

BRISTOL CITY COUNCIL

PUBLIC RIGHTS OF WAY & GREENS COMMITTEE

16TH JUNE 2011

Report of: Jan Ormondroyd, Chief Executive

Title: Application to Register Land at Ashton Vale as a Village Green

Ward: Bedminster & citywide

Officer Presenting Report: Jan Ormondroyd, Chief Executive

Contact Telephone Number: 0117 922 4888

RECOMMENDATION

The delegated responsible officer has reviewed the Inspector's report, and the new evidence that has been submitted by both the applicants and the landowners. It is his view that the new evidence shows that the applicants have shown, on the balance of probabilities, that the requisite statutory test has been met only for part of the application area, and is therefore recommending partial registration as described in the report.

Summary

This report concerns an application to register a 42-acre site in Bedminster Ward as a Town & Village Green. The site proposed for registration is subject of an approved application for a new regional stadium.

The significant issues in the report are:

As set out in the report.

Consultation

1. Internal

This report has been prepared in consultation with the Registration Authority's responsible delegated officer (Strategic Director, Corporate Services); the Head of Legal Services; and the Service Director, Major Projects.

2. External

An Independent Inspector was commissioned to conduct an Inquiry into this application in May/June 2010. The role of the Inspector was to review the application for Town & Village Green status, receive evidence from both the parties and make a recommendation to the Council.

3. The City Council in its capacity as Commons Registration Authority has responsibility in pursuance of the Commons Act 2006 to determine whether the land should be registered as a green. The Strategic Director, Corporate Services is the Registration Authority's responsible delegated officer.

Context

4. In June 2009 a Planning Application was submitted (application no: 09/02242/P) for the development of *'Ashton Vale And Former Alderman Moore Allotments Off Ashton Road (B3128) Bristol'* as a new stadium and associated development, including the creation of a wetland area. This application was granted, subject to conditions, by Development Control (South & East) Committee on 5th April 2011.
5. The plans for the stadium and associated development include:
 - 5.1. A 30,000 seat Stadium with associated conferencing and hospitality facilities. Provision for up to 30 events per year, of which no more than 3 would be concerts, and 22 large-scale conferences per year.
 - 5.2. A retail unit and community facilities and accompanying car parking.
 - 5.3. Land reserved to accommodate a Bus Rapid Transit (BRT) line running around the east and southern sides of the stadium.
 - 5.4. Flood storage/wildlife area immediately to the south of the stadium site, providing a collection of pools, ponds, wet areas and sedge beds.

6. In October 2009 Bristol City Council received an application to register the entire site, a tract of land totalling 42 acres, as a 'Town & Village Green'. Following receipt of the application this Committee referred the decision to an independent Inspector.
7. A Public Inquiry into the application was opened in May 2010. The Inquiry concluded on 3rd June 2010, with the Inspector subsequently recommending the registration of the entire site in a report dated 26th August 2010.
8. Following this recommendation, both the applicants and objectors submitted further information for consideration.
9. In addition, the parties entered a mediation process that took place between January and April 2011, with the objective of exploring a mutually acceptable solution. However a compromise was not found during this process.

Options

10. The options available to the Committee in determining this case are as follows:
 - 10.1. **Refer the case back to the Inspector, to consider the application in the light of additional evidence.** This would cause an additional and significant delay to the determination of the application.
 - 10.2. **Accept the Inspector's recommendation to register the entire 42-acre site as a Green.** The registration of the entire site as a Green would have the effect of preventing any development on the site in perpetuity, and with it, the ancillary benefits of the enhancement works to create a new wetland area.
 - 10.3. **Reject the application outright.**
 - 10.4. **Only register part of the site.** This decision could only be taken if there is sufficient evidence that part of the site does not meet the necessary statutory test to be registered a Town or Village Green.
11. Based on a review of the relevant information, the responsible delegated officer acting in his capacity as the registration officer is recommending the following course of action.

Recommendation

12. The delegated responsible officer has considered both the Inspector's report, dated 26th August 2010, alongside the further evidence submitted by both the applicants and the landowners.
13. The responsible officer has reviewed the Inspector's report, and the new evidence that has been submitted by both the applicants and the landowners. It is his view that the new evidence shows that the applicants have shown, on the balance of probabilities, that the requisite statutory test has been met only for part of the application area, and is therefore recommending partial registration as described below.
14. It is the view of the responsible delegated officer that the northern part of the site – all land to the north of and including the proposed Bus Rapid Transit route – *does not* meet the necessary statutory tests to be registered a Town or Village Green, on the basis that:
 - 14.1. He is not satisfied, on the basis of newly submitted evidence, that the land has been used as of right for lawful games and pastimes in the last 20 years. The use of the land more closely resembles use as footpaths to cross the site, rather than uses synonymous with a Town Green.
 - 14.2. There is significant evidence that this land has been in use as a landfill site within the statutory 20-year period.
15. The registering officer is satisfied that the remaining, southern part of the site, (to the south of and excluding the proposed BRT route) *does* meet the necessary criteria, and should be registered a Town or Village Green.
16. Note that in the planned wetland area, immediately south of the BRT line, enhancement works are to be carried out and the creation of the wetlands completed by Summer 2012. This work is essential for the management of run-off from the new stadium development, but primarily will bring improvements to the quality of the area and its use for recreation by the local community. It is also recommended that the landowner keep in place management plans for the wetlands, ensuring a high-quality environment is maintained.

Risk

Legal / Financial

17. All of the options presented here could leave the Council open to legal challenge – see ‘Legal & Resource Implications’ below. 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 this decision.
18. These risks are mitigated against by the Council’s demonstration of a fair and transparent process in its determination of this application, and a decision based on detailed consideration, by the Registration Authority, of the Inspector’s report and supplementary evidence.

Loss of substantial economic and community benefits for Bristol

19. Whilst not a material consideration in the determination of this application, it would be remiss of a report to Members not to highlight risks associated with this Town & Village Green decision.
20. The course of action recommended in this report reflects the additional evidence, as submitted by the applicants and the landowners. In addition, however, the proposition happens to carry with it the added benefit of protecting the interests of both parties, in that it safeguards a large area of land for the community at the same time as allowing the development of a new regional stadium for Bristol.
21. The construction of a new regional stadium at Ashton Vale would make a major contribution to securing the strategic economic objectives for South Bristol, and the city as a whole. The proposed recommendation in this report helpfully mitigates against the risk that Bristol will lose out on significant economic and community benefits, including:
 - 21.1. £150 million of investment into the local economy
 - 21.2. The creation of thousands of jobs during the construction of the stadium, and a further 1,000 new full and part-time jobs permanently created.
 - 21.3. Community facilities comprising “Football in the community” for existing school groups, and a "Playing for success" study centre. The club also proposes to offer limited free and subsidized use of space to local communities including meeting rooms and the 1000-seat great hall.

21.4. The proposed wetland environment to be created to the south of the stadium would represent a significant improvement to the quality of the natural environment at Ashton Vale, enhancing its value as a recreation asset and as a habitat for local flora and fauna.

Reputational Risk for Bristol City Council

22. As with any high profile case of this nature, the decision made by this Committee is likely to leave the Council open to some vociferous criticism. Many residents of Bristol feel strongly about the development of a new stadium, and many feel strongly about the protection of green space. Both accepting or rejecting the application, in full, could lead to reputational damage.
23. Whilst Committee Members are reminded that they cannot take this into account in determining this application, this reputational risk to the Council must be pointed out. Again, partial registration has the added benefit of protecting the interests of both parties and helping to mitigate this risk.

Public Sector Equalities Duties

24. a) 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

b) The proposals in this report would not have any significant adverse implications for the Council in complying with its Equalities Duties. Any potential implications are guarded against by the registration officer making a recommendation based on the evidence before him, and by this Committee making a decision in accordance with Town & Village Green legislation.

Legal and Resource Implications

Legal

The City Council in its capacity as Commons Registration Authority has responsibility in pursuance of the Commons Act 2006 to determine whether the land should be registered as a green.

The criteria to be applied for successful registration are provided by the Commons Act 2006. The applicants must establish that the land in question comes entirely within the following definition of a “town or village green” to be found in Section 15(2) of the Commons Act 2006 which provides as follows: -

- (2) This sub-section applies where –
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application.

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 all considerations of the desirability of registration, or of development for other uses, as these are wholly irrelevant considerations.

The Committee has a range of options. If it is minded to take a decision on the status of the land then it must address the statutory tests.

Note: it is lawful to decide that only part of the land is a village green

Procedure

On receipt of an application to register a piece of land as a town or village green, the Registration Authority (RA) follows the procedure laid down in The Commons (Registration of Town or Village Greens)(Interim Arrangements)(England) 2007. This provides that the Registration Authority must inform the owner, publish a notice in a local newspaper and display notices in the area for a minimum period of 6 weeks to allow any objections to be made.

In the event that objections to the application are received the RA must send these to the applicant for comment before final consideration. The applicant has a right of reply to any objection. It is at this stage that a decision whether or not to refer the matter to an independent Inspector is made. Since there is no statutory requirement to refer the matter to an Independent Inspector, when this happens the matter is referred as a 'non-statutory' inquiry. The inquiry takes the form of witnesses being examined and cross-examined before the Inspector who will then consider whether **on the balance of probabilities** 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 20 years

The Inspector's Report

The Inspector's Report is dated 26th August 2010 and recommends that the application be granted and the application land registered as a town green. Following the Inspector's Report both the objector and the applicant were given the opportunity to consider and comment on the Report which resulted in the Objector submitting further evidence not made available to the inquiry, as well as the Applicant making further submissions.

There is no statutory requirement that this new information/submissions must be referred back to the Inspector. If the

Registration Authority is satisfied that it can reach a fair decision without a referral back then that would be a lawful decision. The Inspector's Report is a report solely on the evidence which she considered. Therefore, whilst its conclusions may well have been well founded on the evidence before her, there is significant new evidence which must be considered

The New Evidence

The new evidence comprises a bundle of documents from the objector and from the applicant. This evidence is summarised in the appendices. There is no statutory requirement that a Committee reads this documentation, and there is no statutory requirement that it hears from the witnesses who have submitted statements. The Committee must come to a view on the basis of the evidence and it is lawful for it to consider the views of the delegated officer (Strategic Director, Corporate Services) and to reach a view on his summary and consideration of the evidence

Stephen McNamara, Head of Legal Services

Appendices:

Appendix A - Plan

Appendix B - Summary of evidence received

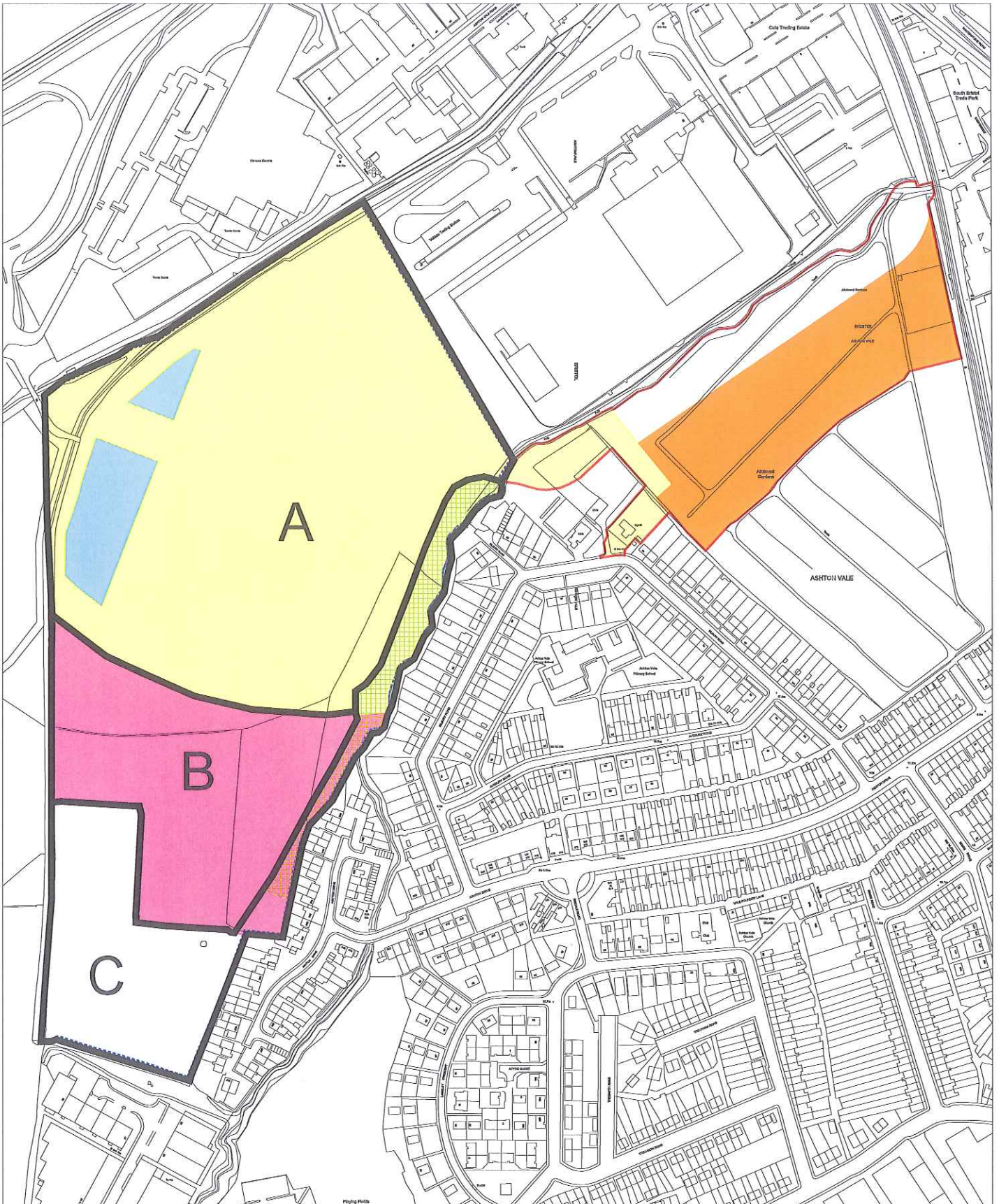
LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers:

Inspector's Report (redacted in accordance with Data Protection)

Additional evidence (confidential submissions)

Relevant departmental files



REV	DATE	AMENDMENTS
01	24.06.2010	Adjusted within RDC boundary
02	01.07.2010	Owner's land added
03	02.07.2010	Boundary boundary removed
04	12.07.2010	Microfence Housing area added
05	18.07.2010	Open space land added
06	18.01.2011	Open space land excluded north
07	04.02.2011	Reference to Dedication Land Removed
08	07.05.2011	

A: Recommend to NOT register

B: Wetland Area - Recommend TVG

C: Recommend TVG

DRAWING TITLE
SECTION 106 AGREEMENT
PLAN 1

STATUS
FOR INFORMATION

PROJECT NO.
4158

DRAWING NUMBER
POPULOUS-A-XX-MA43-XXXX-4158 08

OWNER
DATE
07.06.2010

SCALE
1:1500

SIZE
A1

ORIENTATION
NORTH

DESIGNED BY
PS

CHECKED BY
PS

APPROVED BY
MT

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Summary of further evidence received

Objectors Further Evidence November 2010

1. Christine Cox - Air Photo Services Ltd

This evidence contains aerial photographs of the area from approximately 1988 to 2010 with commentary given by an expert witness on the contents of each particular photograph. The evidence shows some use of the land during the above period but is not conclusive as to the type and frequency of the use. For example, it is possible that the photographs show what may be a footpath as opposed to a Town and Village Green.

2. Mike Nutting – Proof of Evidence – URS/Scott Wilson

This evidence is based on the aerial photos provided and knowledge of landfill procedures. It outlines the basic procedures undertaken when carrying out landfill and how the process works. The conclusion is that the land in question was subject to landfill in the 1980's and was probably available for casual access in the 1990's.

3. Robin Smithyman – Pleydell Smithyman Ltd

This evidence is again based on aerial photos and looks at the procedures undertaken when carrying out landfill and how the process works. The conclusion appears to be similar to the previous report in so far as it indicates that some time during the Autumn of 1989 the landfill was carried out and may have needed to be re-seeded in 1990.

4. Rob Turvey – Rob Turvey Waste Guidance

This is evidence from a waste consultant employed by Avon County Council during the relevant landfill period. The evidence does not indicate when the licence was granted (although it was modified in April 1989) but does indicate that it was cancelled in 1992. It further indicates that it is normal for 'top up' depressions to be required in the ensuing year or two following completion of the tipping which is likely to take place before any licence is cancelled.

5. Tom Oliver – WSP

This evidence is a site assessment carried out by a consultant ecologist in September 2010. It indicates that there are well used footpaths and cattle grazing at the time of the assessment taking place.

6. Statement of Edward Mark Newcombe

This evidence is from the Chairman of the Newcombe Estates Company Ltd and was involved in the management of the company's land holdings when Ashton Vale was purchased in 1947. It indicates that the land was occupied by licensees and actively grazed by a milking herd and that the public tended to keep to the footpaths due to the presence of grazing animals. It also indicates that the landfill took place in 1989.

7. Statement of Timothy John Adams Simon

This evidence is from the managing director of the Newcombe Estates Company Ltd who joined the company in 1998. It indicates that members of the public used the public footpath and occasionally the more direct route over the top of the landfill site.

8. Statement of Bob Hunt – The Bush Consultancy

This evidence is from the managing director of the Bush Consultancy who was advising upon possible development opportunities on the land at Ashton Vale. It acknowledges that the footpaths across the land were used and refers to a survey carried out in 1993 which suggested the land was damp/flooded/impassable and a later report carried out in 2000 which also indicates water logged fields being inundated and impassable.

9. Other witness evidence

This consists of 47 separate witness statements from members of the public who live in the area. The main thrust of the statements is that the majority of people have only ever seen the occasional dog walker who sticks to the paths and that the fields are unsuitable and not fit for recreational activity but do graze cows.

10. Photographs of site taken from David Lloyd Tennis Centre (undated)

11. Anaylasis of Letters of Objection to the 1990 landfill application and for the 2009 stadium development compared with the TVG inquiry

This is a comparison of the objections to the proposed stadium development and those to the TVG application.

Appendix A provides a summary of the witness letters opposed to the development and makes the point that generally, none of them mention themselves or others using the site recreationally.

Appendix B provides a summary of land usage and highlights the discrepancies between the letters received objecting to the TVG application and what was said at the inquiry and suggests that the evidence given by the witnesses was effectively

tailored for the purposes of the inquiry in terms of land use.

Appendix C provides a summary of the apparent contradictions in the testimony of the witnesses given at the inquiry which appears to conflict with their initial letters.

Appendix D provides extracts from letters of witnesses with regard to the nature of the landfill site

Appendix E provides extracts from letters suggesting that the landfill was completed some time in 1989 or 1990.

Appendix F provides a table comparing references to flooding and marshland when objecting to phase 6 landfill application in 1990 against the objections received in 2009 which also refer to marshland and flooding.

- 22 letters of objection (to Avon County Council) to the phase 6 landfill application in 1990
- 21 letters of objection (to Bristol City Council) to the stadium application in 2009
- 6 letters of objection (to North Somerset Council) to the stadium application in 2009
- 2 letters of objection (to Bristol City Council) to the Sainsburys application in 2010
- Ashton Vale Heritage Group objection to Bristol City Council 2009
- Haul Waste Ltd post closure monitoring form 1992 – 1993

12. Analysis of applicants' evidence of use per field and percentages

Applicant's Response to Objectors further evidence November 2010

1. Witness statements from 17 members of the public who live in the area. The main thrust of the statements is that the majority of people have used the land and directly disputes the evidence objectors witnesses refuting that any of them have a full view of all of the fields and suggesting that many of the indicate they do not use the fields and are therefore not in a position to comment on those who may have. The also dispute the analysis of previous objection in so far as they were advised on what grounds to object upon to make it relevant to the particular application under consideration.
2. This evidence consists of approximately 75 recent photographs to support the applicants witness statements (and referred to in those statements) by showing that the views are more obscure that the objectors' statements indicate.
3. This evidence is compiled of documentation to show the procedural history of the claim showing that the applicant was not included in correspondence relating to an extension of time for comments on the Inspector's Report (which led to the submission of new evidence) and also that time was of the essence when the Overview and Scrutiny Committee considered the matter in November 2009 since it appeared to be envisaged that the building of the Stadium could commence in August 2010 based on the assumption that the inquiry would take place in May 2010 with the Inspector's Report due in August 2010. The implication is that the same courtesy is not and would not have been extended to the applicants had the situation been reversed.
4. This is a copy of the Court decision in *Chaston v Devon County Council* [2007] EWHC 1209 to support the applicants' assertion that their legitimate expectation is that the new submissions and evidence provided in November 2010 should be sent to the Inspector who dealt with the original inquiry and any failure to do so would be unlawful (ie due to procedural unfairness). See particularly paragraphs 53 and 66.