenbank. The allotment has and had a separate and direct access from the cycle-path. He recalled a fence separating the footpath from the all weather - pitch, but this may simply have been the perimeter fence to the all weather-pitch. He said that apart from organised sport there was always quite a few groups of people, playing their own games, or walking, or just getting exercise. He had not noticed any increase in dog walking. On Sundays there may be as many as 50 people on the Field.

5.10 Joyce Roderick of Albert Parade, Redfield, has lived close to the Field for sixty years. As a young child she would go with her family to the Field for picnics. Greenbank Infants School and the church used it. More recently Mrs. Roderick had used the Field for walking and dog walking. She had seen parents taking their children to school; Scouting; weekend football matches; joggers; dog walkers and bonfire parties. She would clear up litter from the Field, left by the public. There was a period of 5 years when Mrs. Roderick didn't go on to Packer's Field, between 1980-1985. She entered through the main gates, which were always open. Since 1985 she had used it daily. Mrs. Roderick had seen one sports day last summer, organised by the Academy and the odd game of baseball, javelin throwing, rugby, football, golf, once a week if that. She had seen the infants school use it (at the bottom end) two classes at most, if it is fine. She had never been challenged as to why she was on the Field.

Cross-examined by Mr. Petchey, she said that she thought that there was a fence along the footpath from the cycleway, but there was always a gap there. The gate was never locked.

5.11 Victoria Ann Davidson lives in Barratt Street, Easton. She had moved into the area eighteen months ago. She used the Field for informal recreation, with her family. She gained access from the cycle-path. She would see children playing, people walking dogs, people sitting around and socialising. She would definitely say Easton is a neighbourhood. Packers Field serves the neighbourhood of Greenbank, Whitehall and Easton. She had seen a person from Beaver Maintenance about to fence a gap in the fence. She asked him what he was doing.

The gap was then left. On one occasion she had got on to the Field by passing between the locked gates.

5.12 Peter Taylor lives in Camelford Road, Greenbank. He had used the Field for the last 24 years. He enjoyed the space for my recreation, as did and do many other locals. He has an allotment, and there had been no fence on the Northern boundary for as long as he could remember. There was something happening there all the time - whether it be children playing, kite flying, picnics, exercises or official football or cricket games. During the earlier parts of the user, he would have used it at least 3 or 4 times a week, sometimes more. Greenbank is virtually a stones throw from the field. It is a neighbourhood.

Cross-examined by Mr. Petchey he said he had seen large numbers of school children up there once or twice; once last summer.

5.13 Serena Parker lives in Bloy Street, Easton. She and her husband had used the Field for recreation since 1996, and had not been challenged. They visited the field weekly They had seen people jogging or running, football and cricket. The football tended to be informal, without uniforms. The cricket varied. She had not seen any nets. There is a long-jump pit but no-one using it. She had occasionally seen supervised schoolchildren on the Field.

Cross-examined by Mr. Petchey she said the main gates were open whenever she walked around.

5.14 Collette Bourn has lived in Neath Road since January 2001 and used the field on a daily basis for walking and socialising. They have informal games and

walk the dog. She had seen people jogging, playing football, hanging out with the family and had never been asked to leave the Field. She had entered by the King's Head pub; sometimes she walked in by the cycle track. The fencing had deteriorated over time. The people that she had seen clearing up the field were local people. She had seen the groundsman cutting the grass. She did not think that the land is used often by school children from school. Ms. Bourne said she lived in Whitehall. It centred around the public houses - The King's Head, The Red Lion, The Whitehall Tavern; there were also the allotments and Whitehall Road. She thought Whitehall is a neighbourhood. Packer's is the central point of Whitehall. There was a sense of community there.

5.15 Mr. Paul Cupis lives in Stonebridge Park, Eastville. He managed the Easton Cowboys, and had used the Field regularly since 1998. No permission was given for this. They kept out of the way of teams using it officially. They would train every Tuesday night from 7 to 9 in the Summer; sometimes (sporadically) before that. They did not use the pavilion. He has seen American football teams train there very occasionally, cricket organised and otherwise, and dog walking.

Cross-examined by Mr. Petchey, Mr. Cupis told me that The Easton Cowboys have about 150 members. They are all local, from Greenbank, Whitehall, Easton, Eastville, and St. George.

5.16 Roger Ball lives in Herbert Crescent, Eastville. He explained just how large the Easton Cowboys and Cowgirls Sports and Social Club is, with ten teams. He confirmed that the various teams have used the site extensively over the last seven years. Access has been open and unchallenged since 1998. There

has also been informal use going on at the Field. He has seen organised games of football with referees and full kit, and told me that one needs permission to do this as with most council pitches on Bristol.

Cross-examined by Mr. Petchey, he told me that 3 or 4 years ago he had seen a Gaelic Football team on the Field that he thought might be something to do with Bristol Irish FC. He had seen cricket training up there. There were lots of informal games of cricket.

5.17 Olivia Van Der Werff lived at Stepney Road from 1997 to 2002 and walked her dogs on the Field on most days. Walking was open and unchallenged. Access was gained through the gap in the fence at the King's Head public house. Numerous teenagers would meet at the Field. She saw many organised activities such as football, and children meeting at weekend, There was also lots of informal activity. It was a hive of activity in the evening.

Cross-examined Ms. Van der Werff said that it was never possible to predict whether the gate would be open or not, and she found this irritating. She assumed that the gates were locked to stop vehicles coming in. When the gates were locked she had to go in by the gap at the King's Head. The gate was rarely shut when she was there - perhaps one time in twenty.

5.18 Audrey Smart lived at Stepney Road from 1989 to 2002. She played hockey for the Old Georgians. This was an organised sport and the pitch was hired from the Council. There was lots of informal use of the Field. Even if there were organised sports on the Field at weekends, Ms. Smart was never challenged on the Field. Everyone from hockey sport used Packers She went through the

fence at the King's Head if the gates were shut. Ms. Smart felt that she had a right to use the land because it was there and freely available. She used the Field at any time of the day. She saw St. George school use it once or twice, but never saw children from the infants school in the field. Whitehall Ms. Smart thought is a community. Packer's Field is at the heart of our community.

Cross-examined by Mr. Petchey, Ms. Smart said that there was no gap in the fence between the main gates on Johnson's Lane and the Kings' Head.

5.19 Ruth Buchan lives on Whitehall Road. She walks her dog three times a week, entering at the King's Head. Ms. Buchan had carried out some research by canvassing local residents. She was told about public footpaths right across the field. That there were covenants over the Field that kept it as open space. But she could not find evidence of such rights. Packers had constructed the pavilion and in 1931 sold the Field to Bristol City Council and allocated it for such use to St. George's College.

Cross-examined by Mr. Petchey, she agreed that since January the gap has been regularly blocked and unblocked. She did not recall it being fenced off before January.

5.20 I then heard from Mr. Ray Priest, Principal of City Academy and formerly St. George's School since Sept. 92. He told me that the City Academy were the lessors of the Field the subject of the application. The City Council granted the Academy planning permission to refurbish the sports field and build new changing rooms in July 2004. Turning to the history of the Field, he had been aware of intermittent trespassing by dog-walkers throughout his headship.

Boundary fencing extended around the site. It had been vandalised over the years, and repaired. The Field had been used by the School throughout the day, and by licensed clubs during the evening and weekends. Trespassers had either been warned off verbally or by signage. The usage relied upon amounted to persistent trespassing. A pedestrian gate was installed after 1992. He could not recall whether there was a gate there or an access at that point beforehand. Prior to 1992 there had been in place a grounds staff who looked after the Field on behalf of the City, who managed it. The school was approached to take over management on 7th. October 1992. The governors approved that on 30th. March 1993. On 2nd. April 1993 the school agreed the letting fees. The School agreed a rental of £20,000 per year. On the 29th. June 1994 the School agreed to appoint a groundsman to assist, and started to use the Field daily. The football pitches were widened and the hockey pitches narrowed. There have been discussions about restoring athletics to the site but these were not concluded. Currently the School uses the grass pitches three days a week. In the summer it is used for five days a week, when it is used for athletics. It is used both mornings and afternoons starting at the earliest at about 9:15 and finishing at the latest by 3:15 p.m. In the last two years The school has used the facility less as it moves towards the new development. The pavilion is in poor condition. The fencing through the whole perimeter was replaced in the 1980s with wire mesh. In 1992 there were two particular areas of poor fencing, backing on to Gordon Road and also by the 'dug-out' area. The whole strip bordering on the cycle track was repaired in the early 1990s. Mr. Priest recalled going to a meeting with the landlord of the King's Head. He was concerned about the glazing as the school was using that part of the field for cricket. The school restored the fence there. It also re-fenced the

perimeter by Whitehall School with the assistance of the City Council. The fencing that was erected was not kept up for more than a week. This happened since December also. The school's contractor has a full record of regular visits. The fencing that is in force now is not the type that the school would prefer given the cost of continually reinstating it.

Mr. Priest was then cross-examined by Miss Willavoys. Mr. Priest said that would have been up on the Site thrice weekly, either to see a PE lesson there, or to see the head of Whitehall Infant School. He did not know when the pedestrian gate was put in on Johnson's Lane. The school had been directed by the Health and Safety Executive that there had to be a pedestrian access and that it has to be unlocked. There had been locks on the gate, but they have been unlawfully removed. For the period that Mr. Priest had been in charge of the school, Packer's Field has been a necessary site for the conduct of physical education under the National Curriculum (1988). In the early 1990s the Field was used daily. In the last two years it has been reduced. Between 1995-2000 there has been significant use. There is an annual timetable of usage per year. There are now 40 Classes that use the Field per week at Under 16 level, which is an increase on the 25 in 1992. In the summer all of those classes would use Packer's Field for Athletics. In the winter it is used for football and rugby. There is a school sports day held at the ground each year, although the School missed one year when it went to Whitchurch.

The land is filled with football pitches and the cricket square. There is an athletics pitch marked every year of a 400 metres oval.

Mr. Priest acknowledged that he had recently sought to reinstate the fencing in order to make clear that the land is the Academy's and that others are on it by

permission of the Academy. He did not deny that there has been a problem for many years in securing the site for the safe use of children.

In 1994 the School put up signs at Johnson's Lane, stating that the Field was private property and that there was a number to call if required. In 2003 the City Academy put up a sign indicating that it was a private school field. It was vandalised. The sign relating to dogs pre-dates 1992. He accepted that spectators may take dogs there.

Mr. Priest had on occasions stopped and gone into the Field and challenged people on it. On a couple of occasions he had called the police. If there were school sports going on he would speak to children if they were playing on the field, or to people with dogs. On occasions he has said to people that this is private property, and they have left.

Asked about the identity of the local community, Mr. Priest said that 'the community' was Easton, Redfield, Whitehall, also Lawrence and Barton's Hill. Whitehall is a geographical area where people live. He saw the Field as part of the Whitehall community. The cycle track however links it to Easton.

5.21 Mohammed Razzaq is the secretary of the Bristolians Cricket Club. He has known the land since 1972, and played cricket for the club since 1991. He is a qualified cricket coach. The club has played on the Field since 1997, currently running four youth and three senior teams. The club is a successful one. It uses the cricket pitch, outfield and nets by consent from originally the City Council and latterly the Academy, from May to August inclusive at weekends and evenings. The 'price' for this permission is their maintenance of the cricket square- I do not think that this is an obligation, but it is something that they do

which benefits all parties. With a few exceptions, no-one had interfered with their usage of the Field.

Cross-examined, Mr. Razzaq said that they had league matches every Saturday; and friendly matches on Sundays. There was one evening match three days a week. There are also cup matches and training on Fridays. Access is gained via the main entrance on Johnson Lane. He said that it was very rare that we see other people use the Field. They do see people there, who don't participate. The people we do see are youngsters who come along and watch, and they are encouraged to spectate. They have had a problem with vandalism of the shed over the past ten months. When they have seen people walking across the pitch, which occurred once or twice, they have asked them to leave, and they did.

Mr. Razzaq found that the fence on the Northern boundary had been broken a few years ago. It had been repaired once after they reported it to the Academy about 18 months ago.

5.22 Mr. Brian Latchem played cricket and football for the Old Georgians at Packer's Field until the late 1970s. The team played in the Gloucestershire County League with the Field as its home ground, and stopped only last year. The football club was orally permitted to use the pitch and facilities on Saturday afternoons from September to May each year, paying a fee to the School. Security at the Field was tight when Alec Harris and Barry Risdale were the groundsmen. Problems arose first when the railway line became a cycle path, and secondly when the Old Georgians Social Club started using the pavilion, which meant that the gates were left open much later in the evening. The wooden fence along

Johnson's Lane collapsed in high winds in 1982, just a few days before the team played Stansted in the quarter-finals of the F.A. Vase at the Field.

He recalled that it used to be the case that the pathway leading off the 'cycle path' (between the hard and grass tennis courts) originally led to the allotments, and this was gated. At some time, people started to gain access to the Field by coming up this path and passing through a gap in the fence. This coincided with the removal of the wooden bridge. There was a gate opposite the wooden bridge which appeared to lead to the Fields, but he never saw anyone use it. It was locked. The groundsman may have had a key. The lock was broken on the gate to the allotments; and people then got on to the bank and could get on to the Field.

Mr. Latchem remembered a chain link fence being erected on the boundary behind the tennis court. It lasted a day before it was vandalised.

The pedestrian gate on Johnson's Lane was put in since 1999. There was a wicket gate by the main gate. This was when the main gate was wood. When the fence was replaced the wicket gate was replaced by a complete fence.

Cross-examined, Mr. Latchem said that he retired in 1987, but that afterwards he visited the field on most days. The schoolchildren used the field most mornings. He said that people would come into watch. There may have been other people on the Field, but he did not notice. His recollection was that the North-Eastern boundary was always fenced-off by a link fence. The Eastern boundary was a corrugated iron fence from the wooden bridge to the Limes (near Johnson Lane). This came down when the Infants School was built.

5.23 Gwyn Morgan was the headmaster of St. George's School between 1975 and 1991. Before 1982 the Field was secured by fencing. The groundsman was

astute to remove trespassers. The wooden fence to Johnson's Lane blew down in 1982, and was replaced by a mesh fence. He visited the Field occasionally, either to fill-in for other teachers, or passing by. He did not notice many trespassers. Those that were seen were warned off. The wooden gates were an integral part of the wooden fence. Both were replaced at the same time. There was no pedestrian gate when the fence was demolished. A 'no trespassing' sign was erected in 1988. All parts of the school used the Field once a week. Until 1988 the Field was always used from 2:20 p.m. to 3:40 p.m. during weekdays. From 1988 to 1991 the School used the Field for two mornings a week between 10:50 a.m. and 12:15 p.m. in addition to the afternoon sessions. This continued for 3 or 4 years. In addition the Old Georgian Hockey Club and Bristol Athletic Club were allowed to use the Field. The Gordon Road side was fenced securely. There were occasional problems, with the bottom of the fence being lifted to allow dogs into the Field. An area by the railway track caused problems. It was difficult to maintain fencing there. All breaches in the fencing were referred to the County Estates Department and eventually the fence would be repaired. When the Primary School was built in 1977 the School gave up a cricket wicket. The school had the two best wickets in the City. The school allowed children from the infants school to use the field whenever it did not interfere with their use.

Cross-examined by Miss Willavoys, Mr. Morgan said that he did not have many occasions when people refused to leave the field; he never had to call the police. They always backed down. On average there were 400 children on the site. There were 8 permanent PE staff. There was accommodation in the pavilion for 200 boys and 200 girls to change in the Pavilion at any one time.

5.24 Paul Cooke lives at Vicarage Road, Whitehall. He was a pupil at St. George's School from 1982 to 1989. The school was at that time split between three site. Packers Field was used for rugby, football, hockey and track and field. Games lessons were timetabled for two classes at any one time, some 60 or 70 people, with the lesson taking three hours including travelling time. The school's use of Packer's Field reduced in the mid 1980s when Park School and Rose Green School were closed down. There would only have been 400 children on the Field on special occasions such as sports days. Mr. Cooke now uses Packers' Field for running every 2 or 3 weeks, gaining access from the cycle track, up the embankment and through the gap since 1998. Mr. Cooke told me that Whitehall is a friendly community, and he would describe Whitehall as a neighbourhood.

5.25 Ann Oesten-Creasy lives in Gratitude Road, being born there in 1982, The Field is where she had played and learnt to ride her bike. She and her friends played games of football. She recalled having a sports day with her school once or twice. She said she went to the Field with her parents from 1988. She went there at least once a week. There was always cricket going on, sometimes official, and football at the weekend. People would use their dogs, things like that.

Ms. Oesten-Creasy has never been asked to leave the Field. She accepted that she might not see schoolchildren as she would not have been there during school hours. There are always people on the Field.

Cross-examined by Mr. Petchey, she told me that she remembered a fence being erected; everyone was quite angry about it. She could not remember the fence obstructing her access..

5.26. I then heard from Claire Thompson, the Head Teacher of Whitehall Primary School since 1998. She understood from long-serving teachers that St. George's School and the Academy had for the last 30 years permitted the School to use the Field so long as it did not conflict with the senior school's use, and paying a small sum for the privilege. The pupils use the field on a daily basis, and there are occasional car boot sales on weekends with the Field used as an overspill car park. There was occasional informal use of the Field by people playing football or dog walkers, but the level was trivial. When Ms. Thompson commenced her present job, the gate by the cyclepath used to be locked. People have used bolt cutters to get through the tennis court.

Cross-examined by Miss Willavoy, Miss Thompson accepted that she did not know whether the break-in through the gate was used as a means to access the Field. All the year round the Field is used for football, Key Stage 2. Although the school had a playground, some sports and games cannot be readily played on concrete. Ms Thompson has been on site on Saturdays, but not regularly. She has seen PAK cricket. She does not see hordes of people, but being realistic she accepted that it is an open green space and people will get on it.

5.27 Trevor Crouch was a teacher at St. George's School between 1974 and 1999. He also played for the Old Georgians' Football and Cricket Clubs from 1975 to the mid 1990s, managed Avon Schools Under 19 County Schools teams from 1977 to 1994, chaired Bristol and South Gloucestershire Schools Football Association from 1996, chaired Gloucestershire Schools Football Association from 1999, chaired Bristol and District Cricket Association from 1988, and chaired Gloucestershire Cricket Board from 2001.

He told me that the playing fields at Packer's Field were of a very high standard indeed. St. George's School used to be split between four sites, and pupils from all sites used the Field for timetabled games, during every afternoon and most mornings for a variety of sports. The ground was also used for inter-school football matches in the city, as well as County games. Whilst Mr. Risdale lived near the site, access to it was strictly regulated. It would not have been appropriate to allow free access to facilities used by schoolchildren, either generally or as a matter of health and safety. The public never interfered with scheduled games.

Usage was also made of the site for under nineteen county games. Some spectators would attend. Dogs were never permitted. In recent years the pitch has deteriorated and this use has ceased. The pitches have been used at weekends by the Old Georgians Football and Cricket teams until 1999, and by PAK Bristolians, at weekends in season.

Mr. Crouch was aware of repair to fences being carried out. The fence to the King's Head needed repair from time to time.

Cross-examined by Miss Willavoys, Mr. Crouch told me that the Field was of such a high standard that Somerset - with Ian Botham and Viv Richards - played on the wicket in 1985. The ground appeared to deteriorate because people had been getting on the Field and there was litter, and rubbish of misuse. The worst area was by the cycle track, but it could be on the centre.

5.28 Mr. Richard Turpin lives at Chelsea Park, Easton, and has been a local resident for 25 years. His children have used the Field in different capacities over that time. Mr. Turpin works at a local primary school and in that regard goes to

sports days, football and cricket matches. His children played on the Field informally. They went up through the cycle track and 'hung out' at Packers - mainly over the last ten years.

5.29 Nick Pearson has been a PE teacher at St. George's School and the Academy for the past five years. During that period he has used the Field between six and seven times per week for periods of between forty minutes and two hours during school time. The Field is also used for extra-curricular activities. He had seen trespassers such as dog-walkers on a few occasions. Mr. Pearson handed me copies of his timetable and curriculum to verify his evidence. Rugby was taught at Packers. It is the only rugby and athletics facility. It is an extra football facility.

Cross-examined by Miss Willavoys, he agreed that school usage had increased over the past five years. When he started he would use Packers' Field for up to 4 or 5 hours a week. There were then 6 teachers. You might have up to 4 classes there. There are now 8 main teaching staff. Although there was a sports facility at the Moorfields site, a lot of building has taken place there. It was a nightmare to arrange PE. That increased the school's reliance on Packers outside scheduled lessons. Moorfields was a standard sized football pitch. One could get six such pitches in at Packers.

5.30 Barry Risdale was a groundsman based at Packer's Field from 1958, and in the mid 1970s was promoted to head groundsman at the Field. He lived at 122 Gordon Road which adjoins the Field. In 1992 the care of the sports grounds went out to tender, and Mr. Risdale took early retirement, and moved from Gordon Road.

The Field was secured by fencing throughout its perimeter. Trespassing was not much of a problem, although he would require people who were not supposed to be there to leave if he caught them. There was no informal use until 1993. Dog walkers were never allowed to use the site. He recalled Bristol Athletics Club using the site until about 1998, and they used the area for discus, hammer and javelin training. He was present when the Old Georgians used the ground, at weekends and evenings.

From the 1970s, Mr. Risdale was a static groundsman in that he was on the site all the time. He opened the site up when users were due to arrive. The wooden fence was damaged from time to time but he would repair it. It was very rare that children did not use the site. From 1989 to 1992 he was no longer a static groundsman, but worked from a van and was at the Field from time to time during the day. He moved from his house on Gordon Road in 1988. There was no informal use of the Field.

Cross-examined by Miss Willavoys, Mr. Risdale said that the wooden fence went along Johnson's Lane. There were changing rooms where the depot was as well - this was at the South of the boundary at Gordon Road. The depot had a wooden double gate, at the top of Whitehall Gardens.

5.31 Paul Moilan-Jones lived in Lawrence Avenue, Easton since 1998. He has used the Field informally for recreational purpose with family and friends since then, and has trained there with the Easton Cowboys. Access was gained from the cycle path, or the gap in the fence at the King's Head public house. He visits the Field out of school time, during the evenings or weekends. He has never been asked to leave the Field.

Cross-examined by Mr. Petchey he said that he could not say that organised games do not happen, simply that he has not seen it.

5.32 Kenneth Holmes has been a teacher at St. George's School and the City Academy since 1970, as head of physical education until 2003 The Field was used on a daily basis in term-time for games and sport. During the 1980s occasionally over 400 people used the Field each day. The Field was fenced, gated and locked. There were trespassers from time to time, sometimes with dogs. Mr. Holmes would require them to leave when he saw them, and they did. He recalled problems with dogs fouling the long jump pit. Barry Risdale kept the land immaculately, and prevented trespassers from remaining on the land. It was exceptional to have 400 children on the site - this happened early in the year when they were graded to ability. At the time the school had three football pitches, two hockey pitches, and netball courts. In the summer it was the only field the school could put a 400 metre track on. There had not been many occasions when he had to speak to people about dogs or trespassing. This has mainly occurred after school hours, when he took training. On one occasion he recalled asking a woman to pick up her dog's mess. She said it was bio-degradable.

Cross-examined by Miss Willavoys, Mr. Holmes said that more recently, in the last five years, he had noticed that the number of people and dogs on the pitch has increased.

5.33 Amanda Lane is the former chair of the Governors of Whitehall Primary School, being a governor from 2000 to 2004. She had lived at an address that

overlooked Packers' Field since 1987. She gave evidence of vandalism and general anti-social behaviour from 1999 to date.

Cross-examined by Miss Willavoys, she said that she was aware of the organised football matches that go on. In the summer she observed cricket taking place there. PAK Bristolians are there every summer night. She did see children on there but most of the time they are there with a sporting event. Very few people go on there in the winter. In the summer there might be other children around but they seem to be doing organised sports. She noticed dog-walkers because she strongly disapproved of them being there.

The fencing by the tennis courts has been a source of problems. There was a gate by there which was lockable but not locked. It was destroyed when a people carrier drove on to the lower court. She remembered a man with a hammer attacking a wooden fence that runs alongside the wire fence.

She could not say whether she did not see other users, or simply did not notice them. Ms. Lane did not think that it is a busy place. If there were significant and regular informal use, then she said she would have noticed that, but she did not.

5.34 I then heard from Ian Bone of Rookery Road, Knowle, a local community worker. He told me that two years ago he used the Field regularly to play football with his children. He then lived at Britannia Road. Since 1996 there has only been one notice around the field telling people it was belonging to Avon - which did not exist. The popular perception was that the Field was open space for anyone to use. The hole in the fence was a popular local landmark. He used to access through the cycle path. The Council adopted a policy of benign neglect. By custom and practice the informal use of the space has been tolerated over the last

20 years. It has been used as a de facto town or village green and in Mr. Bone's view it was now too late to alter it. The relevant locality is the Easton electoral ward of Bristol City Council. It serves three neighbourhoods - Greenbank, Easton and Whitehall. Whitehall is a community. It has a church, a primary school, pubs, a scout pack.

5.35 Marion Usher is the Finance Manager of the City Academy, and was bursar of St. George's School from 1978. She took regular bookings for weekend and evening use of the pitches at the Field from recognised clubs. She was responsible for paying for the repair of the fencing to the Field. This was a difficulty for the School given the length of the perimeter, the constraints of funding and the persistence of the vandalism. She also confirmed the agreement that Whitehall Primary School might use the Field. She told me that there would have been a lot of receipts for a fencing work. They were lost when the school became the City Academy. The fence was probably repaired more than twice a year. If it could be afforded it was done more often.

5.36 Michael Perrin has been the Estates Manager for the City Academy and St. George's College since January 2003. He has visited the Field at least twice a month, and has very rarely seen trespassers. He told me that recent fencing work to the site has been deliberately destroyed and vandalised. His agents attend the site on a daily basis to restore vandalised panels. Since the School has started to reinstate the Harris Fencing back on a daily basis it has spent approximately £10,000. Beforehand the spending was £ 500 to £ 600 per annum.

Cross-examined, Mr. Perrin said that it was difficult to fence by the tennis courts, and that therefore that piece was left open. He had seen dog-walkers; they might be just walking through the site. He told me that at no time since he had been estates manager has the entire boundary of the site been secure - meaning that someone would have to break down a fence or climb over something to get in. He would normally visit at a time between 8 and 11 a.m..

5.37 Bob Hoskins worked as a Supervisor for Avon County Council supervising grounds maintenance from 1981 and for Bristol City Council from 1995. Compulsory competitive tendering was introduced in 1988, and the award was made to the Council's direct labour force. The Council won again in 1992, but rationalisation took place, and jobs were lost. Both Alec Harris and Barry Risdale were astute to keep trespassers out of the Field. There were no major problems with trespassers on the site. He too confirmed that the sports field was of the highest quality, and used for local sporting groups. Gloucestershire County Cricket Club has played its minor matches on it in the 1960s, as did the Minor Counties.

Cross-examined by Miss Willavoys, Mr. Hoskins told me that Avon County Council had a general problem with dogs roaming on playing fields. They put up large signs setting out by-laws passed under the Local Government (Miscellaneous Provisions) Act 1972. When he was direct supervisor, he would visit Packers Field at least once a week between 1982-88. In the last ten years I have seen a distinct deterioration in the facility, caused in part by the trespassing. He did not recall seeing much in the way of public recreation on the site - perhaps a person jogging or walking. The deterioration was down to lack of finance. The

school curriculum dictates that the School provide PE facilities at the Field. The organised lettings have decreased because of the financial conditions. However efficient the new system is, it cannot produce the result of the old levels of staffing - in 1965 the Council employed 320 people on school sports ground. They now look after 90% of the school sites with 25 employees.

6. Written Evidence

6.1 I have considered a significant amount of documentation in connection with this application. This documentation falls into four categories:

- (1) Original documentation such as receipts, record books and correspondence.

Given the nature of the dispute between the parties this contemporaneous documentation is of considerable importance.

- (2) Questionnaires in support of, or letters in opposition to the Application. I have taken these into account, but because the information within them has not been tested by cross-examination I am unlikely to give these as much weight as that which is given orally. This is particularly so where questions of dates arise - for in common experience this is an area in which errors are most easily made. An obvious case in point relates to questionnaires that assert that access to Packer's Field was gained by the cycle path on a date significantly before 1979. I do make two general comments. The first is that the standard Open Spaces Society questionnaire is necessarily limited in the information that it gives, try as it might to deal with all issues that can arise on an inquiry such as the present. The explanation given as to the meaning of 'locality' - questions 3a and 3b - is an attempt to reduce to a few words a

legally difficult concept. The second is that I can give very little if any weight to letters from very young school children urging me to come to a particular decision. I am a little surprised that the objectors should have thought that it was proper to put such material before me.

(3) I have also read various witness statements and letters given to the Inquiry.

Although these too are not able to be challenged, they do have the advantage often of being written to deal with the issues that arose as the Inquiry continued.

(4) I have also been supplied with a petition on behalf of the Applicant. It may be more correct to state that these are a number of petitions, for the rubric under which they have been signed differs between various of the sheets. The petitions seek to persuade the recipient that the land ought to be retained for local recreational use. For the reasons that I have stated I cannot take these pleas as such into account. However, it is notable that one petition is under the rubric:

“We the undersigned residents support the application made to register Packer’s Field in Whitehall Bristol as a town green for the continued used for leisure and pastimes by local people.”

Another rubric states:

“We the undersigned members of the local community and users of Packer’s Field request a Public Enquiry be held...”

Having considered the petition, I was struck by the wide distribution of addresses given in the petition, both within Bristol and indeed outside. It

appeared that the interest in the registration of Packer's Field extends well beyond Whitehall as a neighbourhood, or the BS5 area of Bristol.

6.2 It is worth making some analysis of the questionnaires supplied in support of the claim, numbering in total 86:

No. of respondents who have used the Field for more than 20 years - 30; 35%

No of those respondents from 'Whitehall' - 18; 60%

No of those respondents who gained access only by the main gate - 13; 72%

7. Findings

7.1 Usage

7.1.1 The School

Avon County Council (from 1974 to 1995) and Bristol City Council thereafter have administered Packer's Field on the basis that its primary use was as a sporting facility, as an adjunct to the provision of education to schools in the vicinity, and in particular St. George's School, and more latterly its incarnation as The City Academy. This relationship was formalised and the usage strengthened by the grant of a formal long-lease of the playing field part of the Field in 2003.

7.1.2 The precise usage both in terms of quantity and type that was made of the Field by the School has no doubt varied over the years. Part of the reason for that variation has been the change in organisation of the schools in the area, with what

was formerly four separate schools being merged on to one site; with the sports facility available for usage changing over time with land being used for different purposes and building taking place; and with changes in the national curriculum. However, the evidence of all of those who were concerned with the administration of the Field, and its maintenance, and the administration of the School, and teaching within the School, has been consistent, that the School has used the Field for formal sports throughout term time for a significant portion of the day from at least 1970 to the present day. The Applicant submits that Mr. Pearson's evidence demonstrated that the school's user was very limited prior to the bringing together of St. George's School on to one site. I do not accept that. Mr. Pearson's evidence was that for so long as he has been employed at the school there has been some significant usage, but he did accept that this has increased over the years. Although there might be challenge to the detail of the evidence presented on behalf of the objectors, as to such matters as the number of children who might change in the pavilion at any one time, it comes nowhere near challenging the gist of the objectors' evidence on this point which I find to be consistent and credible.

7.1.3 There is however a dispute with the quite substantial number of witnesses on behalf of the Applicant who assert that for substantial period there has been no school use of the Field. These witnesses were not only giving evidence by questionnaire or letter, but gave evidence tested by cross-examination. Those witnesses undoubtedly gave honest evidence to the Inquiry. I have to weigh this evidence in the balance.

7.1.4 Notwithstanding that evidence, I accept the evidence on behalf of the objectors that there has been consistent and significant organised sporting use of the Field by and on behalf of the School at all relevant times. The evidence of Mr. Risdale, Mr. Crouch, Mr. Priest, Mr. Hoskins, Mr. Morgan, and Mr. Holmes is very strong on this point. The reasons why I think the Applicant's witnesses are in error on this point are that, first, Packer's Field is a very large piece of land. Unless the Field was used by a very large number of student, it is quite possible for informal use to take place in one part without infringing on the school's use, or indeed the School noticing it. Secondly, the School's use is an intermittent and periodic usage, occurring during weekdays at working hours and during term-time only. The times at which the Applicant's witnesses might see the land would most likely be the time when the students would not be there. Given that I do not believe that all or some of the witnesses have come to the inquiry prepared to lie to me, it must be the case that one or other group of witnesses is mistaken. It seems to me to be more likely to be those supporting the Applicants, who assert a negative, that those who assert the positive case. I therefore prefer the objectors' evidence on this point.

7.1.5 I accept the evidence given by the teachers from Whitehall Primary School that there was an informal agreement that permitted them to use the field, and that they did use it. During the site view I saw playtime taking place, and it seems more than credible that the School would use a part of the Field for play and recreational purposes from time to time. I doubt whether a large part of it would have been so used, but a part of it that would have been noticeable to a reasonable observer would have been used.

7.1.6 User by formal sports club.

From 1970 to the present date, the person entitled to possession of the Field has permitted various associations to use significant parts of the Field for regular periods throughout the year. During the winter the Old Georgians Football Club used a football pitch or pitches at weekends and during the evenings, and used the site generally for training. During the summer Old Georgians Cricket Club used the cricket pitch during the evenings and at weekends. They also used the cricket net facilities. After the closure of the club, PAK Bristolians have flourished on the site with weekend and evening use. Until the mid to late 1990s Bristol Athletics Club used the track and field facilities at the Field, including the various pits and circles provided within the Field.

7.1.7 Local Inhabitants

I start from the position that some recreational usage by local inhabitants has occurred on Packer's Field throughout the relevant period since 1970. I have heard evidence to this effect, and have read evidence to this effect in questionnaires. Although some of the Objectors' witnesses have asserted that there was no 'trespassing' until recent years, I do not think that this is right. The keenness of Mr. Risdale and Mr. Harris to evict trespassers is consistent with some degree of continuing trespass. Again, the size of the Field indicates that intermittent visitors to the Field on behalf of the School or the Council would not necessarily notice or take account of the usage that was taking place. Even witnesses such as Mr. Holmes who took a strongly anti-dog approach to usage of the Field would not have been on the Site on a regular basis.

7.1.8 Some corroboration of local usage is obtained by the correspondence in June 1988, with Mr. Pointer (who lived at Gordon Road) who wrote to Avon County Council complaining about trespass on Packer's Field. The response from Mr. Baynton, the Principal Administration Officer of the Physical Resources Section was to acknowledge the problem of trespass on its sites, to refer the matter to the County Solicitor, and to state that signs would be erected. That the complaint was made, and the acknowledgement of the problem by Avon demonstrated that usage of the Field by third parties was taking place.

7.1.9 In order to gain access to the Field, local inhabitants would either have had to have passed through formal access points to the Field, such as gates which had been left open; or to pass through informal access points, namely dilapidated or missing fencing. As I indicate in my findings below, the quality of the perimeter fencing to the Field has deteriorated progressively since 1988, and more rapidly after 1992. Its quality would fluctuate depending on the timing and extent of repairs from time to time. It is likely that it has become significantly more easy to obtain access to the Field from 1992 onwards.

7.1.10 The burden lies on the Applicants to prove each element of the claim that they assert. That includes the necessity of proving sufficient user. Whether the test to be applied is that arising under the 1965 Act as enacted, or as amended, 'sufficient' user is enough user to indicate that the land is being used by the local community for general recreation, rather than as occasional use by individuals as trespassers - R. v. Staffordshire County Council ex p. McAlpine Homes Ltd.

[2002] EWHC 76 (Admin) at para. [71] per Sullivan J. It follows that the larger the locality or neighbourhood, the greater the extent and degree of usage that one might expect to see, if a right is being claimed. In an urban setting where the locality or neighbourhood is relatively small, this will give rise to the difficult question as to the effect of user on the consciousness of the landowner where the users come both from the locality or neighbourhood and the surrounding area. I remind myself that the locality and neighbourhood relied on by the Applicants in their closing submissions are first within the BS5 postal district which is said to incorporate Whitehall, Greenbank and Upper Easton neighbourhoods. Alternatively it is said that the neighbourhood could be Whitehall. The Application Map shows an area stretching from Whitehall Road in the South to Greenbank Cemetery in the North. I have also been supplied with a copy of a plan showing electoral ward boundaries, dated 5th. July 2002. The relevant electoral ward appears to be that of Easton. It is plain that these localities and neighbourhoods are of very different sizes. The Easton ward extends from and is bounded by the M32 motorway and Greenbank Cemetery in the North; Rose Green, St. George's Park and Netham Park Industrial Estate to the East; Feeder Road to the South and Chelsea Road, Russell Town Avenue and Marsh Lane to the West. It seems to me that one would ask the wrong question if one first postulated the locality supposedly benefited, and then tried to associate the usage with that locality. In an urban setting it is unlikely that a landowner will know where the users come from. In these circumstances the correct approach is to ask whether the level of user is sufficiently widespread and continuous to indicate to the landowner that a public right is being exercised. If the answer to that question

is 'yes', one then analyses the factual usage to see whether it is in fact exercised by the inhabitants of any particular locality or neighbourhood.

7.1.11 Given that Packer's Field is a large green space in a highly built-up area, one indication of the extent of local usage (as opposed to authorised usage) is to be found in the extent of team games that locals undertake on the land. Although 'lawful sports and pastimes' need not be organised or team sports. Packer's Field is by virtue of its size, location and facilities very suitable for the holding of team games. A number of supporters of the Applicant have referred to the usage of the site by the Easton Cowboys and Easton Cowgirls, which commenced in 1998. It does not seem to me to be a coincidence that the pitch was said to have deteriorated at about that time, Bristol Athletics Club stopped using it and that the Old Georgians were dissolved shortly thereafter. Prior to that date, on the evidence that I have heard, usage by local inhabitants would have been very informal.

7.1.12 I find that the user by the local inhabitants before 1992 would have been informal and occasional, and access mainly gained through the main gates when open for other uses by sports clubs or social events. I conclude that informal usage of the Field by the local inhabitants was not substantial or significant prior to 1988. When the disused railway line became a functioning cycleway in 1979, an opportunity arose for access to be gained via that route to the area of the allotments, the tennis courts and the Field. That would not have led to increased usage unless the perimeter were to become less secure. Usage increased after the maintenance of the Field went out to competitive tender, and increased further

once Mr. Risdale left his then employment in 1992. It increased because the perimeter of the Field became progressively more insecure; the Field remained open to the public for longer periods with the use of the Pavilion for social events; Mr. Risdale was not on site to dissuade members of the public from entering on to the Field, and the School found it progressively more difficult to keep up with the increasing amount of work necessary to repair fencing that has always been broken down by usage, wear and tear, the opening of routes of convenience through the Field, and occasional acts of wanton vandalism. Once the level of access to the Field and user of it started to become more commonplace, then one would expect usage to increase as local inhabitants regarded it as an everyday use. Mr. Bone's view of this, that it appeared to be an activity which had been acquiesced in to the point where the owner of the Field could not properly object to it was I thought quite perceptive, but in error as to the time-scale. In my view, usage of the Field by a significant number of local inhabitants for lawful sports and pastimes certainly did not occur prior to 1992, and on balance did not occur before 1998.

7.2 Fencing

I conclude that for a period until the early to mid 1990s the Council was engaged in a perpetual struggle to maintain the perimeter fencing to the Field, which was broadly in equilibrium. I come to this view based not only on the evidence of the objectors' witnesses, but also the evidence of Mr. Burrough, who painted a picture of holes appearing in fences, repairs, and more holes appearing. Until 1982 the boundary to Johnson's Lane was a wooden fence. The remainder of the fencing was of post-and-wire construction.

7.3 The objectors have supplied an estimate from building contractors dated 9th. July 1996 which appears to relate to the erection of fencing between Whitehall Primary School and Packer's Field. Such work would be consistent with the fencing on view at the site view. Beaver Services Ltd. provided an estimate dated 5th. July 2000 for (inter alia) the removal of a section of chain link fencing and replacement with fencing panels. There is no documentary evidence that this work was carried out. The objectors have provided relatively little contemporaneous documentary evidence to support the case put forward that regular repairs were carried out. The explanation for this is that documentation is said to have been lost in the transition of the School to Academy status. I conclude that the proper explanation for the dispute on the evidence between the claim that gaps in the fencing existed for many years and the School's assertion that the fence was repaired was that the fence was repaired from time to time, but the repaired parts of fence would be opened up by those who wished to have easy access. The gaps occurred more frequently after 1992, and after 1998 the fencing was intermittent only. In particular there were gaps at the King's Head public house; at the access behind the houses on Gordon Road; adjacent to the allotments and adjacent to the tennis courts.

7.4 I also conclude on the evidence that before Easter 2005 the objectors securely fenced the entirety of the perimeter to the Field. Feelings ran very high at this time, and I find that part of the fencing was destroyed by persons opposed to the Objectors' plans for the development and usage of Packer's Field. I do not

find that the Applicant or any witness who gave evidence before me had any part in this event.

7.5 Signage

I have set out the signage on the site at paragraph 2.5 above. There was a dispute as to whether other signs have recently been erected by the City Council which have been torn down. I find that the Council did erect signs forbidding entrance on to the land without their consent, and that these signs were unlawfully removed.

8. User by local residents for twenty years as of right

8.1 In the light of my findings of fact above, I conclude that the Applicant has not succeeded in establishing any period of user by sufficient number of local inhabitants as of right for any continuous period of twenty years. It follows that the Application should be refused for that reason.

8.2 Considering the quality of the usage, I accept the evidence on behalf of the Objectors, and in particular of Mr. Risdale and Mr. Holmes, to the effect that from time to time trespassers (as they saw it) have been warned off of the Field. As far as Mr. Risdale was concerned this extended until 1992; as far as Mr. Holmes was concerned he appears to have done this for as long as he was a teacher on the site. Mr. Holmes was particularly concerned about the usage for the purpose of dog-walking, for reasons that he made plain. This is not to say that dogs should not be walked, nor that the vast majority of dog-owners do not

behave responsibly. However, given that Mr. Holmes and others felt the way that they did about the practice of walking dogs on the Field, it was a consequence that from time to time dog-walkers would be challenged. If that is so, then the use of the field for dog-walking would, from time to time, have been contentious, and continued dog-walking by the members of public would not have been 'as of right' - see Newnham v. Willison (1987) 56 P & C R 8 at 19 per Kerr L.J..

8.3 The question which then arises is whether the contentious nature of one particular form of sport or pastime precludes any claim based on other, non-contentious forms of sport or pastime. In my view it does. The statute requires the continuous use of the land for lawful sports and pastimes for twenty years. If the landowner has indicated that he is not willing to acquiesce in the carrying out of any particular lawful sport or pastime, then I cannot see how a continuous use for lawful sports and pastimes in general can be made out. I note that Mr. Petchey suggested that walking a dog could not be a 'lawful' sports and pastime because it was prohibited by notice. If he was right, then one could see an argument that one should disregard the dog-walking, as it was not 'lawful' and have regard solely to other usage. However I do not think that he is right. 'Lawful' in my view is to a reference to the criminal law. It would be futile to hold that 'lawful' was a reference to the civil entitlement of the public to carry out the sport or pastime at the time, because any user that creates a village green under the third paragraph of section 22 is likely to be unlawful when it occurs. It creates its own lawfulness by long use - see Bakewell Management v. Brandwood [2004] 2 WLR 995.

8.4 I am also of the view that the attempts on the part of the Council and the school to fence off the perimeter would also render the usage contentious and hence not as of right. Although I have no reason to believe that any of the Applicant's witnesses themselves created a gap in a fence, it seems to me that from time to time those who entered through a gap in the fence took advantage of someone who in fact did. The consequence of this is that one cannot view the activities of the local inhabitants as being 'as of right', but must be viewed as being with force.

8.5 I turn next to consider the objection that such usage of the local inhabitants as there was, was equivocal in that it deferred to the use of the Field by the School, the primary school and the various clubs that were licensed to use it - see R. v. Buckinghamshire County Council ex. p. Laing Homes [2004] JPL 319 at para. 82 per Sullivan J. In the context of that case, Sullivan J said:

"the proper approach is to ask whether those using the field for recreational purposes were interrupting [the owner's] agricultural use of the land in such a manner or to such an extent that [the owners] should have been aware that the recreational users believed that they were exercising a public right. If the starting point is 'how would the matter have appeared to [the owner] ?' It would not be reasonable to expect [the owner] to resist the recreational use of their fields so long as such use did not interfere with their licensee's use of them for taking a hay crop."

In the present case it is noteworthy that despite the use made of Packer's Field by the schools and clubs, there has been no suggestion that such user has ever

interfered with the claimed rights of the locals to indulge in lawful sports and pastimes. Notwithstanding the size of Packer's Field, the use made by sports clubs in relation to the whole has been quite extensive. Cricket pitches are sizeable areas when the outfield is included. A 400 metre athletics oval takes up a significant amount of room. The danger area inherent in competitive field sports, especially discus, hammer and javelin is also understandably large. Although the rule itself is somewhat contentious, Ex. p. Laing Homes does lay down a rule that user is not as of right unless it interferes with the actual or intended use of the land by the owner or his licensees, and thus brings to the reasonable attention of the owner the assertion by the public of a right to conduct sports and pastimes. That test appears not to have been satisfied at any time in this case prior to the present dispute arising, when such a right was openly and plainly asserted by the Applicants and other all persons with a common interest. Such interference as there may have been, warranting involvement by groundsmen or teachers, has been relatively infrequent, and would not have been indicative to the owners of the land that some public right with the capacity to affect his own user of the land was being asserted. I conclude therefore that for this reason, too, the Applicant has not established that the user has been as of right for more than a few years.

9. Locality

9.1 For an area to be a 'locality' within the meaning of the original section 22, it must be an area 'known to the law' - see Ministry of Defence v. Wiltshire County Council [1995] 4 All ER 931 at 937b-e per Harman J. Precisely what that phrase meant was fully discussed by Sullivan J. in R v. South Gloucestershire DC

ex rel. Cheltenham Builders Limited [2004] JPL 975. The ratio of that decision is to be found at paragraphs [45]-[[47] where the learned Judge held that:

“[45] Setting the claimant’s submissions as to the meaning of ‘locality’ on one side (see post), it is plain that at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a ‘locality’. It may be difficult to define the boundary of a ‘locality’ on a plan because views may differ as to its precise extent, but there has to be a sufficiently cohesive entity which is capable of definition. In R v. Suffolk County Council ex.p. Steed (1995) 70 P & CR 487 Carnwath J. said, at p. 501:

‘Whatever its precise limits, it should connote something more than a place or geographical area - rather a distinct and identifiable community, such as might reasonably lay claim to a town or village green as of right.’

Although these observations were obiter, since there was no dispute that Sudbury was a locality for the purpose of the Act, they capture the essential characteristics of a locality.

[46] There is no suggestion in the report that the area delineated by the red line on the plan with the application was a distinct and identifiable community. The completed questionnaires mention local facilities such as local shops and a doctor’s surgery, but there is no information as to their location or even as to whether they are within the area edged red. As

mentioned above, the boundary of the area is, for the most part, arbitrary in topographical terms. It appears to have been defined solely upon the basis that it should be drawn so as to include the homes of the 24 people who had completed questionnaires.

[47] Unless a 'locality' in subs.(1A) means any area that happens to have been delineated by a red line on a plan by an applicant, the defendant's decision is fatally flawed. For the reasons I have set out above, I am satisfied that, whatever else it may mean, 'locality' does not have such a non-meaning in the Act."

Sullivan J then proceeded in a lengthy obiter dictum at para. [72] and following to conclude that authority required 'locality' to be construed as 'a division of the County defined and known to law' - see para. [81] where the learned judge concluded that a locality must refer to some legally recognised administrative division of the county.

9.2 It is plain that 'BS5' is not a locality 'known to law' in this sense. It is a designation given to an area for the assistance of the postal services. Although it has become a commonplace manner of describing certain areas, that does not satisfy this legal requirement. It is not suggested that Whitehall is an area known to the law. I turn lastly to the Easton electoral ward.

9.3 The objectors have objected to the reference to Easton as a locality on the basis that it excludes part of Whitehall. Before I come to that, I need to consider whether an electoral ward can in law be a 'locality' for these purposes. I know of

no case that deals with this point, although in the report of Mr. Charles Mynors in Re Magpie Hall Lane, Bromley [2004], it appears to have been accepted that an electoral ward could qualify as a locality. In Laing Homes at [138] Sullivan J. commented that had it been the case that a ward was relied upon as a locality, then Laings would have had good prospects of persuading the inspector that there was no qualifying locality, either because electoral wards are not localities, or because two wards were relied upon. I see no reason why this should not be so. A ward is capable of being described with certainty. It serves an administrative function, albeit one that is confined to electoral business. The instinctive objection is that a ward is plainly not a town or a village. The riposte to that is, first, that an ecclesiastical parish is not a town or village either; secondly that if it is an artificial or unknown construct, then it is highly unlikely that the pattern of users will reflect its boundaries; and thirdly, that the purpose of the 1965 Act was to make it easier to establish the existence of village green rights (Laing Homes at [151]). I conclude that an electoral ward may be a locality for the purpose of section 22 of the Act.

9.4 However, in ex. p. Steed (cited in Laing Homes) Carnwath J. held that the 'locality' "should connote something more than a place or geographical area - rather a distinct and identifiable community, such as might reasonably lay claim to a town or village green as of right." I had no sense during the Inquiry that any of the persons using the land felt that they were using it because they were a resident of Easton electoral ward. This is not surprising. An electoral ward is not a creation to which people owe allegiance or recognise rights, save for the limited

purpose of voting. In my view Easton Ward cannot be a 'locality' within section 22 of the un-amended Act.

9.5 I turn next to Mr. Petchey's suggestion that Easton electoral ward cannot be a locality because it excludes part of Whitehall. In my view this is not an objection to registration. It is not fatal to a claim to an area being a relevant locality that some users of the land come from outside that locality. Mr. Petchey's objection that:

"the relevant words are *a significant number of the inhabitants of any locality not localities*"

and that therefore a locality cannot be an area which does not wholly include a neighbourhood is one I cannot follow. The wording of the amended section 22 is:

"(1A) Land falls within this sub-section of it is land on which for not less than 20 years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality..."

This creates two alternative tests. One is that the users of land live within a locality. The second is that they live within a neighbourhood within a locality. Even if, as a matter of construction, a neighbourhood must lie wholly within a locality (see Ex. p. Cheltenham Builders [2004] JPL 975 at para. 88) I see no reason why that should dictate that 'a locality' within the first test must as a matter of law include all neighbourhoods whose inhabitants use the land. Of course, if there are a significant number of inhabitants who live outside the locality in question, then the consequence would be that the locality would not satisfy section 22 as a matter of fact.

9.6 However, for the reasons I have given, there is no locality that may be relied upon by the Applicants to justify their application.

10. Neighbourhood

10.1 I turn next to the question of whether the usage has been by a significant number of the inhabitants of a neighbourhood within a locality within the amended section 22. The first question must be to attempt to identify the neighbourhood. A neighbourhood is a community. It need not have clear boundaries, nor I think need there be uniformity of opinion as to where those boundaries may lie.

10.2 Mr. Petchey raises two objections to the claim that Whitehall is the relevant neighbourhood in this case. Taking them in reverse order, the first is that Whitehall cannot be a neighbourhood as it straddles two administrative areas, namely the electoral wards of Easton and St. George. The second is that as a matter of fact, users come from a long way beyond Whitehall.

10.3 Although in Ex p. Cheltenham Builders the application would have failed because the relevant neighbourhood was shared between two administrative localities, it should be noted that the localities were Bristol City and South Gloucestershire, two unitary authorities. There was, it appears, no higher authority that the relevant neighbourhood might fall within. In the present case the position is quite different. It is clear that Bristol itself is capable of being a

locality for the purposes of the 1965 Act, and that Whitehall falls wholly within it. I see no reason, therefore, why Whitehall might not be thought of as an acceptable neighbourhood within a large locality, namely Bristol. I would add that as I have found that Easton electoral ward is not a locality in any event for these purposes, it seems to me that it should not be regarded as such simply to preclude the occupiers of a perfectly genuine neighbourhood from relying on the amendment to the 1965 Act.

10.4 I turn to the next issue, namely whether Whitehall is a sufficiently coherent area to justify the description of a neighbourhood. I have come to the conclusion that it does. Witnesses to a greater or lesser extent knew where it was, even if they could not define its boundaries. It is named after a significant road running through it; it has its own meeting places (pubic houses). It is shown as an area on the Ordnance Survey plan of the area.

10.5 The last question is whether the user proven demonstrates user by a significant number of the inhabitants of Whitehall. Both Applicant and Objector have sought to present analyses of evidence that buttresses their contrary submissions, thus.

(1) Mr. Petchey analyses the Applicant's witnesses. Against the criterion for Whitehall mentioned by Mr. Price, seven fall within it; with fourteen from outside. Of the twenty-nine Easton Cowgirls, four are in Whitehall, twenty five in BS5, and the remaining twenty from outside.

(2) The Applicants for their part assert that a majority of those who delivered a statement or questionnaire fell within the boundaries of Whitehall -

although I am unclear whether that is a reference to Whitehall as defined by Mr. Price, or as defined by the Applicant. For the avoidance of doubt Whitehall in my view is bounded by the cyclepath; Gordon Avenue; Park Crescent; Foxcroft Road; and Whitehall Road as far as the junction with Easton Road. Miss Willavoys further broke this down to refer to fifty respondents in Whitehall; seven within Greenbank; ten within other parts of BS5, and ten outside BS5.

10.6 As I have stated above, I am of the opinion that there has not been user of the Field for lawful sports by local inhabitants (from whatever location) for a sufficient period to justify registration. I accept that the majority of the user has come from within Whitehall. That is what one would expect, and also consistent with the fact that the main entrance to Packer's Field faces Johnson's Lane, towards Whitehall. What also appeared significant was that the opening of the cycle way provided easier access to Packer's Field from those in outlying areas, and from those living in Greenbank. In more recent times, with the deterioration of the fencing, more usage of Packer's Field has occurred from Greenbank. For my part, I would not now conclude that a reasonable landowner would be of the opinion that the usage of Packer's Field was associated with a public right vested in Whitehall. He would instead conclude that it was used by anyone who happened to be within reasonable travelling distance who wished to and could use it. For this reason as well I conclude that usage has not been carried out by a significant number of the inhabitants of a locality. I agree with Mr. Petchey's submission that the test is more than simply asking whether the evidence of user correlates in part with a given neighbourhood. It is necessary to ask whether the

user as a whole evidences a particular public right, vested in a particular neighbourhood. It may be the case that, by using the Interpretation Act 1978 one can interpret 'neighbourhood' as in the plural as 'neighbourhoods'. The difficulty in this case is that the user is more disparate than that, encompassing Whitehall, Greenbank, Easton and beyond. In my view the requirement as to user by the inhabitants of a neighbourhood is not made out.

11. The effect of Trap Grounds in the Court of Appeal

11.1 In Trap Grounds the Court of Appeal recognised that their decision that only the amended section 22 of the 1965 Act was applicable as regards applications made after the effective date of the amendment, coupled with their decision that the relevant period of twenty years (in the absence of further regulations, that have not been made) continues up until the date of the actual decision made by the registration Authority, will have the consequence that very few (if any) contested applications would succeed.

11.2 In the present inquiry, it is plain from the initial objection to the application, and the subsequent submissions and the Acts of the objector in fencing the field and erecting notices that appear to have been removed prohibiting access, that the objector hotly contests the local inhabitants' right to use the land, and to have the right registered. Such behaviour, whether by words or deeds, makes subsequent user contentious and no longer 'as of right' - see Newnham v. Willison (1988) 56 P & CR 8.

12. Should the Authority make its decision pending the final resolution of the Trap Grounds case ?

12.1 Does the Registration Authority have jurisdiction to defer its decision ?

Regulation 6 of the Commons (New Land) Regulations 1969 requires the authority to consider the application 'as soon as possible after the date by which statements in objection to the application have been required to be submitted'. The question is whether this imposes a duty on the Authority to proceed now with the inquiry. In my view, 'as soon as possible' refers not only to the time needed to give the dispute due consideration, but also to the time needed to obtain clarity as to the legal basis on which such an inquiry should be held. Ordinarily, where there is uncertainty as to the application of statutory duties, the administrative court will require the authority to make a decision, and will only then intervene if it was in error. However, where there is pending litigation considering the basis and meaning of those duties, it gives a sensible meaning to the phrase 'as soon as possible' to encompass the resolution of that dispute. I therefore conclude that the Authority need not make a decision on an application for so long as the position on appeal from Trap Grounds in the Court of Appeal is unknown⁵.

12.2 If so, should the decision be deferred in the present case ?

My advice to the Authority is that this application should be rejected, on a number of separate grounds. That advice remains the same whatever the final status of the Trap Grounds decision. Whilst it is for the Authority to consider

whether or not to accept my advice, I would suggest that the Authority proceed to the determination of this application now. If during the course of that determination they should be of the view, contrary to my opinion, that the application might succeed if Trap Grounds were to be overturned, then the application could at that stage be adjourned. But to put it shortly, my view is that this application fails whether or not Trap Grounds is overturned.

13. Conclusion

The Authority should dismiss the application to register Packer's Field, Whitehall, Bristol, because:

(1) The Applicants have failed to establish any continuous period of twenty years' user of the Field for lawful sports and pastimes between 1970 and the date of the inquiry. This was because:

(i) The user was not as a matter of fact sufficient to bring to the attention of the landowner of the Field a claim to a public right;

(ii) Insofar as the user has occurred it is in law contentious until 1992 if not later.

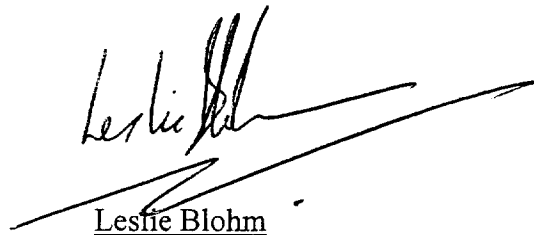
(iii) The Applicants have not proven that the user was by the residents of a locality, being a locality known to law.

(3) Insofar as the Applicants must rely on the amended version of section 22 continuing to the date of registration (that is, on the basis of the law as declared by the Court of Appeal in Trap Grounds) any continuing user is contentious and hence not as of right.

⁵ DEFRA indicated to Registration Authorities on the 11th. May 2005 that if the House of Lords allowed the petition to proceed, it would seek to intervene in the case. I understand that the parties

(4) I also advise that user has not been by a significant number of the inhabitants of the neighbourhood of Whitehall, within the meaning given to section 22 of the Act as amended.

14. I would lastly like to record my thanks to the City Council and its employees for their assistance, help and courtesy that was extended to me, as it was to all the participants, over the course of the Inquiry.

A handwritten signature in black ink, appearing to read 'Leslie Blohm', with a long horizontal flourish extending to the right.

Leslie Blohm

St. John's Chambers,
Small Street,
Bristol,
BS1 1DW

12th. July 2005

expect a decision on the question of permission to proceed within the next fourteen days.



Avon County Council Terrier Plan c. 1974

30 June 1988

PR/N/SI/RMG/RE
Mr R C Baynton
6042

T? 100
19/7/88

Mr A T Pointer
108 Gordon Road
Whitehall
Bristol
BS5 7DP

1. Mr Pointer

Unauthorised use of Whitehall Playing Field

Thank you for your letter dated 26 June 1988, and your letter of 20 June 1988, which has been passed to me by the Committee Services Section.

The Authority is very aware of the problem of trespass on its sites, and is keen to overcome it. Unfortunately, no effective means of prevention has yet been found.

An order has been placed to have signs made for Whitehall playing field, advising that unauthorised use is not allowed and constitutes trespass. These signs should be ready and delivered to the field in a few weeks time.

In the meantime, I have written to the Director of Administration and County Solicitor advising him of the problem of trespass on the field and asking him what action he proposes taking against offenders.

However, I should point out that any action the Authority takes will be for trespass on the playing field, and not parking on your land. I would suggest that you and the other residents affected erect a sign stating that the access way is private and that trespassers will be prosecuted. If the problem persists, you should then seek legal advice.

I will be in touch with you again once I have completed my discussions with the Director of Administration and County Solicitor.

Yours sincerely

R C Baynton
Principal Administrative Officer
Physical Resources Section
For the Director of Education

City of Bristol
Parks Department



Alan Barber, FILAM, DipPRA
Parks Manager

RAS
JFL

Colston House
Colston Street, Bristol BS1 5AQ

Telephone (0272) 266031
Telex 449819

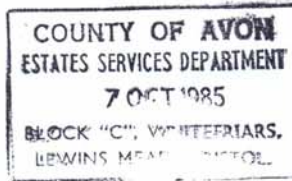
When calling or telephoning
about this letter please ask
for Mr R W Hornby Ext. 509

Your ref X33 SE 21 M 1

Our ref RWH/JJ

Date 2 October 1985

County of Avon
Director of Estates Services Dept.
Block C, Whitefriars
Lewins Mead
Bristol
STOL
2NW



Mr Sir

Packers Allotments - Gordon Road, Whitehall Playing Field

I have been approached by the Allotment Holders at the above site concerning possibility of them being allowed pedestrian access across the playing fields.

The problem has been that there is an access to Packers Allotments which has recently been closed following a considerable amount of theft and vandalism from the site and this does seem to have improved matters. The problem is that about half of the tenants used to use this entrance and it is a very considerable distance to walk to the main entrance in Gordon Road. However, there is a gate which leads from the playing fields into the allotments area near the bowling club house and if access could be allowed across the playing fields for a few tenants it would ease matters considerably.

I hope you would be good enough to consider this request and let me know your decision.

Yours sincerely

Parks Manager


Memorandum from W E Puce, Playing Fields Officer
Mr. I. Roy, Valuation Division 18 March 1986

WHITEHALL PLAYING FIELD, GORDON ROAD
PACKERS ALLOTMENTS

I refer to the request from the City's Parks Manager for allotment holders to be allowed access across Whitehall Playing Field.

Whilst I sympathise with the Parks Manager and the problems he is experiencing with vandalism at Packers Allotments, I do not think it would be in the interest of the County Council to allow public access to our field over which we had no control.

I would therefore recommend that this request be refused.


.....
WEP/BW

1311 D&C

27 March 1986
RMH/JJ
TR/X33/SE/21/M1/BW
Mr Roy
6&19

Parks Manager
City of Bristol
Colston House,
Colston Street
BRISTOL BS1 3AQ

Dear Sir

PACKERS ALLOTMENTS - GORDON ROAD, WHITEHALL PLAYING FIELD

I refer to your letter of 2.10.85 and would apologise for the delay in replying.

Your request for allotment holders to be allowed access across Whitehall Playing Field has been considered with my Playing Fields Officer but unfortunately I do not consider it to be in the County Council's interest to allow public access across the field.

I regret, therefore, that I am unable to agree to your request on this occasion.

Yours faithfully



T ROY
Assistant Valuer
for Director of Estates Services