

BRISTOL CITY COUNCIL

PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE

15TH MARCH 2012

Report of: Strategic Director of Corporate Services

Title: Application to Register Land at Grove Wood as a Town and Village Green under the Commons Act 2006, Section 15(2)

Wards: Frome Vale and Eastville

Officer Presenting Report: Anne Nugent

Contact Telephone Number: (0117) 922 3424

RECOMMENDATION

To register the application land as a Town and Village Green in pursuance of the Commons Act 2006.

Summary

This report concerns an application to register a site known as Grove Wood in Frome Vale Ward as a Town and Village Green.

The significant issues in the report are:

As set out in the report.

Policy

- There are no specific policy implications arising from this report

Consultation

1. Internal

This report has been prepared in consultation with the Registration Authority's responsible delegated officer (Strategic Director, Corporate

Services).

2. External

Mr Leslie Blohm QC of Counsel was appointed as an independent inspector to advise the City Council as Registration Authority as to how to deal with the application. Mr Blohm conducted a non statutory inquiry on 4 - 7 April and 4 and 5 August 2011. The inquiry was open to the public.

Context

3. The applicant, Steven Mickelwright acting for the Snuff Mills Action group, applied on 26 November 2009 to register land at Grove Wood, Fishponds, Bristol as a Town or Village Green of land in accordance with section 15 of the Commons Act 2006 (the Act). The map of the application land is attached as Appendix 1.
4. The City Council in its capacity as Commons Registration Authority has responsibility under the Commons Act 2006 to determine whether or not the land should be registered as a green.
5. The Commons Registration Authority received an objection from the owner of the land, which was then a limited company known as Rhino Group Limited, owner or under the control of Lord Housang Jafari. The present owner is a company called Kingdom of Najafabad Ltd, of which Lady Katrina Jafari is shareholder, director and company secretary.
6. The Registration Authority appointed an independent inspector (Mr Leslie Blohm QC of Counsel) to advise it as to how to deal with the application. The inspector conducted a non-statutory inquiry which opened on 4 April 2011. During that Inquiry Mr Micklewright represented the Applicants, whilst the Objector was represented by Mr Mair, who is the agent acting for Rhino Group, on 4 - 7 April and Mrs Rowena Meagher of Counsel on 4 and 5 August. The inspector heard considerable evidence and legal argument and was provided with documentation. The inspector had an accompanied site view of the land in question.
7. The objector raised a number of objections which are summarised at paragraph 13 of the inspector's report. Each of the objections is then dealt with by the inspector at paragraph 14 of his report. The report is attached as Appendix 2.
8. It is for the applicant to define the application land and then to show that the statutory test is satisfied, on a balance of probabilities, in relation to the whole of it.

9. On the second day of the Inquiry Mr. Micklewright applied to amend his application so as to provide for two alternative and different areas to be the relevant neighbourhoods. These were 'Stapleton' and 'Fishponds' and they are shown on the plan attached as Annex 3 to the inspector's report. 'Stapleton' is coloured yellow; 'Fishponds' is pink.
10. The inspector recommends that the Registration Authority allow the application to be amended so as to provide for two alternative and different areas to be the relevant neighbourhoods.
11. The inspector summarises the evidence from paragraph 20 of his report.
12. The objector's closing submissions are contained in paragraph 94 of the inspector's report. The objector submitted that the user by the inhabitants of the area was not sufficient to indicate to the landowner that the land was in general use for recreation. The objector also submitted that the use of the footpath was permissive and after July 2008 was with force as Mr Jafari (had fenced the footpath off. The objector also submitted that the usage of the land as a footpath should be treated as giving rise to a footpath but not a town/village green. Also an application had been made to register the upper path as a footpath which the objector indicated represented a belief by the users that they were using a footpath not a town/village green. Any use other than for a footpath was too minor to support the application. The objectors also considered that the neighbourhoods (as amended) relied upon were not supported on the facts. The inspector accepted that it would be a matter of impression whether or not these neighbourhoods existed.
13. The applicant's closing submissions are dealt with by the inspector at paragraph 95 and challenged each and every objection.
14. The inspector commented in detail on the evidence from paragraph 96 of his report. In his view the evidence from the witnesses for the applicant was reliable and could be accepted. He found that that evidence was broadly consistent with relatively low level usage of an attractive and interesting piece of land, full of wildlife and flora.
15. The inspector accepted that Rhino Group and Mr Jafari had carried out work to clear some parts of the land with a view to removing timber and opening up access but he did not accept that as a result of this activity the level of access changed.
16. As regards the topography and usage of party of the land the inspector considered that it was essentially a matter of fact and impression as to whether or not the land fell within the scope of the section even if part of

the land would otherwise be inaccessible (paragraph 100 of the inspector's report). On the facts the inspector had the impression that that land had the appearance of a significant whole even with the different areas of land, some sloped, some flat some open and some wooded (para 101).

17. On the issue of user for 20 years the inspector was satisfied on the evidence that this element of the statutory test had been shown (paragraph 102 of the inspector's report) on the whole of the land (paragraph 104).
18. On the issue of lawful sports and pastimes the inspector was satisfied that this element of the statutory test had been shown (paragraph 105 of the inspector's report).
19. On the 'as of right' element of the statutory test the objector submitted that the usage was contrary to the will of the owner and that this was clear to those using the land (see paragraph 107- 111 of the inspector's report for consideration of this). The inspector considers that there was no evidence to show that the use was indeed contentious.
20. The issue of usage by a significant number of inhabitants in the neighbourhood is dealt with at paragraphs 112 –125 (of the report) and the inspector concludes-
 - that the neighbourhoods are Fishponds and Stapleton (para 116);
 - that there was usage and that the previous landowners had been ambivalent as to the general public recreational usage or welcomed it (para 118);
 - that it should have been apparent to the landowner that the land was being used for general recreational use or informal sports and pastimes rather than walking along the footpath (para 119);
 - that there was a significant number of the inhabitants of Stapleton using the land (para 124); and
 - on balance that there was also was a significant number of the inhabitants of Fishponds using the land (para 125).
21. The inspector recommends that the Registration Authority allow the amendment to alter the neighbourhoods and register the application land as a Town and Village Green in pursuance of the Commons Act 2006 (para 128). A digitised plan of the application land is at appendix 3.

Proposal

22. This Committee on behalf of the Council (as statutory Commons Registration Authority) has a statutory duty under the Commons Act 2006

and the regulations made thereunder to determine objectively whether or not the land in question should be registered as a Town or Village Green within the meaning of the Act.

23. The proposal to the Committee is to accept the inspector's recommendations to allow the amendment to alter the neighbourhoods and to register the application land (para 128) as marked on appendix 3.

Other Options Considered

24. The other option considered is to reject the application.
25. The Committee is not obliged to follow the recommendation of the inspector, however, it must have sufficient reason for reaching a conclusion different from that of the inspector (see para 127).

Risk Assessment

26. Not following the recommendations of the inspector without good reason leaves the Council open to legal challenge. In spite of the fact that legal challenge in cases of this nature is the exception rather than the norm, it must be pointed out to members that there are, nonetheless, legal risks associated with not following the inspector's recommendation.
27. Following the recommendation of the inspector after a detailed consideration of the inspector's report mitigates the risk of legal challenge.

Public Sector Equality Duties

28. Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
 - i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;

- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
- tackle prejudice; and
 - promote understanding.

Legal and Resource Implications

Legal

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

The criteria to be applied for successful registration are provided by the Commons Act 2006. The applicant must establish that the land in question comes entirely within the definition of a town or village green, to be found in Section 15(2) of the Commons Act. The Registration Authority must consider on the balance of probabilities whether or not the applicants have shown that:

- a significant number of inhabitants of the locality or neighbourhood indulged in lawful sports and pastimes as of right on the land for a period of at least twenty years;

In its capacity as Registration Authority the City Council has to consider objectively and impartially all applications to register greens on their merits taking account of any objections and of any other relevant considerations. The Committee must leave out of account wholly irrelevant considerations such as the potential use of the land in the future. The inspector has recommended that the application land be registered as a town and village green. The Committee must have sufficient reason for reaching a conclusion different from that of the inspector.

Legal advice provided by Anne Nugent, Senior Solicitor

30. Financial

(a) Revenue

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

(b) Capital

There are no specific policy implications arising from this report.

(Financial advice provided by Principal Accountants Tony Whitlock, and Jon Clayton)

31. Land

There are no specific policy implications arising from this report.

32. Personnel

Not applicable

Appendices:

Appendix 1 – The Applicant's map

Appendix 2 – The Inspector's Report dated 25 January 2011

Appendix 3 - Digitised plan of application land

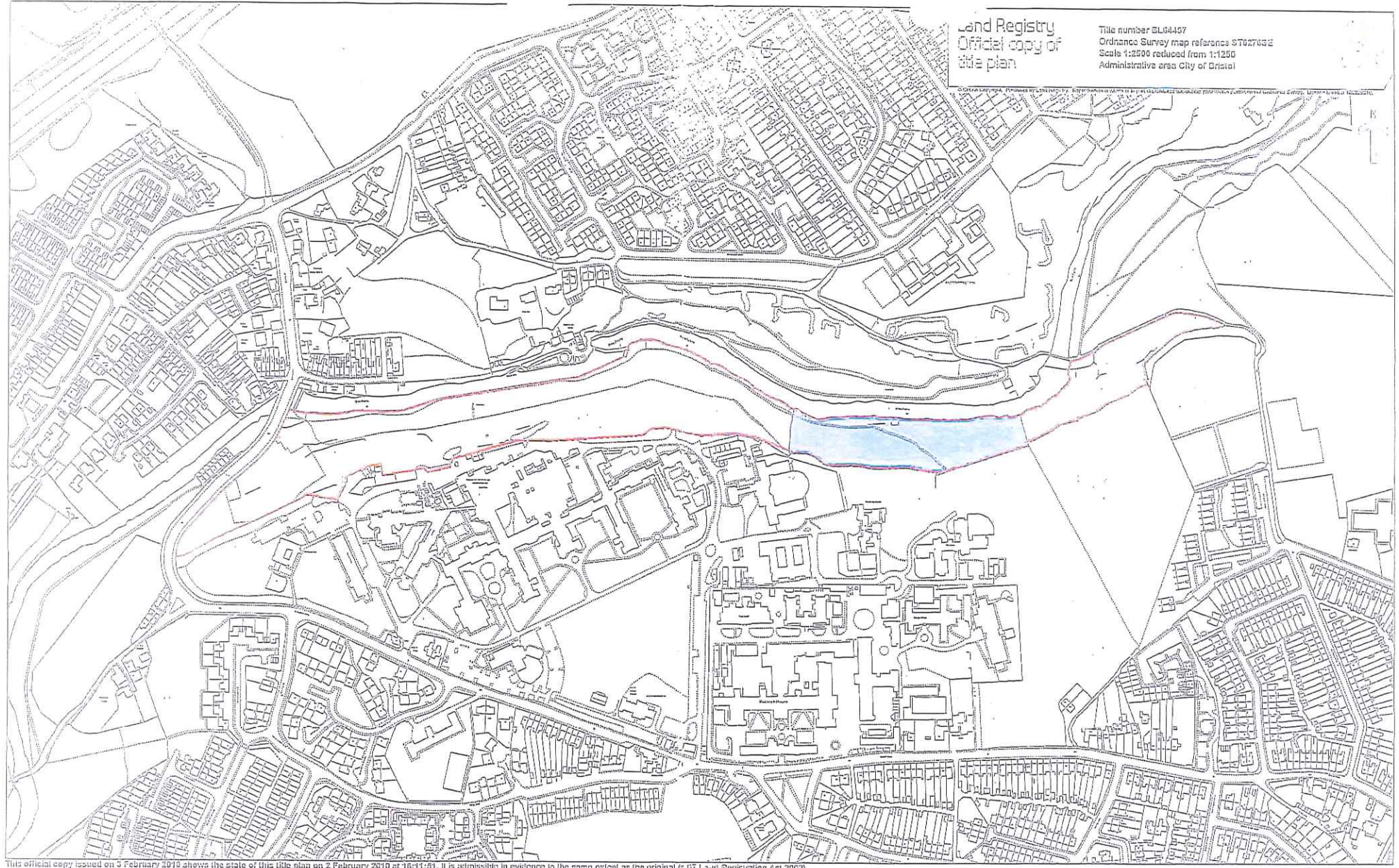
LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

Applicant and objector's evidence bundles and written submissions

Land Registry
Official copy of
title plan

Title number BL04437
Ordnance Survey map reference 9TG27632
Scale 1:2500 reduced from 1:1250
Administrative area City of Bristol



This official copy issued on 3 February 2010 shows the state of this title plan on 2 February 2010 at 16:11:51. It is admissible in evidence to the same extent as the original (s.07 Land Registration Act 2002).
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.
This title is dealt with by Land Registry, Gloucester Office.

3000 2000 1000 0

IN RE: AN APPLICATION TO REGISTER LAND KNOWN AS GROVE WOOD,
FISHPONDS, BRISTOL, AS A NEW TOWN OR VILLAGE GREEN
APPLICATION NUMBER 15 OF 2009

REPORT

1. Introduction

On 26th. November 2009 Mr. Steven Micklewright¹ made an application to register land at Grove Wood, Fishponds, Bristol, as a Town or Village green pursuant to section 15 Commons Act 2006. The owner of the land, which was then a limited company known as Rhino Group Limited, objected to that application, and Bristol City Council which is the Registration Authority under the Commons Act 2006 for the area, has appointed me to conduct an inquiry into the merits of the application, and to produce a report giving it advice as to whether it should accede to the application, or not.

¹ Said to be acting on behalf of the 'Snuff Mills Action Group'

2. The Authority caused a non-statutory inquiry to be held, which took place at the Council House on 4th. - 7th. April and 4th. and 5th. August 2011. During that Inquiry Mr. Micklewright represented the Applicants, whilst the Objector was represented by Mr. Mair, who is the agent acting for Rhino Group, on 4th. - 7th. April and Mrs. Rowena Meagher of Counsel on. 4th. and 5th. August. I have also had an accompanied site view of the land in question.

3. **The Land**

The land is a strip of land of approximately 12 acres in size, some 1000 metres in length (East to West) that is bordered by the River Frome to its North. Facing it across the Frome is Snuff Mills, a landscaped and maintained area of recreational open land based around, as its name indicates, the former Snuff Mill situated on the bank. The land (and Snuff Mill opposite) is in the valley of the Frome, the land rising quite steeply to the South. The Frome can be crossed on foot by a bridge towards the Eastern end of the land; there is also a weir roughly mid-way along the boundary of the Frome, although that would not I think give any easy access across the river. The Western edge of the land is bordered by Blackberry Hill, a main and busy road, and the South is bordered by the University of the West of England Glenside campus, Blackberry Hill Hospital and

(at its Eastern end) by open land known as Laundry Field. At the Eastern end, the land tapers to a point, where it adjoins the Oldbury Court Estate.

4. As I have noted part of the Southern boundary to the land is marked by Blackberry Hill Hospital. The remainder of the boundary between Laundry Field and the land is marked by a significant bund or mound running along the edge of Laundry Field. When I viewed the land, the two main footpaths running through the land were unmade, but were reasonably clear. They appeared wide enough for two people abreast for most of their length, although occasionally narrower. Each could take a substantial push-chair or a bicycle with ease.

5. In the course of the hearing the parties described various parts of the land by certain terms of art. The strip of land between the hospital and the Southernmost path was titled 'Under the Hospital'; that between the public footpath and the other East-West trodden track 'Between the paths'; whilst the strip between the Northernmost path and the river was called 'By the river'. The Eastern section of the land, running roughly East from the exit of the public footpath on to Laundry Field, was referred to as 'the East end'. I was supplied

with a helpful plan showing these areas, and I annex this to this Report as Annex 1.

6. The nature of the land is that it is wooded, but traversed by numerous paths, some narrow and difficult and some plain and obvious. There are a number of clearings; some of these appear to be the sites of former quarry workings; others are natural formations. The area between the paths in general slopes; that under the hospital comprises significant plateaux, although it is quite steep immediately adjacent to the hospital. The woodland appears self-seeded; there is substantial wildflower habitat on the ground, and in particular noticeable outcrops of wild garlic. At 'By the river', the land is flat although not always easy terrain. Where the river is adjacent to the East End, there is a stretch of sheer rock face that makes passage along the river's edge very difficult. Access points to the land are at a gateway off of Blackberry Hill, where access is initially and for a short distance fenced; two entry point at Laundry Field, one adjacent to the hospital and one through a gap in the bund; from a path at the very East end of the land leading to the Oldbury Court Estate; and via the bridge over the River.

Public Rights of Way

7. One feature of the application that has been particularly significant, is whether such public usage of the land that is proven is usage of the public rights of way running across the land, or indeed usage that would only prove the existence of a public highway, and not usage that would establish the existence of a TVG. The public rights of way are as follows. There is a public right of way running through the land shown on the definitive map held by the local authority under section 53 Wildlife and Countryside Act 1981. That is shown as a footpath, and described as No. 153. It enters the land from Blackberry Hill through a deliberate gap in the wall. The way is fenced for fifty feet or so; it is then unfenced and runs along the bank of the Frome for about 770 metres. It then heads East-South-East diagonally across the land, going uphill, and leaving the land at a point in Laundry Field, an open field immediately to the East of the hospital site. The access point to Laundry Field is immediately adjacent to the boundary of the hospital.

8. As can be seen from the plan attached at Annex 1, there are two main formed paths running through the land. Besides Path No. 153 there is another path running more to the South, closer to the Hospital boundary. It has the same entry points to Laundry Field and

Blackberry Hill as does No. 153. There is an obvious traverse between the two in the form of a staircase formed by log risers approximately half-way along. This staircase runs adjacent to what is probably an outfall from the Hospital, as it abuts manhole covers alongside. According to Mr. Jafari, he was responsible for clearing this access as part of his works, and until he did so the upper path was only traversable with difficulty.

Ownership of the Land

9. The historic ownership of the land is as follows. At all material times prior to 2000 the land was an adjunct to an adjacent hospital, and vested in the relevant health trust. The land was purchased by a Mr. Terry Olpin², who I understand to be involved in land development, in about 2000. In about 2000 the land was purchased by Rhino Group Limited, a company owned, or under the control, it matters not, of Lord Housang Jafari. The present owner is a company called Kingdom of Najafabad Ltd., of which Lady Katrina Jafari is shareholder, director and company secretary. The ownership of the land does not appear to be directly material to the issues arising under the application, although relevant to the dispute as to the

² It appears likely that the purchasers were Messrs. Olpin, Wheeler and Harford (see entry 8 in the Charges Register to land Registry title BL64497, edition 2nd. February 2010) but nothing turns on this.

extent and nature of public usage (if any) that has taken place on the land over the years.

10. As I set out later in this report, I heard evidence from Lord Housang Jafari, and his wife Lady Katrina Jafari. I should pause here to note that their names are not, as they might appear to be, titles, but forenames and surname respectively. I mention this not to cause embarrassment, but because I shall be referring to each witness by their title. For consistency therefore I shall refer to them as Mr. and Mrs. Jafari respectively.

The issues in the case.

11. Where an application is made for the registration of land as a TVG by reason of long usage by the public, the legal tests that must be satisfied is set out in section 15 of the Commons Act 2006. In the present case the relevant application is made under section 15(3) which relates to usage that ceases not more than two years before the date of the application. The relevant part of that section states:

"15. Registration of greens

- (1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

.....

- (3) This subsection applies where—
 - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
 - (b) they ceased to do so before the time of the application but after the commencement of this section; and
 - (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b)."

12. The Application as originally made asserted that the land has been used for lawful sports and pastimes by the residents of Frome Vale and Eastville Wards in Bristol, as of right, for a period of at least twenty years ending on 12th. July 2008. The reason for the selection of that date, was that this was said to be the date on which Mr. Jafari had the land fenced off from the public right of way, effectively barring access to it. The application form asserted that the public usage included horse riding, bird watching, cycling, jogging, orienteering rambling and the gathering of wild food and fallen timber. The application was accompanied by 139 statements in the form of certified questionnaires. Those questionnaires asserted recreational use over the land, in particular for dog walking and recreational walking. Mr. Micklewright included a helpful table

summarising the salient points of their evidence, and I annex that to this Report as Annex 2.

13. Objection to the application was made by Rhino Group Limited, the then landowner, by letter dated 10th. January 2010, and a further letter dated 26th. August 2010. The objections were:
 - (1) That the application was incompetent and contrary to the European Convention of Human Rights and UK law;
 - (2) That public user has been prevented both physically and by declaration of absence of right since January 2008;
 - (3) That granting 'Common Green' status would be inconsistent with the rights of the landowner, his tenants or contractor;
 - (4) Bristol City Council has stated that it intends to acquire the land and use it as a nature reserve, which use is inconsistent with the Common Green use;
 - (5) The land is on a flood plain and covered by many dead, dying and dangerous trees that the Council requires the landowner to deal with. The application is preventing this work from going ahead;
 - (6) The land is too dangerous for public use;
 - (7) The Council as Registration Authority has a financial interest in having this Application succeed as it would reduce their acquisition

costs of the land by reducing its market value. There is a conflict of interest and the Council cannot resolve the dispute.

14. I do not think that these grounds of objection have any independent validity save insofar as they allege that the Applicant may not have succeeded in establishing all of the matters that he has to prove in order to make out his claim. Indeed when final submissions were made none of them were referred to. But for completeness I will deal with them at this stage:

(1) Section 15 of the Commons Act 2006 is not, in general contrary to the European Convention on Human Rights, or the provisions of the Human Rights Act 1998. Although a finding of the existence of a TVG may adversely affect a landowner's property, that is so when any right over land, such as an easement or a profit a prendre, is created by long use. The Commons Act 2006 balances the landowner's right to enjoy his property with the public's right to continue a usage of the landowner has been unfortunate enough to stand by whilst that usage continued for twenty years - see Oxfordshire County Council v. Oxford City Council [2006] UKHL 25 at paras. 58-9 per Lord Hoffmann. It is not contrary to the landowner's Convention rights.

(2) If public user was prevented, or contentious from January 2008, then the Applicant will not have succeeded in showing user 'as of right' until 12th. July 2008.

(3) It does not matter that the landowner's normal rights of ownership would be restricted by the grant of TVG status. That is a matter to be dealt with as and when it arises, if it arises – see R v. Redcar & Cleveland BC ex p. Lewis [2010] 2 AC 70 at [47] per Lord Walker of Gestingthorpe.

(4) If the Council's future intention as to usage is inconsistent with the registration of the land as a TVG, then the Council's intention may be thwarted. That is not a good reason for non-registration,

(5) The difficulties caused to the landowner in complying with his statutory obligations as to tree management, if they are caused by the consequences of registration, will have to be managed by the landowner. They are not a good reason for non-registration.

(6) The inherent danger of using the land is not something that the Act takes into account. The presumption may well be that if the public have used land in a certain way for twenty years, then its usage is safe. Landowners are not infrequently concerned that the effect of registration may impose greater burdens on them to ensure the safety of the public. Whilst establishing that usage is unsafe may tend to show that usage has not taken place (at all or

to the extent shown) in my view merely demonstrating that the usage that has taken place was unsafe is not a defence to the application.

(7) No doubt because of the concerns expressed by the Objector, I was appointed by the Registration Authority to conduct an inquiry and to advise them subsequently. I have no connection with the land, and there is no good reason why I should not produce my report, and the Registration Authority should not consider it.

15. The burden lies on the applicant to establish each aspect of the statutory definition of a Town or Village Green. That means that each must be established on the balance of probability, or to put it another way, that it is more likely than not.

16. This is an application which has been prompted by the landowner's plans for, or activity on, the land. I have no doubt, having heard the evidence, that the motives of at least some of the supporters of the applicant have been to resist what they regard as inappropriate plans on the part of the landowner for the present and future use of this land. Equally, Mr. Jafari considers, and has asserted in evidence, that the application is part of a plan on the part of the City Council,

to acquire the land at a substantial undervalue, if not for free, by restricting the use the landowner may make of the land. I make it plain that it is irrelevant to this application whether the proposals of the landowner for the future use of the land are beneficial or not; or whether the establishment of a TVG would be beneficial or disadvantageous. All that matters is whether the statutory requirements have been made out. However, bearing in mind the nature of the allegations raised, I have considered whether the evidence of any witness should be considered as exaggerated or untrue by reason of such purpose.

Amendment of 'neighbourhood'

17. One of the statutory requirements is that the usage be by a significant number of the inhabitants of a 'locality' or of a 'neighbourhood within a locality'. On the second day of the Inquiry Mr. Micklewright applied to amend his application so as to provide for two alternative and different areas to be the relevant neighbourhoods. These were 'Stapleton' and 'Fishponds' and they are shown on the plan attached as Annex 3 to this advice. 'Stapleton' is coloured yellow; 'Fishponds' is pink.

18. Mr. Mair objected to the application, on the ground that it was too late, and prejudicial to the Objector.

19. The Authority does have power to allow an application to be amended. Whether it should do so depends upon whether it would be fair to permit such an application to proceed. As I indicated at the time, there is no obvious or indeed apparent prejudice to the objector, except for the alteration itself. Both new areas fall within the two electoral wards that presently constitute the localities relied upon by Mr. Micklewright in his original application. I therefore informed all of the parties that I would be advising the Authority that they should consider the application on the basis of the application as amended, and that is the advice I now give.

Oral Evidence

20. What follows is my summary of the written and oral evidence given by witnesses to the Inquiry. It is not intended to be a precise transcription of their evidence, and it is not comprehensive as to all matters of evidence, but I intend it to be sufficient to enable the relevant decision-making body of the Authority to follow my reasoning and the reasons behind my advice.

21. Susan Drake

Mrs. Drake lives in Timberleigh, which is in Stapleton. She described it as being in the neighbourhood of Eastville. Between 1998 and 2008 she has walked her dog on the land between two and four times a week. She told me that she used the area 'between the paths' the least, because it was very steep in places. She used the East end a great deal; she has been all the way along the river, and the land. 'Under the hospital' she used for physical training. Although there were several green spaces nearby Grove Wood such as Snuff Mills and Oldbury Court, she went to Grove Wood because it is quiet, and it has no play equipment. She passed through Grove Wood for recreation. She does not use her visit it to get anywhere. Her sons would be taken to the land between 2000 and 2006 for play, swinging on ropes and in hot weather jumping into the river. Although there were two well-used footpaths, and a finger-post pointing from Stapleton Bridge on to the land, there was no indication where the public path ran once it passed on to the land. She had walked run and scrambled all over the land, and photographed fungi and ferns. She had seen orienteering courses marked out, on Laundry Lane; and on the top path. There was a den for children, at the East by Laundry Field, up towards the boundary and away from the path. She had seen people jogging,

mainly on the paths, but some off. Some people run up and down the hillside. There was no contact with Landowner prior to 2008.

22. Cross-examined, Ms. Drake told me that she was 42 in 1998, and her children were then aged 5 and 9. She would get to the wood on foot in about 5 minutes. She herself had never seen anyone swing over the river, but there are ropes there. She accepted that she had previously made a statement in support of a Tree Preservation Order imposed by the local authority over the land, at a time when Mr. Jafari and his companies were clearing part of the land. It was produced for a meeting in April 2009. She is a member of Snuff Mills Action Group ('SMAG'), an unincorporated association that in broad terms is campaigning for the public use of Grove Wood; its retention in a natural state; and the prevention of development on it by Mr. Jafari. She had petitioned the Council to acquire the land by way of Compulsory Purchase.

23. Ms. Drake accepted that the Land is never busy or full of crowds. When she first visited the site it looked like an unmanaged woodland, with lots of brambles and fallen trees. The upper half of the land was always more accessible than the land adjacent to the public right of way. The upper part was sparsely wooded. The wood

is not dark. The trees are tall and thin. Part of the attraction of Grove Wood is that the paths are not accessible. They are all challenging to a degree. She accepted that the top end is very steep.

24. I was told by Ms. Drake that she did not know whether the orienteers were local people or not. She came to know the dog walkers personally. When dogs are walked in the wood they tend to be off the lead. I found Mrs. Drake to be precise and helpful in her evidence.

25. Peter Hirst

Mr. Hirst moved to Downend Road in Frome Vale in 1987, and visited Grove Wood with his family as part of a circular walk that incorporated the Oldbury Court Estate and Snuff Mills. They regularly used it for walks, and explored the old quarry workings and the flora and fauna. They would play hide and seek there and it took place extensively throughout the land. Where the quarries were situated, 'under the Hospital' was particularly good. Their usage was not confined to the paths. Their friends and neighbours used the land as well in the same manner. People would pick the berries on the land. Blackberry and sloe picking – the best place for blackberries was the Green area, against the boundary fence to the hospital land.

The sloes were further along. To pick these you have to leave the main path. The children loved to play there. The neighbourhood he lived in was Frome Vale. Mr. Hirst lived at the top of Stokes Parade previously, in Fishponds or Frome Parade. They would visit weekly. Every weekend, perhaps less in the winter, but it was still very attractive. Up until 2008 he always had full access. He thought that the path had been improved in about 2000.

26. Cross examined, Mr. Hirst told me that the friends and neighbours he referred to live a few doors from where he now lives. There are quite a few people in the street who use the land. He joins the way at Laundry Field and there is no fence there. It is an open access. He frequently walked East to the bridge, and took his children there on most weekends, sometimes on both Saturday and Sunday; they were 3, 5 and 7 years old in 1997. They would commonly walk through the upper path and back by the lower path. He might go dog walking to the very East of the field. They would go mainly into the woods. The children preferred that to the field. He accepted that there are some steep areas, but he never had an issue with safety. He had let his dogs run off the lead. Although he is not a jogger or mountain biker, his son has mountain biked the land. He walks it and picks sloes and blackberries. Mr. Hirst is not a member of

SMAG, nor did he sign the petition in favour of a Tree Preservation Order, neither was he aware of the proposed Compulsory Purchase Order.

27. I asked Mr. Hirst some questions. He told me that his neighbourhood as he understood it was bounded to the North by the M32; to the South by Eastville Park; it ran up towards Staple Hill; and up towards Cosham. He would say that he lives in Fishponds. Usage of the land has fluctuated depending on circumstances. He had been there on some occasions and not seen a soul, but generally you will meet other people. The Public footpath tends not to be used as a highway, for getting from A to B, as he saw it. The usage he sees is exclusively recreational; bird watchers; photographers; walkers; fruit pickers. Mr. Hurst was calm when giving his evidence, and I thought had a good and reliable recollection.

28. Yvonne Dawes

In 1994 Ms. Dawes lived in Scott Lawrence Close in the Frome Valley Area, and moved to Timber Dene in 2000. To her, this area is 'Stapleton'. Between 1994 and 2005 she would jog through the area once a week. After 2005 she has walked through the area. There are more formal paths and more people on Snuff Mills; on Grove

Wood she would see fewer people and dogs. She did not differentiate between the two sides of the river, save that one was wooded. She saw lots of other people having used it.

29. Cross examined, Ms. Dawes said that when jogging she didn't like to repeat the same route, so she would have a look at interesting places such as the hospital grounds, sometimes dead ends. She wanted to enjoy the environment as a leisure activity. The entrance to the woods would be about 20 minutes away. She would spend 20 minutes jogging in the park, crossing at the bridge and passing along the river. Her way through was never prevented by the height of the river. She did not know that there was a right of way there, but would just decide on the day where she would go. She has been walking on the land with her partner and her daughter. She did not recall going through a gate. She only went there in daylight; there were always other people around. Her neighbourhood was, as she understood it, Stapleton.

30. Christine Williams

Mrs. Williams lives in Manor Road, Fishponds, and has lived there since 1975 although she has lived nearby for many years before that. Her house is situated near Laundry Field, and that is how she

obtains access to the land. She would walk through the land on a daily basis to exercise her dogs - the last of whom died in 2005. She exercised her dogs in a loop first going West on the top then back, and along to the bridge, once or twice a day. Her children would play on and scramble through the land, as have her grandchildren, now 14 to 19 years old. With the children she would go off the paths, and to the quarries. She would also go bird-watching there. The birdwatchers would either be on the top or the middle of the land; not so often by the river bank. She has seen joggers and mountain bikers scrambling through the undergrowth. The mountain biking would be off the top path; and lots of children would do it between the upper and lower paths. She has seen children from Colston's School on cross-country runs there, but not recently. She has also seen families picnicking there.

31. Cross-examined, I was told that some new construction on the hospital land about 20 years ago, into Laundry Field, had changed her access slightly. Her children are now 44 and 42. In 1987 her daughter married and moved to Henbury. She would come back for visits and they would go to Grove Wood. Her son lived with her up to 2000, and then again from 2005-8. The walk with her dog would be about 40 minutes in length, of which at least half an hour

would be spent in the Wood. She was not aware of patients using the woods. Manor Park Hospital was for elderly and infirm people – they would not have been in the woods. She did not see people in (nursing) uniform on the land.

32. Mrs. Williams is a member of SMAG, Friends Of the Earth, the RSPB, and the Woodland Trust. She tried to purchase the site but was unsuccessful. She made the offer because it seemed to her that the right of local people to use it was being taken away. In 2000 she was in a consortium of widows who wanted to buy the wood as a memorial to our husbands. Mr. Williams was asked about the owner of the land before Mr. Jafari, a Mr. Terry Olpin. She told me that he and a consortium of people bought the wood. He was trying to make some money from his purchase. He suggested it would be a location for filming, but he didn't stop anyone using it. Describing the land over the years, Mrs. Williams said that it looks mainly as it does today – there were trees and scrub similar to today; there were more bluebells. Some of the detritus of concrete bases (left when the 1960s drainage was put in) has been grown over. There is more wild garlic there now. The Public Right of Way from Blackberry Hill has been muddy in the winter; and it gets narrower as one approaches the weir. There used to be fallen trees over it; The top

part has been the same for years and years. As it stands today the Public Right Of Way is not much better than it ever was. You would not traverse the way with buggies. When she took toddlers, she went by the upper path.

33. Mrs. Williams would refer to herself as a 'Stapleton girl'. This area is Stapleton. To her, Eastville Ward is new. She now lives in Fishponds, but it used to be Stapleton. She did not remember the top path being closed.

34. Elizabeth Gonzales.

Mrs. Gonzales has lived in Victoria Park since 1979, and has used Grove Wood for recreation at least five times a week. Her children would play hide and seek on the land, and she would let her dogs run over it. In 1996 she bought a pony for her daughter, and they would either ride through the land, or build small jumps in a clearing. She described mountain biking on the land.

35. Cross-examined, Ms. Gonzales told me that her route would either come down Laundry Lane and cut through via a gully, or they would go around Laundry Field and down the path. She met Mr. Jafari after he bought the land; he was with a gentleman in an

orange hi-visibility jacket. She was stopped and told that the public footpath was at the bottom and there was no right to ride there. She did not know whether fencing had been erected at that time. The children have always played in the woods. They played childish games from the ages of 5 to 13; since then they walked dogs together and her daughter rides there. Her children are now 30, 27, 26, and the younger two still living at home. She had dragged a buggy all the way to the weir and a bridge once, but would never do so again. The pony gets to Grove Wood by Laundry field. There are four different points of access. They continue to gain access there. The pony goes off the path; but obviously not where it is too steep, by the bridge over the Frome. Elsewhere we have gone just about everywhere, although she does not go by the cliffs. There is a 'beach area' of shelving shingle. The mountain bikers are on the East end, and have been seen there quite a few times. It is a seasonal usage.

36. Cherry Froude

Ms. Froude has lived at School Lane, off of Blackberry Hill, since 1991. Until 2004 she would exercise her dog in the woods once or twice a day the dog travelling as he wished over the land, off of the lead. Ms. Froude both used the wood and stuck to the path. When

she walked her dog she went along the path, unless she had to go into the undergrowth to get the dog. After 2004 she would go into the wood once or twice a month. She did not stick to the path. She described a 'vast number' of people seen entering the wood, being joggers, ramblers, dog walkers, anglers, bird watchers, mountain bikers, wildlife enthusiasts and photographers. The first she knew of obstructions on the site was in 2008, when metal fencing was erected. Her husband ran went up and down the steps, as he was in training for a trip up Mount Kilimanjaro. He did this for about four months, about five or six years ago, and did it daily. It was very convenient for him. Ms. Froude considered that her address was in Stapleton, in between Fishponds and Frenchay, centred on a local church. It was the old village of Stapleton.

37. The land became more overgrown over time. It was left to its own devices and not managed. Ms. Froude telephoned the council to complain about low hanging branches over the Right of Way and they were cut. She described the changes that occurred when Mr. Jafari became interested in the land. First the Terrapin cabin was put in. This became a blot on the landscape. She saw what she termed as devastation in the woods; but did not see any constructive work being carried out. She agreed that there was

thick undergrowth in the wood, and that there were lots of bits that were impassable. She was aware that the public footpath had been blocked by trees for a time, by the weir. Her use of the wood was not a deviation as a result of the blocked footpath. She could not recall the top path being blocked. When the sewer people carried out sewerage work on the land, they opened the place up. She was amazed at how many people went into Grove Wood. She accepted that she could not say what people did when they got there, but she saw people with cameras and bicycles. In the main they were using the path but also went into the land, on bikes or jogging. The children who use it tend to be in family groups, although some are on their own. She had not used the Eastern area very much. Ms. Froude supports the SMAG, goes to meetings and (as she put it) does what she can.

38. Stephen Comer

Mr. Comer lives in Stonebridge Park, as he has done since 2002, and is a city councillor for Eastville Ward of Bristol City Council having been elected in 2005. His knowledge of the land went back to the late 1960s, when he was a pupil at Colston's School, and it was part of the route of the annual cross-country run, or a walking route used as an alternative for games. Pupils were allowed to walk through

the wood. On his return to the area in 2002, he saw that Grove Wood was still being used for the sort of activities he had seen twenty five years before – fishing, picking blackberries or collecting wood. It was popular with people of all ages, and it was common to see family groups enjoying some time there. Although parts were overgrown, there were a lot of areas it was possible to walk through and climb trees. Mr. Comer could also remember photography and bird-watching taking place on the land.

39. Mr. Comer expanded on the neighbourhood in which he lived. He regarded his address as being in Eastville, although technically it was Upper Eastville. Eastville Ward surrounded Eastville Park. Stapleton starts at Gentoran Road; it extended as far as Frenchay, and was bounded by Fishponds. The Old Tavern public house (on the junction of Blackberry Hill/Small Lane) is regarded as being in Stapleton and Fishponds started roughly where the secondary school is; where Snowdon Road becomes Blackberry Hill. It has a parish church; a Baptist church; a chapel in Snuff Mills; it had a post office; it has local shops, two pubs (the Merchants Arms; and The Old Tavern); and a Masonic hall. In his view, both Stapleton and Fishponds are recognised neighbourhoods in Bristol.

40. Mr. Comer accepted that between 2002 and 2008 he was not a regular user of the Wood, but would have a walk around the area. Since 2002 he had entered into Grove Wood some ten or eleven times. He tended to use the lower path as his trainers were not suitable for the upper. In 2002 he walked along the path on both sides, although he saw that there were people in the wood – about a dozen in total. There were more people using Snuff Mills than Grove Wood.

41. James Read Jones

Mr. Jones lives in Heath Road, Stapleton, which he described as being on the Stapleton/Eastville borders. When he moved to the area he lived in a new development built in the 1980s. That area was marketed as 'Stapleton Meadows'. Heath Road which is postally in Stapleton but is outside of the Eastville Ward, and is in Lockleaze Ward. He addresses his house as 'Stapleton', and his deeds referred to it as such when the plot was created in the 1930s. His estate agent described it as 'Eastville'. He moved to his current address in 2004, but lived also nearby (in Begbrook) when younger. He had moved away from the area in 2002 to Oxfordshire. He had played in the wood as a young boy, with his friends, aged 10 in 1985. Then and later they would play along the side of the river, in

particular using a rope swing from a tree on the bank. His more recent trips have in part been along the Frome by canoe. He visits the land twice or three times a month, more so in the summer. Sometimes by canoe (from his garden), or by foot, or by car. Mr. Jones described many tracks crossing the land, and he has seen many people wandering around the land. Rope swinging and climbing would be typical activities he has seen. He has climbed some of the more vertical rock formations on the land, on his own and with others. He has built dens when younger; and mountain-biked over the land, and he has seen others do the same. He often wandered off the path; most of his rambling in Grove Wood was not on the tracks. He thought that the land is frequently and heavily used, with plenty of people walking around and picnicking, taking photographs and generally enjoying the woodland. He has seen groups of children bark rubbing or hunting through the rubbish. There is a real mix of people using the place. Some were less able and would have to stick to the path; some were more sprightly and would roam.

42. As a child he spent every piece of spare time in the woodlands. That's what his friends from the Begbrook area did. They accessed the land via the bridge at the East end and would access the land

to the West. Since 2008 Grove Wood has not changed very much. The land did become more dangerous over time. There had been falling trees. The East end is less heavily used. I found Mr. Jones to be a particularly clear and measured witness.

43. Clare Robinson

Ms. Robinson has lived at College Court, Fishponds since October 2003. Since then she has visited the land on many occasions, to wander and explore, gaining access from Laundry Lane, Laundry Field, Snuff Mills or Nuthatch Lane. She walks there once every weekend; perhaps more often. She has walked on and off the designated pathways as she described them, enjoying the wildlife and tranquil environment, both on her own and with her extended family. The younger relatives have played far and wide throughout the wood. If it is really muddy or wet one might be restricted to paths, but if it is dryer one can walk off-track. However there are many paths. She described having seen others walking, dog-walking, jogging, cycling, and picnicking. She has seen people taking photographs of the river and plants; she has seen boys scrambling on the East End, which is very steep. She has seen people bird watching, and collecting holly and ivy. She believed the land to be part of Bristol City Council's parkland, as she

understood Snuff Mills to be. Although she lived away from 2007 to 2009, the tenant who was living in her flat at the time made use of the woodland.

44. The area Ms. Robinson would call Fishponds is the Frome Valley, including Snuff Mills, which goes all the way up to Winterbourne. Fishponds has a library, a supermarket, shops, and part of the University of the West of England (St. Matthias' campus). The shops and library are on Fishponds High Street. There is a row of shops in an area.

45. Cross-examined, Ms. Robinson told me that quite a few of her neighbours walk to Laundry Lane and then through Grove Wood to the river. She generally makes it a circular walk generally one day each week, weather dependent. She gains access just to the west of the East end. There is a clear opening there. It is just a muddy track. The top path is not dangerous. It runs alongside the hospital. She has seen people kicking footballs on the Grove Wood side of the river, by the lower path. Ms. Robinson had no knowledge of the Tree Preservation Order. Although she is not a member of SMAG, she frankly told me that she supports its activities, and has been to two meetings. She had seen ropes attached to trees, on both sides

of the river. There are ropes attached just below the bridge. There have always been rope swings of sorts on both areas. Contrasting the usage at Snuff Mills and at Grove Wood, she said that she saw lots of people at Snuff Mills, and fewer people at Grove Wood.

46. Lesley Alexander

Ms. Alexander is a ward councillor for Fishponds ward on Bristol City Council. She lives in Thingwall Park, Fishponds, which she described as a brisk ten minute walk from Grove Wood. She has lived there since 1981 and walks around Grove Wood for recreation. Although she could walk around Eastville Park, Grove Wood is of a very different character. She has seen dog walkers, bird watchers, children playing, cyclists, horse riders and picnickers. They, and she, used all of the land and not simply the paths. She would even scramble up steep banks. She particularly liked the East end which is unspoilt and floral. In the summer months she visited once a week; in the winter once a month.

47. As to the neighbourhood, she thought that Fishponds extended as far as the city borders. People from Stapleton and Begbrook shop there. Prior to the building of the church in Fishponds, people went to church in Stapleton. Stapleton is thought of as a cut above. It is a

Georgian area, whereas Fishponds in Victorian. Stapleton does not have a doctor's surgery, whereas Frenchay has five.

48. It was suggested to Mrs. Alexander that much of the topography of Grove Wood was difficult and indeed dangerous to traverse. Her view was that although there are some gullies that are very steep, they are relatively few; otherwise the land would only be inaccessible to very young children, but anyone over the age of four should be fine. Mrs. Alexander is also a supporter of SMAG, and supported the Compulsory Purchase Order petition.

49. Alan Dawes

Mr. Dawes has lived in Brambling Walk, Stapleton since 1977, having lived in the vicinity since 1951. Throughout that period he has carried out recreation on the land; in the earlier years by way of physical training, and more recently by recreational walking, particularly bird watching. He uses all parts of the land, including the step area (at the East end). He thought that between 1988 and 2008 there was little change in the landscape. The main path was fairly safe, and he considered the area between the two paths fairly usable. He wears walking boots, and has no problem at all. Lots of people use Snuff Mills, but relatively fewer people use Grove Wood.

Whilst there are amenities at Snuff Mills, if one wanted to watch the wildlife one would go to Grove Wood. Mr. Dawes is a founder member of SMAG. There are various dog walkers who use the land. On thinking about it, he could not say whether he lived in Stapleton or Frenchay. Mr. Dawes gave his evidence in a clear and thoughtful manner. He struck me as a particularly reliable witness.

50. Andrew Harris

Mr. Harris lives at Wickham Court, Stapleton, moving in in May 1994. At the time he and his wife started to explore Grove Wood. He described it as being overgrown, with the pathways being blocked in places. He saw other people use the land for mountain biking, dog walking and jogging – in the same manner as Snuff Mills has been used. He would visit Grove Wood rather than Snuff Mills because it was more interesting for small boys. If it was a simple walk he would take his children to the paths; or he may play hide and seek or he would go climbing. Sometimes they would go along the lower path and then go scramble up and go back on the upper path. Jogging, scrambling, mountain bikes were everywhere, although mainly on the paths. He would visit on average monthly. Mr. Harris who is now retired had a new knee and hip within the past year. Climbing the slope presented no problem.

51. Andrew Skuse

Mr. Skuse lives in River View, Stapleton. He is 56 years old, and a veterinary surgeon. From Mid 1990 to 2004 he lived in Trendlewood Park , and walked his dog on the land. His usual practice was to walk a circuit, passing by one path and repassing on the other. His dog was allowed to run off of the lead. Since 2004 Mr. Skuse has walked on the land for his own general recreation, about once a month. He has seen others running, walking, dog walking, mountain biking and some photographers. He regularly sees the same people, and recognised people from Trendlewood, either going to Eastville Park or Grove Wood.

52. Mr. Skuse's present house overlooks the entrance. He did not think that Grove Wood had become much more accessible over the period he had known it; the paths were the same. He remembered a kissing gate on the entrance to the land, which he thought had been removed since Mr. Jafari acquired the land. The public footpath had not changed significantly. He thought that quite a few people go off of it. He went over every bit of Grove Wood, just to vary the walk. His dog usually got stuck on the East end. He did not walk at weekends; his work started early in the day and finished early. He has visited the wood in the dark to go bat detecting. He

saw no Anti-Social behaviour, although he did pick up litter there. He had seen ropes attached to trees, as makeshift swings. Children would play on them by the river bank on the Grove Wood side of the Frome. Children play in there a lot - all the time he thought. In Mr. Skuse' view, both Trendlewood and River View are in Stapleton.

53. John Freeman

Mr. Freeman has lived in Glaisdale Road, Fishponds, since 2007 but lived at Welsford Avenue, Stapleton between 1953 and 2007. He would walk around the Frome Valley three or four times a week, and included Grove Wood within that walk. His walks stay on the two main paths. He had seen the land used by bird watchers, anglers by Stapleton Bridge (Blackberry Hill), joggers, dog walkers and children playing hide and seek. He had seen anglers on the other side of the weir.

54. Mr. Freeman described Stapleton as a unique village in many respects which has retained its features. It has a large public school, church, cricket club; the Snuff Mills area adds to that. Fishponds with the use of Laundry Field and Oldbury Court estate is an integral part of the whole area. It is a working suburb of Bristol that has this very attractive area on its doorstep. Fishponds is his postal address; his

flat is one of a complex of 78 situated about 200 yards from the Land, which is accessed via Laundry Field.

55. He was asked about the Dower House, which is situated to the North of the M32, but bears a Stapleton postal address. He told me that it was originally erected by the Duchess of Beaufort. Historically it was part of the Beaufort Estate. He doubted whether they owned Stapleton village, but that appeared to be speculation on his part. His usage of the land increased since his retirement, in 1993. Before his retirement he would walk around the area - and others - at weekends. He had not seen any great changes in the paths. Snuff Mills was busier than Grove Wood. Mr. Freeman told me that there are always dozens of people in Snuff Mills, of all ages. In Grove Wood one sees individuals or couples walking through. The top path on the land cannot be seen from Snuff Mills. Mr. Freeman is a member of SMAG. He agreed that work had been carried out to Grove Wood. He described a great destruction of habitat along the river bank and the removal of trees and scrub; it was a mess. The top path had been widened about half way along. The normal path was perhaps 18" wide, afterwards widened to 3' 6". He had seen a vehicle at the top of the path. It could not have got there before the widening. He doubted that pushchairs would be taken

to Grove Wood because it was muddy. Most would go to Snuff Mills. He agreed that there are nettles at certain times of the year on either side of the path, and that in certain parts of the paths you have to walk in single file. He had not walked along the river from the Bridge, as there is no path there.

56. Jill Minchin

Ms. Minchin lives in Hedgmead View, Stapleton, and has done so since 1978. The rear of her house looks out on to Grove Wood. She and her husband used the land with their son, Richard. Her husband would take her son there for, as she described it, 'their boys walks', and later mountain biking whilst she would take him over to do botany projects and the like. Ms. Minchin would go there 'when the whim takes me', her visits being weekly, but sometimes more often. Sometimes she would stay on the footpath. Sometimes she would ramble off the path. She was not a jogger. Her husband walked their neighbour's dog every day. Some people would walk on the path; others would leave them. She would not necessarily stay on the public right of way; she would go to the river, and sit on the river bank. She had only used the top part of the wood once, because it was a longer walk than she normally wanted to undertake and it is more difficult. She had seen ramblers on the land; they came from

Weston-Super-Mare. At the weekend there are a lot of people in Snuff Mills. They come from all over, and it can get busy there. There were fewer people in Grove Wood, because fewer people know of it. In particular, those who are not locals do not know of it. Ms. Minchin is a member of SMAG.

57. To Ms. Minchin, Stapleton is the place she lives in; it retains a village atmosphere. She considered that it started at the bottom of Bell Hill and ran to the top of Blackberry Hill. It included the Begbrook area, and Colston's School. She did not think of the Dower House as being part of Stapleton.

58. Deirdre Allen

Mrs. Allen lived in Park Road, Stapleton from 1947 to 2006, when she moved to Bryansons Close, Stapleton, nearby. She has used Grove Wood for recreation for many years. The land was known to her, her family and neighbours as 'the wild side'. In the 1980s she and friends took their children there, or went dog walking there. It was more sheltered in the rain, because of the tree cover. It was less crowded than Snuff Mills. She would walk there at weekends and in the evenings as well. She last walked it regularly some five years ago. She had a dog between 1981 and 1985 and 1990 and 1998. At

other times she walked other peoples' dogs. The dog would be let off the lead unless she was walking by the river. In 1988 she was working part time, and made use of the wood when she was free. Although most of the friends with whom she walked lived outside of Fishponds, some, and her god-children, came from within, as did her neighbours. She did not think that Mr. Jafari's work had made the land significantly more accessible. There was a kissing gate on the entrance to the land, but Mrs. Allen could not remember when it was removed; it was some time ago. She is a member of SMAG.

59. Stoke Park was in her view simply a housing estate. Stapleton by way of contrast has village shops, a Post Office, a convenience shop, and a garage. For a doctor she goes to a surgery in Fishponds.

60. Mrs. Allen did not think that the Dower House was situated in Stapleton. Duchess Park was part of Stapleton. She thought that the border of Stapleton would be at the bottom of Bell Hill. She could not remember seeing schoolchildren from Colston School on the land.

61. Ken Ladd

Mr. Ladd has since 1995 lived in Curlew Close in Frenchay, and has known Grove Wood as a place for recreation, on foot and by bicycle, since 1960. He made the point that cycling was regulated in nearby parks, but not in Grove Wood, which made it attractive for youngsters, at least in those days.

62. As far as neighbourhoods were concerned, he used to think that the Stapleton-Fishponds boundary was by the river but now thinks that it is generally perceived as including the Trendlewood Estate in Stapleton. He calls the land 'Frenchay'. There is a small shop in Begbrook and one also in Stapleton. There is a pharmacist in the local rank. Frenchay is in South Gloucestershire; Stapleton is in the next area, which is in Bristol. It extends as far as the River Frome at the bottom of Bell Hill, by Avery Road. His parents' deeds showed it to be in Stapleton.

63. Mark Logan

Mr. Logan is the Chairman of the Stapleton and Frome Valley Conservation Society; and Vice-Chairman of the SMAG; he sits on the Greater Fishponds neighbourhood partnership, chairs the planning sub-group and sits on the environmental sub-group as

well. He has lived at Larks Field, Stapleton, for about twelve years. He regularly walks through Grove Wood, and takes photographs of the flora and fauna. He has seen other walkers, both adult and children, and cyclists, more usually mountain bikers using the land. He has seen horses ridden through. He picks the wild garlic that grows there. His use is not restricted to the paths. The East End is an incredibly steep area with crops of bluebells. In the summer months he visits once a month; in the winter less so. He confirmed that the upper path can be very slippery. Because he has a slight phobia of dogs he tends to visit in the daylight hours. He takes his wife with him. He has seen cycling along the public footpath at the bottom, and down by the bridge at the far end of the site – its a steep hill they can travel down.

64. Mr. Logan lives in Stapleton, on the Trendlewood Estate. Stapleton covers the historic Stapleton village; people in Begbrook and Trendlewood would say they live in Stapleton. There is no defined boundary. Stapleton has contracted over the years. The 1839 tithe map, and the former parish of Stapleton, was rather larger than this. He agreed that the neighbourhood shown on the amended application coloured yellow generally encompasses what would be understood to be 'Stapleton'. Fishponds was in Mr. Logan's view a

more linear community. It is centred on Fishponds Road, which is a shopping street. That goes all the way up to the Cross Hands Public House where the road divides and goes to Downend. But at that point people would probably call themselves residents of 'Staple Hill'. Where the map refers to 'Frome Valley Ward' and the Oldbury Court Estate, people would call themselves 'Fishponds'; Grove Wood is very much Fishponds' local park.. Stapleton has a church or churches, pharmacy, shops, primary school, Colston's school; a hospital; there is The Priory on Bell Hill, some sort of clinic. There is a post office in Stapleton Village; The Mason's Arms; the Old Tavern by Trendlewood; a community centre in Begbrook; and a village hall associated with Holy Trinity Church.

65. There are more facilities in Fishponds – library, doctor's surgery, community hall; council offices; a Post Office. It was in Mr. Logan's view more like a suburban High Street. There is more of a village feel to Stapleton. The housing density is a lot less. There is Georgian housing, plus 1970s estates. Fishponds is more of a high street with dense accommodation.

66. Cross-examined, Mr. Logan told me that he took no part in preparing for this hearing. He accepted that he drew up the

amended application map. He did not know of any map that defining the neighbourhoods relied upon. He accepted that in 2008 there was some clearance of trees - a couple of dozen - and erection first of orange fencing; then HERAS fencing. A mini digger had been in there, involving the piling up of spoil. However, the cleared area leads to a cliff face. It is a dead-end. The clearance made that area more flat and accessible. But was also fenced off so that there would only be access for the workmen. The work has not altered the width of the top path. The lower path was wide enough for people side by side - approximately 3 to 4 metres wide.

67. Jane Joyce

Mrs. Joyce moved, as a young girl, to the Trendlewood Estate in Stapleton in 1972, and spent much time with her siblings playing in Grove Wood. It was an exciting place where they built dens and had adventures. They would stay off of the paths. Her Girl Guide pack (the 90th. Stapleton) used to look for wild flowers there. The pack was based in Begbrook but moved to Stapleton church hall. Her family moved away in 1987, and in 1990 she moved to Tudor Road and then Gratitude Road in Easton, and has periodically used the land since.

68. Martyn Whitelock

Mr. Whitelock lives in Barkleys Hill, Stapleton since 2007. Between 2005 and 2007 he lived at Greenbank Road in Eastville. He has used the land for informal recreation, and picking blackberries and wild garlic, since 1997 (living in Redfield and St. George), and presently goes there on a daily basis. Stapleton is his postal address. He tells people that he lives in Stapleton Village, which he does to distinguish it from Stapleton Road. He uses the two paths, but crosses over between them. Mr. Whitelock works at night, and so visits during the day. He told me that there are no dog walkers there during the day. The wood had remained pretty much as accessible as it was before Mr. Jafari carried out his work. The only thing that has changed is that the old rickety kissing gate has been thrown aside and replaced by a black gate. The general character is precisely the same apart from obvious tree removal and logging. The essential wilderness character is the same. He is a member of SMAG.

69. Stephen Micklewright

Mr. Micklewright has made the application on behalf of the 'Snuff Mills Application Group'. He lived in St. Werbergh's prior to 2006, which is outside the claimed neighbourhoods in this case. From May

2006 he has lived in Ham Lane, which is near the land, on the other side of the river by the car park. Prior to 2006 although he visited the general area regularly, he did not know of and did not visit Grove Wood. After his move he explored the wood in some detail, as he was particularly interested in botany. He was amazed at the ferny and mossy banks between the two main paths – which is I think a fair description of that area. He walked the land with dogs, tending to stay to the paths but venturing off if he saw something that took his interest. He would play with his dogs off of the path. He would visit at least daily. On average he would spend an hour at Grove Wood on each occasion he visited. He described seeing many different lawful sports and pastimes being carried out on the land; a woman riding a horse; joggers using the woods; a person carrying on physical exercises there; mountain biking off of the smaller paths on the land; angling in the river; teenage children playing, especially under the hospital; people bird watching; some circus-like activity; and evidence of orienteering. He knew that many of the people using the land were local residents.

70. Cross-examined, he told me that he did not know who the circus skills people were; they may have been students from Glenside Campus, but that would be speculation. He assumed they were

local; their activities took place on the path. He said he would see a lot of people regularly in Grove Wood. He regularly saw the jogger, in various parts of the wood, two or three times a week. His assumption was that he was local.

71. Mr. Micklewright was cross-examined over the genesis of the application, the stance of the Council (so far as he was aware of it) and the attitude of Mr. Jafari and his company to the land. He said that he made the application because on 12th. July 2008 Mr. Jafari and others put up HERAS (continuous metal) fencing which he took to mean was intended to prevent free access to the wood. People considered how they might stop this. He knew a lot of people who used Grove Wood, and knew that they were local. It was his impression that Grove Wood was used predominantly by local people for recreation, and he wanted to protect that use. He said that Mr. Jafari had felled trees and done damage to the wood. He was aware that the Council had made steps to compulsorily purchase the land.

72. Before Mr. Jafari bought the land in 2007 Mr. Micklewright had been particularly concerned by the condition of the Snuff Mills side of the valley, so he launched SMAG. Coincidentally things started to

happen at Grove Wood. Initially conversations with Mr. Jafari were amiable, but they deteriorated. The tree felling Mr. Jafari wanted to carry out was considered to be excessive; the group suggested the making of a Tree Preservation Order.

73. Mr. Micklewright's background is that he is a director of the Avon Wildlife Trust. He has horticultural qualifications. Before taking voluntary redundancy from the World Wildlife Fund he was the head of policy. He is plainly a particularly committed campaigner for the environment.

74. Mr. Micklewright said that Stapleton and Fishponds are well known areas in Bristol. They do not extend over to Stoke Park, as the M32 provides a sensible boundary.

75. Mrs. Katrina Jafari

Mrs. Jafari lives in the Dower House, Stoke Park, Bristol. Mrs. Jafari told me that its postal address is in Stapleton, and Stapleton is Mrs. Jafari's local area for services, newsagent, garages etc. Stoke Park is simply a housing estate. She moved to her present address in 2003, and knows the area well. In Mrs. Jafari's view the path through the land is not good, and the hillside is dangerous. In 2007 the land

was a wilderness, rough and overgrown. There were lots of dead trees. Mrs. Jafari walked the top path, wet and muddy in Autumn. After the land was acquired, Mr. Jafari started clearing the path. There was a lot of work being carried out on his behalf. It started with the front entrance and worked inwards. The workmen cut and cleared by the stream. Since that work was carried out the wood by Blackberry Hill was much more accessible. Before, one could not see in, and it was unsafe to go in. It was all right in the springtime if one stayed by the river, but in summer it was not safe to go into the wood. Mrs. Jafari was quite vehement that she could and would not take her children into the wood. Save for the path (and that only after it was cleared) the land was both difficult and dangerous terrain, especially for anyone less than able-bodied. Mrs. Jafari also made the point that there is nothing exceptional about Grove Wood. There were other similar places nearby. I think that the point that she was making was either that there was no need for registration, as there is other recreational land nearby (as is common ground, by reference to Snuff Mills itself and Oldbury Court); or that if the Authority should accept that the land has amenity value (which Mrs. Jafari does not) then in that sense it is unexceptional.

76. From her observations she did not think that any significant number of people used the land, and one sees people only on the Public right of way. No landowner would believe that there was any community usage of it, and one should contrast the minimal usage of the land with the use of Snuff Mills on the other side.
77. Mrs. Jafari then described the demographics of the local area as she saw it. Stow Park comprised young families and a lot of students. Stapleton Village is predominantly occupied by an older generation; the wealthy middle class. The new estates are occupied by young families. Begbrook estate is full of children.
78. Cross-examined, Mrs. Jafari told me that before the upper path was cleared, she had not used Grove Wood that much. She accepted that the upper path was marked on historic plans, and said that she had never denied that there is a track there. She did not agree that it was 2m wide. Mrs. Jafari insisted that there was a lot of work carried on to the public right of way. She did not dispute that people go to Grove Wood, but asserted that they used the public footpath. It was the rest of the land that was a 'wilderness'. She told me that before her husband had cleared it, the public footpath by the river was obstructed by fallen trees, but it was walkable.

79. Lord Housang Jafari

Mr. Jafari told me that he bought the land in December 2007 and transferred it to The Rhino Group Limited. The Rhino Group no longer owned the land; the present owner is a company called Kingdom of Najafabad Ltd. Mrs. Jafari is its shareholder, director and company secretary. He produced a series of photographs showing the clearance work that he had carried out to the land; the fencing he erected; damage to the fencing; the portakabins on site; some stencilled and written graffiti on the portakabin, walls and fencing; and the remnant of a kissing gate. The kissing gate and stile formed the entrance to the land from Blackberry Hill. Mr. Jafari said that he cemented the stile and gate into the ground, but that they were both destroyed. In his statement he asserted that he fenced the boundary to Oldbury Court in January 2008. The fencing, which cost several thousand pounds, has all been stolen. He wrote to the Council asking them to help with the erection of new boundary walls at Oldbury Court (which is a council property) and to sign post the footpath at the Laundry Field entrance. The Council has now prevented Mr. Jafari or his companies from fencing the land or maintaining the existing fencing. Mr. Jafari is of the view that this is designed to assist in the Council's aim to turn the land into a nature

reserve. This particular part of Mr. Jafari's evidence was not explored fully, but it appears to be a reference to a dispute between the Council as local planning authority and Mr. Jafari and his companies relating to the work that they were carrying out on the land.

80. According to Mr. Jafari and member of SMAG has applied to have the other path recorded as a public footpath. This application has not been determined.

81. Mr. Jafari's purpose in acquiring the land was to improve the woodland, and to create a monument to his late father. He wanted to cut and sell timber in order to provide an income to maintain the land. He cleared large areas of woodland that had become overgrown, and cleared the pathway along the upper slope to enable access to take place, and to enable log cabins to be constructed (if permission was granted), possibly for holiday use. Some areas of land were levelled. Prior to this work only the public footpath was visible. The stepped path leading uphill between the two footpaths was previously impassable; that was cleared too. The steps were reconstructed with new wooden supports. The land could not have been used before the clearance work was carried

out. The public footpath was itself impassable, being wet and slippery in the winter months.

82. Mr. Jafari suggests that the applicant's witnesses, if honest, must have confused Grove Wood (which was impassable) with Snuff Mills (which is maintained as a recreational facility). He says that Grove Wood is often wrongly referred to as Snuff Mills. I pause at this point to note that, having heard the witnesses who supported the application give their oral evidence, I can see no basis for suggesting that they had confused Grove Wood with Snuff Mills.

83. Mr. Jafari produced a photograph of a notice placed by him on the vehicular gate at Blackberry Hill. It states 'Icon Park. Private. No access for unauthorised persons'. This he says was erected shortly after he acquired the land, and indicates that usage was thereafter contentious. Otherwise, every time that he or Rhino have erected signs saying 'private land' these have been pulled down or destroyed. He and his employee, Rick, have constantly informed people that the land was private, and directed them to the public right of way. Mr. Mair wrote to the local newspaper, the Bristol Evening Post, informing it that Grove Wood was private land, accessible by public footpath only; and he also addressed a

meeting of SMAG to the same effect. The police have been informed of this, and it has become common knowledge at legal proceedings at Bristol Magistrates and County Courts.

84. Mr. Jafari visits the land very regularly. There is no relevant user of it by the public. He has spoken to the former owner, Mr. Terry Olpin, who also denies any such usage during his period of ownership (between 2000 and 2007), although members of the public forcibly interfered with fencing and ignored signs during this period.
85. Until July 2008 he visited the land every two days, spending between one and two hours there. He saw no activities on the land save walking, or walking the upper path. Whenever he has seen anyone there he would tell them the land is not public; and they would then go to the lower path. He had not seen any evidence of any activity on the land save horses hoof prints and bike marks on the public path. Those few people he saw would be walking their dog or walking the public footpath.
86. Mr. Jafari was cross-examined about the dates on which the photographs were taken. He either accepted that some (photographs B – E) were taken on or after the 12th. July 2008, or

that he could not recall when they were taken. Some photographs he insisted were taken before that date (Photo J - summer 2008 but before the 12th. July; Photos U V W X were taken when the land was bought). The sign at Photo X was he said made by a sign writer on Gloucester Road. I asked Mr. Jafari if there was any documentation evidencing the production of the sign, with particular reference to the date it was created. He then said his employee, Rick, had created it. He had obtained the materials from a friend in Gloucester Road.

87. He accepted that the effective fencing went up for the first time in July 2008. Taxed with page 5 of Mr. Mair's report to the Council 'In order to prevent such ...' he contended that Mr. Mair made a mistake. Mr. Jafari said he had fenced the access from Laundry Field, and had put in a gate at the point that the public footpath entered the land from Laundry Field and the bank to the east of the right of way. He had no photographs or documentary evidence of this fencing. That gate was not locked. Mr. Jafari could not say why it had been removed. It was stolen and disappeared. Some of the fencing had been broken too. There are no photos of the fences, nor of the vandalised fences. He had put a pillar in, concreted, with wire mesh and blocked off the upper path, although one could

divert around it. According to Mr. Jafari, the evidence of this work is still present.

88. I did not find Mr. Jafari a reliable witness. His evidence as to fencing and notices varied in its content when put under pressure, and was inconsistent within itself. At critical moments he gave the impression of seeking to persuade, rather than to state facts. His evidence as to the origin of the signage changed during questioning. There was no supporting evidence from 'Rick'.

89. Mr. John Mair

Mr. Mair is the agent for The Rhino Group and has acted closely with it in connection with the acquisition of the land. He has been a regular visitor to the land, which was very overgrown on acquisition. The public right of way was impassable on acquisition. Between January 2008 and March 2011 (when his statement was made) Mr. Mair had tried but been unable to cycle along the upper pathway, due to debris, slope, ground condition and lack of width. With the exception of those few people he has told to leave or to rejoin the path, he has never seen any member of the public walking on the land save on the footpath.

90. In his Report at Appendix 4 of the Applicant's Submission (p.5) Mr. Mair asserted that 'the public have taken to walking across the land via any route they please'. Mr. Mair's oral evidence was that in giving such evidence he was simply trying to prevent the creation of a right of way. He said (to Mr. Micklewright) 'You are trying to achieve something now and I was trying to achieve something then'. Ms. Meagher suggested that this meant that 'he [Mr. Mair] was playing up the public use in general to prompt the Council to do something'. I do not really follow that submission. The purpose behind the statement may have been to prevent the Council from doing something, namely registering the upper route as a footpath. In my opinion there are two possibilities. Either Mr. Mair's earlier statement was true, when it would be a significant admission against interest, given that a substantial strand of the Objector's case is that usage only took place along defined footpath routes; or alternatively it would establish that Mr. Mair is a person who would be willing to mislead the local authority if it would be to the advantage of the Objector. This behaviour would be more than cavalier. It would, I think, be deliberately misleading. Mr. Mair had a dual role in this case, in that he acted as the Objector's representative, and also has given evidence relating to the usage of the land both by the Applicant, the public and the Objector over

the period of the Objector's ownership of the land, and to a limited extent beforehand. I conclude that it is less likely that he should have sought to mislead the Authority in his written submissions, and that his evidence to me is no more than embarrassment at the potential and no doubt unforeseen consequences of his earlier statement. I conclude therefore that he truthfully stated his belief that public use over the land was reasonably widespread, appeared to be so, and was not confined to the specific routes either of the registered footpath, or the upper path. I also conclude that as in the present Inquiry he sought to resile from that important admission, that his evidence is not reliable. In giving his evidence Mr. Mair's demeanour was that of the advocate, not the witness.

Documentary Evidence

91. I have also received a substantial amount of documentary evidence from potential witnesses, and by way of ancillary documents.

92. Considering first the witness evidence, in the form of witness questionnaires or letters, I have assembled that information into a schedule form annexed as Annex 4 to this report. Where evidence relates to issues that are strongly contested, as this has been,

evidence which is not tested by cross-examination cannot be given the same weight as evidence that has been so tested. However it should not in my view be disregarded. The authority should bear in mind that the views of the parties and their witnesses may be swayed by the nature of the dispute, but if that and the absence of cross-examination is taken into account, then appropriate weight can be given to this evidence.

93. I have also been supplied with historical photographs of the land by both Applicant and Objector. It is right to say that none of the photographs that I have seen showed widespread usage of the land. On the other hand, it is not obvious that one would expect to see such usage. The land is wooded, and there are few lengthy vistas. Such photographs as there are which do show people, are plainly family snaps or the like. One of the points that the Applicants make is that the land is of a very different character to Snuff Mills, in that it is quieter, more sylvan and contemplative. The photographs do on occasion show wheel marks on paths, consistent with usage by bicycle or pushchair.

Objector's final submissions

94. Miss Rowena Meagher on behalf of the Objector made the following submissions to me:

- (1) Applying the test set out by Sullivan J in R v. Staffordshire County Council ex p. McAlpine [2002] 2 PLR 1, the extent of the user by inhabitants of the asserted neighbourhood or locality was not sufficient to indicate to the landowner that the land was in general use for recreation by the inhabitants;
- (2) Use of the established footpath is user which is permissive, or *precario*.
- (3) User after July 2008, when Mr. Jafari sought to fence the footpath, was contentious and therefore by force, or *vi*. Mr. Jafari suggested that usage became contentious when he erected fencing on the land, or 'Private – no trespassing' signs, although it was unclear precisely when that was.
- (4) Usage of land which is of a nature of footpath, should be treated as giving rise to the creation of a footpath, and not to a Town or Village Green – see the comments of Lightman J in Oxfordshire County Council v. Oxford City Council [2004] 2 Ch. 253 at para. 102 *et seq*. Usage of the land as part of a more extensive walk (encompassing for example Snuff Mills and Oldbury Court) would fall within this category. Secondly,

an application has been made to register the upper path as a footpath under the provisions of section 53 Wildlife and Countryside Act 1981. This demonstrates that the users of that path believe that their usage is sufficient to create a footpath, and not that it is sufficient to support a Town and Village Green. [The difficulties with this analysis are that first it emphasises the subjective belief of those who use the path as to the nature of the right they are exercising. The House of Lords in R v. Oxfordshire County Council ex p. Sunningwell Parish Council [2000] 1 AC 335 held that such subjective belief was immaterial to the application. Secondly it presupposes that those who lend their evidence to one application or the other have thought about the ultimate outcome with some particularity. Whether they would be happy to support both is not something that has been investigated.]

- (5) Save for usage of land for footpath use, there was little evidence of additional use of the application land. Such additional use was *de minimis*. It is unclear whether the children who cycled on the land came from the neighbourhood. The topography of the land renders off-path use difficult, and it has only been possible to the extent that it

has been used since Mr. Jafari commenced works of clearance on to the land.

- (6) The neighbourhoods relied upon by the Applicant's amended application, 'Fishponds' and 'Stapleton' is opportunistic, in that it was designed to correct a flaw in the original application. Whilst that may be so, whether the neighbourhoods claimed are in fact neighbourhoods must in my view be tested against the evidence adduced. How the defined area has come into being within the application is in my view not of great importance. Next, the Objector submits that the survey carried out by the Applicants during the period of the hearing was of very limited assistance due to the poor number of responses, the un-objective selection of respondents, and the lack of information contained in such responses as there were. Miss Meagher submitted that 'Stapleton' was a larger area than that suggested by the Applicant, noting that Mrs. Jafari and Mr. Joyce both have postal addresses described as 'Stapleton'. Whether a neighbourhood exists depends on whether the area has a form of common identity and is recognisable as a community. These tests or requirements appear to me to a large extent to be unhelpful, save to indicate that a

neighbourhood must be objectively and historically perceived as such, rather than an *ex post facto* construct by the Registration Authority. Miss Meagher suggests, and I think this is right, that whether a neighbourhood exists is in the final analysis a matter of impression. She maintains that there is no evidence of organisational structures relating to the various neighbourhoods, and this she says is a telling piece of objective evidence against the existence of such neighbourhoods. The reference in evidence to facilities within the claimed neighbourhoods, such as newsagents, general stores, churches and the like, did not establish the existence of a neighbourhood. On the facts, the existence of these neighbourhoods was not made out.

95. Mr. Micklewright made the following closing submissions:

- (1) In order to establish that a significant number of inhabitants of the neighbourhood have used the land for the purpose of a Town or Village Green, the inquiry should consider not only direct evidence of user by the witnesses who gave oral evidence to the inquiry; but should also consider the evidence of usage by others. In this respect Mr. Micklewright referred me to the evidence of Mr. Hurst, Mr. Dawes, Ms.

Robinson and Mrs. Gonzales, as well as that of Mrs. Minchin, Mr. Gollege, Mr. Skuse and Ms. Stewart. He suggested that Snuff Mills, which was advertised and in part run by the Council as an attraction, drew visitors from Bristol in general, whereas Grove Wood tended to be known and used by locals.

- (2) As to the existence of the neighbourhoods of Fishponds and Stapleton, Mr. Micklewright stressed the existence of facilities in the neighbourhoods that contribute to their cohesiveness. He referred to Stapleton Village Hall, and the Begbrooke Social Club, schools, churches, and the existence of organisations such as the Frome Valley Conservation Group or the Snuff Mills Action Group.
- (3) As a fall-back argument, Mr. Micklewright referred me to the R v. South Gloucestershire Council ex p. Cheltenham Builders [2004] 1 EGLR 84 and Leeds City Council v. Leeds Group plc [2010] EWHC 810 (Ch) (HHJ Behrens) and [2011] 2 WLR 1010 (CA) which he suggested indicated that a Registration Authority, or the person who conducts the inquiry on its behalf, might come to his own view as to the existence of a neighbourhood, notwithstanding that it was not specified in the application nor accepted as an amendment to the

application. He suggested that I might find recreational usage by the inhabitants of such an alternative neighbourhood if I thought it appropriate on the evidence. I do not think that the authorities go this far. In Cheltenham Builders the issue related to the amendment of the application. In Leeds the issue that arose was as to the propriety of the Inspector's decision that certain areas relied upon as neighbourhoods were, as matter of law and/or fact, neighbourhoods. There was no discussion as to whether the Inspector had a power to find a neighbourhood that had neither been argued, nor raised in the Application. In any event, the prescribed application form requires the applicant to state the neighbourhood or locality he relies upon. The purpose of that would appear to be to give notice to any opponent of the case they have to meet. To allow the Authority to make a decision based on whatever evidence arises and relating to another, unannounced area, seems inconsistent with that statutory requirement. Secondly, as a matter of principle, the jurisdiction to amend an application is only exercisable where it is fair to do so. Whether or not it is fair will usually turn on whether the objector, usually the landowner, is unfairly prejudiced by such a change of tack.

To allow the inspector to select a new neighbourhood of which no notice had been given would appear to be intrinsically unfair. Thirdly, the position of the Authority is a quasi-judicial one. Although its investigation is less formal than that which a Court would carry out, the role of the inspector is not that of a formulator of a case. It is for the applicant to formulate his case, and that is the case that the Objector has to respond to – See the comments of Lord Hoffmann in Oxfordshire County Council v. Oxford City Council [2006] 2 AC 647 at [61]. I therefore conclude that the alternative course of action suggested by Mr. Micklewright is not one that the Authority should adopt.

- (4) Although Ms. Meagher positively conceded that the recreational use of the land was not 'secret' or 'clam', Mr. Micklewright spent some time dealing with the ways in which the landowner would have been aware of the usage, notwithstanding that the land is wooded. He suggested that besides such usage being visible from within the woods, it was visible from across the river at Snuff Mills; that high spirited usage could be heard if not seen; and that when used during late Autumn, Winter and early Spring the lack of foliage on the trees would mean such usage would be readily visible. It

seems to me that Ms. Meagher was right not to argue that usage was clam, or secret, and for that reason not 'as of right'. That element of the legal test is better described as 'furtive' use – that is, usage in a manner deliberately designed to avoid detection by the landowner. Obvious cases include the usage of the land only when the landowner is known to be absent; or usage only at night. Where usage is open, but there are objective circumstances which indicate that such usage might not be so readily apparent to the landowner, then the correct approach is to take those circumstances into account when considering whether there has been 'significant' usage, as required by statute. Given first that 'significant' usage means sufficient to signify to a reasonable landowner that a general right was being exercised; and secondly that the basis of the acquisition of the statutory right is acquiescence in the usage by the landowner, and acquiescence requires knowledge of the usage, that seems to me to be correct. There is however a relevant factual matter arising. If the public usage was readily apparent, it would follow that were a landowner to give evidence of regular visits, and no perception of such usage, then one might more readily conclude that in order to

establish user, the Applicants would have to show that the landowner was being positively misleading in his evidence.

- (5) There was no permission given enabling the public to use the land for recreational purposes.
- (6) It is sufficient for the usage made of the land to be that of sports or pastimes. The usage of the land for mountain biking is a 'lawful pastime', in particular the use of the land from the Laundry Field entrance to Halfpenny Bridge.
- (7) As far as the physical characteristics of the land are concerned, the fact that some parts of it are not easily accessible does not mean that those parts, or the land as a whole, cannot be registered as a Town or Village Green. Mr. Micklewright referred me to the comments of Lord Hoffmann in Oxfordshire County Council v. Oxford City Council *supra*. at paras. 66-68 to the effect that where parts only or a larger plot of land were directly usable, one had to look at the land as a whole to ascertain whether it was in its entirety being used for lawful sports and pastimes.
- (7) The usage of the footpaths was not for the purpose of travelling 'from A to B', but was for the purpose of recreation in itself. That user therefore qualified as user establishing the land as a Town or Village Green.

- (8) Usage of the land has continued at a steady rate throughout the relevant period of twenty years. It is not the case that the land has been made generally accessible during the Objector's ownership. The only trees cut down were those near the entrance on Blackberry Hill. Mr. Micklewright referred me to a document dated 12th. June 2008 from Mr. Mair to Bristol City Council in which he describes the land as overgrown, and states that Mr. Jafari has refrained from felling trees on the land.
- (9) There is no evidence that the landowners prior to the objector (a Mr. Terry Olpin and the local NHS trust) were concerned about public use over the land, or tried to prevent it.
- (10) There is no effective or reliable evidence that Mr. Jafari rendered usage contentious, either by his workmen (from whom the Inquiry did not hear directly) or by signage.

Conclusions

Approach to the Evidence

96. There is a sharp divergence of evidence as to usage in general between that called on behalf of the Applicant, and that called on behalf of the Objector. Although the knowledge of the land by the

Objectors witnesses has accrued over a relatively short period of time at the end of the relevant twenty year period, there is no reason to think that usage of the land has been substantially different throughout that period of twenty years. Although the Objectors made the point that footpath 153 was blocked with fallen trees, there is no significant evidence to show that the usage of the land differed materially throughout that period up to the moment when the Objectors first became aware of the land. Secondly, there is a sharp difference as to the effect of the clearance work carried out by Rhino Group on its acquisition of the land. According to the Objectors' witnesses, it was this work that opened up the land to permit public access to it. By contrast, the evidence of usage on behalf of the Applicant makes no reference to these events. The Objectors' works were regarded, if pertinent, as simply being obstructive.

97. In my view, the evidence of the witnesses called for the Applicant is reliable evidence that I can accept. It is broadly consistent with what one might expect, relatively low level usage of an attractive and interesting piece of land, full of wildlife and flora, open to the public and traversed by a public footpath. Their evidence was not exaggerated. Some evidence was particularly vivid, as one might

expect when land is being used by family members, or being recalled from childhood.

98. I do not accept that the land or the public footpath was throughout its length significantly or substantially impassable at any time during the relevant twenty year period, although I accept that it has been impeded by fallen trees from time to time. Insofar as it was impeded by wetness or slippage of earth, or even a fallen tree such minor obstructions were temporary, and insofar as the circumstances required it, were diverted around. Mrs. Moore in her statement³ said:

“The only time our way has ever been blocked was when a tree fell down in a storm and we, and everyone else judging by the footprints, climbed over and under it branches and continued on our way!”

I note that Mr. Steele, in his written evidence, noted that he would take his grandchildren to the land and ‘a fallen tree across the pathprovided an adventurous route up the hide for hide and seek’. One of the photographs taken by Chris Williams⁴ shows a gentleman in a blue boiler suit crawling under a fallen tree across a path. I have been supplied with a report dated 21st. February 2008

³ She did not give evidence

⁴ At Section 4 in the Applicants’ bundle

from The Landmark Practice to Mr. Mair, which is an ecological survey of Grove Wood, which refers to seven fallen trees across the footpath. Two of those trees would have made access along the footpath very difficult for those with push chairs or perambulators, by the path would have been accessible by the more able-bodied or adventurous. The report also makes reference to the existence of two footpaths within the woodland⁵, which indicates that whatever the nature of the obstruction usage had continued so as to prevent the paths from becoming overgrown, something that would have happened quite rapidly in such land had they not been used. The clear impression that I had from the oral evidence that I have heard, which extends many years, is that usage of the land has been continuous over that period.

99. I do accept that Rhino and Mr. Jafari have carried out work to clear some parts of the land, with a view to removing timber and opening up access. I do not accept that as a result of this activity the level of access changed.

⁵ See para. 1.3

Topography and usage of part of the land only

100. This was a point that was considered, *obiter*, by Lord Hoffmann in Oxfordshire County Council v. Oxford City Council [2006] UKHL 25 as follows:

“66. Secondly, Mr. Chapman [the inspector] dealt with the inaccessibility of a good deal of the scrubland:

"The city council argues that the scrubland is now so overgrown that the majority of it is inaccessible and that this in itself precludes registration as a green. As noted above, my estimate is that about 25% of the total area is reasonably accessible, the rest consisting of trees and scrub. In my view, the question whether land has become a town or village green cannot be determined by a mathematical assessment of the amount of the land which is open to recreation. ...Where the recreational use is informal and consists of activities such as walking, with or without dogs, children's play, exploring and watching wild life, I do not see why much more densely vegetated land should not be capable of being subject to recreational rights, either by custom or prescription. In my view, it is necessary to look at the words of the statutory definition and to ask whether the scrubland, considered as a whole, is land which falls within that definition. In my view, the evidence proves that the recreational use of the scrubland is, and has been over the relevant 20 year period, sufficiently general and widespread, by way of use not only of the main track but also of minor tracks, glades and clearings, to amount to recreational use of the scrubland viewed as a whole."

67. This is not an application for judicial review of Mr. Chapman's decision and your Lordships are not invited to express a view on whether, on the facts, he was entitled to reach the conclusions which he did. For my part, in the absence of an inspection or at least photographs of the site, I would be very reluctant to do so. If the area is in fact intersected with paths and clearings, the fact that these occupy only 25% of the land area would not in my view be inconsistent with a finding that there was recreational use of the scrubland as a whole. For example, the whole of a public garden may be used for recreational activities even though 75% of the surface consists of flower beds, borders and shrubberies on which the public may not walk.

68. Instead, your Lordships are invited to provide guidance on the correct approach to the evidence. But I share with Carnwath LJ a reluctance to offer what would amount to the equivalent of a Planning Policy Statement from the Office of the Deputy Prime Minister. Lightman J made a number of sensible suggestions about how such evidence might be evaluated and the judgments of Sullivan J likewise contain useful common sense observations; for example, on the significance of the activities of walkers and their dogs (*R (Laing Homes Ltd) v Buckinghamshire County Council* [2004] 1 P & CR 573, 598-599). But any guidance offered by your Lordships will inevitably be construed as if it were a supplementary statute. There is a clear statutory question: have a significant number of the inhabitants of a locality or neighbourhood indulged in sports and pastimes on the relevant land for the requisite period? Every case depends upon its own

facts and I think that it would be inappropriate for this House in effect to legislate to a degree of particularity which Parliament has avoided."

Put shortly, it is as is so often the case in connection with the satisfaction of the statutory test, a matter essentially of fact and impression as to whether land falls within the scope of the section even though a particular piece of it has not had feet upon it, or is otherwise in practice inaccessible.

101. What is noteworthy about the present application is that although it contains different areas of land – some sloped, some flat; some open, some wooded, the land gives the appearance of being a significant whole. It is bounded by road, river, historic building and open field/ bund. It is essentially untended and wooded. The areas of land that are as a matter of fact inaccessible, or accessible with great difficulty, which seems to me to be the cliff area adjacent to the river; the steeply sloping land immediately to the South of the hospital site and the campus; and the steep gully leading from the entry on to Laundry Field to Halfpenny Bridge (although I note that I have heard evidence about BMX/Mountain bike usage of that area). In my view this is not land that can be easily divided into parts that are either used or are not usable. It is land that is easily

accessible in part, and accessible with more difficulty to various degrees elsewhere.

User of the Land for Twenty Years

102. I find on the evidence that there has been significant user of this land for the relevant period of twenty years. The usage indeed in my view goes many years further back than that, certainly back as far as the end of the Second World War. I find that the land has been used over the relevant period for recreational and informal walking; for jogging; for cycling both along paths and up and down ravines as the fancy took cyclists; for exercising dogs both off and on the leash; for bird-watching and (for younger people) what might be called unstructured play, in dens and the like. The impression that I had from the evidence that there would have been more such unstructured play at the start of the twenty year period than there would have been towards the end of it, which seems to me likely to reflect a less adventurous culture within families and young people, than any restriction on such activity from the condition of the land itself.

103. Whilst I have had particular regard to the oral evidence of use, I note that witnesses have not only recorded their own usage of the

land, but also that of others seen by them. That evidence, which I accept, is corroborated by the witness statements submitted to the Inquiry, and the questionnaires (insofar as they are not made by the same people). Indeed, there is evidence showing historical use of this land going back many decades⁶. In those circumstances it would be natural for use to continue unless there was good reason for it to stop. There is no such good reason – whether by way of obstruction, or alternative attraction - here.

104. I have considered carefully whether the use can be regarded as properly limited to any part or parts of the land, rather than the whole of the land. I received less evidence relating to use of the land at the 'East End' than the rest of the land, in part I think because the entry points tended to be Laundry Field and/or the Halfpenny Bridge, leading to Blackberry Hill. But considering the land as a whole, I think it likely that some significant use would have been made of all of the land throughout the relevant period; and it would as I have said above have been considered to be one single piece of land. I therefore conclude that the use has been made of the entirety of the land.

⁶ Times do change to a certain degree. There are fewer references to use of the land to make 'dens' nowadays; and historically, use of land for BMX or mountain biking would have arisen in the 1970s or 1980s at the earliest.

For Lawful Sports and Pastimes

105. It is common ground between the parties that informal recreation such as jogging or mountain biking or dog walking is capable of being a 'lawful sport or pastime'. The only exception to that would be cycling (or horse riding) along a public footpath, which would be a criminal offence. Although it might be argued that long use would result in the acquisition of a right to cycle (and I deal with the effect of footpath use separately below) I am satisfied that especially in the area between Laundry Field and Halfpenny Bridge there has been rough mountain bike usage, and that children in particular have taken the opportunity to ride off-track. The land is criss-crossed with minor paths and gullies which have plainly been worn over a long period, certainly far beyond the period Mr. Jafari suggests that the land has been opened up by his works.

'As of right'

106. In order for use to qualify under the Act, it must be use 'as of right' which means, 'without force, secrecy or permission'. Although the land is wooded, I see no basis for suggesting that such usage as has taken place was in any way furtive. In my view the usage is not secret. Equally, there is no basis for asserting that the use is

permissive. No permission or license permitting such use has been suggested; and no alternative right explaining the public use has been put forward. The issue here is whether the use was 'by force'.

107. Use is 'by force' if it is plainly contentious. It does not require the destruction of gates or fences (although such acts may make usage contentious); it is sufficient if it is reasonably plain to those exercising such behaviour that they do so contrary to the will of the landowner. In such cases the landowner may be able to point to communications or notices that are sufficient to put the public on notice that their use is disputed. In the present case the relevant period relates to contentiousness or force prior to 12th. July 2008.

108. The matters relied upon by the Objector are the prior fencing of the land (both the gating of it and its fencing); and the erection of notices informing the public that this was private land – and that there must be no trespassing. The first issue therefore is whether the Objector has established that such gating or fencing or notices were erected prior to 12th. July 2008.

109. Having heard Mr. Jafari give evidence on these matters, I do not accept that any fencing that was sufficient to indicate that the

public were being barred from the land was erected before that date. Although he initially maintained that it had been, he subsequently accepted that the HERAS fencing was the first effective barrier fencing. There is no satisfactory evidence corroborating his assertion that the land was fenced off earlier. His assertion that the fencing was stolen appears to me to be quite fanciful. It may be the case that some fencing was erected on or after Rhino's acquisition of the land, but I find no evidence to suggest that it had any effect in obstructing the usage of the land in general, or indicating that such usage was contentious. Given that there was already a contentious dispute between the local inhabitants and Mr. Jafari over his plan to fell trees, had he fenced off the land before July 2008 the reaction would have been immediate.

110. There is evidence of a 'kissing gate' at the entrance to Blackberry Hill having been broken down. That act, if it were carried out by a member of the public, would be an act of vandalism, but it would not preclude access to the land for the purposes of recreation. A kissing gate by its nature is intended to permit pedestrian access through it. It would be unlawful to block access to the public footpath, and from the public footpath (unless physically

obstructed) the public would have access to the entirety of the Land.

111. Turning next to the issue of notices, I accept that there is a notice on a board on the perimeter of the Land which states 'Private land – no trespassing'. I do not accept that this notice was erected prior to 12th. July 2008. I would add that I do not think that such a notice would have made user contentious if erected before 12th. July 2008 as it does not more than state the obvious – the land was private, that is not public, and trespassers should not be there. In cases such as the present the public are there because they have a perceived right to be there; they do not consider themselves to be trespassers, and hence they use the land 'as of right'. I have not seen any communication prior to that date that might be described as putting the public on notice that their usage of the land was contentious, and Ms. Meagher did not put any such notice forward as justifying any such contention. I conclude therefore that such usage as there was amounted to usage 'as of right'.

Usage by 'a significant number of inhabitants of the neighbourhood'

(a): The Neighbourhood

112. One of the unusual features of this application is that the Applicants have sought to argue that the land exists as a TVG to two neighbourhoods. It is not unusual to see applications where, unsure of the facts that will emerge, Applicants rely on stated neighbourhoods in the alternative. It is usual for such neighbourhoods to substantially overlap. The Registration Authority is then asked to select the neighbourhood that best reflects the usage that is proven. What is unusual is to have two, non-overlapping neighbourhoods put forward, as here. I see no reason why that should not be done, and I see no reason why a parcel of land should not be a TVG (pursuant to the provisions of the Commons Act 2006) to the inhabitants of two such separate neighbourhoods at the same time. It was suggested by Lord Hoffmann in R v. Oxfordshire County Council ex p. Sunningwell PC [1999] 3 WLR 160 at 173B that for an application for registration of a TVG under the Commons Registration Act 1965 to succeed, user had to be shown 'predominantly' from the inhabitants of the claimed locality. In those circumstances plainly one could not prove simultaneous qualifying user by two distinct localities. In Leeds Group plc v. Leeds City Council [2010] EWHC 810 (Ch) HHJ Behrens

QC followed the earlier decision of HHJ Waksman QC in Oxfordshire & Buckinghamshire MHT v. Oxfordshire City Council [2010] EWHC 530 to the effect that the 'predominance' test did not apply to applications made under the 2006 Act. That decision as part of the ratio of both cases, and although the decision in Leeds was appealed unsuccessfully, there was no appeal against that finding. It follows that the Authority should accept that it may find that the land is proven to be a TVG as regards two separate neighbourhoods. It must be remembered that in considering whether the case has been made out, the case must be considered separately as regards Stapleton and Fishponds. Each must stand or fall on its own merits.

113. The next issue is whether either or both of these two areas are 'neighbourhoods'. It seems to me that what is a 'neighbourhood' is a matter of fact, applying the meaning of a common English word. A 'neighbourhood' will tend to have what is termed 'cohesiveness', or in other words a practical reason or reasons why it is treated as a neighbourhood. It may also have some form of historical basis as to why it is treated as such an area; and it will also be self-referencing, that is to say that for whatever reason, the people living within it will tend to regard it as a neighbourhood.

114. It is a characteristic of a neighbourhood that its boundaries will not be precise. Given that its existence is to a large degree dependent on public perception, such perceptions may well differ from person to person. This causes a difficulty in that the Application Form suggests that where the neighbourhood is not sufficiently defined by name, then a map should be supplied showing its location. In those cases where a name might not be sufficient to show the location of a neighbourhood, Applicants will, as here, show it by reference to a map. A location on a map however has fixed boundaries, and it seems to me that much time has been spent arguing over the location of the correct boundaries when it should be born in mind that the boundaries of neighbourhoods are not precise – they are fuzzy. In my opinion what is necessary is that the location shown on the map is broadly correct.

115. Both 'Fishponds' and Stapleton' are very well-known and long-established suburbs of Bristol. Very broadly speaking, Stapleton is bounded by Eastville to the South, Begbrook and Frenchay to the North and Fishponds to the East. Fishponds is bordered by Stapleton to the West, Eastville, Staple Hill, Downend and St. George. Stapleton and Fishponds are of different character. Stapleton

village is the ancient heart of the ecclesiastical parish, which formerly included Fishponds⁷. It is a residential area, with housing from Georgian, Victorian and Edwardian eras. Fishponds comprises more Victorian and artisanal housing, and gives the impression of being both historically and as at present, more of an industrial area than Stapleton. Insofar as Stapleton may, historically, have existed to the North of what is now the M32⁸, I think it is likely that it has not done so for many years. The M32 is an obvious neighbourhood boundary.

116. Having heard the evidence of local residents, I am of the view that the border between Stapleton and Fishponds is not clearly defined. Although there are strong physical boundaries in the area (the Frome is one such) these have tended not to create obvious boundaries between neighbourhoods, in part (as far as the Frome is concerned) because Stapleton Village formed adjacent to it; and also because as times have changed, the social cachet of living in Stapleton as against Fishponds, as perceived by some, has meant that Stapleton has encroached on what was historically the larger neighbourhood. I have born in mind the evidence given by local

⁷ I was supplied with the Tithing Map for the parish of Stapleton dated 1839, which showed Stapleton as the present village, and Fishponds as being a strip development along The Ridgeway.

⁸ Completed in 1975.

residents as to where they considered that they lived. I also have regard to the survey conducted and sent out by the Applicants on 27th. July 2011, the details of which were contained within their document 'Locality and Neighbourhood – Grove Wood Town and Village Green Application hearing 1st. August 2011'. I bear in mind Ms. Meagher's comments that this is to a degree self selecting (in that the e-mail part of it was sent to member of SMAG), but I have no reason to consider that the answers are not authentic. Indeed, having seen members of SMAG give evidence I consider it to be the case that they would obtain and deliver such evidence objectively and fairly, notwithstanding their own preferences as to the outcome of this Inquiry. I accept the survey as an accurate record of the responses of those who were surveyed. Taking all of the evidence together, it seems to me that the claimed neighbourhoods shown on the Amended application are broadly correct in their location; and that they are neighbourhoods as referred to in section 15 of the Commons Act 2006.

(b) Their Usage

117. Grove Wood is not an obvious thoroughfare for people wishing to go about their daily business. It is however an obvious location for those wishing to have recreation in a sylvan setting. I accept the

evidence of the witnesses called on behalf of the Applicants, to the effect that they and others have for many years used Grove Wood for recreation. The evidence demonstrates that this usage has been varied, including rambling, dog walking, play with and by children, mountain and BMX biking. I note in particular the evidence of Stephen Comer, which I accept, that there was substantial usage of Grove Wood from 2002-8⁹ and I see no reason to conclude that user at other times would have been different. A remarkable number of witnesses have stressed the wildlife in the woods, such that I was concerned that there might have been some sort of prompting going on. I note from the evidence of Mr. Ian Llewellyn, a cameraman with the specialist natural history unit at the BBC, (whose written evidence I accept) that the land is one that harbours 'many protected species of birds, trees and mammals'. I note also that Mr. Jafari has stated his intention (if permitted) that the land, or part of it, be used or designated as a memorial wildlife park. Plainly, this acknowledges the richness of the flora and fauna on the site and buttresses the perception of witnesses that it is worthy of inspection and enjoyment.

⁹ The period he could speak of.

118. Although Mr. Jafari has suggested that the former owners of the land would have prevented such general usage by the public, he has adduced no evidence to support such a contention. In contrast, I have been supplied by the Applicants with a letter from Mr. Olpin to Mr. Micklewright dated 28th. July 2011, which is worth setting out in full:

"I would like to confirm that when myself and my fellow investors owned Grove Woods, we never encouraged or discouraged people to use the woods or riverbank. In fact we were quite pleased that locals and all ha[d] pleasure in walking, fishing etc. on our land."

The Applicant also asked the local NHS Trust for information concerning usage of Grove Wood. Mr. Nick Stibbs, the Corporate Services Manager of North Bristol NHS Trust replied by e-mail dated 28th. April 2011 as regards the period 1988-1996 that it erected neither fencing nor notices to keep the public out, and that:

"the NHS was well aware that members of the public used this amenity, in fact they often brought to attention that drains were overflowing etc., so clearance/repair could be effected."

The contents of these items of correspondence are consistent with the evidence that I have heard, and the evidence that I have read.

In my view, prior to Rhino's ownership of the land, the landowners were either ambivalent as to general public recreational usage of the land, or (as appears to have been the case with the NHS Trust) welcomed it.

119. A significant matter at issue in the application is whether the usage that has been proven was usage either of Footpath 153 or of the alternative path as a right of way, rather than as usage of the land as a TVG. The law of the topic is set out in the judgment of Lightman J in Oxfordshire County Council v. Oxford City Council [2004] EWHC 12 (Ch) in terms which were not disapproved when the case was appealed:

“[102] The issue raised is whether user of a track or tracks situated on or traversing the land claimed as a Green for pedestrian recreational purposes will qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a Green. If the track or tracks is or are of such character that user of it or them cannot give rise to a presumption of dedication at common law as a public highway, user of such a track or tracks for pedestrian recreational purposes may readily qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a Green. The answer is more complicated where the track or tracks is or are of such a character that user of it or them can give rise to such a presumption. The answer must depend how the matter would

have appeared to the owner of the land: see Lord Hoffmann in Sunningwell at pp 352H-353A and 354F-G, cited by Sullivan J in Laing at paras 78-81. Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. *Use of a track merely as an access to a potential Green will ordinarily be referable only to exercise of a public right of way to the Green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential Green may be recreational use of land as a Green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. (my emphasis).* If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a Green).

[103] Three different scenarios require separate consideration. The first scenario is where the user may be a qualifying user for either a claim to dedication as a public highway or for a prescriptive claim to a Green or for both. The critical question must be how the matter would have appeared to a reasonable landowner observing the user made of his land, and in particular whether the user of tracks would have appeared to be referable to use as a public footpath, user for recreational activities or both. Where the track has two distinct access points

and the track leads from one to the other and the users merely use the track to get from one of the points to the other or where there is a track to a cul-de-sac leading to (e.g.) an attractive view point, user confined to the track may readily be regarded as referable to user as a public highway alone. The situation is different if the users of the track e.g. fly kites or veer off the track and play, or meander leisurely over and enjoy the land on either side. Such user is more particularly referable to use as a Green. In summary it is necessary to look at the user as a whole and decide adopting a common-sense approach to what (if any claim) it is referable and whether it is sufficiently substantial and long standing to give rise to such right or rights.

[104] The second scenario is where the track is already a public highway and the question arises whether the user of the track counts towards acquisition of a Green. In this situation, the starting point must be to view the user as referable to the exercise (and occasional excessive exercise) of the established right of way, and only as referable to exercise as of right of the rights incident to a Green if clearly referable to such a claim and not reasonably explicable as referable to the existence of the public right of way.

[105] The third scenario is where there has been a longer period of user of tracks referable to the existence of a public right of way and a shorter period of user referable to the existence of a Green.....”

120. In the present case there exists part of the first scenario (use along a potential highway – the more Southerly track) and the second scenario (use along an existing highway). The evidence indicates to me that anyone observing the use of the way would have seen a variety of different usages. Although there was very little evidence of people using the footpath purely as a means of access¹⁰, some people would have strolled along the footpath or the track, as a piece of recreational walking. Others would have walked on the track as to part and off as to others. Those with dogs off of their leads (which from the evidence appear to have been in the majority) and those with young children would have tended to wander off the main tracks, as their animals or their children took them. Thirdly there are those who went on to the wood for the purpose of wandering through it as opposed to walking on the path. The wood lent itself to such activities in particular for children and for those whose interest lay in observing nature, whether flora or fauna. The very strong emphasis in the evidence that I heard was that the land was being used for recreational activities rather than simple footpath walking¹¹. I conclude that the evidence shows that

¹⁰ One example was Ms. Sheila Hill, who used it to go from Riverside in Stapleton to Fishponds. She had known the area since 1947 (her father was the ranger at Snuff Mills Park) and it may be that it was this that gave her familiarity with the short-cut.

¹¹ I note that one group of users were ramblers, who probably did use the land simply from walking. They however appear to have come from outside of the neighbourhoods, so their usage could not assist the Applicant in any event.

it should have been apparent to the landowner that the land was being used, not simply for walking along a footpath, but for more general recreational use, or informal sports and pastimes, during the relevant period. Where the path was blocked by fallen trees, that appears at least in some cases to have been regarded not simply as a matter for diversion, but also as a good reason to explore around the land¹².

(c) A Significant Number

121. There is no requirement that any particular number, of the majority of inhabitants of the neighbourhood, have used the land during the relevant period. According to Sullivan J¹³, in R. v. Staffordshire County Council ex p. Alfred McAlpine Homes Ltd. [2002] EWHC 76, considering what usage by 'a significant number' of inhabitants meant:

“...what matters is that the number of people using the land in question has to be significant to indicate that their use of the land signifies that it is in general use by the local community for informal recreation”.

It is a question of impression from the evidence available to the Inquiry as to whether this test is satisfied; it is not necessary that the

¹² See Mr. Steele's evidence, referred to above.

¹³ Now Sullivan LJ

number of users from the neighbourhood be considerable or substantial. In coming to my conclusion I am not limited to the evidence of the users themselves; I can draw inferences from the character and location of the land as to likely use. Nor am I limited to their evidence of their own use. Indeed it is noteworthy that many of those who gave evidence themselves stated that the land was used by others. Given the evidence I have heard I have no doubt at all that the land was in general use for informal recreation by local inhabitants. But the question is whether a significant number of the inhabitants of each neighbourhood were using it for that period. The Authority must consider the usage by the inhabitants of each neighbourhood separately.

122. Of the witness evidence that I heard the following live in the claimed neighbourhood of Stapleton:

Susan Drake
Yvonne Dawes
Cherry Froude
James Jones
Alan Dawes
Andrew Harris
Andrew Skuse
Jill Minchin
Deirdre Allen

Ken Ladd
Mark Logan
Jayne Joyce
Martyn Whitelock
Stephen Micklewright

123. The following live in the claimed neighbourhood of Fishponds:

Peter Hirst
Christine Williams
Clare Robinson
Lesley Alexander
John Freeman

Whilst it would be wrong to approach the analysis arithmetically, or by adopting the 'predominance' test of Lord Hoffmann in ex p. Sunningwell, both from that evidence; from the written evidence of user that was supplied to me, and from the inferences that I draw from the location of the land (in the centre of the neighbourhood of Stapleton), it seems to me to be the case that significantly more residents of Stapleton than of Fishponds use the land. Insofar as those who use the land have given evidence of usage by third parties, I draw the inference that a fair proportion of them would be local people, and of them, that they would divide between Fishponds and Stapleton in roughly the same proportion as the live witnesses I heard from.

124. As far as the inhabitants of Stapleton are concerned, I have no doubt that the evidence does demonstrate usage by a significant number of its inhabitants during the relevant period. In coming to this conclusion I rely not only on the oral evidence that I have heard but also the written documentation available to me. I also bear in mind the location of the land, its ready accessibility over many years and its particular attractiveness.

125. As far as the inhabitants of Fishponds are concerned, the matter is not so clear cut. However, bearing in mind not only the oral evidence I have heard but also the written evidence (which substantially supports the suggestion of use by the inhabitants of Fishponds) and even use by institutions based in Fishponds (I note that the local Scout Group has used the land for its activities from time to time¹⁴). I am of the view that the evidence does, on the balance of probabilities demonstrate usage by a significant number of the inhabitants of Fishponds during the relevant period.

126. I should add that the consequence of this is that both the inhabitants of Stapleton and the inhabitants of Fishponds will have

¹⁴ The 55th. Bristol, based at St. Mary's Church on Manor Road.

the right to use the land for the purpose of lawful sports and pastimes.

127. This report contains my advice to the Registration Authority on this issue. Statute requires the Authority to come to a decision. I advise the Authority that it is not bound by my findings, reasonings or conclusion. It is obliged to consider my report, along with any other relevant material (which if written may be summarised by officers) and come to their own conclusion as to whether to permit or dismiss the application.

Recommendation

128. I advise the Authority that the Applicant has established the matters required by section 15(3) of the Commons Act 2006 in respect of his application, and that the Authority should:

(1) allow the Applicant to amend the application to alter the neighbourhoods as shown on the plan at Annex 3; and

(2) register the land as a Town or Village Green pursuant to the provisions of the Commons Act 2006. The relevant neighbourhoods should be identified as 'Stapleton' and 'Fishponds' as shown on the plan at Annex 3.

129. Lastly, can I record my thanks to Tom Dunsdon, who assisted throughout at the Inquiry and made the whole process far easier, for myself and I am sure for the parties, than it might otherwise have been.

Leslie Blohm QC

St. John's Chambers,

101 Victoria St.

Bristol,

BS1 6PU

25th. January 2012

jogging wild food / photograph orienteering tracking horsey logging and Courting canoeing paddling camping ar rope swings to river Ferret walking

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101 Clodagh Gr Frome Vale 1990-2009	yes	no	no	yes				yes				yes	
102 Samantha I Eastville 1998-2009	no	no	no		yes			yes		yes			yes
103 Josiah Kem Eastville 1998-2009	no	no	no	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes
104 Helen Brya Frome Vale 1997-2009	yes	no	no	yes	yes	yes	yes	yes		yes			yes
105 Andrew Ho Frome Vale 1996-2009	yes	no	no	yes	yes	yes	yes	yes	yes	yes			yes
106 Andrew C I Eastville 1995-2008	yes	no	no	yes		yes	yes	yes		yes			yes
107 R.A. Minch Eastville 1994-2009	yes	UWE running cl	no		yes	yes	yes	yes		yes	yes		yes
108 Jennifer A I Frome Vale 1994-2009	yes	no	no				yes	yes		yes			yes
109 Paul Upton Eastville 1984-2009	yes	no	no	yes	yes		yes	yes			yes		yes
110 Steven Pen Eastville 1989-2009	no	no	no	yes			yes	yes		yes	yes		
111 Celia Smith other 1980-1990 ?		girl guides	no	yes			yes	yes		yes	yes	yes	yes
112 M Brennan Frome Vale 1993-2009	yes	no	no	yes	yes		yes	yes		yes			yes
113 Yvonne Da Eastville 1994-2009	yes	no	no	yes			yes	yes		yes	yes		yes
114 Mark Store Eastville 1993-2009	yes	no	no	yes			yes	yes		yes			yes
115 John Fergu Frome Vale 1992-2004	yes	no	no		yes		yes	yes		yes			yes
116 Kevin M Fn Frome Vale 1991-2009	yes	no	no		yes	yes	yes	yes		yes	yes		yes
117 Greg Steel S.Glos 1990-2009 ?		no	no	yes				yes		yes	yes		yes
118 Jerry Pavio Frome Vale 1984-2009	no	no	no	yes	yes	yes	yes	yes		yes	yes		yes
119 Peter Hirst Frome Vale 1990-2009	yes	no	no		yes	yes	yes	yes		yes	yes		yes
120 Neil Laphar Frome Vale 1990-2009	yes	no	no	yes		yes	yes	yes		yes	yes		yes
121 Ginny Bate Eastville 1994-2009	no	no	no	yes		yes	yes	yes			yes		yes
122 Darren Cov Knowle 1994-2009 ?		no	no							yes			yes
123 Robert Fiel S.Glos 1990-2009	yes	no	no	yes	yes		yes	yes					
124 Linda Reev Frome Vale 1989-2009	yes	no	no										yes
125 Tania Hirst Frome Vale 1990-2009	yes	no	no		yes		yes	yes		yes	yes		yes
126 Fiona Ruml Eastville 1989-2009	yes	no	no		yes	yes	yes	yes		yes	yes		yes
127 Yvonne Sat Frome Vale 1989-2009 ?		no	no	yes	yes		yes	yes		yes	yes	yes	yes
128 K Mulvenn Eastville 1988-2009	yes	no	no				yes	yes	yes				yes
129 Samantha I Frome Vale 1985-2009	yes	no	no	yes	yes	yes	yes	yes		yes	yes		yes
130 SM Hill Frome Vale 1967-2009	no	no	no	yes									yes
131 Jane Joyce Frome Vale 1972-2009	yes	Girl guides 197C	no		yes	yes	yes	yes	yes		yes	yes	yes
132 Valeri Prob other 1958-2009	no	no	no	yes	yes	yes	yes	yes		yes		yes	yes
133 Roger Prob other 1960-2009	no	no	no		yes	yes	yes	yes		yes	yes		yes
134 J Godden other 2002-2000	yes	Bristol Rat Race	no		yes	yes	yes	yes			yes		yes
135 Alison Hort Frome Vale 2008-2009	yes	UWE OT studen	no	yes		yes	yes	yes				yes	yes
136 E Gonzalez Frome Vale 1980-2008	yes	no	no		yes	yes	yes	yes	yes	yes		yes	yes
137 Leni Loizou other 2008-2009	no	no	no		yes	yes	yes	yes					yes
139 L Walmsley other 1987-1992	no	no	no		yes	yes	yes	yes	yes	yes			yes
139 Adam Leen Frome Vale 1986-2009 ?		no	no	yes	yes	yes	yes	yes	yes	yes			yes

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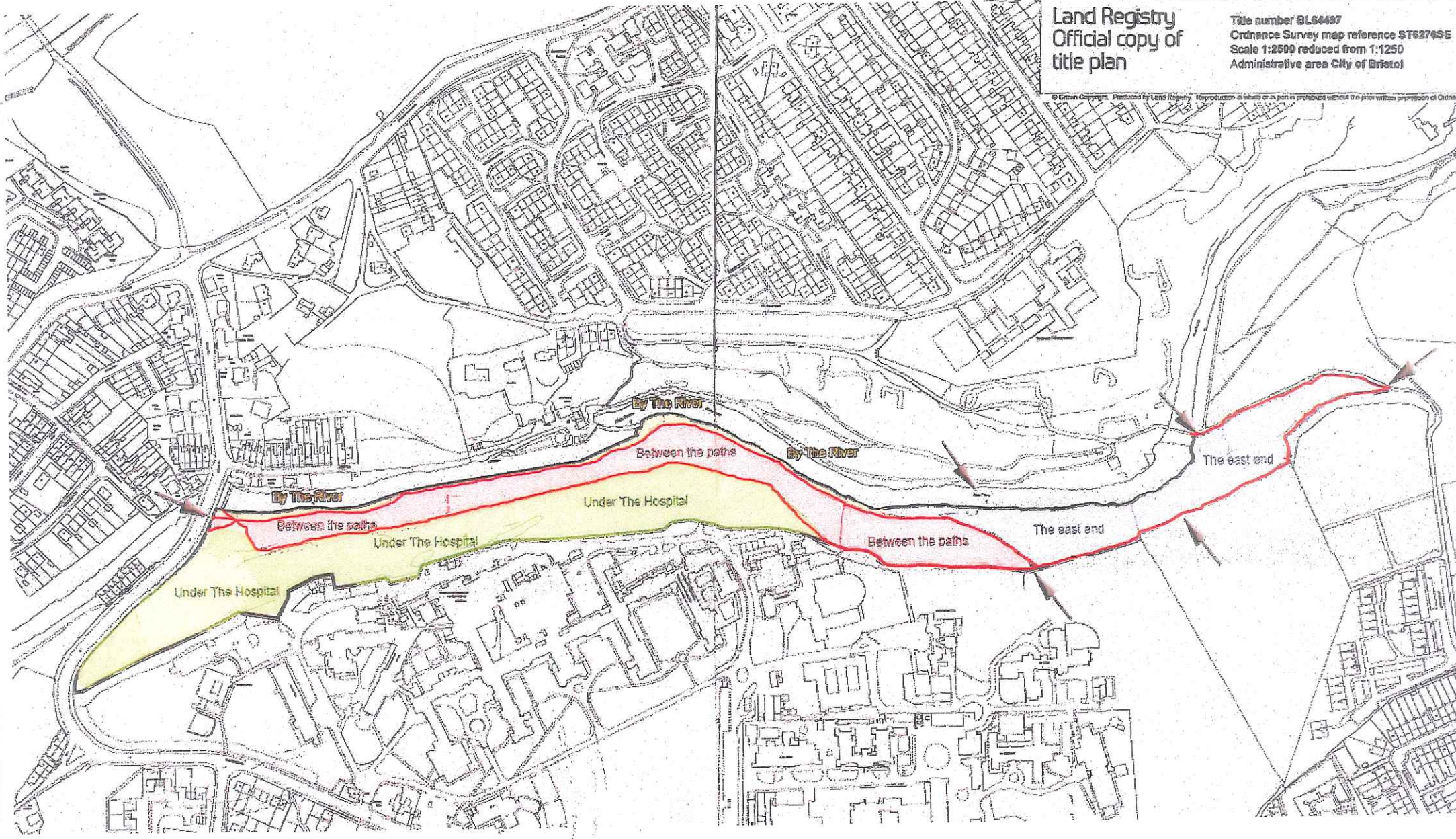
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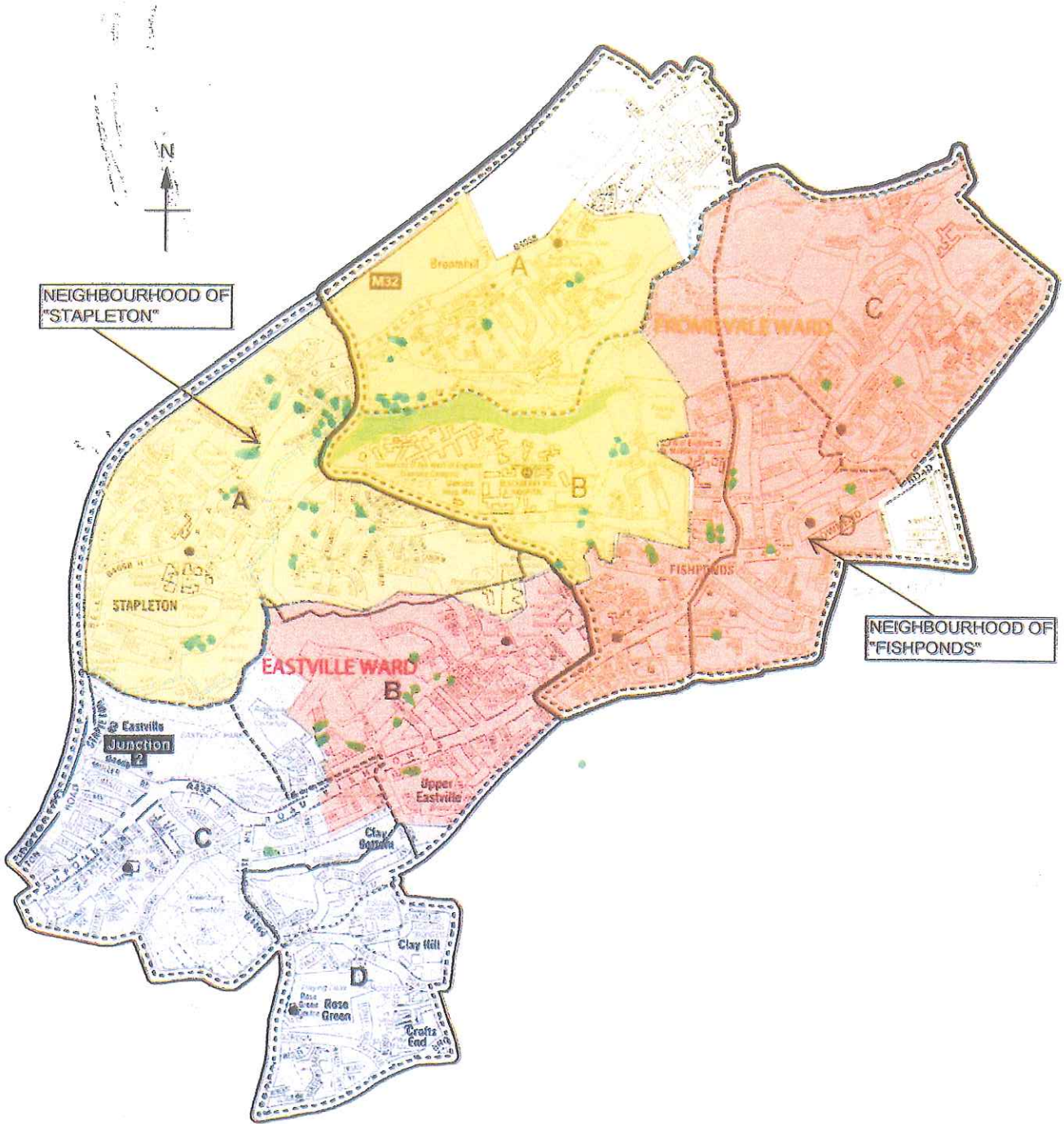
Land Registry
Official copy of
title plan

Title number BLS4487
Ordnance Survey map reference ST6276SE
Scale 1:2500 reduced from 1:1250
Administrative area City of Bristol

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THE LOCALITY OF EASTVILLE AND FROM VALE WARDS BRISTOL
SHOWING THE NEIGHBOURHOODS OF STAPLETON
AND FISHPONDS



Annex 4 - Written Witness Evidence

<u>Name</u>	<u>Address¹⁵</u>	<u>Period</u>	<u>Usage</u>	<u>Use by Others</u>
Lesley Alexander	Thingwall Pk, Fishponds	1981 onwards	General walking, picking flowers, over all parts of the land, not just the paths.	Yes - dog walkers, bird watchers, children climbing trees, cyclists, horse riders, picnickers, people collecting firewood.
Heidi Coveney	Heyford Ave, Eastville	1986 onwards	Cycling on Grove Wood and Snuff Mills, (from 2005) running and cycling. The off-path use was good for mountain biking; the hilly paths for running.	Yes - Runners, walkers, dog walkers, people fishing. Families use the land on Sundays.
Nicola Damery	Grove Park Ter. Fishponds	March 1996 to 2005. 2009 onwards.	Originally lived on Glenside Campus, UWE. Walking, jogging up a down banks. Bird watching,	Yes - fishing, jogging, walking, children playing all over the land; photography, general recreation.
Jeanette Davidge	Ansteys Rd., Hanham	Pre 1965 to date.	Lived in Fishponds	

¹⁵ The area given is that stated by the writer on their document.

			before 1965 and taken through Grove Wood and Snuff Mills as a child. Continues to visit.	
Sue Forse	River View, Stapleton	2007 to date	Walks in the woods regularly. Taken part in 'Owl watch'	Yes - runners, rambles, cyclists, families, fishermen, photographers, bird watchers.
Arthur Giddings	Woodland Grove, Stoke Bishop.	1951 to date	Lived in the Frome Valley behind Grove Wood from 1951. His family continues to use the land.	
Elizabeth Golding	Park Road, Stapleton	1986 onwards	Dog walking; also used top path for access on to Fishponds. Used with granddaughters for fishing for the past ten years.	
Paul Golledge	Dryleaze Rd., Stapleton	1960s onwards	Born in Begbrooke Lane. Played as children in Grove Wood. 1980s/1990s regular walks through the wood with his dogs. Would go off the main path up to the top of the	

			wood to watch the wildlife. Involved in wildlife conservation since mid 1990s. Chairman of local Hawk and Owl Trust; Visits Wood to enjoy wildlife, usually off of main path.	
Enrique Gonzales	Victoria Park, Fishponds	1979 to date	Regular visitor taking his dog for a walk, or walking with wife and child. Has taken a pushchair. Daughter rides a pony there.	Yes - people bird watching, fishing, mountain bikers riding across the steep gradient.
Richard Minchin	Beverley Rd. Horfield.	1985 to date	Angling with father, picnics with family, mountain biking (from 1994) running (with UWE team)	
Geoffrey Perrett	Everest Avenue Fishponds	Since 1950	Walked through the paths twice a year. Led Ramblers' Association through it.	Saw walkers there and children playing on many occasions
John Steele	Wickham Court, Stapleton	1997 to 2002	Played with grandchildren, hide and seek.	
Hilary Stewart	Riverview, Stapleton	1990 to date	Walked through; viewed wildlife; collected wood for natural	

			sculptures. Played hide and seek with his children. Walked dogs off of the lead.	
Paul Upton	Grove Bank, Frenchay	1978-date	As a pupil at Colston's School, land was part of a run or walk route. Runs through the land.	
Robert Woodward LL D, J.P. (ret.)	Malmains Drive, Frenchay	1937-date	Has constantly walked over and about the land. For the past thirty years 'through the roughest parts of the wood' (Originally lived in Fishponds)	
Chris Cooper	Manor Road, Fishponds	1975 to date	Walks on land; picnics with children and grandchildren. 1986-1991 Mrs. Cooper and her husband ran the local Fishponds Watch Group, and would on occasions take the group to Snuff Mills to walk along the river.	Many dog walkers in the area walk their dogs in the Grove Wood area.
Darren Coveney	Newquay Rd. Knowle	1989 to date; Used to	Mountain biking. Now cycling through	Friends also used it for mountain

		live 'locally'.	and walking dog.	biking.
Philip Cornish	Yate	1950-1959 when he lived in Oldbury Court	Walked through land with parents; built dens and played on land.	
Peter Davidge	Ansteys Rd. Hanham. Lived in Fishponds 1945-1970	1945 to date.	Played there as a child; now still walk through.	
Paula Flay	Colston Hill, Stapleton	1980 to date.	Walked there with dog. Often rambles through trees away from path.	Frequently meets other dog walkers, people fishing, people taking photographs.
Terence Forse	River View, Stapleton	2007 to date	Dog walking through woods. Circular route.	Bird watchers, anglers, joggers, walkers, dog walkers.
Kevin Froude	School Lane, Stapleton	1991 to date	Exercising dog off leash in wood. Mountain biking, jogging, physical training.	Lots of other people use the woods for all types of recreational activity. Dog walking, rambling, hiking, orienteering, photography, fishing, mountain biking, horse riding
Jonathan Gledson	Thingwall Park, Fishponds	2007 to date	Physical exercise, repetitions, running up and down the	

			hillside.	
Mr. P. F. Scott	Brinkworthy Rd., Stapleton	1982-1995	Regularly used Grove Wood with both family and dogs; access was unimpeded; could roam freely.	
Evita Gonzalez Szamocki	Pound Lane, Fishponds	1984 to date	At least once a week, walking with parents; playing hide-and-seek. Bird spotting. Running off-road.	Fishing, picnicking, camping, serious mountain biking.
Mrs. K. Gregory	Cromwell's Hide, Stapleton	1990 to date	Walked with husband and children. Walked along river, and explored area.	Children climbing the rocks and cliff face; making use of the land as a general play area.
Angela Helbling	Estcourt Gardens, Stapleton	2005-2011	Walked on land frequently with children. Went off-path. Played.	Frequently met others fishing, rambling, jogging, mainly on foot and not by car. Paths looked well used.
Andrew Hill	Ham Lane, Stapleton	2006-July 2008	Wildlife photography. Walks with dog.	Children playing below the hospital and in the Eastern end. Fishing. Scrambling between Halfpenny Bridge and the woods.

				Jogging. Bird watching.
Sheila Hill	River View, Stapleton	1970s to date	Walked with dog. Picked flowers. Go to Fishponds from Stapleton.	
Tania Hirst	North Devon Road, Fishponds	1988 to date	Walk dogs at least twice a week.	Other dog walkers and other walkers also use the land.
Pat & Julian Holloway	Ham Lane Stapleton	1946 to date	Childhood play. Cross-country training. For the last 30 years, dog walking, bird watching, looking at wildlife. Took son to play.	Fishermen, photographers, dog walkers, joggers.
Lynn Jones	Greenaway Park, Westbury-on-Trym	1979 to date	Used to walk his children there; scrambled over the land. Picnicked and picked blackberries. Now walks dog there 'I have walked and scrambled all over Grove Wood for over 20 years.'	
Jennie Jones	Heath Road, Eastville	2003 to date	Since 2006 visits once a month. Picnics, scrambles. Occasionally mountain bikes.	Hiking, running, biking, flower picking, photography, dog walking. i
Christine Justin	Hedgemoad View,	1970 to date,	Walking, exercising dogs,	



	Stapleton	living at various addresses in Fishponds and Stapleton	jogging, bird watching, fishing, picnicking, viewing wildlife, photography.	
Richard Kijak	Bucks Rd, Isle of Man	1978 to 1997	Mountain / BMX biking through woods. In 1990 took part on outdoor exercises organised by Fairbridge-Drake charity.	
Ian Llewellyn	Vassall Road, Fishponds	2004 to date.	Specialist natural history cameraman with BBC, has studied otters and kingfishers at Grove Wood. Photographs flora and fauna.	Many naturalists and bird watchers. Dog walkers, joggers, wildlife enthusiasts.
Michael McGrath	Marina Gardens, Fishponds	2001 to date	Walking, running. Also some bird watching and photography.	Many others, together with cycling on the path.
Raymond Minchin	Hedgemed View	1978 to date	Fished and picnicked with son; mountain biking off-track; walked the slopes; dog walking off the paths.	
Kevin Muluena	Thingwall Park, Fishponds	1988 to date.	Walking with children; roaming through wood.	Many ramblers walk along the Frome, and all over. Dog walking

				throughout the woods.
Barbara Moore	Princess Gardens, Stapleton	1970 to date	Walked with family along the paths; also went bird watching and taking photographs.	
David Moore	Princess Gardens, Stapleton	1970 to date.	Played there with his children. Hide and seek. Fishing.	'Countless other local folk [have enjoyed the land] without hindrance'
Linda Reeve	Duchess Way Stapleton	1990 to date	Running and walking	
Yvonne Sadler	Brook Road, Fishponds	1989 to date; mainly between 1989 and 1999.	Walked with children most Sunday afternoons and during school holidays.	Wood was very popular. Fishing; people cycled through. Dog walkers. Many families. Joggers. Boy scouts used the woods (St. Mary's Scout group ¹⁶)
Andi Clare St.	Brambling Walk, Stapleton	2005 to date	Carried out an art project based on Grove Wood.	
Virginia Spencer	Reginald Road, London.	1948 to date	Walked in Grove Wood for pleasure until 1965. Since then has walked in Grove Wood with a friend and her dog when visiting	

¹⁶ The 55th Bristol (St. Mary's Fishponds) Scout group based at St. Mary's Church, Manor Road.

				Stapleton	
R. Clarke	G.	North Devon Road, Fishponds	1954 date	to	<p>Played there as a child. More recently takes walks, goes bird watching. Son plays there - wide games etc.</p> <p>Very popular with others - runners, fishermen, orienteers.</p>

APPENDIX NO: 3
**Common Land
 and Village Greens**

-  Extent of Grove Wood
-  City Boundary



Scale @ A3 - 1:4,000
 0 25 50 75 100
 Metres



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