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Public Rights of Way and Greens Committee AGM

Agenda

Date: Monday, 25 June 2018

Time: 2.00 pm

Venue: City Hall, College Green, Bristol, BS1 5TR

Distribution:

Councillors: Peter Abraham, Donald Alexander, Fi Hance, Tim Kent, Mike Langley, Jon Wellington and Lucy Whittle

Copies to: Anne Nugent (Legal Officer), Tom Dunsdon (Solicitor), Christine Pouncett, Duncan Venison (Network Operations Manager), Gemma Dando and Laura Pye

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Date: Friday, 15 June 2018

Agenda

1. Election of Chair for 2018/19

2. Election of Vice Chair 2018/19

3. Welcome, Introductions and Safety Information

4. Committee Membership 2018/19

Members are asked to note the Committee Membership for 2018/19:

Councillor Peter Abraham – Conservative
Councillor Don Alexander – Labour
Councillor Fi Hance – Green
Councillor Tim Kent – Lib Dem
Councillor Mike Langley – Labour
Councillor Jon Wellington – Labour
Councillor Lucy Whittle – Labour

5. Committee Terms of Reference 2018/19

The Committee is requested to note its Terms of Reference agreed by Council on 22nd May 2018.

Terms of Reference

Functions

Full Council has delegated to the Public Rights of Way and Greens Committee all functions relating to public rights of way and greens are as specified in Regulation 2 and Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) under the following provisions and any related secondary legislation:

List A – Non-Executive Functions Delegated to the Resources Directorate

1. Functions relating to the registration of common land and town or village greens (part 1 Commons Act 2006 and the

Commons Registration (England) Regulations 2008);

2. Power to register variation of rights of common (Regulation 29 of the Commons Registration (General) Regulations 1966 (S.I. 1966/1471));
3. Power to apply for an enforcement order against unlawful works on common land (Section 41 Commons Act 2006);
4. Power to protect unclaimed common land and unclaimed town and village greens against unlawful interference (Section 45(2)(a) Commons Act 2006); and
5. Power to institute proceedings for offences in respect of unclaimed registered common land or unclaimed town or village greens (Section 45(2)(b) of the Commons Act 2006).

List B – Non-Executive Functions Delegated to the Communities and Growth and Regeneration Directorates

6. Power to grant a street works license (section 50 of the New Roads and Street Works Act 1991 (c.22)).
7. Power to permit deposit of builder's skip on highway (section 139 of the Highways Act 1980 (c.66) ("the Act")).
8. Duty to publish notice in respect of proposal to grant permission under section 115E of the Act (section 115E of the Act).
9. Power to license planning, retention and maintenance of trees etc. in part of highway (Section 142 of the Act).
10. Power to authorise erection of stiles etc. on footpaths or bridleways (section 147 of the Act).
11. Power to license works in relation to buildings etc. which obstruct the highway (Section 169 of the Act).
12. Power to consent to temporary deposits or excavations in streets (section 171 of the Act).
13. Power to dispense with obligation to erect hoarding or fence (section 172 of the Act).
14. Power to restrict the placing of rails, beams etc over highways (section 178 of the Act).
15. Power to consent to construction of cellars etc. under street (section 179 of the Act).
16. Power to consent to the making of openings into cellars etc. under streets and pavement lights and ventilators (section 180 of the Act).
17. Power to create footpath, bridleway or restricted byway by agreement (section 25 of the Act (C.66)).
18. Power to create footpaths, bridleways and restricted byways (section 26 of the Act).
19. Duty to keep register of information with respect to maps, statements and declarations (section 31A of the Act).
20. Power to stop up footpaths, bridleways and restricted byways

(section 118 of the Act).

21. Power to determine application for public path extinguishment order (sections 118ZA and 118C(2) of the Act).
22. Power to make a rail crossing extinguishment order (section 118A of the Act).
23. Power to make special extinguishment order (section 118B of the Act).
24. Power to divert footpaths, bridleways and restricted byways (section 119 of the Act).
25. Power to make a public path diversion order (sections 119ZA and 119C(4) of the Act).
26. Power to make a rail crossing diversion order (section 119A of the Act).
27. Power to make a special diversion order (section 119B of the Act).
28. Power to require applicant for order to enter into agreement (section 119C(3) of the Act).
29. Power to make an SSSI diversion order (section 119D of the Act).
30. Duty to keep register with respect to applications under sections 118ZA, 118C, 119ZA and 119C of the Act (section 121B of the Act).
31. Power to decline to determine certain applications (section 121C of the Act).
32. Duty to asset and protect the rights of the pubic to use and enjoyment of highways (section 130 of the Act).
33. Duty to serve notice of proposed action in relation to obstruction (section 115E of the Act).
34. Power to apply for variation of order under section 130B of the Act (section 130B(7) of the Act).
35. Power to authorize temporary disturbance of surface of footpath, bridleway or restricted byway (section 135 of the Act).
36. Power temporarily divert footpath, bridleway or restricted byway (section 135A of the Act).
37. Functions relating to the making good of damage and the removal of obstructions (section 135B of the Act).
38. Powers relating to the removal of things so deposited on highways as to be a nuisance (section 149 of the Act).
39. Power to extinguish certain public rights of way (section 32 of the Acquisition of Land Act 1981 (c.67)).
40. Duty to keep definitive map and statement under review (section 53 of the Wildlife and Countryside Act 1981 (c.69)).
41. Power to include modifications in other orders (section 53A of the Wildlife and Countryside Act 1981).
42. Duty to keep register of prescribed information with respect to applications under section 53(5) of the Wildlife and

Countryside Act 1981 (section 53B of the Wildlife and Countryside Act 1981).

43. Power to prepare map and statement (section 57A of the Wildlife and Countryside Act 1981).
44. Power to designate footpath as cycle track (section 3 of the Cycle Tracks Act 1984 (c.38)).
45. Power to extinguish public right of way over land acquired for clearance (section 294 of the Housing Act 1981 (c.68)).
46. Power to enter into agreements with respect to means of access (section 35 of the Countryside and Rights of Way Act 2000 (c.37)).
47. Power to provide access to absence of agreement (section 37 of the Countryside and Rights of Way Act 2000).
48. Power to make limestone pavement order (section 34(2) of the Wildlife and Countryside Act 1981 (c.69)).
49. Power to discharge and acquire from other authorities, functions relating to Definitive Map Modification Orders and Public Path Orders (section 101 of the Local Government Act 1972.

6. Dates of Meetings 2018/19

The following dates are proposed for Meetings of the PROWG Committee during 2018/19:

15th October 2018
21st January 2019
15th April 2019

All are Mondays and start at 2.00 pm.

7. Apologies for Absence and Substitutions

8. Minutes of Previous Meeting

To agree the minutes of the previous meeting as a correct record. **(Pages 7 - 10)**

9. Declarations of Interest

To note any declarations of interest from the Councillors. They are asked to indicate the relevant agenda item, the nature of the interest and in particular whether it is a **disclosable pecuniary interest**.

Any declarations of interest made at the meeting which is not on the register of interests should be notified to the Monitoring Officer for inclusion.

10. Public Forum

Up to 30 minutes is allowed for this item.

Any member of the public or Councillor may participate in Public Forum. The detailed arrangements for so doing are set out in the Public Information Sheet at the back of this agenda. Public Forum items should be emailed to democratic.services@bristol.gov.uk and please note that the following deadlines will apply in relation to this meeting:-

Questions - Written questions must be received 3 clear working days prior to the meeting. For this meeting, this means that your question(s) must be received in this office at the latest by 5 pm on 19 June 2018

Petitions and Statements - Petitions and statements must be received on the working day prior to the meeting. For this meeting this means that your submission must be received in this office at the latest by 12.00 noon on 22 June 2018.

11. Application to Register Land at Stoke Lodge as a Town and Village Green under the Commons Act 2006, Section 15(2)

(Pages 11 - 141)

12. Current applications for registration of land as town or village greens

(Pages 142 - 144)

13. Current Claims, Inquiries and Miscellaneous Rights of Way Matters

(Pages 145 - 152)

Bristol City Council
Minutes of the Public Rights of Way and Greens Committee

17 July 2017 at 2.00 pm

Members Present:-
Councillors: Peter Abraham, Donald Alexander, Charlie Bolton, Tim Kent, Mike Langley and Jon Wellington

Officers in Attendance:-
Anne Nugent (Legal Officer), Nancy Rollason (Deputy Monitoring Officer), Duncan Venison (Network Operations Manager) and Jeremy Livitt (Democratic Services Officer)

1. Election of Chair for 2017/18

It was moved by Councillor Tim Kent, duly seconded and upon being put to the vote, it was

Resolved – that Councillor Peter Abraham be elected as Chair for 2017/18 Municipal Year.

2. Election of Vice-Chair for 2017/18

It was moved by Councillor Peter Abraham, duly seconded and upon being put to the vote, it was

Resolved – that Councillor Tim Kent be elected as Vice-Chair for the 2017/18 Municipal Year.

3. Welcome, Introductions and Safety Information

The Chair welcomed all parties to the meeting and requested that officers and Councillors introduce themselves. He reminded all attendees of the arrangements for evacuation of the building in case of an emergency.

4. Apologies for Absence and Substitutions

Apologies for absence were received from Councillor Paul Goggin.

5. Terms of Reference for 2017/18 Municipal Year

The Committee noted their Terms of Reference for 2017/18 Municipal Year as agreed at the Annual meeting of Full Council on Tuesday 23rd May 2017.

6. Dates for Future Meetings for 2017/18 Municipal Year

RESOLVED – that the following dates be approved as future dates for 2017/18 Municipal Year:

(all at 2pm on Mondays)

16th October 2017
22nd January 2018
16th April 2018

7. Minutes of Previous Meeting

The Committee considered whether or not to approve the Minutes of the meeting on Monday 13th March 2017 as a correct record.

Councillor Tim Kent stated that, in his view, the resolution which was agreed under Agenda Item 9 (Guidance and Briefing on Decision Making), was contrary to Standing Order CMR 12.1 (Motion to Rescind a Previous Resolution).

The Deputy Monitoring Officer confirmed that Councillor Kent had raised the matter with her but stated that in her view the proper process was followed in respect of this decision.

It was moved by the Chair, duly seconded and upon being out to the vote,

Resolved (5 for, 1 against – Councillor Tim Kent voting against and his name recorded as doing so in accordance with Standing Order CMR 13.4) that the Minutes of the above meeting be approved as a correct record and signed by the Chair.

8. Declarations of Interest

There were no declarations of interest.

9. Chair's Business

There was no Chair's business to report to the Committee.

10 Public Forum

The Committee heard Public Forum statements from the following:

David Mayer
Alan Preece

11 Current Applications For Registration of Land As Town or Village Greens

The Committee noted that there were no current Town or Village Green (TVG) Applications and that no money had been spent on TVG Applications since 12th November 2016.

12 Current Claims, Inquiries and Miscellaneous Rights of Way Matters

The Committee noted the present position concerning claims made under Section 53 of the Wildlife and Countryside Act 1981, public inquiries and miscellaneous rights of way orders, agreements and legal proceedings.

It was noted that no objections had been received for Public Path Orders (PPO's) 207 and 424 and that these were now both confirmed.

13 Exclusion of Press and Public

The Committee considered whether or not to go into exempt session to discuss the next Agenda Item 14 (Stoke Lodge Playing Fields – Legal Proceedings In Relation To the Committee Decision).

Some Members expressed the view that, since all Councillors who were present had read the report under the Council's managed access procedures, there was no need to go into exempt session and that discussion could be held in open session.

The Deputy Monitoring Officer advised that, if the Committee needed to refer to confidential legal advice when discussing this item, they would need to do so in exempt session.

The Committee agreed that they should go into exempt session for a short period to discuss the legal advice and then to return to open session for the remainder of the discussion and to vote on any decision.

It was then moved by the Chair, duly seconded and

Resolved – that under Section 1004(A) of the Local Government Act 1972, the public be excluded from the meeting for the consideration of the following item of business on the grounds that it involves the

disclosure of exempt information as defined in Paragraph 5 of Part 1 of Schedule 12 A of the Local Government Act (as amended).

14 Stoke Lodge Playing Fields - Legal Proceedings in relation to the Committee Decision - Further Consideration (Containing Exempt Information In Accordance with Paragraph 5 – Information In Respect of Which Claim For Legal Professional Privilege Could Be Maintained In Legal Proceedings)

The Committee considered this report in exempt session and discussed in detail various options.

Members then agreed to move back into open session for the remainder of the item.

Councillor Abraham moved, seconded by Councillor Wellington and upon being put to the vote, it was

Resolved (unanimously) – that the decision of the Public Rights of Way Committee held on Monday 13th March 2017 is noted in principle but that no further action be taken until the Committee meets in approximately 1 month time pending further information being received.

15 Date of Next Meeting

It was noted that the next scheduled meeting was fixed for **2pm on Monday 16th October 2017.**

However, it was also noted that, following the decision taken in respect of Agenda Item 14, an extraordinary meeting of the Committee would need to be fixed within approximately 1 month to discuss this issue and that notice of this meeting would be given in accordance with the constitution.

Meeting ended at 3.20 pm

CHAIR _____

BRISTOL CITY COUNCIL

PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE

25 June 2018

Report of: Commons Registration Authority

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

Ward: Stoke Bishop

Officer Presenting Report: Anne Nugent

Contact Telephone Number: (0117) 922 3424

RECOMMENDATION

That the committee accept the recommendations of the Independent Inspector set out in his Report dated 14th October 2016 and as confirmed by the High Court in *R(Cotham School) v Bristol City Council* [2018] EWHC 1022 and reject the application to register

Summary

This report concerns an application to register a site known as Stoke Lodge Playing Fields, Stoke Bishop, as a Town Green.

The significant issues in the report are:
The High Court has referred the application for town green status back to the committee for reconsideration in accordance with its judgment.

Policy

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

Consultation

Internal

2. Not applicable

External

3. A non- statutory public inquiry (NSPI) took place between 20th - 29th June 2016 and continued on 13th July 2016.

Context

4. On 12 December 2016 the Committee considered the officer's report (attached

Appendix 1) and the inspector's report and heard public forum submissions. The majority of the committee (with the Chair exercising a casting vote) decided to register the application land as a new town green ("TVG"). The decision to register the land was for the following reasons:

(i) Other than the "as of right" element the Committee accepted the inspector's findings that all the elements of the statutory test were proven on the balance of probabilities.

(ii) That between 1991 and 1996 there were three Avon County Council signs attempting to make the use of the land contentious.

(iii) In Winterburn the Court of Appeal found that landowners can prevent rights being acquired by third parties by displaying clear visible warning signs that the land is private.

(iii) Three members of the Committee considered that the facts of Winterburn were not the same as the facts in this case. Unlike the car park in that case Stoke Lodge Playing Fields is a large piece of land (about 22 acres) and there were only three signs. The small numbers of signs on such a large site was not sufficient to make the use of the land contentious."

5. Cotham School objected to the decision and sent Legal Services a pre action letter. The school's objections could not be resolved and the school sought permission to judicially review this decision. Permission was granted by Mr J Holgate on the 9 May 2017. Having considered the matter at a 2 day hearing in November 2017 and after considering subsequent submissions concerning the Court of Appeal judgment on statutory incompatibility, Sir Wyn Williams quashed the decision to register and remitted the application back to BCC to consider the matter again in the light of his decision (judgment *R(Cotham School) v Bristol City Council* [2018] EWHC 1022 (Appendix 2).

6. The committee will be assisted by a short summary of the various issues including the various grounds the High Court considered in quashing PROWG's decision.

Ground 1: Error of law as to whether the use was "as of right"

7. This ground of challenge to the PROWG decision focused very closely on the issue of signage. The Claimant argued that PROWG's finding was inconsistent with the finding by the Inspector that many users of the land saw the signs. The Council, represented by in-house Legal Services and Mr Stephen Morgan, of counsel, highlighted the fact that the Inspector himself considered that there was inadequate signage from 1996 onwards when the number of signs reduced even further. However the judge was of the view that once PROWG had adopted the findings of fact made by the Inspector as to the extent and visibility of the signage as at the date the signs were erected it was necessary for PROWG to consider in detail whether the state of affairs existing at the date of the erection of the signs had changed, materially, at the commencement of the 20 year period. That was especially so given the clear findings of the Inspector that the signs were in existence between 1991 and 1996 and, further, his findings that a significant number of local inhabitants had actually seen the signs during that period.

PROWG did not undertake that analysis so Ground 1 was successful

Ground 2: Took into Account Irrelevant Matter/Breach of Natural Justice

8. There were two aspects to this ground of challenge. First, that PROWG took into account irrelevant matters in that, during the course of the proceedings on 12 December 2016, Councillor Abraham, in particular, raised matters which were irrelevant. Second, that the Claimant was given no indication, prior to PROWG's decision, that PROWG had received a substantial number of representations to the effect that the Inspector's reliance upon Winterburn was wrong and/or that the decision in Winterburn was distinguishable on the facts. Claimant argued that this constituted a breach of a duty upon the committee to act fairly in its consideration of the application for registration.

9. Although the Judge rejected both aspects of the claim members (of any committee) need to be seen to be objectively unbiased.

Ground 3: Failure to supply adequate reasons for not following the Inspector on contentiousness

10. The judge dealt with both grounds 1 and 3 together. The finding was that PROWG did not explain the basis upon which it was proper to depart from the Inspector's factual conclusions particularly given that the inspector heard all the evidence as to where people walked upon the land and what they saw when they were upon it. The judge considered that it would be "unthinkable" for the decision maker to depart from the recommendation of its Inspector who had produced a closely reasoned and detailed recommendation after hearing oral evidence over many days without providing its own reasons for that departure.

Ground 4: Failure to give reasons for rejecting the submission based on consideration of Mann v. Somerset [2012] EWHC B14

11. PROWG accepted the inspector's recommendation on this issue regarding implied licence (as seen in R (Mann) v Somerset County Council [2012] EWHC B14 (Admin)). The Inspector considered the co-existence of users and the implications of that. He considered the extent of the use of the land by schools, clubs and the University, and the arguments from the objectors that local people had made limited use of the land. The Inspector noted that no-one walking a dog or flying a kite interrupted the game. The Inspector took into account the exclusion of other users of the land at various times. The Inspector was clearly aware of the claimed sports day use, as this is included in his record of the evidence. The Judge rejected this ground, finding no error of law.

Ground 5: Statutory Incompatibility

12. The school alleged that the Inspector was wrong to consider the situation at the point of the application rather than at the point the application is determined. The judge did not make a finding on this.

13. The school also argued that the registration of the land as a TVG would prevent it from complying with the Secretary of State's Directions. The argument being that registration of the land would preclude the School from using the land for PE. The judge did not agree and refused to uphold this challenge.

14. Lastly under this ground the school argued that the Inspector was in error in finding that the Claimant school's duties did not conflict with registration under the Commons Act 2006. This contention of the Claimant failed.

Summary of the Inspector's report

15. Here follows an extract from your officer's report to Committee of 12 December 2016: the Applicant, Save Stoke Lodge Park Land, applied on 4 March 2011 for registration as a Town or Village Green of land at Stoke Lodge, Stoke Bishop, Bristol (the TVG application). This summary sets out the key issues which need to be considered now.

16. The Commons Registration Authority (CRA) received objections from the Council, as landowner (the First Objector), University of Bristol (the Second Objector), Rockleaze Rangers Football Club (the Third Objector) and Cotham School (the Fourth Objector).

17. The Council in its capacity as CRA has responsibility under the Commons Act 2006 (CA 2006) to determine whether the land should be registered as a green. It is for the Applicant to define the application land and then to show that the statutory test is satisfied in relation to the whole of it.

18. Mr Philip Petchey of Counsel was appointed as an independent Inspector (the Inspector) to make recommendations to the CRA on how to deal with the TVG application. The inspector held a non-statutory inquiry to obtain all the evidence and has now submitted his recommendations in a report (Appendix 1).

19. The inquiry sat over 9 days. In this time it heard evidence from 28 witnesses. The evidence of applicant is at paragraphs 35 to 224 of the Report. The evidence of the Council can be found at paragraphs 224 -250; the evidence of Cotham School can be found at paragraphs 251- 304; the evidence of the University of Bristol can be found at paragraphs 304 -331; the evidence of other witnesses can be found at paragraphs 332-334.

20. The Applicant had to show that (para. 335 -337):
    - a significant number of the inhabitants of a locality, or neighbourhood within a locality
    - had indulged in lawful sports and pastimes on the land
    - for a period of at least 20 years down to 7 March 2011; and
    - their use was *as [if] of right.*

21. The burden of proof is to the civil standard (the balance of probabilities). The Inspector considered the effects of registration and non-registration in this case.

22. The Inspector reminded the Council that the issues of whether or not the land should be fenced off; whether or not it should remain open for use by local people; whether or not there is some acceptable compromise which might allow both are not matters for the Inspector or the CRA. The Inspector, and now the Committee, are solely

concerned with an assessment of whether the legal requirements of section 15 (2) have been met.

23. The Inspector considered that the use of the land by local people was significant in any ordinary sense (see paragraphs 338- 342). The inspector reported that the land is an attractive and important piece of open space to which there was ready access by those living in the area. Local people are using the land like a public recreation ground. No single visit would have used the whole of the land but in the course of time they will have ranged all over the land. The Inspector reported that the only thing that might have inhibited local people from using the land was a sense that they ought not to be on the land, which might have been the case if, for example, their use was subject to frequent challenge, but the Inspector advised that there was no such consciousness.

24. The Inspector considered the suggestion that if dog walking and informal recreation are lawful sports and pastimes which may establish a town or village green, then the land has obviously been used for lawful sports and pastimes by people living in the vicinity of the site for lawful sports and pastimes. However, this argument was rejected by the House of Lords in the *Sunningwell* case. Whilst the evidence showed that the land was used as a shortcut to and from places on either side of it, this use does not count towards the establishment of a town green and the Inspector declined to take it into account when reaching his view that there has been significant use of the land.

25. Paragraphs 343 – 360 the inspector considered the extent of the use of the land by schools, clubs and the University, and the arguments from the objectors that local people had made limited use of the land. The Applicant argued that the schools and clubs had made limited use of the land. The inspector considered that whenever a pitch was used by a school or by a sports club it had exclusive use of that part of the land for that period. The inspector noted that no-one walking a dog or flying a kite interrupted the game. Thus in respect of that piece of land for that period, use by local people was interrupted, because pitches of one sort or another covered almost the entirety of land and because in the relevant period there would have been literally thousands of interruptions, thus a claim to registration would fail because the necessary 20 years use has not been shown. On this analysis, the application would fail, but the evidence showed that, subject to occasional issues with dogs, use by local people could co-exist with use by the schools and sports clubs. This was not just a matter of local people going on to the land only when the schools and clubs were not on it. The evidence generally indicated that there was plenty of room elsewhere on the land when it was being used by schools and clubs. More specifically, although none of the parties undertook to analyse for the benefit of the inquiry the complete booking record that a witness produced, and which would have enabled a more precise view to be taken about the matter, the Inspector did not think that the precise extent of the School and clubs use was determinative of the application.

26. The inspector considered the *ad hoc* nature of access to the land and the absence of any signage suggesting that it was available for public use. He found that it seemed

likely that the gates on Shirehampton Road would have been locked and, in any event, these were not directly providing access to the land, but to Stoke Lodge.

27. The inspector then considered the Access points (shown on Appendix 3 to this report). The gates at Access Point [2] look to have been primarily gates to a service yard. Access Points [4], [5] and [6] while going back a long time, look to have been made by made by the use rather than being provided by the Council. Access Point [7], whenever it was made, is a way in over a decaying wall. Access Point [8] was accessed through the service yard. Access Point [9] was, on any view, a gap in the wall and not a "proper" access. Access Point [10] is just a convenient place where people can easily get over the wall. The Inspector accepted that Access Point [3] may have been open and rendered the site freely accessible but it is the only "proper" entrance out of ten.

28. The Inspector considered that the public were trespassers at this time, although some may have *believed* that they were permitted or had some entitlement to go on the land.

29. **Notices** The inspector considered notices at paragraphs 367 -372. The inspector did not accept that the Avon County Council Notice under the Local Government Act 1982 was ambiguous it was confirming the pre-existing situation and was not for first time granting a limited consent.

30. The inspector then considered "as of right" at paragraphs 373 – 412 The qualifying use must be *as [if] of right and* if those using the land actually do have the right, their use will not be "*as [if] of right"* but "*by right"*; the core concept lying behind use which is *as [if] of right* is that it is use by those who behave as if they did have right. The phrase has a precise legal definition – use which is as [if] of right use must be use which is *nec vi nec clam nec precario.* It translates as not *by force, not secretly, not by permission.* Of the three limbs of the definition, relevant to consideration of the effect of prohibitory notices of the kind that the Inspector has held the Avon County Council signs to be is the first limb: *nec vi* or not *by force*.

31. The Inspector made reference to his Report of 22 May 2013 and his then advice to the CRA to conclude that, despite the existence of the Avon County Council signs, use by local people of the land had been "*as of right".* However, the Inspector reminded the decision maker that this was before the recent case of *Winterburn v Bennett 2016* EWCA Civ 482, was decided by the Court of Appeal which established that use which ignores prohibitory notices is not "*as [if] of right".* In his judgment in *Winterburn*, David Richards LJ said:

> *40 … In circumstances where the owner has made his position entirely clear through the erection of clearly visible signs, the unauthorised use of the land cannot be said to be "as of right"*

32. The position now is that there is recent high authority which is directly in point and which establishes that use which ignores prohibitory notices is not *as of right.* Thus the

position is that in principle in the present case the signs may render the use of the land by local people contentious and not as of right. The Inspector also considered the further question as to whether the Avon County Council signs were sufficient to render use of the land contentious. At paragraph 391 the Inspector stated ‘‘I thus conclude that signs which were sufficient to render use of the land contentious were in place at the beginning of the twenty year period (1991) and that such use was contentious until at least the time when Avon County Council ceased to exist 1996. This means that the Applicant failed to establish that use was *as of right* throughout the relevant twenty year period and the application must fail”.

33. The Inspector considered if the “Avon County Council” signs were obsolete following the abolition of Avon County Council. The Inspector concluded that these had continuing application and further, at the beginning of the twenty year period, Avon County Council was still in existence.

34. The Inspector then considered whether it is possible that use of the land in the relevant twenty year period had been contentious not because of the signs alone but *also* because of other actions of the landowner or those acting on his behalf. The inspector considered the warnings off were not very frequent and because they were principally aimed at one category of user – anti-social dog walkers – the Inspector consider that they did not have the effect of making the use of the land generally contentious. Thus on the basis that the signs were not sufficient by themselves to render use of the land contentious, the inspector does not consider that the objectors are able to rely on the signs **plus** the warnings off.

35. The Inspector considered whether there was the possibility of confusion was enhanced if the sign was mounted on a single pole, and if it was possible for it to be rotated so that it will not always have been facing those leaving the grounds of Stoke Lodge House. However, on balance, the reasonable landowner would consider that the sign would be construed by local people as applying to the playing fields and not the grounds of Stoke Lodge.

36. The inspector considered whether, together, the facts of the existence of the Avon County Council signs at the beginning of the 20 year period and thereafter until the sign at access point [12] was replaced by the Bristol City Council sign; and the presence of the Bristol City Council sign thereafter are sufficient to have made use of the land contentious within the relevant 20 year period. The inspector considered this issue and concluded at paragraph 400 that by erecting this one sign Bristol City Council could not reasonably have concluded that it had made it sufficiently clear that it was not acquiescing in the continued use of the land for recreational purposes by local users.

37. The Inspector looked at whether S15(2) or S15(3) CA 2006 applied. S15(2) provides that qualifying use has to continue down to the date of the application. Section 15(3) provides that, in the alternative, qualifying use does not have to continue down to the time of the application but down to a date which may not be more than one year before the date of the application. In the present case, on the basis that qualifying use

ceased at some time in 2009 after 26 March 2009, that cessation would have been less than 2 years before the date of the application (7 March 2011) but more than one year before. On the basis that the law on 7 March 2011 was the same as it is now and that qualifying use ceased in 2009 after 26 March 2009, the application would have been out of time. On this basis, the erection of the Bristol City Council sign in 2009 can have no bearing on a decision to register the land, because if use which is as of right ceased in 2009, the land would still be registrable on the basis of section 15(3) rather than 15(2).

38. **Statutory incompatibility** paragraphs 413 – 412 **-** A local authority is under a duty to ensure that sufficient schools for providing secondary education are available for their area. For this purpose, a local authority may establish and maintain secondary schools. These powers are now contained in the Education Act 1996; before 1996 they were contained in the Education Act 1944. The Inspector considered the key to this issue is the correct time to look at the matter If the correct time is the date of the application, the proposition that there is statutory incompatibility in the present case lacks conviction because at that time both the school and local people were using the land in a way that was not incompatible. If the correct time is now – i.e. the time at which a decision on the application falls to be made – the inspector considered that this has some force because registration will evidently preclude the School from using the land for physical education.

39. The inspector considered that a Court would hold that the relevant date is the date of the application and therefore, however the matter ultimately is rationalised, he advised that the argument on statutory incompatibility failed.

40. N**eighbourhood & locality** paragraph 453 – 460 -The Applicant confirmed that the red line that he had drawn should be taken to be a neighbourhood and not a locality. The legal representative for the School argued that the area that the applicant has defined lacks any degree of cohesiveness and is arbitrary – just a line drawn on a map reflecting where the users come from.

41. The inspector considered that one expects there to be a correlation of some kind between the area where users come from and the relied on locality or neighbourhood within a locality. The inspector did not consider that the application should fail because no neighbourhood within a locality has been demonstrated. With the deletion of Sea Mills, he considered that the area defined by the Applicant is a cohesive neighbourhood.

42. **Conclusion** The Inspector recommended (para 463) that the land be not registered as a town or village green because in the relevant twenty year period use by local people has not been *as of right*. Otherwise the inspector's recommendation would have been that the land should be registered. The inspector did not consider that any of the other reasons argued for by the objectors should lead to the rejection of the application. Here ends the extract from December 2016 report.

PROPOSAL

43. The Committee's duty on behalf of the Council (as statutory CRA) under the Commons Act 2006 and associated regulations is 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.

44. The High Court has given clear guidance on the consideration of the application and the inspector's recommendation, so on this basis, the proposal is that the land be not registered as a town (or village) green, that is that application for registration be rejected for the reasons set out in the inspector's report.

Other Options Considered

45. Whether the inspector's recommendation should be overruled and the land be registered. Given the outcome of the Judicial Review this option was rejected

Risk Assessment

46. If the Committee does not follow the recommendation of the inspector, as upheld by the High Court, the Council risks a further legal challenge.

Public Sector Equality Duties

47. 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

48 Legal

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; and 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 wholly irrelevant considerations. Having commissioned the inspector to gather the evidence and to provide his recommendations on the registration or otherwise of the land as a town green and given the decision of the reviewing judge it is likely to be unlawful to decide to register.

<u>"As of right"</u>

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

<u>"By right"</u>

User "by right" means that users already have a statutory or other legal right to use the land for those purposes. Such users are not trespassers. Land is not used "as of right" for lawful sports and pastimes if user is "by right". If land is used "by right" then the statutory test cannot be satisfied.

Legal advice provided by Anne Nugent, Team Leader Solicitor

49 Financial

(a) Revenue

In the event of any subsequent legal challenge any costs exceeding the existing revenue budget will have to be met from Legal's reserves.

(b) Capital

There are no specific policy implications arising from this report.

Financial advice (Revenue) from *Tony Whitlock*, Corporate Finance
Financial advice (Capital) from *Jon Clayton*, Corporate Finance.

Land

There are no specific policy implications arising from this report.

Personnel

Not applicable

Appendices:

Appendix 1 –The Inspector's Report
Appendix 2 – *R(Cotham School) v Bristol City Council* [2018] EWHC 1022
Appendix 3 - Plan showing access points

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
Background Papers:

Applicant and objector's evidence bundles and written submissions

Section 15 Commons Act 2006

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

APPLICATION BY MR DAVID MAYER TO REGISTER LAND KNOWN AS STOKE LODGE PLAYING FIELD, SHIREHAMPTON ROAD, BRISTOL, AS A NEW TOWN OR VILLAGE GREEN

REPORT

Preliminary

1. Bristol City Council is the statutory body charged by statute with maintaining the register of village greens. It has asked me to advise it whether land within its area known as Stoke Lodge Playing Field should be registered as a town or village green. I am a barrister in private practice with expertise in the law of town and village greens. In this capacity, I have often advised registration authorities and have often acted on their behalf as an Inspector, holding a public inquiry into an application before reporting and making a recommendation. I have also often advised and acted for applicants who have sought to register land as a town or village green; and for objectors, who have argued that land should not be registered as a town or village green.

Procedural history

2. On 7 March 2011, David Mayer on behalf of Save Stoke Lodge Parkland made an application to register land at Stoke Lodge Playing Field/Parkland, Shirehampton Road, Bristol ("the application site") as a town or village green. Objections to the application were received from Bristol City Council in its capacity as landowner (the First Objector), the University of Bristol (the Second Objector), Rockleaze Rangers Football Club (the Third Objector) and Cotham School (the Fourth Objector). Mr Mayer responded to those objections and subsequently there were further exchanges of representations. In its capacity as registration authority the City Council initially considered that it would be necessary for there to be a non-statutory public inquiry and, on this basis, invited me to hold such an inquiry[1]. In August 2012 I issued draft directions for such an inquiry. However I did observe in those directions that the factual matters in dispute appeared to be limited. This prompted the City Council in its capacity as landowner to suggest that it might not be necessary for there to be a public inquiry or, at least, a full public inquiry and accordingly I explored whether this might indeed be possible.

3. On the basis of a number of concessions made by the objectors as to the issues arising, I advised the City Council as registration authority that it would not be necessary for there to be a public inquiry and that the matter could be determined on the basis of written representations. Further representations were made and on 22 May 2013 I issued a report to the City Council recommending that the land be registered as a town or village green because I considered that the statutory criteria had been met. In particular, I considered that use of the land had been *as of right*; and that an objection based on statutory incompatibility of registration with the statutory purposes for which the land was held fell away in the light of

[1] Such inquiries are referred to as "non-statutory" because there is no express power in the town and village green legislation providing for them to be held. However such inquiries have long been considered as appropriate in appropriate cases where registration of land as a town or village green is in dispute: see *R v Suffolk County Council, ex parte Steed* (1995) 70 P & CR 487 at p500 (per Carnwath J (as he then was)) and *R (Whitmey) v Commons Commissioners* [2005] QB 282 (CA) (per Arden LJ at paragraphs 26. 28 - 30).

the decision of the Court of Appeal in *R (Newhaven Port and Properties) Limited v East Sussex County Council*[2]. I suggested that that it would be appropriate to give the parties the opportunity to comment on my Report before it was submitted to Committee, and all took the opportunity to do so.

4. Bristol City Council as landowner changed its position on notices and further suggested that there should be a public inquiry in order to hear evidence about notices; for its part, Cotham School suggested that a public inquiry was needed in order to investigate the extent of the use by schools and by sports clubs. Further, once it became likely that there was going to be an appeal in the *Newhaven* case, the City Council further suggested that further consideration of the matter be deferred until the outcome of that appeal was known.

5. I decided that it would be appropriate for further consideration of the matter to be deferred. One possible outcome of the appeal in the *Newhaven* case would have been that it became clear that the application should fail. In these circumstances, of course, I would have advised the registration authority to dismiss the application and there would not have been a need for a public inquiry.

6. The Supreme Court handed down its decision on 25 February 2015[3]. Following submissions from the parties, I decided that on its proper interpretation it did not require the application to be dismissed. In all the circumstances, I decided that it was appropriate for there to be a public inquiry. This would enable evidence to be led on the statutory incompatibility point, as well as in respect of the use of the land and as to the notices. I had at an earlier stage reached the view that it would be appropriate to allow the City Council as landowner to alter its position as regards notices[4]. I held a pre-inquiry meeting on 5 February 2016 and issued directions in respect the public inquiry on 3 March 2016.

7. The public inquiry sat on 20 – 24 June 2016, 27 – 28 June 2016 and 13 July 2016.

8. I first visited the site on 21 February 2013. I visited the site again on 22 June 2016 during the course of the inquiry and finally, after the conclusion of the inquiry, on 14 July 2016. All the visits to the site were accompanied by representatives of the parties. On 14 July 2016 (and after the conclusion of the site visit) I walked around the area by myself; the parties agreed that it was not necessary that they should accompany me.

9. The Applicant represented himself. Bristol City Council as landowner was represented by Leslie Blohm QC. Cotham School was represented by Richard Ground QC and Dr Ashley Bowes, of counsel. Rocklease Rangers FC did not appear and were not represented.

Introduction

10. The site is a large grassed area of about 20 acres in Stoke Bishop. It "wraps around" a

[2][2014] QB 186 (CA).

[3] [2015] AC 1547 (SC).

[4] My procedural decisions following my Report on 22 May 2013(of which paragraphs 3 to 4 above are a summary) were on 11 September 2013, 30 January 2014, 6 March 2014 and 5 November 2015.

Victorian house, called Stoke Lodge, which is now used as an adult education centre[5]. I set out the history in detail below but in outline the position is that until after the Second World War the house was in private ownership and lived in; and the land which is subject to the application for registration as a town or village green comprised the grounds of the house. After the War the house and grounds were acquired by Bristol City Council. As stated, Stoke Lodge became an adult education centre and the grounds were appropriated to educational use. From time to time proposals were made to build a school on the land but they never came to anything. Accordingly the grounds were laid out as playing fields which were used by schools and sports clubs. There was also use by the public.

11. Local people who want to preserve the land for public access refer to it as "Stoke Lodge Parkland". Mr Blohm described took issue with this description and certainly there does not seem to be a description of the land in this way until the campaign to preserve public access to it got underway. Nonetheless the land does not represent a typical playing field in that it contains a number of fine trees, not all confined to its edge. It also not entirely flat, and its slightly rolling character adds to its generally attractive appearance. On its northern and western sides it is enclosed by houses, although on its northern side it is separated from those houses by what is evidently an ancient public right of way called Ebenezer Lane. Its southern boundary is formed by Shirehampton Road (and the enclave represented by Stoke Lodge). Its eastern boundary is formed by Parrys Lane. At about the mid point of the northern boundary there is a pavilion, sadly the subject of repeated vandalism. It has been laid out with football and rugby pitches in the winter, and an area for cricket and an athletics track in the summer. The reader will get a feel for how it was laid out winter and summer by looking at two Google aerial photographs which are at **Annex 1**. They date from 14 April 2007 and sometime in 2010.

12. I shall now describe the access points to the land. To understand these, it will be helpful to have available a copy of the plan that was used at the public inquiry and which is **Annex 2**[6]. Immediately to the east of the pavilion is an entrance to the land (access point [3]). There was originally a pedestrian gate here. There is no evidence to suggest that it was ever locked in the twenty year period down to 2011 and, if it ever was locked, it was probably not locked during the day. In the north west corner there is a path on to the land from Ebenezer Lane. There is no suggestion that this was ever obstructed (access point [5]). Cheyne Road, an unadopted road, terminates at the western boundary of the land. It is possible – perhaps likely - that at sometime the land was fenced at this point but if so, this was a long time ago. Accordingly there is access on to the land from the end of Cheyne Road (access point [4]). Until very recently there was a bollard in the middle of the accessway, evidently to prevent motorbikes from getting on to the land. From Shirehampton Road, there is access to Stoke Lodge, and via that access, unimpeded access to the land (access points [1], [12] and [11]). There have always been gates to Stoke Lodge; the gates there at the moment are not the ones that were there in the 20 years down to 2010. At the north eastern corner of the land are what one may describe as "the service gates" giving access historically to a service yard and building (access point [2]). Shortly beyond the service gate was a pedestrian gate on to the land. There

[5] The house is listed, Grade II.

[6] Note the photograph shown of access point [5] is a repeat of the photograph of access point [7].

were gates from the southern end of the service yard on to the land (access point [8]). The northern boundary to what was the service yard is formed by a wall which has deteriorated over the years, and access has evidently been taken by the public over this wall (access point [7]). Access has also been taken at a gap at the join between the wall and fencing at that point (access point [9]). At the south east corner of the land, the level of the land rise in relation to the wall which encloses it. At this point it is easy to sit on the wall and enter the land by swinging your legs over. Wear to the wall shows that people have done this. This is access point [10]. Finally, the wall forming the boundary to Ebenezer Lane along the north west boundary has deteriorated over the years, and there is access to the land at a number of points along this section of the boundary (access point [6]). The boundary of the land excludes a piece of land to the south west of Stoke Lodge on which a children's playground has been built since the application. There is access to the playground from a route from Shirehampton Road and from the land the subject of the TVG application itself.

13. There is a sign, about 4 ft 6 inches x 2 ft 6 inches[7], at access point [3] which reads as follows:

MEMBERS OT THE PUBLIC ARE WARNED NOT TO TRESPASS
ON THIS PLAYING FIELD
In particular the exercising of dogs or horses, flying model aircraft parking vehicles or the use of motorcycles and the carrying on of any other activity which causes or permits nuisance or disturbance to the annoyance of persons lawfully using the playing field will render the offender liable to prosecution for an offence under section 40 of the Local Government (Miscellaneous Provisions) Act 1982.
Requests for authorised use should be made to the Director of Education
COUNTY OF AVON

There is an identical sign at the point where the pedestrian gate on to the land (beyond access point 2) would have been. It is also clear that there was a further Avon County Council sign in the grounds of the Adult Education Centre and near access point [12][8]. This was where there is now a Bristol City Council sign, which evidently replaced the Bristol City Council sign in 2009[9].

14. The Bristol City Council sign reads as follows:

[Bristol City logo]
Private grounds

[7] I.e 1.37m x 0.76m.

[8] Mr Mayer is agnostic about the existence of this sign, which most of his witness did not recall. It is however entirely clear from the evidence of F1 that it did exist.

[9] There is no hard evidence that the third sign existed beyond 2007 (when it was photographed) but on the face of it the explanation for its removal was its replacement by the Bristol City Council sign.

These grounds are private property and there is no right of public access. Legal action will be taken against any trespassers.
Any request for the use of these grounds should be made in writing to the Divisional Director of Property and Local Taxation.
The exercising of dogs on these grounds is forbidden.

15. There was also at some point a further sign which was nailed to a beech tree along the north western boundary of the site. It is not clear who erected it.

History

16. Before the Second World War it seems that the Misses Butlin - Annie, Mary and Emily - lived in Stoke Lodge, a large house with extensive grounds in Stoke Bishop. It seems that a field in the north east corner of the grounds was laid out as Recreation Ground[10] and used by Stoke Bishop Cricket Club. The suggestion is that the sisters used to watch the cricket from an attractive summer house which still stands, a little to the north of the main house. It is possible Annie died in 1940 and Mary in 1946. In 1946, Emily sold 5 ½ acres of the grounds to Bristol City Council for temporary housing and in 1947 sold the remaining 22 acres (including the house) to the City Council for educational purposes.

17. As regards the 5 ½ acres, almost immediately after its acquisition the Education Committee took the view that it would be better used for educational purposes and, subject to one matter (which I shall come to in a moment) it was appropriated for educational purposes. This was agreed on the basis of a "trade off" between the Housing and Education Committees, whereby the Education Committee abandoned certain other "issues" which it had with the Housing Committee at that time. However as regards 1 ¼ acres, it was envisaged that this would be appropriated for a Health Centre. This never happened at that time, and the Health Centre was never built. In 1963, for some reason which is not clear, the Housing Committee "woke up" to the fact that it still controlled the 1 ¼ acres[11]. At this point it was envisaged that the land would become part of the future Fairfield Grammar School. Accordingly it was now proposed that it should be appropriated for educational purposes. However, again for reasons that are not clear, this appropriation never happened[12].

18. I do not have set out in any detail in the papers before me what the 27 ½ acres were used for by the City Council after 1947. As far as I can see they were used as school playing fields, first for Fairfield School (until 2000) and then for Cotham School; and no doubt the pitches were hired out to local sports clubs, as they still are today.

19. The position would have fallen to be further considered in 1974, when the City Council in its then form ceased to exist. Until April 1974, Bristol was a unitary authority (a County

[10] This is shown on the 1916 OS.

[11] The area of the relevant land was then put at 1.19 acres; I am not quite sure how the discrepancy between that figure and the figure being referred to in 1947 arose, but it is evidently the same land.

[12] Perhaps because the proposal to build Fairfield Grammar School was abandoned.

Borough). In April 1974, the City became a district council with a new county authority, Avon County Council, also exercising functions within the former County Borough area. Among the functions of the new County was education. As one would expect, the legal provisions that gave effect to these new arrangements provided for land used for education to be vested in the new County. Accordingly the 26 ¼ acres vested in the new County. There was however a dispute about the 1 ¼ acres. The District evidently claimed that it was not education land but housing land. This dispute was resolved in 1980, and the City Council agreed to this land vesting in the County Council with effect from 1 October 1980. It is nowhere set out, but it is apparent that this was on the basis that the land was indeed properly considered as education land and not housing land.

20. In 1995 planning permission was granted for development in the area – I imagine that it was development which either led to the loss of open space or gave rise to a requirement for additional recreational facilities. By the end of 2010, there was a sum of a little over £100,000 available for the provision of play facilities on the application site.

21. Avon County Council ceased to exist in 1996 and Bristol City Council – once again constituted as a unitary authority - "took over" as education authority, holding the land for the purposes of education.

22. In 2009, Bristol City Council erected the sign referred to at paragraph 15 above. It was commissioned by H4, as appears from an e mail dated 26 March 2009 from B5, an employee of Bristol City Council, to H4. There were originally two attachments to this e mail, one relating to the sign at Stoke Lodge, the other to a sign at Bishop Road[13]. This prompted a letter (dated 16 July 2009) from a lady who lived in Sea Mills Lane:

I would like permission to walk in the grounds of Stoke Lodge which is a pleasant and open space for someone of my age (70) and healthy leisure [sic]. I do not have a dog. It seems very strange that such strolling and enjoying nature and the views, with access to the footpath is now deemed trespassing. Please would you be kind enough to enlighten me on this ruling?

23. On 2 September 2009, P5, an Asset Manager in Children and Young Person's Services replied:

It is common practice for the Council to erect signage on land owned by them. The wording used is standard for sites and is designed to inform the public who owns the land and their rights in respect of the land. In this instance the Council believe there is no need to issue a licence to you for the use of the land at Stoke Lodge. However, you should note that the use of the land is permissive, and this can be terminated at any time.

24. On 1 September 2010, Cotham School entered a transfer of control agreement with the University of Bristol. I am instructed that this agreement puts on a formal footing

[13] The e mail reads *Please find attached proposals for two of the No Trespassing signs you commissioned. I've sent relevant visuals to Ashton Park School and am awaiting approval; I will send those to you once they're given the OK. Also Gay Elms School Office for F4; and Ridingleaze House for W3 (which will complere the major CYPS project). As soon as I have approval for all proposals, I'll obtain estimates and let you have the figures.*

arrangements which had obtained informally for a number of years before this time.[14] The way the agreement works is that the School pays the University £17,613 (plus VAT) to maintain the sports pitches. The School then has priority use of the playing fields. Subject to the School's priority use, the University can also use the fields for sporting purposes and can also let out the pitches to third parties for sporting purposes, keeping any fees so generated.

25. Towards the end of 2010, the City Council published an Ideas and Options Paper for the Henleaze, Westbury-on-Trym and Stoke Bishop Area Green Space Plan which was intended to pave the way for a final version of that Plan to be adopted by early 2011. It sought to identify green spaces *for which there is legitimate public access*; conversely it said that *[t]he Area Green Space Plan will not consider green spaces that are not freely accessible to the public, including ... school grounds ...* It did not identify the application site. More specifically, as regards the application site it said:

There may be an opportunity to provide a new play area at Stoke Lodge but at present this land is predominantly used as school playing fields for Cotham Grammar School and is not publicly accessible.

26. In 2010 also Parliament passed the Academies Act which extended the statutory provisions by which maintained schools could become academies. Cotham School became an academy under these provisions. On 31 August 2011, the City Council granted Cotham School a lease of the playing fields for a term of 125 years. This was part of consequential arrangements following Cotham School becoming an Academy. The lease of the property was subject to

... all existing rights and use of the Property including use by the community.

27. In the Local Plan, as far as I am aware there are no site specific policies relating to the playing fields. Policy L1 of the Plan states that development resulting in the unacceptable loss of playing fields and recreational open space will not be permitted save in three identified exceptional circumstances. The rubric to the plan states:

In particular the City Council is concerned about the protection of existing playing fields, and formal playing facilities. However, it should also be recognised that such facilities often also provide valuable amenity space which is enjoyed by local residents, in providing setting to, and relief from the built environment. Bearing this in mind, when such facilities cease to be required for their original purpose, it does not automatically mean that they should be developed for other uses, as they may be able to meet the growing need for open space in the wider community in providing open space for more informal leisure pastimes.

28. I think that it will be helpful to detail the circumstances which led to the present application.

29. At the end of 2009, a project was put together by the City Council in respect of the application site:

The Stoke Lodge Playing Fields project proposes a major refurbishment of the field including

[14] The agreement was for one year, although I understand that the arrangements continue to the present time. However for the purposes of my Report I need only note that the agreement was in force for the latter months of the relevant 20 years (which ended in March 2011).

the development of community facilities to the edge of the pitch, changing room improvements and pitch improvements. The scheme includes fencing to the perimeter of the site. It will be funded from a section 77 consent[15] for an investment of £1M (from the proposed disposal of a portion of land at the former Romney Infant/Junior Schools that has DCSF approval. Additionally, a £600k Sport England Grant has been awarded for the scheme.

30. This project was consulted on and a meeting of the Henleaze, Stoke Bishop and Westbury on Trym Joint Forum was held on 25 August 2010. 172 people signed the roll but it is suggested that more than 250 people attended. A vote was taken at the end of the meeting on the fencing of the playing fields; the meeting was unanimously against, with one abstention. On 15 September 2010, the matter was further considered by the Henleaze, Stoke Bishop and Westbury on Trym Neighbourhood Partnership and Committee Meeting. This is a meeting attended by local councillors, 12 elected neighbourhood representatives, council officers and members of the public; I imagine that only the Councillors and elected representatives have a vote. The meeting resolved

THAT the strength of feeling expressed at the Stoke Bishop Neighbourhood Forum be noted and that its views had been relayed to the Director of CYPS. It was further noted that the Executive Member had given an assurance that the proposal to fence Stoke Lodge had categorically been dropped and that the parkland would remain with open access for all as of right.

Evidence

31. The inquiry sat over 9 days. In this time it heard evidence from 28 witnesses. It would not be useful to set out a record of absolutely everything that was said. As it is, I am conscious that this is very long report. What I set out below I hope both identifies what was said on the key points and will also give the reader a clear feel for what was said at the inquiry.

32. It was accepted by the Objectors that no-one had ever been prosecuted for their use of their land under the Local Government (Miscellaneous Provisions) Act 1982 or any other provision, so this was one matter that did not need to be pursued in evidence.

33. Some evidence was documentary evidence ie of documents which speak for themselves; some evidence was in writing ie statements which were not subject to cross-examination.

34. It seems to me that the evidence, taken together, presents a coherent picture of how the site was used and which is not, in the event, very controversial. The conclusions properly to be drawn from that picture are however very controversial.

Evidence on behalf of the Applicant

Oral evidence

[15] I.e consent under section 77 (5) of the School Standards and Framework Act 1998.

35. P1 lives at xxxxxxxxxxxxxxxx. He moved to his present address in 1972 with two small children. He would describe the area that he lived in to a cab driver as Stoke Bishop. He is xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. He worked long hours and would not then have been aware of what was going on on the land during the day. He retired in 2004, since when his personal use has increased. He used to use the land during the evenings and at weekends; now he was able to use the land during the day.

36. He used the land as a place to wander with the children, to play ball games, fly kites, watch groups playing cricket and football and using the long jump, generally to exercise and to chill out. He taught his children to cycle on the land, asking them not to cycle on the cricket square. He has observed wildlife on the land. He regularly walked from his house across the land to the shops. Now he has grandchildren aged 12 to 4 and he takes them over to the land in the same way that he used to take his children over there. He has seen others doing the same thing on the field that he has done with his family. He has seen dog walkers on the land and he himself has walked his neighbours' dogs for them when they have been unable to do so because of illness. He has seen people jogging around and across the land. The number of people on the land depends on the weather. On a sunny weekend there could be in excess of 100; normally there would be 10 – 20 people at any one time. The day before he had crossed the land in heavy rain and there had been dog walkers on it. His experience was that some dog walkers walked around the field and some walked across it. He had seen the land used by schools, and in particular by Fairfield School, but school use had generally been when he was at work. He confirmed that schools came by coach, and parked in West Dene – he had seen this happen. The land had been used for school sports days but he hadn't seen this in recent years. He didn't recall use of the land by schools for discus or for rounders – he was unable to help with identifying what the various markings on an aerial photograph showing the summer layout of the land. He had seen sports clubs using the land when he had been on the land at weekends. He didn't interfere with the games of either sports clubs or schools. He occasionally watched games in progress. When schools or clubs used the facilities he would keep out of the way out of courtesy. Thus if the pitches were being used he was able to walk from access point [3] to access point [12] without interfering with the use of the pitches. The use of the land for formal sports didn't prevent him going on to the land and didn't prevent his enjoyment of the land. He didn't seek permission to use the land and didn't know of anyone who had asked permission. He didn't know of anyone who had received permission. When using the land he had never been challenged or asked to leave and he didn't know of anyone who had been so challenged.

37. He couldn't recollect a party for the Queen's Silver Jubilee or for other royal events – these were occasions that he tended to avoid. There had been a picnic for the launch of the children's play facility recently. There had been parties held by local people to celebrate birthdays. There was cricket match between the residents of West Dene and South Dene which was an annual event and which he had watched.

38. In his evidence questionnaire, P1 said that the land had been used for botany tours. In his oral evidence, he explained that this referred to a tree specialist who talked about the trees on the land.

39. P1 would use the West Dene entrance [3]. He would also use the Cheyne Road entrance [4] when he crossed the land to get to the shops. He would sometimes use the entrance near to Druids Hill [9] when he crossed the land to get to the shops in the opposite direction. Occasionally he would cross the land from the Cheyne Road entrance to the entrance on Shirehampton Road [1] via point [12] (the boundary between the land and the Adult Education Centre). He recalled that the Cheyne Road entrance [4] was at one time blocked off with a tree trunk. He did not remember someone taking a chain saw to the tree trunk. He remembered the bollard being erected at entrance [4]. There had always been a gap there as far as he was aware and a clear route through on to the land; he could not remember wire being bent back to make this entrance. He was not aware of the bollard being lying on its side a fortnight ago. Access point [3] had never been gated. He thought that access from Ebenezer Lane on to the site (access point [6]) was more restricted now than years ago. In winter it was very easy to get through; in summer nettles grew up. There were more brambles now, and stray sycamores. Access point [5] was well marked and used a great deal.

40. He was aware of the two Avon County Council signs that are now on the site. He thought that they were put up in the late 1980s. His son alerted him to them, and he went had a look at them. He thinks that when the signs went up they may have put a stop to the use of the land for the moment, but he then became aware that others had carried on using the land. He followed suit. He was not aware of there being any other Avon County Council signs and in particular was not aware of there having been an Avon County Council sign attached to a beech tree on the boundary of the land near access point [6]. He had become aware of a sign at the Adult Learning Centre after the application had been made. It faced down the path towards the field. He accepted that people often exercise their dogs on the land but not on the perimeter of the adult education centre.

41. There used to be a groundsman on the site who lived in Stoke Cottage, near access point [3]. The standard of upkeep of the land had varied over the years. It, and the pavilion, were probably maintained to a higher standard when there was a resident groundsman. He was not aware of the groundsman's duties. The resident groundsman had been withdrawn before the Avon County Council signs went up. When the children were small in the 1970s and early 1980s there was certainly then a resident groundsman. The employees of Bristol City Council or the University would have seen the community using the land.

42. The history of the dog litter bins had been that an application had been made to the Neighbourhood Partnership Wellbeing Fund. This was within the last five years. A bin was provided near access point [3]. A second application was made about two years ago and a bin was provided near access point [7].

43. He was not aware of any formal reference to the land as "Parkland". It was known as "Stoke Lodge" or "Parkland" – so that P would say to his childreren

44. P1 also told me something about community facilities in Stoke Bishop.

45. Stoke Bishop had been served by a mobile library but not for about 20 years. There was a library in Westbury-on-Trym.

46. There was a large Post Office in Westbury-on-Trym. There had been a small dedicated Post Office at the junction of Stoke Hill and Druids Hill. That had closed about 10 years ago.

There used to be a Sub-Post Office forming part of a shop in Stoke Lane but that had gone now.

47. There was an NHS Surgery on Stoke Hill.

48. There were shops on Shirehampton Road – now a little depleted and on Stoke Lane. There were shops in Westbury-on-Trym.

49. There was no bank in Stoke Bishop, the nearest being in Westbury-on-Trym. There was however a cash point at the Stoke Lane shops.

50. Answering questions from Mr Ground about locality and neighbourhood, P1 accepted that part of Sea Mills was outside the red line defining the neighbourhood relied upon in the application. He accepted that St Edith's Church in Sea Mills drew its congregation from inside and outside the red line. There was a Post Office in Sea Mills which was used by people inside and outside the red line. The Riverleaze Health Cente – near the Pentagon in Sea Mills – was used by people inside and outside the red line. Elmlea School, of which he was a Governor between 1976 and 1981) draws pupils from inside and outside the red line. Rockleaze Rangers FC and Shirehampton FC draw players from both inside and outside the red line. P1 did not know about the Bristol Croquet Club but accepted that it might draw members from the whole of Bristol. The Bowling Club drew members from inside and outside the red line. The four banks at Westbury-on-Trym draw customers from inside and outside the red line, and the same point could be made about the Stoke Bishop cash point.

51. There was a War Memorial to the memory of those from Stoke Bishop who died in two world wars. This was at the junction of Stoke Road and Stoke Hill.

52. D1 lives at xxxxxxxxxxxxxxxxxx. He moved to Stoke Bishop in April 1973. He was xxxxxxxxxxxxxxxxxxxxxxxxxx, working from home. He retired about 5 years ago. He assumed that the land was open for public recreational use – "It was our local public park", he said – and he and his family so used it. Thus asked if he had ever sought permission to use the land he replied "No, of course not, its our public park". His eldest daughter started at Stoke Bishop Primary School in September 1973 and he remembered the school sports days taking place there once or twice as the athletics tracks were so well marked. They didn't use the land for games or PE. He was not aware of whether the school had formal or informal arrangements made in advance with the Council in respect of such use. In recent years he has gone on the land with his grandchildren. He has used the land to walk his dog and also for games, family picnics and kite flying. His wife has picked blackberries, damsons and elderberries on the land and used them for making wines. He had also gathered firewood on the land. He had seen others use the land in the same way that he had done. He was aware that it had been used by teenagers from Sea Mills for all night parties as he and his wife had cleared up after them next morning. It had also been used by St Mary's Scouts and by youth groups without their paying. He said that the traditional Boxing Day football knockabout with a team of all ages from St Mary's Church had always been great fun. He used the land for both recreation and also to get to places. He would go to the shops to get eg milk and a newspaper and walk back across the land via access points [4] and [9]. His youngest daughter (of four) was born in 1982. His daughters would have used the land until their teens, so the last daughter would have ceased to use the land in the 1990s. He didn't recall the land being

used for Royal Jubilee events (St Hilary's Close had had its own street part for one of these) or for the Millenium.

53. He used all the access points to the land but mostly didn't use any – he used to swing his legs over the low stone wall near the mini roundabout[16]. When first asked about it he said that access further to the north (access point [9)]) had only been there about 20 years; it had been obtained by someone pushing back the mesh fencing. On reflection, he thought that it had been there for more than 20 years. Asked whether he thought up to about 20 years ago the standard of maintenance had been higher, he said that he had never seen any maintenance of fencing. He thought that access at access points [5] and [6] had always been fairly open. He did not recall any difficulty in walking through. This wasn't the remains of a perimeter wall but a low bank – there was a perimeter wall between access points [3] to access point [7]. At access point [8] there was a fence which was maintained but which now has large gaps in it. He was totally unaware of any attempts made by the groundsmen to block off access. There was never a gate at access point [3] to his knowledge.

54. The land was used by Cotham School and by junior football clubs. It had been used both by Stoke Bishop Primary School for sports and for end of term parties. In the 70s and 80s the school fete was held there. He had rarely seen Cotham School using the land in recent years – he saw them perhaps once in a week and then not for a while. Over the years it was quite unusual to see school use. He wasn't aware that Fairfield School had used the land. He had a vague recollection of Christ Church School using it. He didn't recall Clifton High School for Girls using it. Local people used the athletics track; he had a dim recollection of schools using it. He didn't recollect seeing children playing cricket. He had seen school sports days but very infrequently. This was not a particular memory and in particular he did not remember Cotham School Sports Days in 2001 and 2002 when, it was suggested, there would have been 400 students, 100 staff and parents. He thought that there were not then sufficient children to fill half the pitches. He would have used another part of the land. He used the land on a daily basis and on most days didn't see much use except community activity.

55. He would often meet employees on the land. They would wave at each other. The employees must have been aware of community use. He didn't interfere with games in progress; sometimes he used to watch games in progress. When pitches were being used, people used to steer clear of them and you never saw people going on to the pitches when they were in use. He would put his dog on a lead so that it wouldn't join in. Use by the schools did not prevent access to the whole of the land and their use did not prevent his enjoyment of the land. He knew of no-one who had asked for permission to use the land nor of anyone who had received such permission. He had never seen a notice or advertisement granting permission to use the land for recreational use. When using the land for recreational use he was never challenged nor asked to leave the land. He didn't use the land furtively.

56. As regards the notices, he did not see the notices when they were first put up and did not notice them for a long time – it might have been in the late 80s or early 90s that he first did so. He put this down to the fact that although he walked all over the land, he did not walk around the perimeter. The signs had no impact on the public use of the land so far as he was

[16] In terms of the access point's marked on Mr Mayer's map, this was access point [10].

aware. The Avon County Council sign near access point [7] wasn't there when he first came to the area. He never saw another Avon County Council sign attached to a beech tree near access point [5]. Shown a photograph of the sign, he suggested that it was not genuine.

57. He was aware of the Bristol City Council sign that went up 2 or 3 years ago. This had had no impact on public use. He never saw an Avon County Council sign where the Bristol City Council sign now is, although he accepted that he did use that entrance quite a lot.

58. The presence of animal faeces had no impact on public use. He would clear up faeces on about every third visit. He collected 2 or 3 bagfuls sometimes.

59. There were no paths for walking laid out across the land. There were no benches. There were no refreshment facilities. There were no ornamental flower beds. D1 was not aware of any document or signage which described the land as park or parkland.

60. The land had markings for sports pitches. D1 didn't think that these filled up the land. Shown a copy of the plan produced by F3 showing the pitches laid out on the land, he did not recall all of tem being laid out. He accepted that there were nine pitches on the land at the moment, but made the point that they were not all used at the same time.

61. He was reasonably familiar with the Stoke Lodge Adult Education Centre. It had parking for 100 cars. It drew students from the whole area of Bristol. He hadn't however noticed whether students at the dentre walked around the field. The gates to Adult Education Centre are locked on Sundays. On Saturdays they are open until 4 pm and on weekdays until 9 pm.

62. E1 lives at xxxxxxxxxxxxxxxxxxxxxxxxx. Her family moved to xxxxxxxxxx when she was five in 1975. After 1989 she was in tertiary education or living elsewhere, but came back to visit her parents. She moved back to Stoke Bishop in 2006 after she had married and when her son was aged about six weeks.

63. When she first moved to Stoke Bishop she would go over to the land with her parents and brother with a ball, be it cricket, football or rugby. Her brother developed into a serious rugby player and he used the land for practice. Her father used the land as part of a running route. The family would use the land for picnics and in the autumn her mother would take the children blackberrying. When family members came from Wales they would have a semi structured game of cricket or rounders. As a child at junior school she would go over with friends and climb the great pine tree or create a den in the "woods" around or chat on the grass. She had seen others using the land in the same way – there is always someone over there, sometimes upwards of ten people. She has son born in 2006 and a daughter in 2007. They have used the land in a similar way to when she was a child. She completed the Bristol 10k in the last two years and has practised interval training on the land. Some runners did stick to the perimeter to see how far they have run, but she did not do so in her training. Her son was in the 43 St Mary's Cubs, Beavers and Scouts Group. They have held sports and hiking activities there on a Wednesday evening after 6.30 pm. The most recent was a "healthy hike" on 16 March, following which they played team games. Her son had his investment ceremony for Beavers in the sun in Stoke Lodge when he was 8. She didn't know how Akela organised these events. He played in the St Brendan's rugby tournament on 13 March 2016 watched by three of his grandparents. They had used the whole of the western half of the land, laid out in 6 or 7 mini pitches, from 10 am to 1 or 2 pm. She didn't know if the Club had

asked for permission or whether equipment had been supplied for this event. The land wasn't sealed off and was open to local residents. Her son was now aged 10 and she would allow him on to he field by himself but she wouldn't allow him to do this when he was younger.

64. She didn't remember a Silver Jubilee celebration on the land.

65. A lot of people used the new children's playground. There were two entrances, one from Shirehampton Road and one from the playing field. She recognised parents and children who used the playground as coming from Stoke Bishop and from elsewhere. There were some whom she didn't recognise.

66. She called the land Stoke Lodge as she had said in answer to Q6 in her evidence questionnaire. She was not sure who had referred to it as Stoke Lodge Parkland.

67. She had used access points [4], [9],[5] and [10].

68. She had a vague memory of seeing an Avon County Council sign when she was 8. She thought that this was at the side of Parry's Lane. She didn't use the entrance at point [3] until recently; she hadn't noticed sign there. She was not aware of any Avon County Council signs anywhere else. She was aware of a Bristol City Council sign by the Lodge. The signs had no impact on her use of the land. She had not referred to signs in her statement. She had referred to signs at Q39 of her evidence questionnaire. She was not sure which signs she was there referring to. She could not recall at notice attached to a beech tree near access point [5]. There had been a bollard at access point [4]. She hadn't noticed that it had recently been moved or removed. She hadn't see access point [4] obstructed by a tree; it wasn't obstructed by a tree now.

69. She had a vague memory of someone drawing lines on the land but couldn't recollect seeing the grass cut. Throughout the time that she had known the land it had been marked out with pitches, usually at one end or the other, with usually 2 or 3 pitches being used. She would be surprised if there had been 11 pitches marked out. She didn't think that there had always been much maintenance of the land – thus she was unconvinced that the sand in the long jump pits had been maintained very well. She recalled a running track being marked out in the summer; she was not sure if it was there every year and she couldn't recollect seeing it used. She knew cricket-y things went on in the area of the cricket square but she was not interested in cricket. If there was a cricket match going on she agreed that that land could not be used for informal recreation, and you wouldn't walk through an on going game. She couldn't however remember cricket use, although a description of the cricket square – roped off at four corners – seemed familiar. She hadn't seen secondary school children using the land during the day time, and she had never seen coaches going into West Dene with pupils of secondary school age. Stoke Bishop Primary School when she was there had its sports day on its own field. When she was at Cotham School, they had used Dorian Road and other sites and not Stoke Lodge. Rocklease Rangers used the eastern side on Saturday; she had seen formal sport at the weekend. Use by schools had not prevented her use of the land. She hadn't sought permission to use the land. She didn't know of anyone who had sought permission to use it for informal recreation or who had received such permission. She hadn't seen a notice or an advertisement permitting use. She had not been challenged or asked to leave the land when using it and she did not know anyone who had been so challenged. Animal faeces were not a reason for her

not using the land. She did recall that her son had come back recently with dog poo on his shoe.

70. E2 also lives at xxxxxxxxxxxxxxxxxxxxx. He met his girlfriend – now wife – in 2001. Her parents lived in Stoke Bishop. He was then living in Clifton village. He would use the land on a regular basis at this time for running at general fitness. He would generally use access points [9] and [10]. He didn't recall access point [9] ever being closed off; possibly it was, and he didn't see. When his wife was expecting their first child they decided to buy a house in Stoke Bishop. They now have two children, aged 8 and 10. The land has become part of their lives. They enjoy running around with a ball, playing hide and seek, tag, snowball fights, building snowmen, blackberry picking and daisy chain making. He taught both children to ride their bikes on the land. He is a coach for mini rugby and has practised rugby on the land with his son. His daughter mastered the art of cartwheels and handstands on the land. Both children have used the land for nature lessons, trails and cross country trials with the local primary school. His son belonged to the local Cub group, and had used the land for night time activities and sports events in the summer evenings. Both children use the children's playground and they will also kick around a rugby ball on the land when they visit. They have picnics on the land and watch the occasional game of cricket. The cricket was in south eastern corner of the land. There was a mini rugby tournament in 2016. He had had seen other members of the public using the land for informal recreation – can vary from 5 – 6 to 10 – 20. Sometimes it was young kids playing football. He worked shifts and might visit he land at any time, although he didn't go when it was dark.

71. They normally accessed the land through access point [4]. He as also used access point [6] and access points [5], [9], [10] and, on occasions, via the learning centre at access point [12]. He used access points[5] and [6] infrequently.

72. He had seen people cutting the grass. His presence would have been obvious to them. He had seen the land being used by a school on one occasion. Use of the land by the school hadn't denied him access to the whole of the land nor affected his enjoyment of the land. He wouldn't interfere with a game that was in progress on the land. He didn't seek permission to use the land and didn't know anyone who had sought permission to use it. He didn't know anyone who had received permission to use it. He had never seen a notice or advertisement granting permission to use the land. When using the land for recreation he was never challenged or asked to leave the land. He had not seen any signs on the land and, in particular, was not aware of any Avon County Council signs. The presence of animal faeces on the land were not a reason for not using the land.

73. He was aware that sport pitches were marked on the land; that there were football posts on it; and cricket pitches on the south western side. Other than for cricket, he hadn't seen the pitches used for formal games of football and rugby. He had seen Rocklease Rangers play, although he tended not to go up to the land on Saturday. Apart from that, he hadn't seen any use for formal football. He had seen cricket once or twice and had watched a game once. He had never seen athletics. He who go to the land once or twice a week, depending on when he was working. He would go with his son to play rugby. He was a coach with the Clifton Club. The Club had played on the land twice in the last two or three years – once for a mini-Tournament and once for a formal game. He didn't think that his failure to see cricket and athletics indicated that he went on to less than he imagined.

74. His children went to Stoke Lodge Primary School. They use the grounds of the school in school time. His son was now a Scout. He thought that the Scouts just turned up to use the land but didn't know for certain.

75. He wouldn't normally include "Stoke Bishop" as part of his address, but he thought that it was formally part of it.

76. F2 lives at xxxxxxxxxxxxxxxx. She is xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

77. Her first use of the land was in 1980s, when she lived at xxxxxxxxxxxxxxxxxxxxxxxxx. When her son was aged between 7 and 12, he would play football there with some of his school friends. This was not as a member of an organised football club but informal five-a-side play. She would take him there and stay while he played, or her husband would stay. She put this as being between 1985 and 1990 and fortnightly, during the football season. When he was older, he would go there unaccompanied to play football.

78. She did not recall there being any bars to access and there was free access from West Dene (access point [3]), from Ebenezer Lane and from Cheyne Road (access point [4]) and, when the gate to the Stoke Lodge Car Park was open, from the driveway. They were not challenged by the Council staff. She did not remember if there were notices, although since the TVG application, these have been brought to her attention.

79. She then moved away to the centre of town and then to North Somerset. She moved to Stoke Bishop in 2007 and started using the land again. She most regularly gained access through access points [1] and [11] but had used access points [9] and [4]. Sometimes she left the land at access point [3] and occasionally used access point [7]. When she last went to access point [4], the bollard was still there. She never used access points [5] and [6], and had never walked down that end of Ebenezer Lane. She has seen the signs recently but considers that since she has never damaged the land, she is entitled to go on it. She has gone on the land with friends and family members. She has practised Tai Chi with a group of friends in the summer. This was in period over six weeks in July and August for the three years 2009/2010/2011 – when she was attending classes. They used a piece of and on the western part of the site, near the walnut tree. She joined in with a community picnic. She has seen other people openly using the land in an informal way. She had never been on the land on her own. She has seen the land being mown on several occasions and had seen men painting lines, this activity being on the western side. She was sure it was carried on on the eastern side, but she hadn't seen it happening. She is a "tree champion" and about 3 times a year went on to the land to look at the trees – the area of land to the east of Stoke Lodge formed an "arboretum". Her use of the land for informal recreation was infrequent – about once a fortnight - but she drove past the land. She was frequently aware of formal sports on the land, mostly on the west end. She assumed that there was school use during the week and use by clubs at the weekend. She was not aware that school use denied access to the land in totality. She had never asked for or been given permission to use the land. She didn't know of anyone who had asked for or received permission to use the land. She was unaware of the Avon County Council signs. She was aware of the Bristol City Council sign. She wasn't aware of a sign in that position before. It had not impacted on her use. She didn't interfere with the formal use of the land.

80. She thought that the land had been called Stoke Lodge Parkland before 2010 – she would ago away and look at her old e mails[17].

81. E3 lives xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxx.

82. The Scout Group is a charitable volunteer organisation which educates children to become good citizens. The Group has operated for over 50 years from its site off Kewstoke Road in Stoke Bishop. It currently has 65 local children registered with it, who attend its weekly Beaver, Cub or Scout meetings. The children are aged from 6 to 14. In addition there are 25 local adult volunteers, many of whom are parents with children themselves. Members of the Group came from the local community. Typically this was the roads surrounding the Scout Hut – Stoke Bishop and Sneyd Park. Others would go to another Scout Group – although there was no territorial discrimination.

83. Stoke Lodge Playing Field is a short and safe 5 minute walk away from the Scout Hut without any need for the children to be transported in cars by parents. For many years the different sections in the Group have visited this "beautiful and wide, safe open space" for various activities, including nature walks, rounders matches, informal football, wide games and exploration walks. The acquisition of badges required participation participation in outdoor events. The Cub section visits the land at least once a month, and this tends to increase in the spring and summer months. They used the eastern end of the land for e.g. rounders but they did travel around the land. On occasions when the pitches were being used, the Scouts would steer clear of those areas. The Group has always regarded the land as free to use community space where we have unlimited access rights. E3 illustrated how it might work: if on a Thursday at 7.30 the sun was shining and the children were "hyper", they might be taken up to the land. The individual who used to be leader remembers his now grown up son joining the Cubs and taking trips up to Stoke Lodge 20 years ago.

84. E3 also submitted an evidence questionnaire in which he spoke of his personal use of the land from 1985 for walking the dog and kicking a football around etc. He had seen others doing similar things. He had moved to xxxxxxxx with his family in 1985 when he was 15 or 16 and had lived there for two years before going to University. He moved to xxxxxxxxxx in 2005. He tended not to be on the land during the working week. His chief access point was [7], he would sometimes use access point [3] and [4] as well as coming out at [1] if he were going to the shops on Shirehampton Road. When he lived in xxxxxxxxxxx he had used access point [4]. There were always other people on the land – how many depended on the time of day and the day of the week. He had seen employees painting lines and cutting the grass; he had seen them swopping the pitches from football to rugby. He spoke them on occasion. He had seen a school during the day taking part in activities. Rocklease FC and Shire Colts FC play on the land on Saturdays and Sundays and train in the evenings in summer. St Brendan's Rugby Club used it. He had seen a cricket match. He had never seen the athletics track being used formally. He had two sons who played in both clubs – depending on age they use Stoke

[17] I can note here that there is no documentary evidence before me of the land being called Stoke Lodge Parkland before the date of the TVG application.

Lodge or Sea Mills Playing Fields. He had never interfered with a game in progress. He didn't watch games in progress. School use did not deny access to the land in totality or prevent his enjoyment of the land. He had not sought permission to use the land. He didn't know anyone who had sought or received permission to use the land for informal recreation. He had never seen a notice or advertisement giving permission to use the land. He had never been challenged or asked to leave the land and he did not know anyone who had been. He had only become aware of the Avon County Council signs in the last two months and it certainly had been possible to enter the land without seeing a sign. He had not observed the Bristol City Council sign until recently.

85. The Scouts had never asked for permission to use the land. However he was not aware of the basis on which their predecessors had used the land. His understanding was that it was by way of entitlement.

86. The Scout Group had never been challenged or asked to leave; they had never interfered with on going sports activity on the pitches. The presence of animal faeces were not a reason for the Scouts not using the land.

87. In answer to a question from Mr Blohm, E3 said that generally Health and Safety evaluations were carried out for the Group's activities. He didn't know if this had been done for Stoke Lodge – this would be a matter for the Scout leader[18].

88. M1 lives at xxxxxxxxxxxxxxxxxxx. He moved to Stoke Bishop with his partner in November 1995. He worked in an office during the week until 4 pm but would return home after that. He has used the land for running or walking and picnics. There might be some weeks when he wouldn't visit very often and in the middle of January he might not visit for 2 or 3 weeks, When the children were young it was good and safe environment for them. They learned to ride their bikes there. They used it for informal games of football, rugby, cricket and rounders. His now teenage son "meets his mates" there. He has seen others use the land for sport, nature rambles and painting. There would be a minimum of 8 or so. His children had attended/were attending Stoke Bishop Church of England School. It had used the land for nature walks, orienteering and picnics. He didn't know how this was arranged. He had been there as a parent helper for eg an orienteering session: he would take a morning off to help, and he had also had a year when he wasn't working, so was able to help more often. They would do this perhaps once or twice in the summer; a nature walk once, perhaps. His main reason for being there was getting them safely to Stoke Lodge. The School didn't use the land for football – they had their own facilities on site. At the end of the year the Year 6 children have some sort of leavers picnic where they met together for one last time before going to different schools for Year 7. The children organised this party themselves and didn't ask permission. He produced a photograph that he had taken on the land of that school leavers' event. He had seen people erecting goal posts and marking lines and had walked past within a few yards of them. The land was used by schools and formal spots clubs. During a year that he wasn't working he had seen school use of the facilities on the land occasionally – not every time that he went on to the land. He had seen pupils brought to the land in a bus. He

[18] I was subsequently supplied with a Risk Assessment Sheet in respect of a Local Walk and Outdoor Wide Game for the Cub Scouts held on 16 March 2016.

could remember them being near the long jump. He saw running around but never saw hammer, javelin or discuss. He never saw them using the long jump pit. He didn't see school sports days being held on the land in 2000 and 2001. He didn't interfere with a game in progress when the school were using the land. Occasionally he stopped and watched it. The use by the school didn't deny access to the totality of the land and did not prevent his enjoyment of the land. He had never sought permission to use the land and he did not know of anyone who did. He never saw a notice or advertisement granting permission for public use of the land. He was never challenged or asked to leave the land and he didn't know of anyone who had been.

89. He had an interest in cricket and was assistant coach of Stoke Bishop Cricket Club for 2 years when his son played for the club. His son quite often played at Stoke Lodge. When the boundary markers were in place it was possible to walk between the pavilion and the boundary. It was possible to walk around the boundary.

90. He used to be a member of Combe Dingle Crusaders Football Club. He had started as a parent helper and then became an assistant coach. They used the land on Saturday morning. Different age groups used 3 different pitches. Mini pitches were marked out. They would bring their own goal posts. He wasn't responsible for booking the pitches. Booked pitches would be used unless the football was called off because the land had become waterlogged. Although he was not aware of how the arrangements were made, both the Combe Dingle Crusaders and the Stoke Bishop Cricket Club paid for their pitches. When he was involved with these clubs he was aware that the University were managing the land.

91. He was familiar with two signs. One was at access point [3]; he couldn't remember the location of the second. He did remember a wooden sign, hanging off a tree and halfway along where access point [6] was. He saw it when entering the land at access point [6]. When he saw it is was obscured by vegetation, not as it was in the photograph of it, and it was probably askew. He didn't remember it referring to Avon County Council. He thought it said something about golf. It was possible that by mentioning golf and perhaps other prohibited things, it was permitting other things. He couldn't say when it fell off the tree – perhaps five years after he moved to Stoke Bishop. He used the entrance by Stoke Lodge (access points [1] and [12]) in connection with formal use by the Shire Colts. There could well have been an Avon County Council sign there.

92. He thought that in 1995 the access point [3] may not have been as wide as it was later, with a tree in the way. He remembered it being widened – he assumed by Bristol City Council. The log that was there was added later but didn't inhibit pedestrian access. He didn't remember at some stage the log being pushed in to obstruct access and then being pushed out again. He couldn't recall whether at access point [9] someone had peeled back wire and was not aware of this access point ever being fenced off. He didn't use access point [8] but didn't recall it ever being fenced.

93. M2 lives at xxxxxxxxxxxxxxxxxxxxxxxxxxxx. xxxxxxxxxxxxxxxxxxx. He moved to his present address in July 1992 and started using the land almost at once, it being a matter of only 200 yards from his house. He would use the land with his wife and three sons. They would use the land to play with the children, for walking and picnicking, for ad hoc games of football and cricket and for running and other fitness exercises. The land was also used

extensively by the public and was particularly busy in the non winter months. The top and the bottom fields were equally popular.

94. His sons were all enthusiastic members of Shire Colts Junior Football Club, which made extensive use of the land at Stoke Lodge for regular training and for the playing of games. This involved age groups from the under 8s to the under 16s. He had initially been a parent helper/supporter (1998 – 2001) and then a junior team manager (2001 – 2006). During the time he was a manager, his team played on the land on Sunday mornings and trained there July – September and mid March to early May. Most Shire Colts games were played on Sundays and rarely on Saturdays. On Sundays, the Club had access to five full size pitches and 3 junior pitches. Junior pitch usage was typically one or two pitches on Sunday morning. The typical use of the full size pitches would be one or two on Sunday morning and two or three on Sunday afternoon. They would have been able to use more pitches than they had booked were they available. The position was probably that not all bookings were used but and not all use was booked. The gate at access point [2] was opened to provide pedestrian access for teams, and the gate into the adult education centre for vehicular access. It was generally possible to walk between the pitches when they were being used. He accepted that during the period the pitches were hired it would not be possible for the public to use them.

95. He would use the small opening on to the land at the top of Druid Hill (access point [10]) and also go over the wall (access point [9]). There were however many openings to the land, which had made open access the norm. The access at point [10] was very easy – one just sat on the wall and swung one's feet over. He remembered T1 and his wife using this access until they were into their 70s – he would hand his dog over. T1 died last year. He could not recollect whether at some time between 2003 and 2008 access point [9] may have been fenced since he was able to get in via access point [10]. He thought that although there may have been a fence all the way along the north eastern side of the land, yet there may have been gaps in it. The gas converter building had been built in the last ten years.

96. Although there were a few old Avon County Council signs on the land, he and his family never thought that they required permission to use the land or ever sought it. He did not recall an Avon County Council sign at access point [12]. There had always been a sign there, which to his recollection was green. He also was aware of a Bristol City sign at the Adult Learning Centre. The signs did not have any impact on public use. He never saw a notice or advertisement granting permission for informal recreation. The presence of animal faeces was not a reason for not using the land.

97. M2 worked normal office hours between Monday and Friday so had little or no knowledge of the use of land at these times. He was aware of school use but would not know if the level of that use had changed over time.

98. S1 lives at xxxxxxxxxxxxxxxxxxxxx. He moved to this address in xxxxxxxxxx. He then had three sons, who were aged 11, 9 and 4.

99. He and his sons used the land for informal football and cricket, frisbee throwing and walking. During the school holidays his sons would be on the land almost every day, together with their friends living nearby. Between 1983 and 1995 S1 was an active runner, running some half marathons, and used the land to train on in preference to hard pavements. He was also an

active orienteerer, to a high level, and trained on the land. This was not just round the edges. He did interval training on the pitches.

100. From 1995 until 2010 S1 had a border collie dog. Accordingly he used the land 2 or 3 times a day for walks and dog training. In more recent times he had taken his grandchildren over to the new play area. He retired in June 2007. Before then he was spending more time in the office than he wanted.

101. He had seen others using the land for informal recreation. The number of people he would see varied with the time of day – at 6.30 am there might be 2 or 3 people; at other times there might be several dozen.

102. He had seen workmen on land – initially City Council employees and now the University under a sub-contract. They might have exchanged the time of day – his presence would have been apparent to them. The land was occasionally used by schools and clubs. When schools were using for formal sports he didn't interfere. The schools' use of the land was at the Parry's Lane end – Areas A and B on the plan produced by the School - he would use the other end and kept away. He couldn't recall school use of the western part of the land. He saw athletics occasionally – he didn't think that the athletics track was that well used. He assumed that Fairfield School and Cotham School had had some arrangement with the Council in respect of their use but he did not know the basis. Similarly he assumed that the sports clubs made arrangements for their use, but he did not know the basis. He assumed that they paid a fee and got an exclusive right to use a pitch during the period for which they had booked it. He was a football enthusiast and would watch formal games in progress. School and club use did not deny access of the totality of the land to the public. Their use enhanced his enjoyment of the land. He never sought or obtained permission to use the land. He didn't know anyone who had sought permission to use the land for informal recreation or anyone who had received such permission. He had never seen a notice or advertisement granting permission for use of the land. He didn't know of anyone who was challenged or asked to leave the land. Animal faeces on the land had not prevented him from using it.

103. The cricket square used to be roped off. He had seen the land used for cricket – the players in whites. Looking at a plan produced by F3 showing the layout of the pitches in 2000/2001. He never saw hockey on the land and did not recall a pitch where the playground area now was.

104. He accepted that an aerial photograph taken in April 2007 showed a well used facility and that pitches towards the end of the season were worn. He thought that the pitches used by the Shire Colts were not as well looked after – the goal posts stayed there all the time whereas the goal posts and rugby posts at the eastern end were taken away at the end of the season. As far as his recollection went, the athletics track was not that well used.

105. S1's previous house had been close to Blaise Castle parkland and he used the parkland there and the land at Stoke Lodge in the same way.

106. He would enter the land from Ebenezer Lane (access points [5] and [6]) and from the entrance at the end of Cheyne Road (access point [4]). In 1983 he suspected that there was neither a bollard nor a log at access point [4] and he couldn't remember which came first the bollard or the log. He always assumed that the bollard was to stop entry by motor bikes which at one time was a problem. He recalled a time when a log was "shoved" in front of the bollard at

access point [4]. He didn't realise that the University had done this – he thought that it was done by youngsters. Thus he recalled a short period – about two weeks - when he had to step over the log to access the land. He recalled thereafter that the log had been moved away from the bollard. It was possible to access the land via Ebenezer Lane at this time. He thought the hedge through which access point [6] was taken was essentially in the same condition now as in 1983. There had always been a number of accesses through that hedge. He couldn't recall access at point [6] ever being blocked.

107. The only sign that he could remember was a dilapidated sign near Stoke Lodge. He could not remember what was on it. He could not remember seeing a sign at access point [3] – he saw it for the first time a couple of weeks ago. Nor could he remember a sign stuck to a tree near access point [6], even though he had spread his dog's ashes under that tree where it was suggested it had been.

108. D2 has lived at xxxxxxxxxxxxxxxxxxxx since 1981. He retired 3 or 4 years ago and before that worked conventional hours. His parents moved to xxxxxx in Stoke Bishop in 1949 when he was about five and he has lived in Stoke Bishop, on and off for most of his life.

109. He first visited Stoke Lodge house when he was about five or six. His mother knew a lady who lived in the house and he was taken to play with her daughter. They caught some newts in a little pond in the garden.

110. In the mid-fifties he joined the Westbury Harriers, an athletics club, which trained on the land every Monday evening.

111. In his teens (in the late fifties) he and his friends would play cricket most summer evenings. Occasionally a groundsman would come and speak to them but he seemed quite happy for them to be there as long as they were behaving themselves. He thinks that the groundsman's name was Clarke. His use when he lived at Cedar Park was all before 1990.

112. Since living in South Dene he took his five children to play on the land – playing football and cricket, flying kites, collecting conkers, building snowmen and watching bats catch flies under the trees on a summer's evening. He was not a dog walker. His oldest child is 42 and his youngest 32; the youngest had left home after University 10 years ago. His children had not been members of sports clubs which used the land. One of them had gone to Cotham School but had not used the land while there. He had also attended church fetes on the land. He has seen other members of the public using the land. There is never a time when there aren't other people using the land – it might vary from about half a dozen to 50 – 60 on a church fete day. He had been on the land on occasions when Fairfield School and Cotham School were using it. The land was also used by schools and clubs for formal sports activities. He was aware of use by football and cricket club use; he was not aware of rugby club use. He assumed that the arrangement was that the clubs had some arrangement whereby they got exclusive use of pitch. He recalled seeing most of the pitches shown on F3's drawing dating from 2000/2001 – there were certainly ten pitches.

113. There were about two church fetes held on the land, which D2 put at before 1990. They were run by St Mary Magdalene's Church and took place on the south western part of the southern half of the land. They did not involve payment for admission.

114. Xxxxxxxxxxxxxxxxxxxxxxx, he used to enter through the main gate to the house, turning right on to the land. Since living at xxxxxxxxxx, he has used the gateway at the end of West Dene (access point [3]). He cannot remember there ever being a gate there in the period since 1981, although it was possible that there was a gate there until the Marathon in 2005. If there had been a gate it would have been readily openable or he would remember it. He has exited the land at other points – at the Cheyne Road entrance (access point [4]) very frequently and very occasionally at point (access point [7]). He was aware of a sign at access point [3]. This had had no impact on public use. As shown in a photograph taken in 2003, this was readily visible, although when trees grew in front of it, it was not. He was not aware of any similar signs on the land. The presence of animal faces on the land was not a reason preventing me from using the land.

115. D2's youngest child left home about ten years ago, having finished university. He himself retired 3 or 4 years ago. Before his retirement he worked conventional hours and didn't go on to the land on week days when he was working. However there had been occasions when he was on the field when Fairfield School were using it.

116. There had not been significant changes to the land over the years. There had been a cricket pitch and small wooden pavilion in the south east corner of the land. Usage in one year was likely to be typical of usage in another. He recalled some but not all of the pitches shown on F3's drawing dating from 2000/2001. He thought that there would be 10 pitches laid out on the land. Looking at an aerial photograph, he recalled the athletics track. He had never seen rounders played on the land. He accepted as fair a descriptopn of the land as a sports field to which the public had access.

117. He had seen groundsmen engaged on their work. His presence would have been apparent to them. He didn't interfere with a game in progress if the land was being used by a school or a club. He had watched a game in progress very occasionally. The use of the land by schools and clubs never denied access to the totality of the land to the public. Their use did not prevent his enjoyment of the land. He had never sought permission for informal recreation and he didn't know anyone who did. He didn't know anyone who had received such permission. He never saw a notice or advertisement granting permission for informal recreation. He didn't know of anyone who was ever challenged or asked to leave the land.

118. H1 lives at xxxxxxxxxxxxxxxxxxxx and has done so since 1982. He retired in 2004. When he bought his first house in Sea Mills in 1973, he bought a street map that marked open spaces in green, and looked for house with in easy reach of as many open spaces as possible. He applied the same criteria when he moved.

119. When his children were at home he regularly took them to the land to play informal games. Each year the residents of Woodland Grove held a community event (garden party or BBQ) which involved sports on the land. When he lived in Sea Mills his principal access point was via [1] (and then [11] or [12]). Since moving to Stoke Bishop his principal access points were [3] and [6], although he had used all the accesses at various times. He tended to go on the land in the evening. When he was working he would not have seen the use of the land during the day. He was conscious of the Avon signs going up many years ago. He took it to mean that he would be a trespasser if he undertook any of the activities there identified but that otherwise it didn't prevent his use of the land. He was aware of only two Avon County Council signs: at

access point [3] and near access point [7]. He was probably aware of the Bristol City Council sign when it went up. He didn't recall a gate at access point [3]; if there was a gate there it was certainly never closed. He was unaware of the marathon going through the land in 2005.

120. He was aware of white lines on the land but was not aware of their significance. He could recall seeing goalposts on the land – he could see them from the upper storey of his house – but he couldn't recall the number of them. On the eastern part of the land in summer there was a running track and cricket; he recalled in winter that these might be replaced with other pitches and posts.

121. Invariably when he has been on the land he had seen other members of the public using it for informal recreation. There could be anything between a handful and several dozen. He put the average at 12 or 15. He thought that althoughsome dog walkers stuck to the perimeter of the land, most went all over it. He had seen groundsmen on the land – he had seen tree planting taking place. His presence would have been apparent to them and he would have conversed with them on occasions. He tended to avoid the land if it was being used for formal sport by schools and clubs, although he had been on the land when this was happening. He did not recall Cotham School using the land for sorts days in 2000 and 2001 when there would have been 450 – 550 students on the land and 100 staff. Access to the public was not denied in totality at these times. He had never sought permission to use the land for informal recreation and didn't know anyone who had sought such permission. He had never seen a notice or advertisement granting permission. He had never been challenged or asked to leave the land and didn't know of anyone who had been. When the children were young, the presence of animal faeces was an unpleasant aspect of use of any parkland. The position had been much improved of late. This could be to do with the installation of dog bins and the dog owning public becoming aware of the risk.

122. S2 lives at xxxxxxxxxxxxxxxxxxxxxxxxxxx. He was an xxxxxxxxxxxxx who had retired from full time work in 2001. He had got a dog in 2002. He had been a xxxxxxx until 2014, working from home and going overseas. S2 and his family moved in 1972 to xxxxxxxxxxxxxxxxxx. They noticed other families walking on Stoke Park and assumed that they were able to do the same. They used the land for walking, dog exercising, jogging, throwing balls with their children and grandchildren, trying outdoor toys such as kites and toy planes, scooters, bikes etc. When he was employed he used the land at weekends and in the evenings on a fortnightly basis. His children as teenagers used to go the land to meet their friends. More recently they have walked to the new playground and picnicked while their children had played on the equipment. He had seen others use the land for informal recreation. The numbers varied considerably – it could be 5 people or as many as 20.

123. They most frequently used access point [3] but he had also used access points [6]. [1] and [9]. He was aware of two Avon County Council signs on the land, in the vicinity of access points [3] and [7]. This was despite the sign at access point [3] being quite often obscured with undergrowth. He was not aware of any similar signs. He was not aware that the signs had changed anyone's habits. He was not aware of the Bristol City Council sign.

124. He had seen ground staff on the land – he had spoken to a guy marking out the cricket pitch on one or two occasions. He had not had his dog with him then. He had seen grass cutting. His presence would have been apparent. He hadn't heard that dog walkers had on occasion

been spoken to by people from the University or that dogs had sometimes misbehaved. He confirmed that F3's drawing made in 2000/20001 was roughly correct as showing the winter layout of the pitches. There wasn't a hockey pitch. He accepted that the aerial photographs produced by the school showed the summer layout. He wasn't sure about the purpose of all the markings and he had never seen shot putting on the land. Although when he was working he wouldn't have been in a position to observe school use of the land, he potentially would have seen it at other times. He had not however observed its use for athletics. He thought that recently there had been an increase in informal sessions where young people were coached for football.

125. He had witnessed formal sport by clubs and schools. He was not sure of the arrangements. He had not interfered with a game in progress. He had stopped to watch games of football and cricket in progress. Use of the land for formal sport did not deny access to the land in totality and did not prevent his enjoyment of the land; he would probably not go on to the land with his dog on a Saturday afternoon. He had never sought permission to use the land for informal recreation and knew no-one who did. He knew no-one who had received permission to use the land. He had never seen a notice or advertisement granting permission for informal recreation. He had never been challenged or asked to leave the land and did not know of anyone who was. Animal faeces on the land were not a reason for not using the land.

126. W1 lives at xxxxxxxxxxxxxxxxxxxxxxxxx. He and his family first started to use the land in 1984 when they lived at xxxxxxxxxxxxxxxxx. In 1986 they had moved to and lived at various places in the area before moving to xxxxxxxxxx in 1994. Between 1992 and 2015 he worked from home and on site, so his visits to the land might be at any time of day.

127. Over the years he has used the land for walking his children to school, ball games, kite flying and teaching the children to ride a bicycle. He would particularly use the land on his children's birthdays when they would go on to the field with their friends for games. They would pick fruit in season – damsons, sloes and mulberries. He would on occasion clear up litter left after organised sporting events and teenage parties. For a short while he helped with the local cub pack, taking them on to the field for games and educational activities. He used the land 2 or 3 times a week – about half the time for exercise and half the time for going to local shops and doctors.

128. The land has been used for annual street parties, cricket matches and national celebrations such as the Royal Wedding in 2011 and the Queen's Diamond Jubilee in 2012. These were picnics for about 30 people – those attending lived in South Dene and West Dene. He remembered that in 2002 there was a street party on Woodland Grove and afterwards people went on to the land for informal games. There had been a celebration for the Queen's 90th birthday but he had not be there and he wasn't sure how many people attended.

129. When using the land he would see others also using it for informal recreation – the numbers would vary between 20 and 25 people. He had witnessed ground staff on the land about their duties – mowing the grass, painting white lines and watering newly planted trees. His presence would have been apparent to them – he had spoken to the guy watering the trees. He had observed formal sports taking place on the land – by schools and sports clubs. The land had been used by Rocklease Rangers, Shirehampton Colts – he would hear the cheer "Come on Shire" - and St Brendan's Rugby Club. They had had an event on the last year. The land

had been used for cricket, but he didn't know the names of the cricket clubs. These were formal matches on properly marked out pitches for specified periods but he wasn't aware of the basis. He assumed that it was arranged in advance with the owner. People would be aware that they didn't have a right to go on the pitch on these occasions, although it wouldn't be a thing that they thought deeply about. They wouldn't interrupt a formal or an informal game. He thought that F3's drawing dating from 2000/2001 gave a reasonable impression of the layout of the pitches, recognising that there wasn't a pitch beneath the trees). He had never seen all the pitches in use at the same time. Likewise he thought that the aerial photograph dating from 2010 produced by the school and showing the long jump, the cricket pitches and the running track gave a reasonable impression of the land in the summer. He had witnessed children throwing javelins in the area to the left of the pavilion. Before 1995, the athletics area had been on the western side, as could be seen in a picture that he produced dating from July 1994. He didn't think that the markings for athletics were used very much. He wasn't aware of any change in the identity of the schools using the land. They got to the land by coach and would park in West Dene and South Dene. He said that he seemed to remember about 500 people on the site on one occasion, but he didn't realise that it was a sports day as such. Most of the pitches would have been used and he didn't use it at that time. When games were in progress, he didn't interfere. When a pitch was not being used, he used the land for informal recreation; when it was being used, he occasionally stopped and watched the game in progress. Formal sports use did not deny access to the land in totality and did not prevent his enjoyment of the land. He never sought permission for informal recreation and didn't know anyone who did. He didn't know anyone who had received permission for informal recreation. He never saw a notice or advertisement granting permission for informal recreation. He didn't know anyone who was challenged or asked to leave the land. The presence of animal faeces on the land was not a reason for not using it.

130. When living in xxxxxxxxxxxxxxxxxxxxx he would use entrance point [4] as well as [12] and [11] and [10]. Since living in xxxxxxx, entrance points [3] and [6] have been the access points that he has mainly used, although he has also used [1], [11], [10]. He did not recollect there ever being a gate at access point [3]. Access point [6] was used by those using the pitches to retrieve their balls but also by Woodland Grove residents who had gates on to Ebenezer Lane and then went straight on to the land.

131. He was aware of two Avon County Council signs on the land, but not of any similar signs. He had become aware of the Bristol City Council sign when he went to use the new children's play area – roughly in about 2014.

132. B1 lives at xxxxxxxxxxxxxxxx. He moved to xxxxxxxx in February 2009. He had used the land for 19 years. B1 was a xxxxxxxxxxx and worked from home. He travelled extensively and didn't keep office hours. He was at home a lot during the day during the working week. He has walked on the land, run, kicked a football, flown a kite, ridden his bike around. With his family he has picked walnuts, plums and blackberries. He has had family picnics on the land in summer and in the winter enjoyed, along with many others, making snowmen and snowball fights. His wife is something of an artist, and has made drawings on the land. In the past there have been several informal community cricket matches between West Dene and South Dene. They tried to organise one last year, but the weather went against them.

133. B1 was the xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. From about 1993, about five members of the club who wanted cricket training would meet enter the land by access point [9] and use the land for practice. This was for 2 or 3 seasons until alternative facilities became available. Between 1996 and 2009 when he was living in Clifton his use of the land was "minimal to light".

134. After he moved to xxxxxxxxx he would use access point [3]. If he was going to restaurants at Stoke Hill, he would enter at access point [3] and leave by access point [9]. His daughter has gone to Stoke Bishop Primary School since 2010. They get to school via access point [3] and [1], going via points [11] or [12]. If catching the bus, he would use [3] and jump over the wall at [10]. Going to shops, he might use access points [3] and [4] or sometimes [6] and [4]. Sometimes returning from school, they would enter at [1] and leave at [7]. He had never seen a gate at access point [3].

135. His appreciation of the number of pitches in the winter in the time of his observation was of a rugby pitch and two soccer pitches on the eastern side and two big football pitches on the western side, with three sets of goal posts. He had never seen a hockey pitch. The cricket pitch had not been marked out in summer for a little while. He saw the running track marked out about five years ago; he had not seen it marked out since. He wasn't able to help in explaining the various ground marking shown on the aerial photograph produced by the school dating from 2010.

136. B1 had seen the Avon County Council signs near access points [3] and [7]. They were usually covered by trees. He was not aware of any similar signs. He had seen the Bristol City Council sign, which he noticed in the week that it went up. He had not seen an Avon County Council sign in that position before the Bristol City Council sign.

137. B1 was a xxxxxxxxxxxxx and worked from home. He travelled extensively and didn't keep office hours. He was at home a lot during the day during the working week. He saw other people using the land – people walking to school, dog walkers, mothers with prams, people having picnics or coffee, joggers, teenagers after school chatting under the trees. His wife, xxxxxxxxxxxxxx, has made drawings on the land. After dropping his children off to school this morning he had seen perhaps 15 dog walkers on the land.

138. He had observed members of the ground staff undertaking their duties - in particular, cutting the grass - and his presence would have been apparent to them. Shirehampton and Rocklease Clubs used the land. The University used it for rugby matches, which were "proper" matches, although not refereed. He accepted that all formal use would be booked out, although not all bookings might be taken up. If someone booked a pitch, he would be getting exclusive use of it. When a formal game was in progress, he didn't interfere. The use of the land for formal sports did stop his enjoyment of the land in totality or at all. When a game was on, he could still go on to the land. When the marked out pitches were not in use, he accessed that part of the land. He didn't know of anyone who had asked for or received permission to use the land for informal recreation. He had never seen a notice or advertisement granting the public permission to use the land for informal recreation. He didn't know anyone who was challenged or asked to leave the land. Animal faeces were not a reason for not using the land.

139. Asked by Mr Blohm about the use of the land by Cotham School, he said that over the last five years they had been using Combe Dingle. He said that the School had stopped using the

land before 2014. In 2009 he recalled that there had been two occasions when a bus had come to site; and on one of them he had had to help the bus driver reverse. Coaches coming to the site on four occasions a week was not consistent with his recollection of that time – once every two weeks might be. In 2010 the use was lot less. In 2010 and thereafter he had seen Cotham School pupils using Combe Dingle but not Stoke Lodge. He observed that West Dene was a small street and he would notice a 40 seater bus going down it. He said that there might have been one bus a week in 2009 and that it got less frequent, tailing off to nothing in 2012.

140. M3 lives at xxxxxxxxxxxxxxxxxxxx. xxxxxxx was not, she explained, a private road, but an unadopted one. Thus residents looked after the trees and the surface of the road and the Council were responsible for drainage and lighting.

141. Her parents moved to this address in 1974 when she was less than a year old. They were drawn to Stoke Bishop generally and Cheyne Road in particular because of its quiet, almost rural character with adjacent woodland and the open space that was the Playing Fields. Her father, M4, was a public health physician and was keen that she and her brother would grow up in a relatively safe and healthy environment. M3 produced a letter written by M4 in which he stressed the health benefits of open space at the same time as testifying to the extensive use of the Playing Field by local people of all ages. M3 said that it was on the land that she learned to walk, play, ride a bicycle, fly a kite, collect conkers and pick blackberries, damsons, sloes, haws and mushrooms. She played there with other neighbouring children. Birthday parties inevitably ended with a wander on the land. The family first acquired a dog when she was aged seven, and she has walked a dog on the land since then. She currently uses the land to exercise with her dog, on foot or with bicycle, for relaxing and enjoying the wide open vista, stargazing at night, collecting seasonal fruit and taking photographs. She was on the land most days. She had a small part time job locally which did not involve office hours; otherwise she was a carer for her mother. In all this time she has used the land she has never been told or asked to leave. M3 pointed out that Cheyne Road ends in a very obvious open entryway into the playing fields. It seemed that this had been a point of access to the land since before she was born.

142. The entrance at the end of Cheyne Road (access point [4]) was the entrance point that she used most frequently, but she also used the numerous gaps on Ebenezer Lane (access point [6]). If going to Stoke Bishop village, she would go via access points [4] and [9]. She would have used all the entrances at one time or another.

143. At some point a big tree trunk was put in front of access point [4]. What happened was it fell off the oak tree and landed more or less where it is now – she heard the crash. The larger branches were cut off and she imagined that a conscious decision was made to leave it there. The tree trunk had been there for at least ten years. She did notice that on one occasion it was pushed nearer the entrance after grass cutting. The bollard went in about 20 years ago and was only recently removed; she had reported it to Neighbourhood Watch team on 23 May 2016.

144. At access point [3] there used to be a metal gate. It was a like a small garden gate[19]. It had a finger latch. It disappeared a long time ago – she thought not as long ago as ten years, but it

[19] M3 made a drawing of the gate, indicating that it was made of lattice work in some way rather than being solid.

could have been. She couldn't remember the arrangement as regards the latch ever being different. It was never locked and it would not have been possible to lock it.

145. She had seen other members of the public using the land for informal recreation, and she had been aware of such use since childhood. It depended on the weather – in winter or in rain, there would still be the hardened dog walkers. On a sunny summer afternoon there might be 20 people doing different things. She had seen ground maintenance personnel and her presence would have been apparent to them. She had seen schools using the land and clubs using it at the weekends. She was not aware that Cotham School had ceased using the land, although she was aware that they had used it less and less. She had been aware that until 2010 sports pitches had been marked out on the land. She had never interfered with a game in progress – it would have been inappropriate to do so. If nothing as going on on a pitch and it was empty, she might walk across it. Use of the land for formal sports did not prevent the enjoyment of the whole of the land by local people, there was room for everyone, although she accepted that when a pitch was being used for formal sports use, it was not available for public use. She didn't know of anyone who had asked for permission to use the land for informal recreation, nor of anyone who had received such permission. She did not know of anyone who was ever challenged or asked to leave the land.

146. She recognised the Avon County Council signs. There was one at the Parry's Lane corner of the land and one at access point [3]. She was not aware of any other Avon County Council signs anywhere. The Avon County Council signs had no impact on her use of the land or on the public's use of the land. She expressed the view that she probably was not born when the Avon signs went up[20], and was certainly aware of them as she grew up. She thought that she was allowed free and unfettered access provided that she did not cause a nuisance. She accepted that there could have been an Avon County Council sign at access point [12] in June 2007[21].

147. She recognised the Bristol City Council sign at [12]. She didn't witness it being put up. The first time she noticed it, the writing was facing her, so that the back of the sign was facing the Lodge. She almost walked into it. She would put this event as being several years ago, perhaps 5 – 6 years ago. When she first saw it she thought that it referred to the grounds of Stoke Lodge. People did exercise their dogs in the grounds of Stoke Lodge, as was evidenced by sign on the Biffa bin at the back of the Lodge saying that people were not to put dog poo in it.

148. She accepted that there were signs at all the metalled entrances to the land. She understood that there had been a style in the 1930s at the end of Cheyne Road. If you looked at old an old OS map it was her understanding that it showed a footpath going through the gap before being dissipated in the field[22].

[20] This would not have been the case, since the signs refer to the Miscellaneous Provisions Act 1982.

[21] The date of the photograph which was produced by F.

[22] If there was such a map, no-one managed to find it. It seems a bit unlikely since the 1916 OS, which Mr Mayer did produce, simply shows Cheyne Road as terminating against the boundary of the grounds of Stoke Lodge (then a recreation ground: see paragraph 16 above). A later OS map, showing a Central

149. The presence of animal faeces was not a reason for not using the parkland.

150. B2 lives at xxxxxxxxxxxxxxxxxxxxxxxxxxx. He has lived at this address with his wife since xxxxxxxxxxx and has a garden gate opening on to the land. His observation is that during this time access has been universally available to the adults and children living in the area around the land and beyond. That access has been without permission, without secrecy and without force. In particular, he has seen the land being used by: power walkers, usually ladies, from Keep Fit or Weight Watchers; athletes training by running around or sprints across the field; dog walking; families and individuals strolling across and around the field; family picnics; hot air balloon landings – there had been at least one balloon landing and there might have been more; informal cricket, rounders, football and rugby games played by parents with their children; informal football played by scratch teams or by small groups of teenagers; informal sports as part of a Woodland Grove BBQ day; one to one sports coaching (by which a local boy became Gloucestershire CCC 2nd XI wicket keeper); outdoor sketching – in connection with Stoke Lodge Adult Learning Centre Art Classes; picking blackberries, mulberries and walnuts; Scouts, Guides and Brownies having outdoor meetings;walking to the Shirehampton Road shops across the field via Stoke Paddock Road; walking to stoke Bishop village shops across the field via Druid Hill; and walking to Stoke Lodge for adult learning classes.

151. B2 retired in 2001; prior to that he worked normal office hours. He himself is a dog walker. Prior to retirement he visited the land in the early morning and in the evenings; and at the weekend at all times. The pattern did not dramatically change upon retirement; although he had lost his dog in 2005, since then he had looked after 6 other dogs. He mainly used access point [6] – at the point nearest to access point [5]. In order to get to Sea Mill Harbour or Blaise Castle he would use access point [4]. In order to get to Stoke Bishop village or beyond he used access point [9]. It was rare to see nobody else on the land and there must have been 300 people on the land for the St Brendan's Junior Rugby Club competition, which to his recollection was on 13 March. The whole of the field was used, and mini pitches were created for the purpose. People had kept out of the way of the rugby players.

152. The land had been used by schools and by formal sports clubs. He was aware that the land had been used for school sports, and of school groups from Cotham or Fairfield Schools using it. On the Parry's Lane side of the field the land had been used for athletics but in recent times there had not been so much activity. He remembered young ladies from, he thought, Cotham High School using the athletics track. He had not seen shot putting, javelin or discuss throwing. He concurred with the proposition that school use had ended in 2014. He wasn't aware of Cotham School using the land for their Sports Day in June 2000 and June 2001. It was unthinkable that members of the public would interfere. People would put their dogs on a lead and would frequently stop to watch. Formal sports use did not prevent use of the whole of the land. There were wide tracts of land in between pitches, and he thought that there was more area that was not pitches than was. He accepted that the pitch itself was not available for use by members of the public when it was being used for formal sport. On a Sunday there would frequently in winter be a pair of football matches going on and on a Sunday morning

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Kitchen immediately to the west of access point [3] does not show it either. M3 remembered this building as a girl, but it was long gone.

lots of young boys would be coached on the south western part of the field. He had only seen one rugby game – by University students on a Wednesday afternoon, on a pitch east of the pavilion. He had seen some rugby fitness training sessions. The cricket pitches (the all weather pitch and the strips alongside) were used on Tuesday or Wednesday evenings; and there had been matches on a Sunday. These were proper matches i.e with players wearing whites.As regards formal sports, he accepted that there had to be a process whereby those using the pitches arranged hire of them.

153. The use of the land for formal sports did not prevent his enjoyment of the land. He did not know of anyone who had sought permission to use the land for informal recreation, nor anyone who had received such permission. He had never seen a notice or advertisement granting permission for informal recreation. He didn't know of anyone who was challenged or asked to leave.

154. He was aware of two Avon County Council signs, one by access point [3] and one near access point [7]. He was not aware of any other similar Avon County Council signs. He could not recall when these signs were put up and pointed out that, as he usually used access points [6] and [4], he would not expect to see them on a typical visit. He couldn't remember a conversation among the dog walkers when they These signs had no impact on his use of the land for informal recreation. He was aware of a sign at access point [12] but it had no impact on his use of the land. He thought that there was an Avon County Council sign in this position before there was a Bristol City council sign.

155. He would have walked on part of the land marked out as a pitch when formal sport was not being played on it. The presence of animal faeces on the land did not prevent access – B2 said that dog walkers consistently cleared up dog poo and sometimes picked up dog poo that others had not picked up. He had not seen a dog owner let their dog get out of control. There was no antipathy between the men mowing the grass or marking the lines. There had been some friction with dog owners but was not aware of any friction since the University had taken over. He had not experienced a degree of friction between dog walkers and maintenance staff and could not say when it had occur. Some people brought their cars to Stoke Lodge before walking their dogs. There were people who left litter but this tended to be after formal sporting activity. Residents were keen to preserve the cleanliness and beauty of the land and had taken black sacks over there and cleared up.

156. W2 lives at xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. He has lived there with his wife since September 1987. He has used the land for recreation since he moved to the area. He was a barrister who retired from court work in 2001 to become an arbitrator; he has since retired altogether. He used the land more after 2001 and more still after he had retired as an arbitrator. Since his retirement he has regularly walked round the land, sometimes as often as six times a week. He generally enters by the Cheyne Road entrance where there is a post in the middle of the entrance to assist pedestrian access and prevent vehicular access. There are no notices there. He had accessed the land by access points [3], [7] and [8].

157. W2's sight is impaired and he emphasised that the land is used by elderly people, some with disabilities. There are no steps.

158. W2 has seen frequent use of the land by both organised and ad hoc sporting groups. He wasn't able to tell who the organised clubs were. Although he had never interfered with a

formal match, he often walked on the pitch area. When his nephew was younger, he used to go with him to the land and have a football kickabout. He recently inquired of a group of about a dozen youngsters aged 10 to 14 who were playing football using one of the sets of goal pasts how often they used the land. Their leader said that they used it every weekend "rain or shine".

159. The land had been used by the St Brendan's Old Boys' Rugby Club for a mini rugby tournament, involving about 350 youngsters. People had gone to look at the tournament. There had been plenty of room to move around. The land had been used by the Scouts to teach their youngsters fieldcraft. He had seen the land used for kite flying, picknicking and for cricket. It was used by many dog walkers who invariably cleared up after their animals. He has picked blackberries on the land with his wife. He had not seen the athletics track used for athletics or running.

160. He had held arbitration seminars at Stoke Lodge. After the sessions it had been good to walk on to the land and get some fresh air. The students attending would have come from Bristol and the western counties – Cornwall through to Dorset. The students attending classes at Stoke Lodge came from all over Bristol. By way of example, the upholstery teacher lived in Redland.

161. He referred to the land around Stoke Lodge as Stoke Lodge Park. He was not aware of any formal documentation so referring to it.

162. He had seen men mowing the grass – he had seen them this week – they would have been aware of his presence on the land. He had waved to the groundsmen who had waved cheerfully back.

163. When he first moved to Stoke Bishop, the main gates that open on to Shirehampton Road were often left open; more recently they have been closed.

164. He was not aware of any Avon County Council signs on the land; perhaps because of his increasing visual impairment, he had not seen the Bristol City Council sign. He thought that in 1987 he would have been able to read the Avon County Council signs had he observed them.

165. W2 produced a copy of a "Domesday Map" prepared by John Garnons Williams in about 1986, but showing Gloucestershire at the time of the Domesday Book in 1086. North west of Bristol the settlement of "Estoche" may be seen.

166. Finally, W2 explained that in 2015 Bristol was European Green Capital and considered that this emphasised the importance of registration of the land as a town or village green.

167. O1 lives at xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. He used the land infrequently up until 2003. He then used it on a weekly basis, walking with his partner and her dog. Since 2007 he has used the site on a daily basis, primarily for dog walking. He retired in August 2010, and became the principal dog walker, visiting the land mostly in the afternoon – very rarely in the morning and sometimes in the evening.

168. He accessed the land through the main entrance to Stoke Lodge on Shirehampton Road [1] and [11] or, most frequently, via the opening near the mini-roundabout at the junction with

Parry's Lane [9]. Since the provision of the pedestrian gate to the new children's play area, he has used that entrance; before that provision was made, the gate was often locked. Now the access to the children's play area – which has been open for about eighteen months - is never locked.

169. He has seen many other dog walkers, who seemed to him the largest group of regular users – typically between 12 and 15 when he visited between 1 pm and 4 pm. He has seen little evidence of organised sports activities during the week; he accepted that this may have been because it took place in the morning and he visited the land in the afternoon. In contrast he was aware of the playing fields being used for junior football and rugby games. He could only recollect having seen the running track marked up on one occasion. When he saw ground staff on the land he avoided them. He didn't interrupt a formal game of football but did walk on a marked up pitch when it wasn't being used for formal sport. He had never asked permission to use the land for informal recreation nor knew of anyone who had asked for it. He had never dseen a notice or advertisement granting permission for informal recreation. When using the land he had never been challenged or asked to leave; he did not know of anyone who had been.

170. He was not aware of the Avon County Council signs, apart from seeing them referred to at the inquiry. He was aware of the Bristol City Council sign, although his route going by access point [11] does not take him past it. When O1 first saw the sign it was facing inwards to the field, and he thought that it applied to the grounds of the house. He had since seen the sign in all sorts of orientation. O1 produced a photograph of it taken on 12 March 2015 when it was facing towards the house. It has now moved by about 20 degrees. O1 accepted that the Bristol City Council sign went up in 2009. The children's playground opened in 2014. He didn't remember an Avon County Council sign where the Bristol City Council sign now was. If it had been there, there was no reason why he wouldn't have seen it.

171. H2 now lives at xxxxxxxxxxxxxxxxxxxxxxx but he first knew the area in 1953 when his family moved to xxxxxxxxxxxxxxxxxxxxxxx. He was then aged 13. He moved away in 1968 but he still came back to see his family. He had then used access point [4] but he couldn't remember details about it – it was just a gap.

172. He moved to xxxxxxxxxxxxx in Stoke Bishop in 1982 and to his present address in xxxx. As far as he was aware use by the public had been continuous since 1953.

173. He now used access points [9] and [4], the latter when he was returning from the Shirehampton road shops via the land. There were no signs at either of these two entry points. He considered that the gap at access point [9] had been left intentionally. He believed that there were Avon County Council signs at two other entrances he considered these obsolete. If there had been a sign on the beech tree on south western boundary of the site he would have been able to observe it when he was walking his dog, but he had not seen any sign there.

174. He had become aware of a Bristol City Council sign recently. He thought that it post dated the TVG application and related to the overflow car park at Stoke Lodge. It was in an area of the field that he did not go to. He had only seen the back of it.

175. Between 1982 and 2011 he sometimes used to jump over the wall between access points [9] and [10] but apart from that only used access points [9] and [4]. He thought that at access point [8] a gap had been left intentionally. He had no recollection of access point [9] ever being closed with wire. He believed that access points [9]and [10] were the same now as they were in 1982.

176. He was a dog walker and he observed a pattern of use – there would be people on the land between 8 am and 9 am; then perhaps it tailed off; in the afternoon there would be the heaviest use. He had counted 85 people on the land on a weekday afternoon. He was not aware of any dog walker being challenged or of friction between the groundsmen and dog owners. He had not heard of an incident when a dog got into the changing rooms.

177. He had seen the land used for the range of recreational activities identified in section 26 of his evidence questionnaire; the "rounders" he had observed was perhaps baseball. He had also seen the land used for formal sports. He had not interfered with games in progress. Formal sports use did not prevent him from using other parts of the land. He had never sought permission from anyone to use the land for informal recreation; he did not know anyone who had or who had received such a permission. He didn't know of anyone who had been challenged or asked to leave the land. The presence of animal faeces on the land was not a reason for not using the land.

178. He had seen Clifton High School and Cotham School using the land in the morning. They were not there at 9 pm and to his recollection they were there for about an hour, although he accepted that unless he had gone down twice on a particular morning he would not have been able to tell whether there had been one session or two sessions. He didn't recall them using three as opposed to 2 pitches and he did not recall seeing as many as 90 children. When he was walking the dog on the land when PE lessons were going on, he would keep well away. Other dog owners would do the same.

179. He almost certainly had seen the school sports days in 2000 and 2001 – he had a good view of the eastern part of the land from his house. He thought that there had been 5 or 6 sports days in the period 1990 – 2010, largely taking place in the afternoon. He had gone on to the land on occasions when sports days were on, with or without his dog. He didn't specifically remember to Cotham School Sports Day with about 500 people present. There had been a big difference in the size of the sports days – some were involved just pupils coming in coaches. The land was never closed off and it was only ever the eastern part of it that was used. He did not know who had lobbied for the dog litter bins (one near the West Dene entrance, the other on the land near access point [7]). They had been put in at different times, but post dated the TVG application. H2 said that he could not imagine why the dog bins were put in if the Council didn't want people to use the land.

180. A1 lives at xxxxxxxxxxxxxxxxxx. He moved there in July 2005. He and his wife were already familiar with the area as they had met while they were both students at xxxxxx University. A1 was a resident in xxxxxxx on xxxxxxxxxx for three years between 1973 and 1976. He was aware of that time of the playing fields at Stoke Lodge and believed that some students used them for informal games. When he moved back to Stoke Bishop in 2005 it was immediately obvious that that the land was used for informal recreation, walking the dog and more formal sporting activities.

181. In September 2005, he and his wife acquired a three month old puppy. Before doing so, he explored the local area to see where it might be possible to exercise it. He saw that people did take their dogs on to the land at Stoke Lodge and he assumed that he also would be able to do so. At that time he did see one of two Avon County Council signs – either the one near access point [3] or the one near access point [7], he cannot remember which. Having read the sign, his understanding was that the activity proscribed was any which caused or permitted nuisance or disturbance to others. He had no intention of allowing his dog to be a nuisance to anybody. The local community was already undertaking the activity which he wanted to undertake. In any event, the sign was in the name of Avon County Council, which had ceased to exist. He was not aware of the sign having any impact on the behaviour of anybody. Having acquired the dog, A1 did take him on to the land, sometimes once but often twice in a day. On average he would walk the dog on the land 5 – 7 times a week. He got to know many of the dog walkers and met some of his neighbours for the first time walking on the land. This continued until their dog died in November 2014. As regards walking his dog, he had walked him around the perimeter of the land but he had also walked him all over the place and he didn't always walk around the perimeter. Stoke Lodge was often part of a walk – A1 would walk through and would be on the perimeter of the field for part of the time. He had walked the dog in other places – the Downs, Combe Dingle, Blaise Castle, sometimes along the road – it all depended on the circumstances.

182. He and his family have used the land for other reasons than walking the dog. He has taken guests and visitors on walks which have taken in the land. When he had guests they might go and look at the trees. He had picked blackberries there, collected fir cones and also collected rubbish. He has taken friends with children to the children's playground. He has used the land at all times of day.

183. He had entered land by all the several entrances – by the mini-roundabout (access point [9]0 from Ebenezer Lane (access point [6]), through the Stoke Lodge entrance (access point [1]) and from Cheyne Road (access point[4]). His main access was at access point [9]

184. He has often seen groups of children, sometimes with a parent, practising kicking a football or rugby ball or practising cricket. On the lower area he has seen individuals practising golf. He has seen groups of teenagers and families sitting and chatting. He has seen people of all ages walking across the land between Parry's Lane and Shirehampton Road, or Cheyne Road. In addition to the wide range of activities referred to in Q26 of his evidence questionnaire, he had seen someone iding a motor bike on the land; and someone with a radio controlled car.

185. He has seen, and sometimes stopped to watch, formal games of cricket, rugby, football and also athletics. Schools generally used the land in the morning before noon. Sometimes it was just groups of children, occasions when several pitches were being used at once. He never interfered with a game in progress. The use of the land for formal sports did not prevent access to the totality of the land or prevent his enjoyment of the land.

186. He had observed the ground staff going about their work. They would have been aware of his presence on the land.

187. He had never been approached by anybody to say that he should not be on the land or that he should leave and had not heard of anyone else being so approached or asked to leave. He was not aware of any action to restrict access and paths and ways on to the land, other than the

gated entrance to the lodge, had never, to his knowledge, been closed, blocked or obstructed. He was not aware of anyone who had sought permission to use the land, although he assumed that those who used it for formal sports would have made appropriate arrangements. He never saw a notice or advertisement granting the public permission to use the land. The presence of animal faeces on the land was not a reason for using the land.

188. Mr Blohm asked A1 about his description of the land in his statement as Stoke Lodge Parkland. He thought that when he had been at University the land had been described as *the Playing Fields.* He accepted that it probably had not been described as Stoke Lodge Parkland until 2010 when the issue of public access had arisen. Accordingly Q7 in his evidence questionnaire was wrong – the land had been known as something other than Stoke Lodge Parkland. It had predominantly been known as Stoke Lodge. When he filled in the questionnaire he did not distinguish between Stoke Lodge and Stoke Lodge Parkland.

189. When he first saw the Bristol City Council sign, his recollection was that the back of the sign faced towards the Stoke Lodge building; he had not been entirely clear what were the grounds to which it was referring. Later it was turned round. Q 37 in his evidence questionnaire referred to the Bristol City Council sign[23].

190. Mr Ground asked A1 about the group that had made the application. He accepted that they were organised – they were a group that had coalesced out of a group of those who had used the land over many years. His impression however was that the land was not now used more than earlier because of the encouragement by the group of local people to use it. He thought that the use waxed and waned – for example he had used the land less since his dog had died in November 2010.

191. H3 lives at xxxxxxxxxxxxxxxxxxxxxxxxx. She moved to her present address in September 1978 together with their 2 year old son. They subsequently had had a daughter. Both their children attended Stoke Bishop Church of England School. Her daughter (who was aged 36 and who had left the school in 1991) had told her that at school they had played cricket on the land. They had walked there. She didn't know the frequency of this use.

192. Since 1978, she and her family have used the land for playing games with the children, children's parties, bird watching, flying kites, walking the dog and Brownie Sports Days. The Brownie Sports Day on the land would have been in the late 80s. She had seen others using the land for informal recreation – she would see up to a dozen at one time when she was walking her dog. Dog walkers walked their dogs in all different places. She had not seen the land used for organised games on a recognised pitch when she was using the land, but she had seen cricket and probably football when driving past in her car. She didn't think that it had been used that often by schools – she would have seen this if it had. She had seen school use and had seen coaches which she assumed had come from the schools using the land. She had seen them at access point [2] – they are not supposed to park there – causing traffic difficulties. She said that cricketers had used to use the land in summer a lot but she didn't think that they did anymore. Otherwise she was not aware of any decline in formal sports use.

[23] The question was *Has any attempt been made to prevent or discourage the use being made of the land … by local inhabitants?* A1's answer was *There is a sign adjacent to Stoke Lodge, not at the entrance I used. I had then been using SLP for more than 2 years and I took no notice of it.*

She used the site very early in the morning. She had seen ground staff cutting the grass, although not marking out pitches. They would have been aware of her presence. After 1994 her routine changed and her use of the land was occasional.

193. The main point of access which she had used during this time was access point [9], although she had used points [1] / [11] and [3] and [4]. Occasionally she had used points [5], [6] and [7]. She was aware of the Avon County Council signs near access points [3] and [7]. She was not aware of any similar signs anywhere else, and specifically did not see an Avon County Council sign The signs did not have any effect on public use. She had only seen the Bristol City Council sign since the installation of the children' playground.

194. The use of the land for formal sports had never denied her access to the land in its entirety and had not prevented her enjoyment of the land. She avoided walking on marked out pitches out of courtesy. She didn't know of anyone who had sought permission for informal recreation. She had never seen a notice or advertisement granting permission for informal recreation. She didn't know of anyone who was challenged or asked to leave the land. The presence of animal faeces on the land was not a reason to prevent her using the land. She had visited the land last Saturday and had walked from access point [7] to the tree sculpture and to access point [9] and did not see any animal faeces; she had been specifically looking. It wasn't a problem where she walked.

195. She was a member of the xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

196. P2 lives at xxxxxxxxxxxxxxxxxxxxxxx. Her family moved to xxxxxxxxxxxxxxxx in February 1971. P2 was then aged 14 and she had two brothers and a sister who were then aged 20, 17 and 5. In 1977, the family moved to xxxxxxxxxxxxxxxxxxx. Her mother and brother continued to live there (after the death of her father and the older children leaving home) until June 1987.

197. P2 moved away from Stoke Bishop when she was 23 but returned with her family to her present address in xxxx. She then had three children who were aged 8, 6 and newborn.

198. As regards the family's use use of the land in the period 1971 – 1987, the position was that the land was immediately opposite their house, on the other side of Shirehampton Road. They would cross the road and enter the land by climbing over the low wall. Her parents would have used access points [9] and [8] (she had checked with her mother recently). P2 remembers playing Frisbee and rounders on the land too many times to number, both in summer and winter. She used to walk their dog there on many occasions. Her sister and elder brother have similar memories, and her brother remembers the land as a place to have a cigarette without his parents seeing. Her youngest brother remembers using the land for playing football, cricket and rugby and, later on, for running and training and enjoying the long jump. He remembered football birthday parties on the land.

199. He remembered the football nets going up early one Saturday morning in about 1976 -1977 and discovering members of Liverpool Football Club training on the site in preparation for a

match that afternoon with Bristol City Football Club. The players were very friendly and he got several autographs[24].

200. P2 says that all the members of her family remember being asked at one time or other to leave the then Clifton High School playing field site, the then Imperial Sports Ground site and the Combe Dingle Sports Complex. There was always free and open access to the site and P2 believed that she was entitled to use it – just like the Downs.

201. Since returning to Stoke Bishop her children have used the land in very much the same way as she and her brothers and sister did at an earlier time, using it for playing cricket and football. She remembers her son as a teenager being a member Her youngest son walks the dog there every weekend with his friends, and she uses it about once a week. She usually uses access point [9], but also [1]/[11]. She had used acces point [3] (walking to Westbury-on-Trym to see her daughter) and access point [4] (walking to Sea Mills Post Office). She has seen other members of the public using the land for informal recreation. The land was not used solely by dog walkers. She saw more people at the weekend than on weekdays, but she would usually see 8 – 10 people. She had observed the ground staff moving the grass and putting down white lines. They would be aware of her presence. The land was also used for formal sport. When formal sport was underway, she did not interfere with the game. Use of the land for formal sport didn't prevent her from using parts of the land which were not being so used. She had seen people walking on the pitches when there were no formal sports on them. She didn't know anyone who had sought permission for informal recreation. She did not know of anyone who was challenged or asked to leave the land. She recognised the Avon County Council signs near access points [3] and [7]. She was not aware of any similar signs on the land. She recognised the Bristol City Council sign near access point [12]. Although she was aware of them before, she first read the signs a few weeks ago – it was quite funny seeing a sign that said *No dogs* and a field full of dog walkers. Faeces on the land had not deterred her use – she considered it a very clean parkland.

202. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, so she was aware of what went on there. Every day there was a pre-school children's group from 8 am to 1.15 pm. On Monday the Hall was used for the Ladies' Choir, on Tuesday the Ladies Badminton, on Wednesday Pilates, on Thursday Social Bridge and on Friday Pilates. Upstairs there was an Art Group on Thursday pm and Yoga on Wednesday afternoon and evening. On Monday there was a Bridge group, on Tuesday dog training and on Wednesday a dance group. A dancing teacher fills in the gaps with dance classes. There were occasional bookings at the weekends.

203. The village hall, which is on the corner of Old Sneed Road and Stoke Hill, was built in 1885. It was owned and run by charitable trust – the Stoke Bishop Community Association. Those who attend activities do not just come from Stoke Bishop and may come from quite a distance – for example, one person who comes to the Bridge Group comes from Portishead. She thought that some of the people attending the dance classes may come from Sea Mills.

Written evidence

[24] Documentary evidence subsequently produced by showed that this event had occurred at Combe Dingle.

204. The application was supported by 54 statements and/or questionnaires. Some of those making statements and/or giving questionnaires gave oral evidence to the inquiry; and of these making statements and/or giving questionnaires, 27 (ie exactly half) referred to the existence of signs on the land. In 2012 the Applicant also submitted a further 81 written statements; and then, more recently, some 58 additional statements in the form of e mails (all dating from 2016). These written statements are congruent with the oral evidence of user that I heard and go to support it, supplying "chapter and verse" so to speak of the oral evidence that I heard as to use by others which those who gave oral evidence had observed. I do of course recognise that this written evidence (and all the written evidence) was not subject to cross examination and is intrinsically less weighty than the oral evidence which was so subject.

205. Mr Mayer submitted four statements relating to specific matters.

206. S3 prepared for the benefit of the inquiry *A Brief History of Stoke Bishop.*

207. Stoke Bishop was originally a Saxon settlement, established around a spring. This can apparently still be seen trickling out, hidden in the garden of what was once the old school house. Nearby was Westbury-on-Trym, where there was a monastery. In 824 the Bishop of Worcester took control of the monastery and the land appertaining to it, which included Stoke, which thus became Stoke Bishop. Stoke (Bishop) is mentioned in the Domesday Book as Estoch.

208. In the Middle Ages Stoke bishop languished, while Westbury-on-Trym grew in importance, its Vicar in 1444 himself becoming the Bishop of Worcester. He may have set aside land in Stoke Bishop as a deer park. This is the area known as Sneyd Park (*sneed* meaning *set apart* in middle English).

209. On the dissolution of the monasteries, the land around Wetbury-on-Trym was broken up into a number of large estates, interspersed with farms. There was Stoke House on Stoke Hill, built by a Bristol magnate, Sir Robert Cann; Sneed House (encompassing Sneyd Park), the home of Joseph Jackson, a London merchant, who made his fortune in Bristol; and Kingsweston House, which Sir John Vanburgh designed and built for the Southwell family. Between the eighteenth and the middle of the nineteenth century, these estates were themselves broken up. Stoke Lodge was built in 1834 on land bought from the Kingweston Estate. The biggest change came following the death of Mary Jackson, the last of the Jackson family, who died without direct heir in 1811. The distant relatives who succeeded to the estate sold it off for the high class suburban development of Sneyd Park. Other development in Stoke Bishop followed. In 1860, Stoke Bishop became a separate parish (it had previously been part of the parish of Westbury-on-Trym) and the parish church of St Mary Magdalene, Stoke Bishop was consecrated. It was built on Mariner's Drive, Sneyd Park. S3 says that the boundaries of the new parish *have defined Stoke Bishop ever since.*

210. (I have been supplied with a map showing the boundaries of the ecclesiastical parish. To the NW, SW and SE these are geographical features: the River Trym, the River Avon and Durdham Down. To the NE the boundary is formed by Parry's Lane, save that where Parry's Lane (if you are travelling west) dog legs to the south, the parish boundary follows the line of Ebenezer Lane. This means the land the subject of the town or village green application is on the northern edge of the parish. More specifically, the northern section of Bell Barn Road,

Woodland Grove, Coombe Lane and West and South Dene are not within the ecclesiastical parish.)

211. In the early years of the twentieth century there was more development, but Stoke Bishop retained its rural character, because there were still big houses surrounded by large grounds: the Fry family at Stoke Lodge, the Wills family at Downside, Louis Nott at the Holmes and Sir George White at Old Sneed Park House. The population in 1911 was 1300.

212. Many joined up when the First World War broke out in 1914. S3 points out that the War Memorial records three sets of three brothers who were killed.

213. (I have seen the War Memorial, which stands at what may be called the eastern entrance of the parish from Bristol, travelling west along the Stoke Road).

214. After the war there was much development and some of the big houses were given over to other uses. During the war, American troops were billeted in Stoke Lodge while General Omar Bradley and his staff lived at the Holmes, planning the D Day assault on the Normandy beaches.

215. After the war, the big houses that survived were all taken over by institutions: Stoke House became Trinity Theological College, Downside became Nazareth House a Roman Catholic Orphanage, Holmes was taken over by Bristol University and Stoke Lodge by Bristol City Council. Other large houses were demolished and flats built in their place.

216. P3 was brought up at xxxxxxxxxxxxxxxxxxxx, leaving home aged xx in 1986.

217. As a child used the land for football and for riding his bike. The majority of the time he would use access point [3] although he was aware of other accesses. He is now aware of the Avon County Council sign at [3] but has no recollection of it as a child. He believes it to have been erected soon after he left home. There was a sprung gate at access point [3] that had no catch and which could be pushed open to enter the field without dismounting his bike. The gate was a small pedestrian gate about 1m wide and not very high. It was of tubular metal outline with criss-cross metal mesh as the actual barrier. He was sure that this gate was never locked nor this entrance unavailable to a bike in all the years that I used it. The gate has been absent for many years.

218. P4 lived at xxxxxxxx from 1972 until 1988 thereafter returning in the university holidays until she started work in 1993. She did not recollect when the gate at access point [3] disappeared but it wasn't in place when she left home in 1988.

219. As a child until the age of 15 (1985) she played with her friends on bikes on the land. They referred to it as the Field. They also used it as a short cut to Shirehampton Road. In 1984 a pony that she had been looking after at xxxxxxxxxxx escaped on to the land. It would not have been able to get there if the gate had been locked. In 1984, she and her brother had walked their neighbour's dog on the land when he was ill.

220. G1 has lived at xxxxxxxxxxxxxxxxxxx since 1988. Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx.

221. Her back garden gate opens on to Ebenezer Lane and it is easy for her to access the land. She observed that its use was not comparable to the use by Fairfield School. For a period of 2 or 3 years she monitored the use of the land by Cotham School, going on to the land every day in term time. They would use the land Monday to Thursday in the morning, more in the winter and autum terms. They did not always come.

222. There would be two groups, the first group using the land between 9.30 am and 10.30 am and the second between 11.30 am and 12.30 pm. There would be about 20 – 23 boys, who kicked a football near the pavilion. Girls used the Combe Dingle Sports complex, where there was a hockey pitch. They used the land for an occasional game of rounders.

223. In June 2010 the School was averaging less than three hours a week. She produced some of her monitoring records which she had just found in an old cupboard[25]. These are not complete nor altogether easy to interpret, but in broad terms appeared to bear out her comments.

224. Between 1989 and 2013 she organised "field events" for children an adults as part of a midsummer party – running races, egg and sppon sack races, tug of war and rounders. She had made programmes for all of them and produced that for Woodland Grove's Golden Jubilee Celebrations in 2002, when there were events at 23 Woodland Grove, races on the land between 2.30 pm and 4 pm and then a street party.

Evidence on behalf of Bristol City Council as landowner

Oral evidence

225. C1 is employed by Bristol City Council as an xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxx. It is she who has searched the records of the Council which has been produced to the inquiry and which informs this Report. She has researched the minutes of Committee meetings of both Avon County Council and Bristol City Council; historic property files; conveyancing documents; record cards; and historic plans.

226. Among the records that C1 has found is correspondence relating to the erection of the Bristol City Council sign in 2009.

227. C1 visited the land on 10 October 2011 with a colleague in the Parks Department called H4. She parked in the car park to the left of Stoke Lodge as you enter by the main gates. There was a sign nearby which she identified as the Bristol City Council sign. The front of the sign faced the car park and house.

228. H4 then left and C1 walked around the playing fields in a clockwise direction. She noticed that some of the houses, whose gardens backed on to the playing fields, had gates which allowed them to take direct access on to the playing fields. Along the north western boundary to the playing field, she noticed a gap in the hedge with a wooden post in the middle of it, the land on the other side being the cul-de-sac known as Cheyne Road.

[25] Her statement is dated 28 June 2016, shortly before the end of the inquiry.

229. She continued along the northern boundary and observed an Avon County Council sign situated near to the pavilion. Continuing her walk, at the north eastern corner of the playing fields where the gas governor is located, there was another Avon County Council sign.

230. H5 is employed by Bristol City Council as an xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxx.

231. H5 supervises xxxxxxxxxxxxxxxxxxxxx on all education sites within the City and advises the Council on all grounds maintenance issues. He first joined the Council in 1965 and worked as an xxxxxxxxxxxxxxx between then and 1970. Between 1970 and 1972 he was employed as a groundsman at Lawrence Weston Playing Fields. Between 1972 and 1981 he worked in private practice as a landscape operative for a landscape consultancy company. In 1981 he joined Avon County Council as a district supervisor for school grounds in the northern area of Bristol. His area included Stoke Lodge, and his responsibilities included arboricultural issues. In 1995 his responsibilities changed and he became solely responsible for arboricultural issues across the education grounds. In 1996 the responsibilities of Avon County Council as regards education were transferred to Bristol City Council. He remained in his arboricultural role until 2012. However he had no direct involvement with the site after the University took over management of it in about 2004.

232. H5's first involvement with the paying fields was approximately in 1981, when he joined Avon County Council xxxxxxxxxxxxxxxxx. He used to visit the playing fields at least weekly as he was the manager of the on site team and had to collect their time sheets. At that time there was no longer a full time groundsman living on site but there was still a full time groundsman and another part time groundsman, their kit and machinery being kept in the pavilion. The system changed in the late 1980s to a system of "mobile" groundsmen.

233. He recalled the erection of the Avon County Council signage on the playing fields. This was approximately in 1985/6. The signs were put up on all Avon County education playing field sites, at what were considered to be the main entrances into playing fields which the public could access. There were two signs which are still present on the land – one near access point [3] and one near access point [7]. There were four other signs which were put up at this time but which have since been removed. They used the same wording as the signs which are still present. H5 said that the wording of the signs made it clear not to trespass on this playing field and that requests for authorised use should be made to the Director of Education. One of the signs that has now been removed was fixed to a large beech tree along the Ebenezer Way footpath. This was the standard Avon County Council sign. The tree is still in situ and H5 recalled that this sign caused some concern to a resident of a house in Woodland Grove as it was apparently very prominent in view from his kitchen window. H5 responded to his complaint by having the sign moved to a lower position on the tree. Another of the signs was erected to the left of the main entrance to Stoke Lodge (in a position where the Bristol City Council sign is today). All the Avon County Council signs were erected at the same time in the mid to late 80s. Finally there were two signs either side of the gate on Shirehampton Road giving access to the Adult Education Centre. He thought that one on the main entrance gate was still there and one was lost when one of the gates was destroyed when it was hit by a car. They responded to a problem that was experienced all over the County of Avon of trespassers on school land. He thought that they had disappeared after 2002.

234. Answering questions from Mr Mayer, H5 explained that he recalled the fixing of the Avon County Council sign to the beech tree, which had happened "much to his displeasure". It had been fixed with nails – a minimum of two nails, top and bottom – facing into the playing field. It had originally been fixed higher up and facing towards the pavilion. By lowering it and altering its orientation into the field they had addressed the concern of the resident in Woodland Grove. He couldn't say how it had ended up as shown in F3 photograph dating from June 2003. Generally in Avon signs were put up on posts, or on chain link fences. He couldn't think of any other instance of a tree being used for an Avon County Council sign.

235. The Bristol City Council sign replaced an Avon County Council sign. Asked by Mr Mayer as to why it had been changed, he said that he thought that it was to put the stamp of ownership of Bristol City Council on the land[26]. However, although he did see it after it was put in, he couldn't really comment on the sign since he was not involved with its erection. He couldn't say why only one of the Avon County Council signs was changed. As regards the Bristol City Council sign, this faced on to the car park area and not into the playing field. His recollection was that it had always done so. He hadn't changed its orientation. Because of its orientation, he did not think that any reasonable person could consider that it applied to the Adult Learning Centre. Moreover there was no sign at the entrance to the centre where you would expect such a sign if was intended to apply to the grounds of the Centre. He said that the orientation of the sign had not changed since it had been erected.

236. H5 said that during his involvement with the playing fields there had been a general awareness from members of the public that their use had been contentious. He described the use of the site by members of the public without permission as an on going problem to the Council. He recalled that the public had been challenged regarding the use of the playing fields by dogs and were often subject to abuse. On one occasion a member of his staff called S4 was assaulted by a lady walking a dog when challenged to pick up dog faeces. He thought that this was in the late 80s or early 90s – S4 was an Avon employee. As a result of this and similar instances, staff were reluctant to challenge members of the public who are using the playing fields without permission from the Council. After this incident, members of staff were advised not to confront members of the public as they might put themselves at risk. Friction nonetheless continued between employees and members of the public. H5 described this as "verbal fencing" – sometimes it was friendly sometimes not. It was not necessarily unpleasant. Some would take advice, others would object to being told what to do. Staff were certainly aware that the land was used by the public for informal recreation. Reasonable use was never challenged; a challenge only issued when they were doing something anti-social.

237. He had a very clear recollection of there being at least four files kept in the offices of the Parks Department which contained a huge amount of historical and more recent information. They were all destroyed as a result of an office move in mid-2000. H5 had access to these files and was familiar with their contents. He was definitely able to state that they contained a large number of letters to and from the Council and members of the public concerning the

[26] In the papers supplied to the inquiry is a copy of an e mail dated 15 August 2012 from H4 to P5 and C1 in which he says *The sign was put up to stamp our ownership. Funded from money made available by Mick to standardise property transferred to CYPS.* H4 said in his evidence that he didn't think that this referred to the sign at Stoke Lodge but it does appear to do so.

contentious use of the site. In particular there were letters from members of the public complaining to the Council that they had been told by Council staff not to use the site. The files would also have contained evidence as to when repairs were carried out to the boundary of the site.

238. H5 recalled from many years back that the boundary on the Ebenezer Lane side of the site, which makes up just under half of the perimeter of the site, was not directly accessible to members of the public. This part of the boundary consisted of a stone wall from the Parry's Lane end up to the cottages in West Dene. There was always a pedestrian entrance on this side of the site but there is now a sign at that entrance. Prior to this he recalled that this access point was gated with a standard council gate and locked so that, when it was locked, the general public could not have accessed the site from this point. However this was the entrance from which school pupils accessed the site and although the gate would have been locked at night, it probably would not have been locked during the day. He remembered that the coaches bringing children to the site used to park in West Dene. There was one coach or minibus, perhaps more. Once the on site presence on the site went at the end of the 80s there wouldn't have been anyone to lock and unlock the gate. In all probability it was left open after this time. Until about 2005, from the cottages along the remainder of the perimeter on the Ebenezer Lane side of the site, there used to be a boundary consisting of hedges, trees and whatever remained of the old boundary wall. Over the years the boundary was persistently breached by members of the public trying to access the site to the extent that by about 2005 (he could not be exact as to dates) a number of gaps had appeared enabling the public to access the site without difficulty.

239. Access point [4] was a major area of contention as attempts were regularly made to block off this access point to members of the public. He recalled that there was a problem with motorbikes accessing the site via this point and at one time (again he cannot recall the exact dates) Council staff placed a tree trunk across this access point only to find that someone had put a chainsaw to it. He had seen the tree trunk but wasn't involved in moving it. The destroyed files would have contained letters to the Council from members of the public complaining about the Council's actions in blocking up this gap. Subsequently a wooden bollard was put in at the request of local residents. He put this in the early 90s, still in the days of Avon County Council, just about. The contentious use of this access point was a problem up until 2000.

240. The lost files would also have contained a number of complaints from the clubs, schools and other organisations using the land. The Council constantly received complaints right up until when the University took over regarding dog walkers failing to clear up after their dogs. H5 said that *Safeguarding of children and preserving the site as an important educational facility was one of the main reasons why use of the site by members of the public was such a concern to the Council.*

241. In answer to questions from me, H5 explained that in 1981 the north eastern corner of the site, behind the gates that are access point [2] there was a car park and working yard. This was fenced off from the main site and formed a little enclave. There were a second set of gates into the into the site in line with the first set, and also some gates further down the fencing of the enclave. The gates would not have been kept open but locked, so there would not have been public access at this point. In 1981 at access point [7] there were only the remains of a

wall, so there would have been access at this point, albeit over the remains of a wall. However access would have been into the car park/service yard area. As regards access point [6], he thought that in 1981 the boundary wall had largely collapsed; the remnants were standing but there was little left. Accordingly it would have been reasonably easy to access the field from these points. He couldn't remember if there was a gap at access point [5] at this time; access point [4] was open. At access point [12] it was possible to move freely on to the playing fields. At access point [1] there were gates to the Adult Education Centre. They were locked at night and unlocked during the day. He couldn't recollect people using access point [10] in 1981 and didn't believe that there was a gap at access point [9]. He thought that the use of this had occurred after new development had occurred on the other side of the road. To his recollection, there were not in 1981 any signs saying anything about access by the public. As access point [8] he thought that these gates would have been open during the day, but didn't think that there would have been access on to the land from access point [7] via access point [8].

242. H4 was an employee of Bristol City Council from about 1985 until his retirement in 2014. Xx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxx. Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxx. Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxx.

243. H4 was very familiar with the land. This was not just because of his employment with Bristol City Council. He was born in xxxxx. As a young boy (from about the age of 11) he used to play on the playing fields. This was because he was friends with the son of caretaker who lived in a cottage adjoining the land and which had access on to it; otherwise he would not have dared to have gone on to the land. He was aware at that time that members of the public were not allowed to use the site and he remembered the caretaker constantly having to "shoo" people off the site and asking them to leave as they were trespassing. The caretaker or groundsman used to live on the site in those days, and H4 recalls that he had difficulty in controlling members of the public. H4 also stated, although he could not recall dates, that some or all the site was fenced off but the fencing was constantly vandalised. Over the years there have been numerous incidents at the site including vandalism, graffiti, damage to fencing and, on one occasion, an arson attack on the pavilion.

244. H4 cannot recall the exact dates but it would have been around late 2008/early 2009 that he was given the responsibility of commissioning new signs to be displayed at the entrance to the site. He knew that there were other signs around the site, but he specifically recalls arranging for a new sign to be displayed in the grounds of the adult learning centre. This was a decision of his line manager. This was because this was considered to be the main entrance to the site accessed by members of the public. Its intended purpose was to advise members of the public that they would need to get permission from the Council if they wanted to use it: he said "It is therefore true to say that this sign was put up because the Council did not want members of the public to use the site". He recalled that trespassing was becoming a real concern to CYPS and "the main reason for the new signage was to safeguard the children who were using the site with permission due to a number of issues such as people walking their dogs on the site and failing to clear up after them, acts of vandalism, graffiti and general trespassing". The office had been inundated with calls about dog muck in the grounds and similar. The land was an important educational facility that was regularly used by children, including a school and a

football club. It was also considered that as Avon County Council had been abolished in 1996, the existing signs were out of date and needed to be replaced. This was following advice received from a barrister following the "Packers" TVG case. Attached to an e mail dated 26 March 2009 would have been details of the proposal for the Bristol City Council sign and the sign would have been produced after that time. The wording was word for word what had been suggested by the barrister. H4 asked the sign company to replace all the signs on the site; they replaced only one. The reason why all the signs were not replaced was because the sign company did not do what he asked them to do. He saw the old sign before it was replaced and the new sign afterwards; his instruction was to put the new sign on the old posts to save costs and he thought that this is what had happened.

245. He was not aware that Bristol City Council had agreed open access to the site in September 2010.

246. At the same time as there were discussions within CYPS about replacing the signs, consideration was also given to fencing off the site. This was put to one side because of funding and the previous problems of fencing being vandalised. Because of the Council's need to make significant savings, fencing was not really a viable option.

Written Evidence

247. H6 is the xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

248. He said that the University had used the land for more than 30 years for both its inter-university competition and intramural competitions. The use had been on Wednesday afternoons and weekends. During the period that the land was owned by Bristol City Council, the use of the pitches would be negotiated by the University with the Council. In the period 1990 – 2000/1, the University worked with the Council and Fairfield School to ensure that their respective uses of the land were compatible. This was relatively easy to achieve given that Fairfield School would use the land between Monday and Friday between 9 am and 12 noon and 2 pm to 3.30 pm. Cotham School had the same pattern of use after 2001. Cotham School's use was compatible with the University's use. The University's Management and Maintenance Agreement with Cotham School sought to maximise the space for University, School and Club use. The University had worked with the local clubs to avoid clashes at the weekends. The pattern of use had not changed in the relevant period. He produced a document showing use by the Shire Colts Football Club and a letter from the Bristol Ladies Union FC which uses the land for mid-week training and have been doing so since 2008.

249. S5 has been Business Manager of Cotham School since 2005. He did not have records going back ten years to the time when the School started using the land but produced records of the bookings between 2010 and 2013. All lessons were timetabled for the first two periods of the school day. This had been the arrangement since before he started working for the school[27].

250. He produced a letter from B3, who was the Chairman of the Shire Colts Junior Football Club. B3 explained that the Club provides competitive and non-competitive football for children aged 6 to 18 and has used the land since the 1980s. The Cub used the land every weekend

[27] He was writing before the use of the land by the school had ceased.

(both Saturdays and Sundays) during the season for matches and throughout the year for coaching, plus mid-week summer training leading into the season. This had been the pattern for the last 30 years, increasing with the success of the Cub. The Shire Colts had a membership of 200 local families and the Bristol Ladies Union FC (which incorporated their ladies' section) had 150 girls and women playing for it.

Evidence on behalf of Cotham School

Oral Evidence

251. B4 is the xxxxxxxxxxxxxxxxxxxxxxxxx, having been appointed in January 2015. It is rated by Ofsted as *Oustanding.*

252. B4 gave me some background information about the school.

253. It had an eight form entry and 1480 students. In respect of ethnic mix, about 45% of its pupils were categorised as "black minority ethnic" , and 30% were of Somali origin. It was no longer a predominantly white, middle class school. 40% of Year 7 pupils were entitled to free school meals, a proportion that was rising.

254. Some pupils had what are styled "complex family arrangements" for example where a parent was in prison or subject to a restraining order. There were five such cases at the moment. Photographs of the parents concerned were known to Reception and they were prevented from accessing the School. B4 was concerned that if the school used the Stoke Bishop Playing Field without it being secured by fencing, there could be attempted access by parents such as this on the Playing Fields.

255. There were three entry points at the school site, all of which were secure, entry being by means of entry card. Pupils entered by a single entry point which was unlocked at the appropriate time, subject to supervised access and then locked again. Pupils were locked in during their time on the premises. There was also a Visitors' Entrance and a Delivery Entrance. Visitors needed to be buzzed through. They would then be signed in, given a lanyard and be allowed supervised access. All classrooms had security. There were similar security provisions as regards the Delivery Entrance. All the site was covered by CCTV.

256. The School had a duty under the Education (Independent School Standards) Regulations 2014 both to keep its pupils safe and to provide for their welfare by providing for suitable outdoor space for physical education in accordance with the curriculum.

257. By reference to the first requirement, the School had a *Child Protection and Safeguarding Policy.* It was reviewed every year and every year the requirements became more stringent. The latest version dated from October 2015, although B4 also produced the version dating from July 2010. This reflected how attitudes to school security had changed over the years, starting with the Dunblane Primary School shootings in 1996. There had been high profile incidents in Bristol that had highlighted the concern, and Ofsted had shown increasing interest in the issue.

258. In B4's view, taking pupils to an unfenced and unsecured site was not consistent with this policy and she agreed both with the Risk Assessment that had been carried out in the time of her predecessor (see below). She explained that she wanted to make the Playing Fields a safe

a secure environment – they were in effect outdoor classrooms. The need was for fencing of some sort; the details of which had not been worked out.

259. As regards informal recreational use by the community, the School would try to allow recreation by other members of the community, although this was not something that had been worked out in great detail; there would need to be discussion with community partners. She had talked to the Newmarket Academy where something had been put in place to allow this. Here there were 8 gates to a field which was locked during the school day. She was confident that the School would be able to come to some arrangement with the community.

260. As regards the second requirement. in February 2013, Ofsted published *Beyond 2012 – outstanding physical education for all*[28]. It notes that in the best secondary schools core PE of two hours each week was viewed by senior leaders as a basic entitlement for all pupils. This is re-iterated at p54 and at p41 is the observation that *Significantly, in schools where the achievement of pupils in PE is outstanding, all of them provided at least two hours of core PE each week.*

261. There is very restricted space available on the main school site at Cotham Lawn Road. Accordingly in order to provide pupils at the school with two hours of PE each week, it is necessary to provide lessons off site. This view was corroborated by a calculation done by reference to *Area guidelines for mainstream schools: Building Bulletin 103* (June 2014) produced by the Department for Education. This indicates that the outdoor space requirements for new schools, school refurbishment projects or conversion projects[29]. Including the land, the School would just meet the indicated requirement; without it it fell far short.

262. Provision used to be made by using the playing fields at Stoke Lodge on four mornings a week. This continued until April 2014, at which time the School Governors took the decision to cease to use the playing fields in the light of a risk assessment undertaken by S5 (the school's Business Manager) and A2 (the school's Facilities Manager). This was, in the light of the open access to the site, because of issues as regards

- uncontrolled dogs
- dog excrement on pitches
- potential risk of harm to students and staff from uninvited members of the public; and
- risk of students absconding.

263. Alternative provision has been made by the use of the Combe Dingle Sports Complex. However this did not meet the entirety of the school's needs and is very expensive (£25,000

[28] The title is explained by the fact that the previous OFSTED guidance had been entitled *Working towards 2012 and beyond.* 2012 was a significant date as being the year of the Olympic Games in London.

[29] I observe that although BB 103 represents guidelines for new schools and similar, evidently it may be relevant for assessing the situation at existing ones. I note also that the introduction to the text states these guidelines will not necessarily have to met in every case and should always be flexibly applied in the light of particular circumstances.

per year). Moreover, the school was still having to pay £20,000 per year for the maintenance of the Stoke Lodge Playing Fields, even though it no longer used them.

264. B4 was asked by Mr Mayer about the facilities at Combe Dingle that were currently used for PE. She considered that these were compliant with the School's Child Protection and Safeguarding Policy, even though she accepted that a lanyard was not required by visitors and the gate to the complex was open and not locked during the day. She considered that the School took reasonable steps to safeguard children undertaking PE. They were fully supervised and managed as she had explained

265. As regards the requirement to provide PE lessons, B4 accepted that timetabling was at the discretion of the School. Nonetheless it had to provide a broad and balanced curriculum. This was an inner City school which had decided to offer 2 hours of PE. If it did not do so, she considered it would not be delivering a broad and balanced curriculum.

266. B4 accepted that there were occasions when pupils went out of school for extra curricular activities. A risk assessment had to be carried out. There generally had to be a teacher:pupil ratio of 1:15 (1:10 in respect of smaller children) and it was also possible to use DBS cleared parents to assist. There would be cost implications if this increased level of supervision were to be used in order to provide for PE on the application site. The level in respect of ordinary PE lessons was 1:30. B4 considered that the School could not afford to make use of the Playing Fields by way of an increased teacher:pupil ratio. But even putting aside the cost, she considered fencing to be the only solution. She was not aware of views expressed by Bristol City Council before she was in post as to the appropriateness of fencing off the site or in relation to the possibility of shared access between the School and the community.

267. She said that teaching a schools games lesson was not comparable to running a junior football club. She observed that a junior sports club will normally have multiple adults (paid and volunteers) who are DBS check and will be able to help. That help may well include coaching, supervision and clearing litter and dog excrement from the pitch. By contrast, a school class of 30 will be supervised by a single teacher. She did not consider it reasonable to expect a single teacher to do all these things; in particular, to clear the field of dog excrement. Moreover with a single teacher there would still be risks arising from the dogs themselves and free access and egress from the site.

268. She made the point that the school was fully insured as regards its existing arrangements so that, by extension, their insurer was happy.

269. As regards the arrangements at the Combe Dingle Sports Complex, she was satisfied that they provided a well-maintained environment for the School's students to take part in supervised sporting activity without disruption. The whole site was fenced to deter unauthorised access and pitches were free of dogs and the resulting problem of dog excrement. Students could take part in sports in a safe and clean environment. On arriving at Combe Dingle, Cotham School's coaches have dedicated parking spaces and the children are monitored as they cross the driveway at a crossing point with "School children: Slow" traffic sign on the wall. All coaches and other vehicles arriving can be seen from the Coombe Dingle reception (which is

always staffed) as well as from the Grounds Managers's office[30]. Combe Dingle staff monitor who is on the site. On arrival, Cotham School staff report to reception for the fact that they are on the site to be recorded before use is made of the facilities. The grounds are privately owned and not open to free public access. Members of the public or the community must book facilities in advance if they wish to rent them. Match spectators may occasionally be present during the School's use of the facilities, but access to the facilities is still tightly monitored to ensure the security of the site and its users is not compromised. University Security officers check the facilities throughout the day and the area around Combe Dingle is also patrolled by a local police patrol car. B4 is clear that the Combe Dingle Sports Complex provides a significantly safer environment than Stoke Lodge in which to teach the School's curriculum.

270. Asked by Mr Mayer what the School would do if the village green application were granted, she said that the school would be put in an incredibly difficult position given the cost of Combe Dingle.

271. F1 is xxxxxxxxxxxxxxxxxxxxxxx and in this capacity supports the objection made by Cotham School to the registration of the land as a town or village green.

272. She xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. She is xxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. Cotham School is an Academy which is both a Charity and a Company registered at Companies House. As a governor she is essentially a director of the company. She is concerned that the school should be able to provide for the total needs of pupils in providing a mixed and balanced curriculum including safe and secure sport facilities.

273. To the knowledge of F1 the land has provided off site provision for PE and sports since 2002, and the school has maintained the playing fields since that time. In 2011, the School entered a 125 lease with Bristol City Council on the basis of the land being used as a school playing field.

274. In her role as xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, in 2014 it was she asked that a health and safety assessment be carried out in respect of the use of the playing fields (which led to the decision of the Governors to stop using them for the provision of PE and sports). Having read the statement of B4, she agreed that open public access to the land would conflict with the school's duties towards its employees and students.

275. F1 worked for nearly 30 years xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxx. Her understanding was that the land was vested with the education department of Avon County Council until 1996 and thereafter by Bristol City Council as education playing fields; and that policy for the land was as playing fields.

276. On behalf of the School she has taken an interest in understanding the use of the land and the opportunity it represents and accordingly has visited the land on several occasions. On several occasions she has taken a series of photographs.

[30] I observed the arrival of a bus from the school on my accompanied site visit on 14 July 2016, which took in a visit to the Combe Dingle Sports complex.

277. She visited the land at around 9 am on 18 June 2007 and took several photographs. These included a photograph of a sign which was alongside the boundary fence with Stoke Lodge House. F1 produced a copy of this photograph, which was of an Avon County Council. This was the same size, construction and layout as the two Avon County Council signs which remain on the land. It was in a broadly similar position as the new Bristol City Council sign, of which F1 produced a photograph which she had taken on 3 April 2016.

278. F1 had seen the land used by sports clubs and by people for walking their dog. She hadn't seen it used for other informal recreation. She had visited the site on many occasions and during the early morning and in the afternoon.

279. Cotham School became an academy on 1 September 2011, and the lease of the land was signed before that. The land was one of the sites which the School operated and on that basis we took a lease of it. It was taken on the basis that the TVG application was in place. She accepted that in the past the use of the playing fields had been satisfactory from the Schools point of view, during which time the School had conducted quite a large percentage of its sports activities on the land. She thought that the pressure in respect of the interaction between the school use and community use had escalated and this perhaps explained why signs were not put up at an earlier period. She thought that possibly that escalation had increased since the TVG application: she thought that there had been some "egging up" of community use after the application.

280. Shown a picture of a sign that had been put up at a school at Redland Green some time after 2002, she said that this was signage put up by Bristol City Council in respect of a new school; Cotham School when it started using the land was using an existing facility for the signage of which Bristol City Council were responsible.

281. She was asked by Mr Mayer about the Articles of Association of Association of the School which provide that the schools objects are

(a) to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing a school offering a broad and balanced curriculum;

(b) to promote for the benefit of the inhabitants of Bristol and the surrounding area the provision of facilities for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstances or for the public at large in the interests of social welfare and with the object of improving the condition of life of the said inhabitants.

282. She thought that (a) did conflict with (b). She didn't believe that (b) was put in the Articles to address the particular situation at Stoke Lodge.

283. M5 started working for Cotham School as a xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxx.

284. Prior to 2004, the land was used for Cotham School Sports Days in two years – 2000 and 2001. In each year events took place over a two day period in June, with the "lower school" (years 7, 8 and 9) competing on one day and the "upper school" (Years 10 and 11, with selected students from the "sixth" form (Years 12 and 13)) competing on the second day. On each day 450 – 550 students, 100 members of staff and a number of parents would have been on the land. At least three quarters of the field was used. M5 thought it very unlikely that any member of the public would have used the land at this time. It would have been possible for the public to access the land during the Sports Day. He would have known the vast majority of parents but couldn't be absolutely certain about everybody.

285. In the 1990s development of the school on the main site reduced the area of playing field and between 2000 and 2007 the available are was yet further reduced. The upshot has been that the School must use off site locations for all its requirements for grass pitches and athletics. Accordingly, since 2004, Stoke Lodge Playing Fields has been the School's site for off site provision of PE and sports since around 2001.[31]

286. From this time, the PE department took students to Stoke Lodge on a daily basis. They would go to the site on around four mornings a week in term time; use around 3 pitches; and be there for most of the morning. They got to the land in two 54 seater coaches, being dropped either in West Dene or on the corner of South Dene. The coaches originally stayed but this was not popular with the residents and so they would leave and return at the appointed time. The pupils would be dropped off in school clothes and they changed in the pavilion. Access in 2001 was via point [3]. There was a gate there – just like a garden gate – and you just walked in. The gate wasn't there when he last had contact with the site, but he didn't remember when it disappeared. The lesson would be a double period of two hours. The first group of about 90 students would arrive at 9.10 am and leave at 10.35 am and the second group would arrive at 11.10 am and leave at about 12.50 pm or 12.55 pm. "PE" included games – rugby, rounders, softball and football – as well as athletics; and M5 had it in the back of his mind that they used to play hockey: they wouldn't play hockey on grass these days. Between September and November and February and May, there would be games after school, depending on the light. This would be on 2 or 3 evenings – the norm was 2, in order to reduce transport costs. The games would run between 3.30 pm and about 5 pm (the pupils had to be back at the School by 5.30 pm). The coach procedure was the same. In all the time he was teaching PE on site between 2001 and 2010, no person went on to a pitch during the lesson. There would be 3 or 4 teachers on site – a minimum of 3 if the pupils were all of the same sex, 4 if the pupils were of both sexes. Use of the land would only be called off in extreme weather conditions – less than once a week. If the pitches were waterlogged it would be possible to find somewhere to go on the land. There were a couple of incidents when dogs interfered with the delivery of lessons and of changing for the students. At times there would be no one on the site except for the students. On a typical morning, he might see five or six people walking their dogs.

287. As regards the booking arrangements, his understanding was that there was a block booking by the school of the periods 9 am – 1pm Monday – Thursday for each week in term time.

[31] Years 7, 8 and 9 would always use Stoke Lodge, although some activities would be carried on in the sports hall; Years 10 and 11 might go to the climbing centre and occasionally to other locations for badminton and squash.

Further, at the beginning of term or as appropriate there would be a booking of the extra curricular games.The school year was 190 days in length.

288. Following the TVG application in 2011 the School continued using the land on a daily basis until April 2014 when, following a risk assessment, the Governors decided to cease such use. He wasn't aware of any decline in use before 2012.

289. In explaining that decision, M5 explained that over the years the environment in which teaching was carried on had changed. In his time in teaching at the school, in the 1980s there had been a serious sexual assault on a student that head led to a revision of procedures. There had, on the main site, been a short cut that residents used to get to the shops. That was no longer acceptable and it had been closed off. There was now no open access for strangers at the main school site and lanyards had to be worn. All access was gated and deliveries had to be buzzed in. Whenever they went off site in a coach – however short the journey – there had to be a risk assessment. There had been flashers at Stoke Lodge. Although the vast majority of dog walkers kept their dogs on leads and incidents were few and far between, there had been incidents of which three stood out – concerning a dog in the changing room and a dog chasing students. Over the years he had become increasingly concerned about the risks involved in taking students to the land.

Written evidence

290. A2 is the xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. He as lived in the area for 45 years and is very familiar with the surrounding streets.

291. He did not consider the area claimed by Mr Mayer to be the neighbourhood on which his application relied to be anything more than a line with Stoke Bishop at its centre. He did not think that a factor unifying the inhabitants of the area, which he did not consider to be a recognised or cohesive area within Bristol.

292. He had played cricket on the land between 2005 and 2010 with one and often more than one match in each year. He did not recall there being any public use of the land when these matches occurred.

293. L1 is employed by Bristol City Council as a xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxx. He started working for Bristol City Council as a member xxxxxxxxxxxxxxx xxxxxxxxxxxxxxx in 1990. He was based at Stoke Lodge Playing Fields between xxxx and xxxx and carried out the maintenance to the site as well as to other sites around North Bristol. He was at the site every morning at 7 am, every lunch time between 12 and 1 pm and at the end of day at around 4.30 pm. On some days he would be at the site all day; he would spend an average of half the working week at Stoke Lodge.

294. Before 2004, the land was used as the playing fields for Fairfield School and for Christchurch School. Fairfield used the playing fields on around 3 days per week and Christchurch would use the fields on 1 day per week. On the occasions that children were using the field, if people were there they would walk around the perimeter of the field and would not walk on the pitches. When he was mowing or maintaining the pitches, people would stick to the edges of the field. On a Saturday and Sunday usually all the pitches in the western end of the field would be used. There would be some occasions when all the pitches would be used and on

most Saturdays and Sundays there would be some use of the eastern pitches. There would also be weekday evening matches. People never walked on the pitches during matches but would use the perimeter walks.

295. Fairfield School, Christchurch School, Clifton High School for Girls and Stoke Bishop Primary School use the land for sports days. The primary schools would use the full extent of the eastern side of the field. Secondary schools would use the full extent of the eastern side of the field. Secondary schools would use the full extent of the eastern side and would also use the western section of the field for throwing events (discus and javelin). On those days the eastern side was full of children, parents and teachers and he did not see any other users on the field.

296. Cotham School used Stoke Lodge for its sports days (two days each) in June 2000 and June 2001. L1 assisted in the setting up of the fields and line marking for various events, including a 400m running track and for discus, shot put and javelin. A large number of students and staff were involved. He was not aware of any members of the public and he thought that they would have avoided the land on these days.

297. He personally saw little or no use of the fields except by members of the public to walk their dogs. Of this the vast majority would take a perimeter circuit route. It was rare to see any other use. Most of the time he would go out with the gang mower and there would be no other person on the field.

298. Access was gained via West Dene, Parry's Lane and via the Stoke Lodge entrance, with very little access from elsewhere. Access did also occur via Cheyne Road but this was fairly rare. The majority would enter it via a recognised route and would enter having passed the Avon County Council signs in those places. "There were Avon signs on the West Dene entrance, the Parrys Lane Entrance adjacent to Stoke Lodge and at Ebenezer Lane."

299. He took the opportunity to revisit the site and observe any changes in recent times[32]. He was shocked at the state of the boundary along Ebenezer Lane where for a length of about 100m it is possible to walk into the land. In the time he knew the boundary it was grown with brambles and access was extremely restricted.

300. G2 is employed by Bristol City Council xxxxxxxxxxxxxxxxxxxxxxxxxxxx. He started working for the Council in xxxx and was based at Stoke Lodge Playing Fields between xxxx2 and xxxx. The pattern of his work in relation to the land was the same as that of L1 between 1995 and 2005.

301. His evidence was to the same effect as the evidence of L1. He remembered that in the early period of his employment, K, a colleague, would block Cheyne Road to prevent access via that route. He did not remember so much as L1 about the use by Cotham School for sports days but remembered about the use for cricket. He recalled that the land was used during the summer for a number of evening and weekend cricket matches. They would use the pitch in the centre of the site adjacent to the pavilion. Before 1995, there was also a cricket pitch on the western side of the site. There were regular matches on weekends on both Saturday and

[32] L1's statement is dated 26 April 2016.

Sunday and also on weekday evenings. Bristol City Council managed the use and groundstaff worked weekends to set up the wickets. He never heard of local people interfering with games.

302. R1 xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

303. During her time at the School she was regularly involved in using the land for games activities, particularly during the summer for athletics and rounders. She had regular, weekly, issues with finding dog excrement on the playing areas, which she had to ask students to avoid. Lessons would start with a pitch/track check which wasted time. It was not always easy to see the excrement until the ball went into the mess or a student trod on it.

304. She also experienced many unpleasant conversations with dog walkers who let their dogs off the lead. The dogs would often chase the girls causing disruption to lessons and scaring the students. They would run away with the rounders ball and, on other occasions, poo on the pitch in front of us. The adult dog walkers were often rude and arrogant when approached by me or other members of staff and some would not accept that even picking up the mess was not enough as this left possibly health risking excrement traces on the playing area.

Evidence on behalf of the University

Oral Evidence

305. F3 xxxxxxxxxxxxxxxxxxx for the University of Bristol xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.

306. F3 has been employed by the University since xxxxxx and has always been based at the Coombe Dingle Sports Complex, which is about 700 metres (to the north west) of the land which is the subject of the TVG application.

307. From 1984 until the mid-1990s he walked to work from Parry's Lane along Ebenezer Lane and West Dene. Accordingly he took an interest in what was happening on the eastern part of the land. There were then two Avon County Council signs on the land. One was set into the field at the inner edge of a small car park at the northern corner of the site, to the south west of the Parry's Lane entrance. The other was inside a pedestrian gate at access point [3]. He remembered this sign when it was put up – he found it quite amusing and it stuck in his mind. This would have been in the mid 80s. He think that it replaced an earlier wooden sign which he believed was white with black wording. There still existed in the shrubbery behind the pavilion an old wooden sign. It was not however possible to make out the words[33]. When he walked to work he took his dog with him. He had to be at work by 8 am. He wasn't aware of people dog walking on the land at this time, although he did not have extensive sight of the land. In early 2000 when he went only rarely to the site, he was not aware of much dog walking. In 2004 it was fairly obvious that people were using the land, but he didn't see much dog walking. From about this time there had always been a few people around the perimeter of the site running or walking with dogs. It would depend on the time of day. There had never

[33] The site inspection on 14 July 2016 confirmed the existence of this sign.

been so many people as he had seen when the site visit was carried out on 22 June 2016. More recently he had seen very much more dog walking.

308. In 1998/1999, the University were in discussions with the Education Directorate of Bristol City Council in connection with the University taking over the management of Stoke Lodge Playing Fields. There were also discussions with Cotham School about it taking over the use of the playing fields from Fairfield School and renting facilities at Combe Dingle. This is what ultimately happened; plans for a new school to be built on the site were not pursued.

309. The upshot was that SEH started to manage the sports bookings from September 2000[34] and maintenance of the playing field in 2005.

310. In 1998/1999, the position was that Shirehampton Colts had for many years been renting pitches from Bristol City Council on the lower or west side of the playing fields. This use is still continuing, although now the rent is paid to the University of Bristol. Shire Colts had played in the Avon Representative League, the Suburban League, the Hanham Minor League and the Avon Youth League. They also hald regular 6-a-side tournaments, at which programmes were handed out. F3 produced a fixture list for 2005.

311. In the summer there was also a cricket square located near the oak tree in the centre of that part of the field, but this is no longer used.

312. Between 2000 and 2005 an agreement between Cotham School and the University was drafted[35]. At this time, F3 started to prepare budget costs in respect of the playing fields, and obtained cost and work schedules from Bristol City Council. He downloaded a plan of the public rights of way in the area as he had a concern about the use by the public of access point [4] ("a gap in the hedge") at the the end of Cheyne Road. He was satisfied that this showed that the gap was not official, although his assumption was that since there was a bollard there, it was probably put in by the City Council.

313. In about 2000 or 2001 he measured the pitches and marked them up on a plan which he had obtained the City Council. This plan, which he produced to the inquiry, showed eleven pitches.

314. He also set in motion a conditions survey. This focused on the pavilion, but also took note of some of the walls around the property and fence lines.

315. In May 2000, F3 received from Cotham School a preliminary schedule for the use of the playing fields and of the Combe Dingle Sports Complex. In September 2000, SEH took over responsibility for the bookings on the playing field, and co-ordinated use of the playing field by Cotham School and by Clifton High School (who were also used it at this time). Clifton High School had has sports days in 2012 and 2013 – 9.30 to 2 on a Tuesday. They had also had Monday evening athletics meetings.

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[34] It took over the bookings because of the need to co-ordinate the use of the land by Clifton High School (as well as Cotham School) who at that time used the athletics facilities.

[35] A copy of the agreement ultimately entered into (in September 2010) was produced to the Inquiry by Bristol City Council.

316. In June 2003, he undertook another conditions survey in order to get recommendations for completing the painting of the pavilion and an asbestos survey completed. In the course of this he took some photographs, which he produced to the hearing. Two of these photographs show a sign hanging from a beech tree on the north western side of the field. His recollection was that this was a white sign with timber edging with mitred joints. It was very old. The only word he thought that he could make out was the the word "Private". When he had attended the site inspection on 24 June 2016 a member of the public had said to him that the wording of the sign was the same as the Avon County Council sign[36]. Two other photographs in this series respectively show the front and the back of the Avon County Council sign in the vicinity of access point [3].

317. Access point [4] had not changed in appearance very much. There had always been a bollard there. The tree trunk was much further out into the field. Fairly soon after the University took over the running of the site he was inundated from phone calls from people saying that it was preventing them exercising their dogs. His Deputy Director said that it was better to let them back in, so the tree trunk was pulled out enough so that people could get access, although it was a bit awkward.

318. There certainly was an Avon County Council sign at access point [12] and it appeared to be that produced to the inquiry by F1. (It was had been defaced by being sprayed with the letters "DBK", as had been a number of other signs in the area). Most of those walking round the land and not entering it at this point would not have seen it. He didn't recall seeing the Bristol City Council sign – he didn't have that much reason to go over to that part of the grounds.

319. Also in 2003 he undertook a survey of the perimeter fencing and hedges, primarily undertaken to show where fencing was needed to stop unauthorised persons coming on to the land by pushing through hedges, jumping over walls or entering through gates owners had put in their fences. The survey identified a need for 576 metres of fencing. His reasoning was that this would stop or reduce unauthorised entry to land which was primarily a school playing field in particular because there was a safety issue as regards dog faeces and to safeguard the children. Where dog faeces are present it presents a health risk and groundstaff machinery has to be continually cleaned. F3 produced a plan showing where he considered the fencing had been required. This plan also showed the layout of pitches at that time. There were eleven pitches in an arrangement similar to that which were shown on the plan dating from 2000 or 2001.

320. No fencing work was undertaken at this time.

321. He remembered that at access point [6] there were "tip toe points" where people would have gone from the field into Ebenezer Lane to get their footballs back – there were gaps but they were not as wide as they are today and he only recalled 3 ways through (as opposed to the current 4). The gaps at this point had assumed their present width within the last two or three years. There was however a wider path at access point [5] which people used on a fairly regular basis.

[36] It would seem that the sign is visible in the very far distance in a picture dating from July 1997, produced to the inquiry by W1. But the issue is not about the existence of the sign, but what it said.

322. After xxx took over maintenance of the land in 2005, a programme of improvements to the turf was instituted. This involved heavy scarification, aeration and regular mowing of the fields to encourage a good sward of grass. F3 did not spray the fields with a selective weed killer because he consider that it would have been safe with members of the public walking around the edge of the fields and their dogs running on pitches. The groundstaff undertook a basic level of maintenance that was suitable for an unprotected site, which involved about 1,924 hours of work per year.

323. When the University took over the site he would like to have managed it like the Combe Dingle Sports Complex. This was fenced and although the gates were open it was possible to monitor people entering the site from reception. Because it was an open site, he could not do this. It was difficult to discourage people walking dogs. He had reminded people after they have just walked past sign that no dogs were allowed site. He got various reactions – usually a verbally aggressive reaction to the effect that the sign doesn't mean anything and that they've always done this. He had carried on doing this intermittently – only once or may be twice a year; and he didn't go on to the field in recent years as much as he used to do.

324. In June 2005, the University organised a half marathon. The course went twice through the playing fields, between the entrance to Stoke Lodge on Shirehampton Road (access point [1]) and the West Dene entrance (access point [3]). There would have been about 500 people taking part, who were students, staff and some locals. The gate which had hitherto been in place at access point [3] was removed for the half marathon. It had been a black gate with wire mesh, and had a finger latch. It was not at this time lockable, although previous groundstaff may have been able to put a chain on it – he couldn't say. By 2005 the bottom had rusted through and it sat on the ground. It wasn't necessary to operate the finger latch to get through.

325. When Rocklease Rangers had used the land for a tournament in 2004 he allowed parking on the south western part of the field. He had allowed some parking in connection with some filming in 2008 – 2009.

326. Frequently he would visit the site and not see any members of the public. On the occasions when he did see people, walking or running around the perimeter of the fields, they did not hinder SHE's work. They generally kept out of the way of the tractors and machinery. They did have issues with dog walkers and their dogs. He considered that of the members of the public who used the fields, 90% were dog walkers, who used to walk around the perimeter. He had personally had to do an emergency stop at least twice, which was not easy when you had had agricultural machinery such as spikers or mowers behind you. There had been many times when he would hoot the horn to warn people to look after what they were doing. Most people were good and put their dogs on a lead; some people he had to warn. It was a matter of body language – it would not be possible to speak because the engine would be running. He had warned the odd child about use of the goal mouth after it had been treated for wear. He had spoken to his staff about their experiences and it was the same as his. One employee had experience of a dog walker getting aggressive. For the last 6 or 7 years the staff hadn't taken any action about dog walkers. He would hear of incidents from teachers – he had been told of an incident when a dog went into a changing room and the children got upset; and of another incident when a dog went through a number of Cotham School pupils during a lesson. He had not seen members of the public using the land save for perimeter walks. He remembered

a phone call from a local resident who alerted him to the fact that someone was erecting a tent and some kind of stall on the land; he explained that this was not permitted and the person left. Last year he stopped a large teenager who was flying a drone; he was able to point to the Avon County Council sign as authority for his actions. It was near where the "totem pole"[37] is. He did stop. He had never come across horse riders.

327. In the early days of the 2000s, access point [9] was a pinchpoint. It was possible to see where some had accessed the land but it was very overgrown and they would have brushed up against brambles – not as it is now. At one time he put a bit of chain link fence against it; on another occasion he put some branches against it but these were pushed out of the way.

328. In 2004 when the University took over the management of the site he put a padlock on the double gates at access point [2] and on the pedestrian gate to the side of it on to Ebenezer Lane. This looked as if it had been fairly well used; there had not been a padlock on the pedestrian gate before. One padlock was cut off; it was replaced with a stronger one. There was a pedestrian gate from the service yard into the field. This gate was then in a bad state of repair and there was not a lock on it. The provision of new padlocks was part of a process whereby all the padlocks in relation to the land could be opened by the same key including the key to the padlock to the gate of the Adult Education Centre. To the best of his knowledge, access point [8] – the gates from the compound on to the field – had been kept locked by Bristol City Council before we took over. After the University took over maintenance, the gates were kept shut but not padlocked. At access point [7] there was access available over the wall into the service yard. F3 erected a makeshift barrier but this only lasted about 6 weeks or so. Thereafter there would have been access via access point [7] at the gates at access point [8]. This access would have got progressively easier over time. Subsequently a branch of a tree grew into the fence leading to the gate at access point [8] and it was necessary to remove a section of fence which then became a new access point. This however was in 2012 after the TVG application. The position between 2004 and 2011 would have been that there was access via access point [7] and the gates at access point [8]. There is now access into the field from the former yard. This happened in about 2010 when a gas converter was built in the yard. Before that it was not possible to drive a vehicle directly from access point [2] on to the field but there was pedestrian access. This disappeared when the gas converter was put in. It was now more convenient to use this as an access point for vehicles.

329. F3 produced a print out of the 14,700 bookings of the land there had been between 2000 and 2016.This showed not only use by the schools involved but also use by the local community clubs and the University for football, rugby and cricket. The print out should be seen as a broad indication of use, not a precise guide. Sometimes are greater number of pitches would be used than had been booked out – for example, if the Shirehampton Colts turned up with more children than they expected. The print out would not show cancellations, and in the course of the season there would be quite a few cancellations. He suggested that it showed that the number and frequency of bookings was such that during weekdays in term time when the land was being used by schools and at weekends when the land was being used by clubs, it would have been difficult for members of the public to have accessed the land save around the perimeter. It was possible to identify from the print out which part of the site had been

[37] A tree sculpture on the eastern part of the site.

used[38]. There was a reduction in use by Cotham School from 2010 onwards. The general pattern of use by the School was in the mornings – two coaches arriving at 9.30 am and another 2 coaches mid-morning. After school matches were usually organised using a mini-bus. There would at most be 3 teams. Sometimes Cotham School had had insufficient staff to be able to use Stoke Lodge and had been able to use an artificial pitch at Combe Dingle. He could think of two occasions when this had happened – his colleagues might have been aware of more.

330. As regards athletics use by schools there were two areas for discuss and javelin throwing, which could be identified on the aerial photographs produced by the school. The land had definitely been used for javelin throwing. Local people would not have been in the vicinity when this was happening. The long jump pits were used – they were cleared out in 2004 and 5 tons of sand put in. They were used until 2012. It was possible to identify two rounders pitches.

331. He was disgusted by the school and University were not involved in provision of dog litter bins on or at the entrance to the site by Bristol City Council – the University had been trying to discourage dog walkers over the years – this, he felt, was encouraging them. They had been installed sometime afte 2011. He didn't know whether the bins were well used.

Evidence of a member of the public

332. S6 lives at xxxxxxxxxxxxxxxxx. This is a sixties development off xxxxxxxxxxx, about 5 – 10 minutes from the site.

333. S6 recalled that H4 had given evidence of use of the land in 1964. He wished to give evidence of his experience when his family moved to xxxxxxxxx in 1967. He was then aged about 2 or 3. He was taken by his parents and elder brother along Bell Barn Road to Ebenezer Lane, which was then called Cross Elms Lane. They would use access points [5] or [6]. They had no difficulty in so doing – there were well defined paths through. When he was at Stoke Lodge Primary School, he would indulge in informal recreation on the land. Later he would go up there own his own and walk up to the top. They were never challenged or stopped, even though there would now and again be a groundsman there. Certainly if they thought that it was not right to use the land they would not have done so. It was a belief that people had for a long time, that they had the right to use the land.

Consideration

334. The core facts of this case are not in dispute. The land has been used for use by schools for games and athletics. It has been used by sports clubs for football, rugby and cricket. It has been used by local people for dog walking and informal recreation. Access for that dog walking and informal recreation has been freely available. At all relevant times two Avon County Council signs were positioned on the land, and still are. There was a third sign Avon County Council sign on the land which must be contemporaneous with the other Avon County Council signs and survived down from the mid 1980s until at least 18 June 2007. Cotham School have a lease of the land and could fence it off, subject to it not having become

[38] Each booking referred to either location A, B, C, D or E being used. The "key", showing which parts of the land these were, was produced to the inquiry by Cotham School.

a town or village green by virtue of long use by local people. However the existence of these core facts has not precluded extensive argument.

The law

335. For land to be registered as a town or village green, the requirements of section 15 of the Commons Act. This[39] provides as follows:

(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.

(2) This subsection 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.

(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 relevant period] [1] .

(3A) In subsection (3), "the relevant period" means—
(a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);
(b) in the case of an application relating to land in Wales, the period of two years beginning with that cessation.

(4) This subsection applies (subject to subsection (5)) 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 commencement of this section; and
(c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).

The application was made under section 15 (2) on 7 March 2011. Accordingly the Applicant had to show that

- a significant number of the inhabitants of a locality, or neighbourhood within a locality
- had indulged in lawful sports and pastimes on the land
- for a period of at least 20 years down to 7 March 2011; and

[39] I set out sub-sections (1) to (4).

- their use was *as of right.*

336. The burden of proof is to the civil standard (the balance of probabilities). In *R (Beresford) v Sunderland City Council*[40], Lord Bingham said:

As Pill LJ rightly pointed out in R v Suffolk County Council, ex p Steed (1996) 75 P & CR 102 ,111: *"it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green ..." It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision-makers must consider carefully whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years' indulgence or more is met*[41].

337. The effects of registration or non-registration in this case are clearly very important for both the School and the local community, and perhaps more widely, so Lord Bingham's point is well made. However it is worth stressing that the intrinsic merits of whether the land should be fenced off or whether it should remain open for use by local people or whether there is some acceptable compromise which might allow both are not matters either for me or, in due course, for Bristol City Council as decision taking registration authority. I am solely concerned with an assessment of whether the legal requirements of section 15 (2) are met.

Significant use

338. The requirement that there be "significant" use was apparently introduced into the law of town and village greens by the Countryside and Wildlife Act 2000 in order to meet the point that had been raised in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council*[42] that it might be possible to defeat a claim if a substantial number of users had come from outside the claimed locality[43]. However this may be, the word evidently provided a test for the extent of use required. In *R (Alfred McAlpine Ltd) v Staffordshire County Council*[44]

… "significant", although imprecise, is an ordinary word in the English language and little help is to be gained from trying to define it in other language. In addition, the inspector correctly concluded that, whether the evidence showed that a significant number of the inhabitants of any locality or of any neighbourhood within a locality had used the meadow for informal recreation was very much a matter of impression. It is necessary to ask the question: significant for what purpose? In my judgment the correct answer is provided by Mr Mynors on behalf of the council, when he submits that what matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is

[40] [2004] 1 AC 889 (HL).

[41] See paragraph 2 of his speech.

[42] [2000] 1 AC 335.

[43] See p357F.

[44] [2002] 2 PLR 1.

in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.

More recently in *Barkas*[45], Lord Carnwath emphasised the importance of the assertion of community use:

... his conduct brought home to the owner not merely that a right was being asserted but that it was a village green right[46].

339. The suggestion is that most of the use has been by dog walkers who, in order to give their dog the longest possible walk stuck to the edges of the land; and that others – runner, for example – also stuck to the edges of the land. This was the picture of use of the land painted by F3. Against this was the evidence of local people who spoke of going all over the land and, in particular, walking over the area of the pitches when they were not in use. But even on this basis, it is a very large area of land and, although those who used it invariably spoke of seeing others using it in the course of their use, on no view were there generally large numbers of people using it at the same time.

340. It seems to me that the use of the land by local people was significant in any ordinary sense. The land was an attractive piece of open space to which there was ready access by those living in the area. Thus I would expect everyone who had a child or children to take them to the land when the need arose for outdoor exercise or games. Likewise I would expect dog owners to use the land to exercise their dogs. And this, essentially, is the use to which local people have spoken – using the land like a public recreation ground. No single visit would have used the whole of the land but in the course of time they will have ranged all over it. I think that the only thing that might have inhibited them is a sense that they ought not to be on the land, which might have been the case if, for example, their use was subject to frequent challenge. This is an aspect of the matter that I address when I consider the argument on whether the use has been *as of right,* but at this point I merely observe that I do not think that there was any such consciousness. Moreover I do take Mr Mayer's point that in a Briefing Note that officers of Bristol City Council produced after the *Redcar* case[47], the risk of an application in respect of the land was recognised:

... the playing field (Stoke Lodge Playing Field) is currently unfenced and allows unfettered community access.

341. At paragraph 340 above I conclude that the use of the land was significant "in any ordinary sense". I think (see the *McAlpine* case) that it is in its ordinary sense that I must consider the word significant. The difficulty that the Objectors face is that if dog walking and informal recreation are lawful sports and pastimes which may establish a town or village green, then the land has obviously been used for lawful sports and pastimes by people living in the vicinity of the site for lawful sports and pastimes. The law might have taken a different turn,

[45] Ie *R (Barkas) v North Yorkshire Council* [2015] AC 195.

[46] See paragraph 65.

[47] I.e *R (Lewis) v Redcar and Cleveland Council* [2010] 2 AC 70 (SC).

requiring at least some element of community organisation. But this argument was rejected by the House of Lords in the *Sunningwell* case.

342. I should add that, as one would expect in the circumstances, the evidence shows that the land is used as a short cut to and from places on either side of it. This use does not count towards the establishment of a town or village green (walking from A to B is not a lawful sport and pastime) and I have not so counted it in reaching my view that there has been significant use of the land.

Co-existence of the significant use for lawful sports and pastimes with the use of the land by schools and sports clubs

343. I need to begin by considering the extent of the use of the land by schools, clubs and the University. In a manner similar to that in which the objectors argued that local people had made limited use of the land, Mr Mayer argued that the schools and clubs had made limited use of the land.

344. As regards school use, the evidence of M5 as to the use by Cotham School was that the land was used on four mornings a week and the booking record supports this. The statement and record of G1 would suggest that the use was less than this but she did not give oral evidence and was not available for cross examination. More generally the Applicants' witnesses suggested that the land was used less than this by the School[48]. I think that it is possible that there may have been times when Cotham School did not use the site as intensively as four mornings a week and ideally I would have liked some more definitive evidence about this, and clearer evidence about use by other schools. Nonetheless I think that the extent of the use by Cotham School becomes essentially a non-issue when it is recalled that G1 draws the contrast with the use by Fairfield School, which she accepts was greater. H6's evidence is that as well as using the land in the mornings, Fairfield School used it in the afternoons also.

345. Mr Mayer points that in any event, the booking record shows that the School was never using the whole of the field, that the land would not have been in physical used for the whole of the morning and that there would be many periods of the day when they were not using it. This point, made in relation to Cotham School, may still be made even if afternoon use by Fairfield School is factored in.

346. For reasons, I shall explain below, I do not think that the precise extent of the school and club use is determinative of the application.

347. As regards sports club use, in my Report dated 22 May 2013, I summarised the community use obtaining

- ***Shire Colts FC****- four pitches on Sunday am and four on Sunday pm during the football season*
- ***Rocklease Rangers FC*** *– three to four junior pitches on Saturday am and one full size pitch on Sunday am during the football season*

[48] Most specifically and forcefully, the evidence of B1.

- ***Bristol University*** *– four football and one rugby pitch on Wednesday afternoon between 1 pm – 4pm or 5pm*
- ***[A club whose name I cannot read]*** *– Sunday morning use of the rugby pitch during the winter season as required*
- ***Coombe Dingle Crusaders juniors*** *– two junior football pitches on Saturdays during the football season*
- ***GWR Shunters Cricket Club*** *– approximately nine home matches during the summer. Several hours a week in the summer (weekends and evenings)*
- ***Various corporate cricket bookings during the summer***

348. Recognising that this is a snapshot, it seems to me that the evidence put before me confirms that picture. M2 described the use by the Shire Colts in similar terms to those set out above. From their objection, it seems that Rocklease Rangers FC also use pitches on Saturday afternoon and Sunday morning. It is possible to see from the booking records produced by F3 that there was use of pitches at all times at the weekends; however use of the entirety of the land – as for the St Brendan's tournament– was exceptional. Evidently there will have been occasions when more extensive use took place than was recorded and conversely there will have been bookings that were not taken up, but it does not seem to me that this alters the broad picture.

349. Against this background I turn to consider the argument that the extent of the use by schools and clubs is such that the land cannot properly be registered despite significant use of it by local people.

350. The simplest way of putting this argument is to say that whenever a pitch was used by a school or by a sports club it had exclusive use of that part of the land for that period. Further no-one claiming to walk a dog or fly a kite interrupted the game. Thus in respect of that piece of land for that period, use by local people was interrupted. Because pitches of one sort or another covered almost the entirety of land and because in the relevant period there would have been literally thousands of interruptions, a claim to registration fails because the necessary 20 years use has not been shown.

351. If this were the correct analysis, it is apparent that the application would be bound to fail. However I do not think that it is the correct analysis. The evidence went to show that, subject to occasional issues with dogs[49], use by local people could co-exist with use by the schools and sports clubs. This was not just a matter of local people going on to the land only when the schools and clubs were not on it. The evidence generally indicated that there was plenty of room elsewhere on the land when it was being used by schools and clubs. More specifically, although none of the parties undertook to analyse for the benefit of the inquiry the complete booking record that F3 produced, and which would have enabled a more precise view to be taken about the matter, it did seem generally to evidence

- the levels of use to which I have spoken above; and

[49] I consider this aspect in detail when I consider the claim that use has not been *as of right.*

- the fact that there would always be space on the field for local people to use.

352. As regards the sports clubs, it sounds as if members of the public might have been quite interested in watching a game or part of a game from time to time and there is no evidence that they were discouraged from doing so. It seems to me that the situation was one where the use by local people could and co-exist with use by schools and sports clubs both geographically (because there would always be room for both) and temporally (because one could use the land when the other was not).

353. I take the point that no local resident would have interrupted schools or club use and no doubt he or she would, if they had thought about it, appreciated their lack of entitlement to do so, but I do not think their mental state is relevant. (I take the point in this context that a local resident would not have interrupted an informal game of football being carried on by other local residents. This would evidently be a matter of courtesy). Perhaps are more relevant question is what would have happened if the School or a sports club turned up to use a pitch and it was then in use by local people on an informal basis. I think that it is obvious that the local people would have vacated the pitch. However a consideration of the legal priority of the use takes us back to the idea of deference (ie that the non-entitled users defer to the entitled), a concept that was rejected by the House of Lords in *R (Lewis) v Redcar BC.*

354. So as stated above and as a matter of fact, it seems to me that school and sports club use co-existed with use by local residents throughout the relevant twenty year period.

355. That does not perhaps entirely resolve the matter. Mr Blohm raises the concern that, if the land were registered as a town or village green, it would fix the entitlement of the school and sports clubs at historic levels. Thus, for example, the school might not be able to use the land on five mornings a week or, perhaps, in the afternoons: at any rate to use the land more intensively. Reasoning back from this being a result unlikely to have been intended by law, it could be argued that the present state of things indicates a state of affairs, indicated as possible by Lord Hope in *R (Lewis) v Redcar BC* where *the two uses cannot sensibly co-exist at all*[50]. Mr Mayer of course argues from the historic position and says that there is no reason to think that, if local people continued to use the land, there would be any difficulty in its use by the School and by clubs (recognising, of course, that the School might not choose to do so).

356. It seems to me that, if the land were registered as a town or village green, local people would have no basis for complaint if the land were used more intensively by the School and by clubs. By complaint I mean legal action claiming that their village green rights had been infringed by the more intensive use. Realistically it seems to me that the sort of use that local people historically have made of the land could continue in the context of increased use by schools and sports clubs, whatever that increased use might be. I say "whatever that increased use might be" recognising that it would not be practically possible for all the land to be continuously used during the hours of daylight. I do not know what the practical maximum would be, but it seems obvious that it would still give space and time for use of the land by local people.

[50] See paragraph 76 of his speech.

357. It is because of the view that I take set out in paragraph 356 above that, as explained at paragraph 346 above, I do not consider it necessary to seek to reach a conclusion about the precise level of use by the schools and by sports clubs insofar as precision is possible[51].

358. Finally I need to refer to a passage in Gadsden and Cousins on *Commons and Greens* (2nd edition; 2012) which Mr Ground referred me to and relied on. It is as follows:

> *Clearly suggests that golf can coexist with other recreational pastimes. Apart from when the golfers are briefly playing on a particular part of the course, players of the game do not actually occupy the* Lewis *land. There is therefore no problem with recreational use of the land by local residents for much of the time. When, however, land is used for games such as football or cricket, the position is different. Such games are played in a more concentrated area for concentrated periods and cannot properly be played if local residents are trying to use the relevant part of the land at the same time. Where such games are not interrupted by local residents, in practice they will have been excluded from the land for significant periods of time and the deference shown will be of a different kind to the common courtesy shown to the golfers in* Lewis*. This means that applications to register such land are likely to fail because the use would not be "of such amount and in such manner as would reasonably be regarded as being the assertion of a public right" , although the parts of the land from which the inhabitants were not excluded could still be registered.*[52]

359. As regards the last sentence a footnote adds *Such as the edges of the playing fields and areas between the pitches (although the result would be a very odd green).*

360. It will be seen that I do not agree with this passage. The use of the land by golfers was not regarded by the House of Lords as *de minimis.* Accordingly I do not see how they are to be distinguished from footballers and cricketers, albeit I readily see that the latter occupy the land for longer. Moreover the logic of the writer's position leads him to accept the registration of the land around the pitches even though the pitches themselves are not. This does not seem a sensible outcome particularly since in practical terms it probably would secure what the applicant wanted: thus, in the present case, the School would not be able to fence off the land if the edges and areas between the pitches were registered as a town or village green.

As of right

Introduction

361. As set out at paragraph 335 above, qualifying use must be as of right. This means that, in the Latin phrase, it must be *nec vi, nec clam, nec precario* (not by force, not secretly and not by permission). Use is by force not simply in circumstances where physical force is used to gain entry but also where the use is contentious[53]. I say more about the meaning of as of right below.

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[51] I would, I suppose, be seeking to identify the period within the relevant 20 years when the land was most intensively by schools and clubs and determine what the level of use was at that time.

[52] See paragraph 14-20.

[53] See *Eaton v Swansea Waterworks Co* (1851) 17 QB 267.

362. The objectors argue that the use in the twenty years to the date of the application was not *as of right*, either because it was permitted (precario) or because it was contentious (vi).

363. I think it is helpful to begin by considering use in the period before the relevant twenty year period.

364. It is unclear is how this use began. It is unlikely that the Misses Butlin would have permitted or tolerated general public access to the grounds of their house, albeit the part of their land was laid out as a cricket pitch before the Second World War, and perhaps dog walkers would have used that. Thus the use with which I am concerned is likely to have begun both after the Second World War and after the land had been taken into public ownership. It seems to me that there are essentially two possibilities. The first is that the public were positively allowed by Bristol City Council to use the land. The land was held for educational use and this would no doubt have been viewed as its primary use of the land but it would also have been actually envisaged that the public would use it. On this basis it would have been envisaged the land would have functioned very much as an open recreation ground with it being used by schools as well as by clubs who would pay for use and by the public who would not. Given that no such actual permission has been discovered, it might be that the permission would be one implied from the circumstances. (In *R* (*Barkas) v North Yorkshire Council,* Lord Carnwath envisaged that a permission might properly have been implied from the circumstances in *R (Beresford) v Sunderland City Council* where the land functioned as an extension to the public park next door[54]).The second is that the use of the land by local people was tolerated or acquiesced in but never permitted so that members of the public would have been "tolerated trespassers" to use Lord Walker's phrase in *Beresford*[55].

365. What I think sounds against the first possibility is the *ad hoc* nature of access to the land and te absence of any signage suggesting that it was available for public use[56]. It seems likely that the gates on Shirehampton Road would have been locked and, in any event, they were not directly providing access to the land, but to Stoke Lodge. The gates at Access Point [2] look to have been primarily gates to a service yard. Access Points [4], [5] and [6] while going back a long time, look to have been made by made by the use rather than being provided by the Council. Access Point [7], whenever it was made, is a way in over a decaying wall. Access Point [8] was accessed through the service yard. Access Point [9] is on any view a gap in the wall and not a "proper" access. Access Point [10] is just a convenient place where people can easily get over the wall. I accept that Access Point [3] may have been open and rendered the site freely accessible but it is the only "proper" entrance out of ten. Accordingly I think that the public were trespassers at this time, although some may have **believed** that they were permitted or had some entitlement to go on the land.

366. This then provides the context for the erection of the Avon County Council signs, some time in the 1980s.

The Avon County Council notices

[54] See paragraph 85.

[55] See paragraph 87.

[56] There has of course been no suggestion that any time there was signage **permitting** use.

367. To determine what the effect of these notices is in law it is first of all necessary to construe what they say.

368. I think that it is clear that the notice begins (the first 13 words) by forbidding trespass and then continues by giving examples. The examples are just that – a list, which is not comprehensive, of particular forms of trespass that the member of the public reading it should not commit.

369. There is, I consider, an intrinsic ambiguity in the lower text case. The person drafting it wanted to invoke the provisions of section 40 of the Local Government Act 1982. That Act created an offence of causing or permitting nuisance or disturbance to the annoyance of persons who lawfully were using educational premises. Accordingly he referred to the section in his lower case text. But he prefaces it by reference to the exercising of dogs or horses, flying model aeroplanes, parking vehicles or the use of motorcycles. The member of the public does not know whether these five activities are offences against the Act or not. In fact, they are not, as he would have been able to discover by consulting the statute book; nonetheless I think it likely that many members of the public would have concluded the opposite. This however is as may be. The fact that exercising a dog did not constitute an offence under section 40 does not mean that it was not contentious as an example of trespass. Thus the notice is saying that, in particular, the five activities identified in lower case plus causing or permitting nuisance or disturbance are contentious.

370. I recognise that there is an alternative reading, which was urged upon me by Mr Blohm and Mr Ground. They say that the activities identified in the lower case text are the ones which constitute trespass. Thus walking (without a dog) and playing games on the land are not forbidden. Thus some activities are contentious (those identified in lower case text) are contentious and some, not being forbidden, are impliedly permitted. I accept that some local people using the land may have read it in this way. I note the argument but it seems to me incorrect, not giving the words *In particular* their appropriate meaning.

371. If Mr Blohm and Mr Ground were right, Avon County Council would have been doing something quite subtle – forbidding one set of activities and permitting another (particularly walking without dogs and informal recreation not causing a nuisance). There is no evidence that this was its intention, although I accept that the Council might have achieved something which it did not intend. Moreover although some local people may have read it in this sense, I do not regard it as the natural thinking[57].

372. I do not accept that the notice is ambiguous but it does seem to me that the meaning that I prefer is supported by the context. It seems to me, in the light of H5's evidence, that County-wide, the County was taking action in respect of general trespass in respect of educational premises; in the context of the site with which I am concerned it was **confirming** the pre-existing situation and not for first time granting a limited consent[58].

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[57] As set out in my record of the evidence, I did hear some evidence of what local people thought that the signs meant. I think this evidence is of limited value because those giving it were conscious of there being an answer which was more favourable to their case than other. They may not have deliberately been trimming in what they said, but the risk of their doing so at least unconsciously was real.

[58] It may occur to the reader that the signs may have fallen to be construed in other village green cases. I am aware of no such cases in Bristol, but in South Gloucestershire there have been two. In report

The meaning of as right

373. As stated above, qualifying use must be *as of right.* Obviously if those using the land actually do have the right, their use will not be *as of right* but *by right*; the core concept lying behind use which is *as of right* is that it is use by those who behave as if they did have right. If, however, this is the core concept, the phrase has a precise legal definition – use which is as of right must be use which is *nec vi nec clam nec precario.* The use of Latin emphasises that this is a concept going back to Roman Law. It translates as not *by force, not secretly, not by permission.* Of the three limbs of the definition, relevant to consideration of the effect of prohibitory notices of the kind that I have held the Avon County Council signs to be is the first limb: *nec vi* or not *by force*.

374. The primary meaning of access that is vi or by force is access by physical force e.g. by breaking down a wall or cutting through a fence. However it is sufficient if use is contentious. In *Smith v Brudenell-Bruce*[59] Pumfrey J defined contentious use as follows:

It seems to me a user ceases to be 'as of right' if the circumstances are such as to indicate to the dominant owner, or to a reasonable man with a dominant owner's knowledge of the circumstances, that the servient owner actually objects and continues to object and will back his objection either with physical obstruction or by legal action.

375. It is obvious from this that a notice may make use contentious. This was explained at the highest level and by reference to its origin in Roman Law by Lord Rodger of Earlsferry in *R (Lewis) v Redcar*[60]. In the light of my conclusion as to the meaning of the Avon County Council signs I need to consider whether they have had this effect.

376. Although a notice may make use contentious it has been less clear what may be less clear what is the position if a notice is ignored.

377. In analysing the position, it is helpful to begin by taking the example of an open site which is fenced off with a wire fence. Local people mistakenly consider that they have a right to go on the land, and make a hole in the fence with wire cutters. The first to go through will be taking access by force. It is surely the case that those who in succeeding days use the gap that is created will also be taking access by force. But if we imagine that local people continue to use the gap thereafter and no further challenge issues, it is not so easy to describe their continued use as by force/contentious. The obvious analysis is that a challenge was issued, accepted and the landowner has subsequently acquiesced in the continued use: which is intrinsically peaceable. Local people behave as if they have the right.

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dated 28 June 2010 an application to register playing fields belonging to Sir Bernard Lovell School, David Ainger construed the signs as a general prohibition of trespass, albeit his conclusion was in respective of a number of signs, of which the Avon County Council sign was one type. In a Report dated 17 October 2008 into an application to register land known as Hoopers Farm Playing Field, Winterbourne, Charles Mynors viewed the sign as being intended generally to deter trespassers.

[59] [2002] 2 P & CR 4.

[60] See paragraphs 88 to 90 of his judgment.

378. A similarly analysis may be made if, instead of surrounding the land with a wire fence, the landowner puts up lots of notices saying: *Keep out! It is forbidden to trespass on this land.* Initially access will be by force, but the landowner may be viewed as acquiescing if he takes no further action.

379. There is dicta of high authority which supports this analysis.

380. In *R (GodmanchesterTown Council) v Secretary of State for the Environment*[61], the House of Lords had to construe section 31 of the Highways Act 1980. This provides that land may become a highway if it has been used by the public for twenty years. The relevant use has to be *as of right*; moreover the claim will fail if the landowner shows that there was *sufficient evidence that there was no intention ... to dedicate it* ("the proviso"). In his speech, Lord Hoffmann emphasised the difference between use being as of right and a landowner being able to satisfy the proviso. He said:

> *... there may be a notice which says "No right of way. Trespassers will be prosecuted". Nevertheless, for upwards of 20 years members of the public may have ignored the notice and used the way, openly and apparently in the assertion of a right to do so. Their user will satisfy section 31(1) but the landowner, even on the most objective test, will have satisfied the proviso*[62].

381. By saying that *[t]heir user will have satisfied section 31 (1)*, Lord Hoffmann was saying that that use by the public which ignored the notice was *as of right.*

382. In *R (Beresford) v Sunderland City Council*[63], Lord Walker of Gestingthorpe said:

> *It has often been pointed out that "as of right" does not mean "of right". It has sometimes been suggested that its meaning is closer to "as if of right" (see for instance Lord Cowie in* Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd 1992 SLT 1035*,, 1043, approving counsel's formulation). This leads at once to the paradox that a trespasser (so long as he acts peaceably and openly) is in a position to acquire rights by prescription, whereas a licensee, who enters the land with the owner's permission, is unlikely to acquire such rights. Conversely a landowner who puts up a notice stating "Private Land—Keep Out" is in a less strong position, if his notice is ignored by the public, than a landowner whose notice is in friendlier terms: "The public have permission to enter this land on foot for recreation, but this permission may be withdrawn at any time."*

383. This passage contemplates that a landowner may not be able to argue successfully that use by members of the public which ignores a prohibitory sign is not *as of right.*

384. It is these dicta, in particular, which led me in my Report dated 22 May 2013 to advise the registration authority to conclude that, despite the existence of the Avon County Council signs, use by local people of the land had been *as of right.* As Mr Mayer points out, I recorded at paragraph 70 of that Report *that It seems to me that the present case is a classic one of*

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[61] [2008] 1 AC 221.

[62] See paragraph 24.

[63] [2004] 1 AC 889.

acquiescence. This however was before the recent case of *Winterburn v Bennett*, decided by the Court of Appeal[64]

385. Thus, despite these dicta, the position now is that there is recent high authority which is directly in point and which establishes that use which ignores prohibitory notices is not *as of right.* In his judgment in *Winterburn*, David Richards LJ said:

40 ... In circumstances where the owner has made his position entirely clear through the erection of clearly visible signs, the unauthorised use of the land cannot be said to be "as of right". Protest against unauthorised use may, of course, take many forms and it may, as it has in a number of cases, take the form of writing letters of protest. But I reject the notion that it is necessary for the owner, having made his protest clear, to take further steps of confronting the wrongdoers known to him orally or in writing, still less to go to the expense and trouble of legal proceedings.

41 The situation which has arisen in the present case is commonplace. Many millions of people in this country own property. Most people do not seek confrontation, whether orally or in writing, and in many cases they may be concerned or even frightened of doing so. Most people do not have the means to bring legal proceedings. There is a social cost to confrontation and, unless absolutely necessary, the law of property should not require confrontation in order for people to retain and defend what is theirs. The erection and maintenance of an appropriate sign is a peaceful and inexpensive means of making clear that property is private and not to be used by others. I do not see why those who choose to ignore such signs should thereby be entitled to obtain legal rights over the land.

386. I note that in *Winterburn* it might have been argued that use was contentious on the basis of protests by the landowner in addition to the signs. However it is clear that the judgment is on the basis that the signs were sufficient by themselves. I also note that David Richards LJ did not refer to either the *Godmanchester* or *Sunderland* cases. However although the position is that the Court of Appeal may not have had drawn to its attention relevant authority[65], that authority represents *obiter dicta* and not *ratio decidendi*[66]. Thus it seems to me that the basis does not exist for Bristol City Council to do other than loyally follow the judgment of the Court of Appeal.

387. Thus the position is that in principle in the present case the signs may render the use of the land by local people contentious and not as of right. I say in principle because the further question arises as to whether the Avon County Council signs were sufficient to render use of the land contentious. I consider this on the basis that there were signs at entrance points [1], [3] and [7]. I consider it unlikely that there was a further Avon County Council sign of the same type as the other on the beech tree. F3 clearly describes another sort of notice. I think also consider it unlikely that a metal Avon County Council, clearly designed to be installed on

[64] [2016] EWCA Civ 482.

[65] I cannot tell from the transcript what authorities were referred to it.

[66] It was not necessary for what Lord Hoffmann and Lord Walker said necessarily to be right for the House of Lords in each case to reach the decision that it did.

two posts, was nailed to a tree. I think that H5's recollection was faulty in that he recalled installing such a notice in such a way. It may be that there the sign that F3 recalled was an Avon County Council sign (perhaps of the same vintage as the illegible on referred to at paragraph 307 above) and on which he recalled the word "Private". I think however it is not possible to reach any firm conclusion about this sign on the evidence before the inquiry. Further I do not think that it would be appropriate to work on the basis that there were two additional Avon County Council signs at the entrance to Stoke Lodge. This is because, as I have indicated I do not think that H5's recollection is altogether reliable; I do wonder if there would have been two such signs. The entrance has been comparatively recently (since the application) been reconfigured and certainly no further sign is extant or is physically evidenced. There was no other evidence led before me of a sign or sign at this point.

388. I should refer at this stage to another point that H5 made, namely to the four files that were formerly held by the Parks Department but which have since been destroyed. I can readily accept that such files did exist. What is less clear is what they would have said. In the absence of the material contained in the missing files, I do not think that knowledge of their existence carries the matter further.

389. I consider that the three Avon County Council signs were at the time of their erection as a matter of fact sufficient to make the use of the land contentious. I bear in mind that no notices were erected at points [4] and [5]. However many people would necessarily have walked passed the signs at access points [1] and [3], and of course quite a few did. Moreover I have accepted that local people have gone all over the land. The corollary of this is that they would have seen one of the signs. I appreciate that not everyone may have "registered" the signs but given that there are of reasonable size and in prominent positions on the land that is not the fault of Avon County Council. I have note that of the evidence questionnaires submitted with the application, half referred to the existence of signs. I think that the other half will not generally be people who were not aware of the signs because the never saw them (because, for example, they used only access points [4] and [5]) but people who never "registered" the signs. Thus I think the reasonable landowner would have considered that he had done enough to render use contentious i.e. by posting notices at what he would perceive to be the principal entrances to the site. There was a suggestion that they may from time to time have been obscured by vegetation but as of my site visits they were clearly visible and there is no reason to think that they were not clearly visible at all times throughout the relevant period[67].

390. The other point that I need to consider is the argument that the signs were obsolete following the abolition of Avon County Council. I think that there are two points here. First, I think that if someone comes across an old and decrepit sign saying "Trespassers Keep Out" he might from all the circumstances consider that it was of no continuing application. Second, although the fact that a sign says "Avon County Council" rather than "Bristol City Council" does not mean that the day after Bristol City Council takes over from Avon County Council the notice ceases to have any effect, someone might well wonder, say, ten years after Avon County Council ceased to exist whether any particular sign that it had put up had continuing effect. These may be interesting points but it seems to me that the do not fall for determination in the present case. The two Avon County Council signs that are still in place, though clearly not

[67] F3 produced a photograph dating from 2003 which showed it to be clearly visible.

new, are not decrepit; and the one that was at access point [12], although subject to some graffiti before it was removed, was similarly not decrepit as shown in the photograph dating from 2007. Further, at the beginning of the twenty year period, Avon County Council was still in existence.

391. I thus conclude that signs which were sufficient to render use of the land contentious were in place at the beginning of the twenty year period (1991) and that such use was contentious until at least the time when Avon County Council ceased to exist 1996. This means that the Applicant has failed to establish that use was *as of right* throughout the relevant twenty year period and the application must fail.

392. I need to recognise that if the registration authority accept my advice as set out in paragraph 391 above, their decision might be challenged on the basis that *Winterburn* is wrong and that the use in this case was as of right. Accordingly it is appropriate for me to go on to consider whether it is possible that use of the land in the relevant twenty year period has been contentious not because of the signs alone but **also** because of other actions of the landowner or those acting on his behalf.

393. It will be recalled that there has always been open access to the land from access points [3] and [5] and, when the gates were not locked, from access point [1]. Access may have been impeded for a brief period by a tree trunk at access point [4] but I do not think that much significance should be attached to this[68]; similarly to the fact that the gap at access point [9] may have been repaired at some point – most people would have been unaware of this. If an argument is to be made it must that be that dog walkers were warned off with sufficient frequency to make it clear that, in combination with the signs, use of the land was being rendered contentious. I put it this way because there is no evidence of people other than dog walkers being warned off in the relevant period; and it will be recalled that it was the argument of Mr Blohm and Mr Ground that use by walkers and those using the land for informal recreation (without dogs) was permitted. (They would not have been able to make this argument if the non-dog walkers had been warned off). The picture I derive from the evidence is of anti-social dog walkers being warned off - and one might expect this to have happened where anti-social behaviour happened in the sight of Bristol City Council or University employees. Specifically H5 spoke of anti-social dog walkers, which had culminated in an assault on a colleague. But it does not seem to have happened very often; and it must have happened with less frequency if the standing instruction after the assault was not to challenge dog walkers. That this is so is borne out by the fact that those who gave oral evidence were generally unaware of any such challenges – and that evidence is congruent with the written evidence. I note that B2 accepted that there may have been some friction vis a vis the dog walkers; and for example among the Applicant's 58 additional statements is that of T1 who spoke of having used the land for at least 19 years for a variety of recreational uses

… despite being told by some annoying little busybody that I was trespassing as the land belonged to Avon County Council (and this some 10 years after Avon had been abolished).

[68] It better grounds an argument that use was permissive. I consider this further below (see paragraph 412).

394. This is apparently one incident in about 2005. However some friction and the occasional incident as recorded above do not in my judgment amount to the use of the land being contentious, seen in the overall context of toleration of dog walkers.

395. The instruction not to challenge may not have survived the University taking over the land, but it is clear from F3's evidence that although there may have been some challenges, they were not very frequent. The evidence that **is** at odds with this conclusion is the statement of R1. It is in fact, to a degree, at odds with some of the rest of the objectors' evidence which "talked down" the extent of the dog walking. However this may be, I did not have the benefit of oral evidence from R1, which Mr Mayer would have had the opportunity to cross examine. In these circumstances I cannot place weight on it to significantly modify the view that I have otherwise formed.

396. Because I think that the warnings off were not very frequent and because they were principally aimed at one category of user – anti-social dog walkers – I consider that they did not have the effect of making the use of the land generally contentious. Thus on the basis that the signs were not sufficient by themselves to render use of the land contentious, I do not think that the objectors are able to rely on the signs **plus** the warnings off as founding an argument that the use was contentious in the relevant period.

397. There is one other matter that might conceivably alter the position, which is the erection of the Bristol City Council sign in 2009. It seems to me that the sign is, to a degree, ambiguous. I accept, of course, that I have to construe it in a common sense way and in its context.[69]. It is indeed from the context that the ambiguity arises – placed as it is on the boundary between the grounds of Stoke Lodge House and the playing fields. Thus it seems to me that a reader may not be sure whether it relates to the grounds of the house or the playing fields. The possibility of confusion is enhanced if the sign being mounted on a single pole, it was possible for it to be rotated so that it will not always have been facing those leaving the grounds of Stoke Lodge House. However, on balance, I think that the reasonable landowner would consider that he had put up a sign that would be construed by local people as applying to the playing fields and not the grounds of Stoke Lodge. Thus someone considering the sign, even if it had been re-orientated, would consider that it was likely to apply to the playing fields. That, in its context (whatever its orientation may have been) it was taken as applying to the playing fields by at least one person emerges from the letter set out at paragraph 22 above: the lady must have been referring to the playing fields because she refers to the land on which she walks as being a pleasant and open space, which is not an apt phrase to describe the grounds of Stoke Lodge[70].

398. Accordingly the point I need to consider is whether, together, the facts of

- the existence of the Avon County Council signs at the beginning of the 20 year period and thereafter until the sign at access point [12] was replaced by the Bristol City Council sign; and

[69] See *Betterment Properties (Weymouth) Ltd v Dorset County Council and Taylor* [2010] EWHC 3045 (Ch) per Morgan J at paragraph 116.

[70] Following the reply to her letter set out at paragraph 23 above, this lady's use will have been permissive; but that will not have been the general position.

- the presence of the Bristol City Council sign thereafter

are sufficient to have made use of the land contentious within the relevant twenty year period.

399. This is on the basis that, by virtue of the Avon County Council signs, at the beginning of the period local people would have appreciated that they were trespassers but would have considered that the landowner was acquiescing in their use.

400. It seems to me that a landowner, waking up to the situation that the extant signs might no longer be considered to be effective, might very well want to make it clear that use **is** contentious. What on the face of it, he does is to replace the existing signs and, in the context of this site put up signs at access points [4] and [5][71]. However what he actually does is to replace one sign. I accept that a significant number of users will have seen this sign. Nonetheless a significant number would not have seen it. And someone who read the sign and pondered the situation might have wondered why one Avon sign was being replaced and not the others[72]. I conclude that by erecting this one sign Bristol City Council could not reasonably have concluded that it had made it sufficiently clear that it was not acquiescing in the continued use of the land for recreational purposes by local users.

401. If I were wrong about this, it would mean that use which is as of right ceased some time after March 2009 and that qualifying use did not continue to the time of the application in accordance with section 15 (2). However, Mr Mayer submits that this does not matter. He says that the land is registrable on the basis of section 15 (3). This needs a little unpicking.

402. Section 15 (2) provides that qualifying use has to continue down to the date of the application.

403. Section 15 (3) in its current form and as set out at paragraph 335 above provides that, in the alternative, qualifying use does not have to continue down to the time of the application but down to a date which may not be more than one year before the date of the application.

404. This is intended to deal with the situation where a landowner gets wind of an application and puts up notices, although it applies to any situation where qualifying use ceases within the period of a year from the date of the application.

405. In any particular case an applicant may not know eg whether a notice has been effective or not. Accordingly in a case where it is shown that a notice was so effective within the one year period, it would seem to be within the intention of the legislature to allow registration if such a notice has been effective, but an applicant has "called it wrong" and applied under section 15 (2) rather than section 15 (3). This is so even though by the time the matter falls to be considered, the time for making a fresh application under section 15 (3) has long passed.

406. In the present case, this argument of itself will not avail Mr Mayer. On the basis that qualifying use ceased at sometime in 2009 after 26 March 2009, that cessation will have been less than 2 years before the date of the application (7 March 2011) but more than one year

[71] It may be noted that H4's recollection was that he did intend to replace all the signs.

[72] It is tempting in consideration of the sign to take into account the fact that what the City Council really wanted to do was to **permit** people to use the land, albeit making sure that they acquired no rights (see paragraphs 22 and 23 above). But I think the matter has to be looked at objectively.

before. On the basis that the law on 7 March 2011 was the same as it is now and that qualifying use ceased in 2009 after 26 March 2009, the application would have been out of time.

407. However the law was not then the same. Before it was amended by the Growth and Infrastructure Act 2013, section 15 (3) provided for a two year grace period. So if the applicant had called it differently on 7 March 2011 and applied under section 15 (3) and it was subsequently held that use had ceased in 2009 after 26 March 2009, he would have been in time[73].

408. I think that paragraph 407 above does accurately state the law. Further, I consider that if registration is permissible on the basis of section 15 (3) where an application is made on the basis of section 15 (2), it is permissible on the basis of section 15 (3) as it applied at the date of the application and not at the date that registration is being considered. In effect I consider that the applicant had a vested right to have the application considered on the substantive law as stood at the date of the application: see paragraph 122 of the speech of Lord Rodger of Earlsferry in *Oxfordshire County Council v Oxford City Council and Robinson*[74]. On this basis, the erection of the Bristol City Council sign in 2009 can have no bearing on a decision to register the land, because if use which is as of right ceased in 2009, the land would still be registrable on the basis of section 15 (3) rather than 15 (2)[75].

409. There two further discrete points on as of right.

410. On 26 July 2005 there was a meeting between a body called the Friends of Stoke Lodge, the University of Bristol and Bristol City Council. Among those present was Mr Mayer. The minutes record:

The Council did not categorise Stoke Lodge as a public park and indeed there were signs at some (not all) the accesses confirming that it was a sports site. It did not advertise the site as a public park, did not direct outdoor event promoters to it. However it permitted public use provided it did not impede sports use or damage the facilities …

[73] I do not think that it can be suggested that the amendment to section 15 (3) was retrospective, so that an application which was made within time but relying on the two year grace period might have been invalidated because it was outwith the new one year period. This is certainly not the view of DEFRA which considered that the amendment applied to applications made after the application came into force: see paragraph 3 of *Guidance to Commons Registration Authorities in England on sections 15A to 15C of the Commons Act 2006* (February 2014).

[74] And see also section 16 of the Interpretation Act 1978. Of course Parliament may have provided otherwise, but it did not. I do not think that it is necessary to consider the impact of the Human Rights Act 1998, which might otherwise impact on the situation.

[75] The relevant 20 year period would be 1989 – 2009 rather than 1991 to 2011 but there is no suggestion that this would make any difference.

411. The signs of course were, as I have held, making use of the site contentious. The statement seems to me to be recording the Council's acquiescence in use of the site, not recording a permission granted which now (apparently for the first time) was being communicated[76].

412. Second, the arrangements at access point [4] (ie the provision of a bollard) may be taken to suggest an implied consent to the public to use the land. This suggestion can be argued to be supported by the subsequent removal - in the light of protests - by the managers of the land of the obstruction of that access point by a tree. I think that it is difficult to attach too much significance to the latter event, of which many will have been unaware[77] but the general point still runs. However, if the situation at access point [4] is to be read as an implied consent, he landowner was potentially sending out "mixed messages". In respect of use of the same piece of land by the same people, use of land cannot be simultaneously contentious and permitted. I think that after the erection of the notices, the reasonable landowner would not have considered that users of access point [4] – and more generally those who used the land using other accesses - would have considered that they were being given an implied permission. The situation has to be viewed as a whole, and so viewing it, I do not think that the provision of a bollard and the non-closure of access point [4] can be taken as a permission[78]. Note that the issue of any inference of permission arising from the positioning of dog litter bins on or near the land does not arises because these bins were installed after the application for registration of the land as a town or village green.

Statutory incompatibility

413. I should begin by setting out the relevant statutory powers and duties:

414. A local authority is under a duty to secure that there sufficient schools for providing secondary education are available for their area. For this purpose, a local authority may establish and maintain secondary schools. These powers are now contained in the Education Act 1996; before 1996 they were contained in the Education Act 1944[79].

415. By section 507A of the Education Act 1996

(1) A local authority in England must secure that the facilities for primary and secondary education provided for their area include adequate facilities for recreation and social and physical training for children who have not attained the age of 13.
(2) For the purposes of subsection (1) a local authority may–
(a) establish, maintain and manage, or assist the establishment, maintenance and management of–
(i) camps, holiday classes, playing fields, play centres, and

[76] The idea that there was a permission is not of course consistent with the Ideas and Options paper referred to at paragraph 25above.

[77] And in particular, that the University were involved in moving the tree.

[78] A simple resolution of the situation would be to say that there was an implied consent arising from the situation at access point [4] and more generally before the erection of the signs, and which was terminated upon the erection of the signs. As set out at paragraph 365 above, however, I do not think that this is the correct analysis.

[79] See sections 14 and 16 of the 1996 Act; and sections 8 and 9 of the 1944 Act.

(ii) other places, including playgrounds, gymnasiums and swimming baths not appropriated to any school or other educational institution,
at which facilities for recreation and social and physical training are available for persons receiving primary or secondary education;
(b) organise games, expeditions and other activities for such persons; and
(c) defray, or contribute towards, the expenses of such games, expeditions and other activities.

416. This relates to children who have not attained the age of 13; section 507B makes similar provision in respect of qualifying young persons between 13 and 20.

417. By virtue of section 120 of the Local Government Act 1972, a local authority can acquire land by agreement for the purposes of any of its functions *under this or any other enactment* as well as, more generally, *for the benefit, improvement or development of their area.* These functions include its functions under the Education Act 1996. By section 121 a local authority is authorised to acquire land compulsorily for a number of purpose for which it is authorised to acquire land, which includes for the purpose of its functions under the Education Act 1996. By section 122, a local authority may appropriate land from one purpose to another[80].

418. As regards the statutory duty of an Academy to provide outdoor space, by section 94 of the Education and Skills Act 2008, the Secretary of State may by regulations prescribe standards for independent educational institutions, of which academies (specific provision for which is contained in the Academies Act 2010) are one. By regulation 3 of the Education (Independent School Standards) Regulations 2014 (SI 2014 No 3283), the relevant standard is provided by paragraph 29 to Schedule 1 of the Regulations:

(1) The standard in this paragraph is met if the proprietor ensures that suitable outdoor space is provided in order to enable—

(a) physical education to be provided to pupils in accordance with the school curriculum; and
(b) pupils to play outside.

419. In *R (Newhaven Port and Properties Limited) v East Sussex County Council*[81], the Supreme Court held that land of a port held for statutory purposes by a statutory port undertaker was not registrable as a town or village green because those statutory purposes which were incompatible with its use as a town or village green. Evidently the principle may be applicable in respect of the land of other statutory bodies[82]. What however is not clear is the application of the principle to the land of local authorities, which are all statutory bodies.

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[80] In this case the appropriation of part of land from temporary housing to education (see paragraph 17 above) would have been under the predecessor of section 122, namely section 163 of the Local Government Act 1933.

[81] [2015] AC 1547 (SC).

[82] As will be seen, there is now a decided case where it has been applied.

420. It will be helpful to begin by considering the judgment of Lord Neuberger and Lord Reed, which was the majority view[83].

421. At paragraph 76 they explain that there is nothing express in the Commons Act 2006 that restricts the operation of section 15 in respect of the land of a statutory undertaker.

422. At paragraphs 78 to 80 they consider the English law of dedication and prescription. In English law, for a public highway or private easement to be established by long user, the general law is that the owner needs to have capacity to create such a right. If the owner of land which others wish to register as a town or village green does not have to have capacity to create such a right, it cannot come into being. It is within this context that the question of statutory incompatibility has been addressed in the English law of public highways and easements. Thus it was not of direct assistance in seeking to ascertain whether statutory incompatibility might arise as an issue in circumstances where, as with section 15, the establishment of the rights did not depend upon the capacity of the relevant landowner to create those rights.

423. At paragraphs 81 to 90, they consider the position as to the creation of highways and easements in Scots law. Here it was arguable that the true position was that although capacity was not generally relevant, nonetheless a highway or easement could not come into being by reference to long user if it was over the land of a statutory authority and incompatible with the powers of that statutory authority.

424. At paragraph 91, they reach a conclusion. The law relating to the English and Scottish law of highways is only of relevance by analogy. They go on to say: *It is, none the less, significant in our view that historically in both English law and Scots law, albeit for different reasons, the passage of time would not give rise to prescriptive acquisition against a public authority, which had acquired land for specified statutory purposes and continued to carry out those purposes, where the user founded upon would be incompatible with those purposes*. There was an Irish case to similar effect (*McEvoy v Great Northern Railway*[84]).

425. Against this background, they found that there was an incompatibility between registration of a town or village green under the 2006 Act and the statutory regime which conferred harbour powers on the landowner to operate a working port. The heart of the judgment on this aspect of the case is set out at paragraphs 92 to 96:

92 In this case if the statutory incompatibility rested only on the incapacity of the statutory body to grant an easement or dedicate land as a public right of way, the Court of Appeal would have been correct to reject the argument based on incompatibility because the 2006 Act does not require a grant or dedication by the landowner. But in our view the matter does

[83] Lord Carnwath expressed a different view of the matter.

[84] [1900] 2 IR 325.

not rest solely on the vires of the statutory body but rather on the incompatibility of the statutory purpose for which Parliament has authorised the acquisition and use of the land with the operation of section 15 of the 2006 Act.

93 The question of incompatibility is one of statutory construction. It does not depend on the legal theory that underpins the rules of acquisitive prescription. The question is: "does section 15 of the 2006 Act apply to land which has been acquired by a statutory undertaker (whether by voluntary agreement or by powers of compulsory purchase) and which is held for statutory purposes that are inconsistent with its registration as a town or village green?" In our view it does not. ***Where Parliament has conferred on a statutory undertaker powers to acquire land compulsorily and to hold and use that land for defined statutory purposes, the 2006 Act does not enable the public to acquire by user rights which are incompatible with the continuing use of the land for those statutory purposes …***

94 There is an incompatibility between the 2006 Act and the statutory regime which confers harbour powers on NPP to operate a working harbour, which is to be open to the public for the shipping of goods etc on payment of rates: section 33 of the 1847 Clauses Act. NPP is obliged to maintain and support the Harbour and its connected works (section 49 of the 1847 Newhaven Act), and it has powers to that end to carry out works on the Harbour including the dredging of the sea bed and the foreshore: section 57 of the 1878 Newhaven Act , and articles 10 and 11 of the 1991 Newhaven Order

...

96 In this case, which concerns a working harbour, it is not necessary for the parties to lead evidence as to NPP's plans for the future of the Harbour in order to ascertain whether there is an incompatibility between the registration of the Beach as a town or village green and the use of the Harbour for the statutory purposes to which we have referred. Such registration would clearly impede the use of the adjoining quay to moor vessels. It would prevent the Harbour authority from dredging the Harbour in a way which affected the enjoyment of the Beach. It might also restrict NPP's ability to alter the existing breakwater. All this is apparent without the leading of further evidence (emphasis supplied[85]).

426. It is clear that what Lord Neuberger and Lord Reed are doing in their judgment is determining the position of a statutory undertaker. Moreover their words might suggest that the principle of statutory incompatibility applies solely to a statutory undertaker. I do not think that the principle is so limited, both because I cannot see why it should be so limited and also because Lords Neuberger and Reed seemed to recognise its wider application. This is apparent from paragraphs 98 – 101 of the judgment. The judgment was responding to the objection to the principle of statutory incompatibility raised by the registration authority, namely that it had never been applied to land held by local authorities. Lord Neuberger and Lord Reed said:

98 The County Council referred to several cases which supported the view that land held by public bodies could be registered as town or village greens. In our view they can readily be distinguished from this case. In New Windsor Corpn v Mellor *[1975] Ch 380, the Court of*

[85] Mr Blohm in his written submissions on behalf of Bristol City Council as landowner says that this is the ratio of the case on the statutory incompatibility point. I agree with him.

Appeal was concerned with the registration of Bachelors' Acre, a grassed area of land in New Windsor, as a customary town or village green under the Commons Registration Act 1965. The appeal centred on whether the evidence had established a relevant customary right. While the land had long been in the ownership of the local council and its predecessors, it was not acquired and held for a specific statutory purpose. It had been used for archery in mediaeval times and had been leased for grazing subject to the recreational rights of the inhabitants. In recent times it had been used as a sports ground and more recently it was used as to half as a car park and half as a school playground. No question of statutory incompatibility arose.

99 The Oxfordshire[86] *case concerned the Trap Grounds, which were nine acres of undeveloped land in north Oxford comprising scrubland and reed beds. The land was, as Lord Hoffmann stated (in para 2) "not idyllic". More significantly, while the city council owned the land and wanted to use a strip on the margin of it to create an access road to a new school and to use a significant part of the land for a housing development, there was no suggestion that it had acquired and held the land for specific statutory purposes that might give rise to a statutory incompatibility.*

100 Thirdly, the County Council referred to R (Lewis) v Redcar and Cleveland Borough Council (No 2) *[2010] 2 AC 70 , which concerned land at Redcar owned by a local authority which had formerly been leased to the Cleveland golf club as part of a links course but which local residents also used for informal recreation. The council proposed to redevelop the land in partnership with a house-building company as part of a coastal regeneration project involving a residential and leisure development. Again, there was no question of any statutory incompatibility. It was not asserted that the council had acquired and held the land for a specific statutory purpose which would be likely to be impeded if the land were to be registered as a town or village green.*

101 In our view, therefore, these cases do not assist the respondents. ***The ownership of land by a public body, such as a local authority, which has statutory powers that it can apply in future to develop land, is not of itself sufficient to create a statutory incompatibility****. By contrast, in the present case the statutory harbour authority throughout the period of public user of the Beach held the Harbour land for the statutory harbour purposes and as part of a working harbour* (emphasis supplied).

427. In considering this passage, it is helpful to begin with the passage that I have emphasised. Clearly Lord Neuberger and Lord Reed envisage that there is some land of a local authority which could properly be registrable as a town or village green. Potentially some help is afforded in understanding what land may be registrable by looking at the three cases that they considered.

428. The key passage in their consideration of *New Windsor Corporation v Mellor* is as follows:

[86] I.e. *Oxfordshire County Council v Oxford City Council and Robinson* [2006] 2 AC 674.

While the land had long been in the ownership of the local council and its predecessors, it was not acquired and held for a specific statutory purpose. It had been used for archery in mediaeval times and had been leased for grazing subject to the recreational rights of the inhabitants. In recent times it had been used as a sports ground and more recently it was used as to half as a car park and half as a school playground. No question of statutory incompatibility arose.

429. New Windsor Corporation was an historic local authority which did not owe its creation to statute. As Lord Denning put it *From time immemorial it has belonged to the Mayor, Bailiffs and Burgesses*[87]. As Lord Neuberger explained, it had been used for archery and was subject to recreational rights. It seems clear that as well as no question of statutory incompatibility arising, no question of statutory incompatibility was capable of arising.

430. As regards the Trap Grounds case, although many points were argued there was indeed, as Lord Neuberger and Lord Reed put it *no suggestion that [the City Council] had acquired and held the land for specific statutory purposes that might give rise to a statutory incompatibility*. Obviously if the suggestion was not made, there was no possibility of the Courts considering it. Nonetheless Lord Neuberger and Lord Reed were aware that the City Council wanted to develop a significant part of the land for housing purposes and they do not flag the possibility that this might properly found an argument based on statutory incompatibility which one might have expected them to do had they thought that such a possibility might have arisen. One cannot know but one suspects that why they felt able to deal with the case so comparatively is the absence of suggestion that it had been acquired for a specific statutory purpose that might give rise to statutory incompatibility. As far as I am aware there is nothing in the reports of the judgments in the Trap Grounds case at first instance, in the Court of Appeal and in the Supreme Court which make it clear on what basis the land was acquired. It is nonetheless clear from the Inspector's Report that the land was acquired for housing. It seems to me that, on the face of it, if the principle of statutory incompatibility is to have application in relation to land held by local authorities, it should have applied in that case.

431. *R (Lewis) v Redcar and Cleveland Borough Council (No 2)* is potentially more helpful in identifying a category of land held by a local authority that may properly be registrable. The land in question was a local authority golf course. It was not argued that local people had been permitted to go on the golf course[88]. The Supreme Court held that golf course use was compatible with the non-permitted use by local people in the sense that the registration was able to proceed on the basis that the golfers would be able to continue playing golf. In fact by the time the case was considered the local authority wanted to develop it for housing, as Lords Neuberger and Reed were aware. So the Supreme Court evidently did not regard this subsequently arising statutory incompatibility as preventing registration.

[87] An examination of the decision in the case of the Chief Commons Commissioner shows that they derived title from a nineteenth century enclosure award (see p5) but they had originally owned it long before that.

[88] Mr Blohm made this point.

432. In the light of the above it seems to me that is possible to argue that the concept of statutory incompatibility applies to all land of local authorities. This would be because in all cases it might be the case that future use and development could be incompatible with the current use. Even where land was held for the purposes of public open space, it might become appropriate in the future to build on part of it[89]. Nonetheless this analysis does not seem to me to be plausible in the light of what Lords Neuberger and Lord Reed said in *Newhaven.* I think that the argument could only work on the basis that all that they were saying about the three cases that they considered was that statutory incompatibility was not argued in those cases and that for that reason they could not provide any precedent. However if they had thought that the concept of statutory incompatibility had a very general application to the land of local authorities one would have expected them to say so.

433. A contrasting view would be that the concept of statutory incompatibility had no application to the land of local authorities, being limited to the land of statutory undertakers. It seems to me that this view is also implausible since I cannot see why it should be so limited.

434. In this connection I think it is useful to have regard to paragraph 94 (and the following paragraphs) of the *Newhaven* decision set out above. As I read it, Lords Neuberger and Lord Reed were not saying that, where one is considering the land of a statutory undertaker, the concept of statutory incompatibility **necessarily** applies (ie as matter of law) but that, where one is considering an entity such as a port or harbour it obvious that it applies. If this is the correct interpretation then it is obvious that the concept is not limited to statutory undertakers but might apply to other statutory bodies, such as local authorities. Further, whether it does apply or nor depends on the facts (supplied in the *Newhaven* case by an examination of the statutory powers). The position may not be as obvious in the case of a local authority as it is in the case of a statutory undertaker (or the particular statutory undertaker considered in *Newhaven*). I am confident that this nuanced view (as opposed to the "extreme" positions articulated in paragraphs 23 and 24 above) is the correct one.

435. Developing this theme, it seems to me that if there is in practice nothing that is consistent with its statutory purposes that a statutory holder of land can do with that land if it subject to rights of recreation by the public, the principle of statutory incompatibility applies. If on the other hand, there is something that he can do with the land, the principle will not apply.

436. In the absence of authority, I would have thought that the test is whether there is any such incompatibility at the date of the application. I appreciate that it could be argued that the test is whether it is reasonably foreseeable at the date of the application (or immediately before) that there might be statutory incompatibility; and also that the date for assessing incompatibility is the date the application falls to be determined, not when it is made. However the difficulty with the first proposition is that it is always foreseeable that in some wise that the land might be used in a way that is incompatible with registration – in this case, for example, as a school. As regards the date for assessing incompatibility being the date of

[89] Land held as public open space might be an exception to the principle. It would not in any event be registrable because use by the public would be *by right* and not *as of right*.

determination, this would appear to enable the local authority so to organise matters that there certainly is a statutory incompatibility at the relevant time, even though there was not at the date of the application[90]. My conclusion would accordingly be that. on the approach set out at paragraph 435 above, at the date of the application (7 March 2011) there was no incompatibility because the land was being used both by the school and by local people for lawful sports and pastimes.

437. The proposition that in these circumstances there is no statutory incompatibility to preclude registration derives support for the judgment of Ouseley J in *Lancashire County Council v Secretary of State*[91] In that case, the decision maker had held that land was not held by Lancaster City Council for educational purposes, and Ouseley J held that she was entitled so to hold. On the basis that the land was held for educational purposes, he held that the key question was

Can [the education authority] carry out its educational functions even if the public has the right to use [the land registered as a town or village green] for recreational purposes?

438. He said that the answer would be *Yes*, even if the education authority could make no educational use of the land at all.

439. *R (NHS Property Services) v Surrey County Council*[92] concerned land potentially registrable as a town or village green that was owned by a statutory body, NHS Property Services Limited, and which was held land for health service purposes. Gilbart J pointed out

No-one has suggested that the land in its current state would perform any function related to those purposes, and the erection of buildings or facilities to provide treatment, or for administration of those facilities, or for car parking to serve them, would plainly conflict with recreational use[93].

440. Accordingly he held that the principle of statutory incompatibility applied and that the land was not registrable as a town or village green.

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[90] In *Oxfordshire County Council v Oxford City Council and Robinson*, Lord Hoffmann rejected an argument that would have allowed (on the law as it then was) an application for registration of a town or village green to be defeated by posting signs making use contentious after the date of the application and before its determination on the basis that Parliament could not have intended the Act to work in that way.

[91] [2016] EWHC 1238 (Admin).

[92] [2016] 4 WLR 130. Judgment in this case was handed down on the last day of the inquiry (13 July 2016), so the parties did not have the opportunity then to address me on it. I do not take the view, as will be seen, that, it materially alters the approach to be taken in a case of the present kind. Accordingly I have not felt it necessary to seek the parties further representations on the matter; and none of them have themselves sought to make representations to me about it.

[93] See paragraph 134 of his judgment.

441. This is a different approach to that adopted by Ouseley J. However Gilbart J did consider the position as regards land for educational use. It will be helpful to set out paragraph of his judgment immediately following that set out at paragraph 439 above:

135 Indeed, it is very hard indeed to think of a use for the land which is consistent with those powers, and which would not involve substantial conflict with use as a village green. A hospital car park, or a clinic, or an administrative building, or some other feature of a hospital or clinic would require buildings or hard standing in some form over a significant part of the area used. By contrast, it is easy to think of functions within the purview of education, whereby land is set aside for recreation. Indeed, there is a specific statutory duty to provide recreational facilities, which may include playing fields, and other land, for recreation, the playing of games, and camping, among other activities—see section 507A Education Act 1996.

442. Thus Gilbart J was specifically saying that land held for educational purposes under section 507A of the Education Act 1996 may be registrable: thus, of course, explaining why in his view the principle of statutory incompatibility would not apply to the land in the *Lancashire* case. He also envisaged that land held by a local authority under "general" powers would be registrable i.e. where it was held under section 122 of the Local Government Act 1972 for the benefit of its area.

443. It is possible that Gilbart J might also have taken the view that in some circumstances land the recreational use of which **might** lead to a conflict with the particular purpose to which the statutory body indented to devote the land could lead to the principle applying but, if so, he did not say so; and if he had said this it would seem to bring his approach into conflict with that of Ouseley J. In fact, he suggests that Ouseley J's judgment was correct[94].

444. These are difficult matters, but it seems to me to that on the basis that the registration authority looks at the matter at the date of the application, the principle of statutory incompatibility does not apply whether one adopts the approach of Ouseley J or Gilbart J. The matter is less clear if the principle were to apply at the date the registration authority come to consider the application.

445. It seems to me that the approach of Gilbart J emphasises the basis of the principle as one of statutory construction[95]. I get the impression that he considered that it was simply a question of looking at the relevant statutory powers and duties and considering their compatibility with registration as they stand. If this be correct the date on which one examined statutory incompatibility would only matter if the statutory use changed after the application. In the present case it is true that the land has vested in an Academy since the application, but the nature of the powers and duties of the Academy are similar to those of Bristol City Council as education authority before it. Accordingly I do not think that applying his approach, a different conclusion is reached if one looks to the date of the determination of the application. It seems to me that if the Academy could demonstrate that they could not provide the physical education which they were required to provide without using the land in a way incompatible

[94] See paragraph 130 of his judgment.

[95] See paragraphs 128 and 130 of his judgment.

with recreational use by local people (ie by fencing it off), Ouseley J contemplates that the principle of statutory incompatibility might apply[96]. At the moment of course they **do** provide such physical education (at the Combe Dingle Sports Complex). B4 says that the situation is unsustainable, pointing to the cost; and of course there can be no guarantee of the Combe Dingle facilities continuing to be available. I am not discounting that evidence if I say that although it seems to me that it is possible that the School might not be able to carry on with its current arrangements at Coombe Dingle, it is difficult to see that it would not be able to make some alternative arrangements if it became necessary. Narrowly, I think that the position **as of now** is that there is no statutory incompatibility as envisaged by Ouseley J; and it seems to me wrong in principle that future incompatibility might be sufficient to hold that the principle of statutory incompatibility applies in the present case.

446. Mr Ground advanced a more sophisticated argument on statutory incompatibility.

447. Under the Academies Act 2010, an Academy cannot dispose of a playing field without the consent of the Secretary of State. The Secretary of State has indicated that he is unlikely to agree to such a disposition if it would leave the school unable to meet its outdoor space guidelines [97] Registration of a village green is, it said, a disposal for the purpose of the legislation[98].

448. If the Secretary of State issued a direction that the disposal be not made it

... would place Cotham [School] in the impossible situation of being required to comply with a number of incompatible duties: a duty to permit unfettered access to the inhabitants of the neighbourhood, a duty not to cease using the land for academy purposes and a duty to safeguard its pupils. The specific statutory duty in relation to this land could not be complied with if there was TVG registration because disposal would not be able to comply with the mechanisms of the Academies Act 2010. The playing fields would be lost to Academy purposes and the control of the Secretary of State would be taken away by the TVG registration.

449. I have difficulty in following this argument. I do in fact doubt that registration of a TVG is a disposal for the purpose of the relevant provision. **If** it does the Secretary of State will have to make decide whether or not to consent. This is as may be; I am not concerned with that situation but with whether the land is not registrable before that stage is reached on the basis of the principle of statutory incompatibility. If there is no such incompatibility on the law as enunciated in the *Newhaven* case, *Lancashire* and *Surrey* it does not seem to me that the postion is changed because of the need for the Secretary of State's consent. If I do consider the position the Secretary of State did decline to give his consent, it surely gives rise to a

[96] See paragraph 81 of his judgment.

[97] See paragraph 17 of Disposal or change of use of playing field and school land. More specifically, he will be unlikely to grant his consent if the result will be failure to meet the outdoor space guidelines. That would be the case here – see the evidence of

[98] By paragraph 17 (8) of Schedule 1 to the Academies Act 2010 references to a disposal of land include references to a change of use of the land in cases where the land is no longer to be used for the purposes of an Academy.

situation where, upon that decision, registration becomes void (and not before). It seems to me that if there be merit in the argument, it is one to be made after registration.

450. Mr Blohm put a similar point to me relying on the statutory restriction on disposal of playing fields contained not in the Academies Act 2010 but under section 77 of the School Standards and Framework Act 1998 (which is in similar terms to the relevant provision in the Academies Act 2010). The Act of 1998 would apply if the matter of statutory incompatibility falls to be considered at the date of the application. He tests the matter by asking the question *If it was the intention of Parliament that a local authority could not apply to create a TVG over land used as a school sports field without the approval of the Secretary of State, can Parliament have intended that long use by the public (without the approval of the Secretary of State) can create a TVG?* He answers this question in the negative and thus argues for statutory incompatibility. However, trying to follow this somewhat convoluted argument, it does not seem to me that voluntary registration of a village green is necessarily to be equated with involuntary registration on the basis of long user or that Parliament should necessarily consider that the Secretary of State would necessarily consider that the registration of a village green over a school playing field would be unacceptable if, in fact, such registration was compatible at the relevant time with use by the school.

451. Standing back, it seems to me that, if the correct time to look at the matter is the date of the application, the proposition that there is statutory incompatibility in the present case lacks conviction because at that time both the school and local people were using the land in a way that was not incompatible. If the correct time to look at the matter is now – i.e. the time at which a decision on the application falls to be made – I think it has some force because registration will evidently preclude the School from using the land for physical education. Accordingly, I think that the date at which the issue falls to be examined may be key to this issue. I consider that a Court would hold that the relevant date is the date of the application and therefore, however the matter ultimately be rationalised, I think that the argument on statutory incompatibility would fail.

452. I should add for completeness two matters:

(i) if the correct time for looking at statutory incompatibility is the date of the determination, it may be relevant to have in mind that the land was acquired by Cotham School subject to any town or village green rights that there may have been over it;

(ii) permission to appeal was granted in the *Surrey* case and is being sought in the *Lancashire* case so there is likely to be some further authority on statutory incompatibility in due course.

Neighbourhood and locality

453. When I considered this aspect of the matter in my Report dated 22 May 2013, I said:

I*n Oxfordshire County Council v Oxford City Council and Robinson, Lord Hoffmann said that there could be reliance upon a neighbourhood within two localities*[99]*. In the present case the application site is within the Stoke Bishop Polling District, but use comes not just from that*

[99] See paragraph 27 of his speech.

polling district but the Westbury-on-Trym Polling District and Kingsweston Polling District. In R (Mann) v Somerset County Council, HH Judge Robert Owen QC held that two polling districts were capable of being localities for the purpose of section 15. In his application Mr Mayer identified with a red line an area within the three polling districts which he said identified where the great majority of users lived; he described this area as the locality on which he relied. It seems to me that in fact it represents the ***neighbourhood*** *within the three identified localities on which he relies. As such, in R (Cheltenham Builders) v South Gloucestershire Council[100], Sullivan J said that to be a neighbourhood an area had to have a sufficient degree of cohesiveness[101]. It is not suggested by the objectors that the neighbourhood identified by Mr Mayer lacks that necessary degree of cohesiveness and the objectors do not contest Mr Mayer's application on this basis or of any failure to demonstrate a relevant locality or neighbourhood within a locality. I do not think that it is necessary for the registration authority – or for me on its behalf - to be astute to take any point on whether use has been by the inhabitants of a qualifying locality. The area identified by Mr Mayer evidently has some geographical coherence being drawn in relation to main roads and other natural boundaries and the fact that it might not be easy to determine the precise boundary of the neighbourhood would not be an objection to it[102]. It is worth observing that when points are taken by objectors on the basis of locality or neighbourhood within a locality[103], it rarely proves possible to sustain them[104].*

454. Mr Mayer confirmed that I had understood the application correctly so that the red line that he had drawn should be taken to be a neighbourhood and not a locality.

455. Mr Ground argues that the area that Mr Mayer has defined lacks any degree of cohesiveness and is arbitrary – just a line drawn on a map reflecting where the users come from.

456. Obviously one expects there to be a correlation of some kind between the area where users come from and the relied on locality or neighbourhood within a locality[105]. It must however be possible that the users cannot be related to any area with a sufficient degree of cohesiveness – which is what Mr Ground says is the position in the present case.

457. On the OS Landranger map for Bristol, the word Stoke Bishop is printed at the east end of the land the subject of the application. There is no doubt that a geographical area called Stoke Bishop exists and has done so for hundreds of years. It has shops which include "Stoke Bishop" in their names and there is a church, village hall, memorial fountain and a war memorial. To its north west is Westbury on Trym and to the south west is Sneyd Park. As S3

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[100] [2004] JPL 975.

[101] See paragraph 85 of his judgment.

[102] See *Leeds Group PLC v Leeds City Council* [2011] Ch 363 (CA).

[103] See eg *R (Laing Homes Limited) v Buckinghamshire County Council* [2004] 1 P & CR 36 at p573; *R (Oxfordshire and Buckinghamshire Mental Health Foundation NHS Trust) v Oxfordshire County Council* [2010] 2 EGLR 171 (High Court).

[104] Note that the footnotes to this passage are within the original text.

[105] This has recently been the subject of a judicial review case in which I am involved and where judgment has been reserved: R (*Allaway) v Oxfordshire County Council.*

explained, Sneyd Park is historically part of Stoke Bishop, and forms part of the ecclesiastical parish of Stoke Bishop. Pausing there, this might suggest that the ecclesiastical parish of St Mary Magdalen, Stoke Bishop might have been relied upon as a locality in the case. However the north west boundary is Ebenezer Lane, so that it excludes Woodland Grove and West and South Dene to the north of the land. By contrast, the Stoke Bishop Ward includes all these roads. The Stoke Bishop Ward in fact does represent a locality that includes most of the dwellings where the inhabitants live on whose use the Applicant relies. The **neighbourhood** on which he relies by contrast

- excludes Durdham Down
- includes part of Sea Mills
- includes an area north of Coombe Lane.

458. I think that nothing turns on the inclusion of Durdham Down, since nobody lives there. I do not think that Sea Mills is appropriately included in the neighbourhood because although some users evidently come from there, it is a very distinct area on the other side of the River Trym.

459. As amended by the deletion of Sea Mills, it seems to me that what the claimed neighbourhood is trying to do is to identify an area which may appropriately be called Stoke Bishop. I think that Stoke Bishop does have reasonably clear boundaries as reflected by its two "official" delineations – the ecclesiastical parish and the ward: to the west the River Trym, to the south the River Avon and to the east Durdam Down (whether Durdham Down be regarded as "in" or "out" not making any difference in this regard). Where there is less clarity is where Stoke Bishop ends to the north and Westbury on Trym begins. The Applicant has taken the main road that curves round Stoke Bishop to the north, which includes some users who might otherwise be excluded. I do not think that that because the Applicant has arguably cast his net too wide, it invalidates the neighbourhood that he has identified. In *Oxfordshire County Council v Oxford City Council and Robinson*, Lord Hoffmann said

"Any neighbourhood within a locality" is obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries[106].

460. Accordingly I do not think that the application should fail because no neighbourhood within a locality has been demonstrated. With the deletion of Sea Mills, I think that the area defined by the Applicant is a cohesive neighbourhood.

Other arguments

461. There are no arguments other than those set out in paragraphs 338 - 460 above and there considered why the land should not be registered as a town or village green.

Conclusion

[106] See paragraph 27.

462. I recommend that the land be not registered as a town or village green because in the relevant twenty year period use by local people has not been *as of right*. Otherwise my recommendation would have been that the land should be registered. I do not think that any of the other reasons argued for by the objectors should lead to the rejection of the application.

463. I am grateful to everybody who assisted the smooth running of the inquiry and I am grateful to all the advocates for their submissions. I should particularly thank Mr Mayer for the immaculate documentation for which he and his team were responsible.

PHILIP PETCHEY
14 October 2016

Neutral Citation Number: [2018] EWHC 1022 (Admin)

Case No: CO/1208/2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 3 May 2018

Before:

SIR WYN WILLIAMS
(Sitting as a Judge of the High Court)

- -

Between:

THE QUEEN on the application of COTHAM SCHOOL	**Claimant**
- and -	
BRISTOL CITY COUNCIL	**Defendant**
- and -	
(1) DAVID MAYER	**Interested Parties**
(2) BRISTOL UNIVERSITY	
(3) ROCKLEAZE RANGERS FOOTBALL CLUB	

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- -

The Claimant was represented by **Richard Ground QC and Dr Ashley Bowes** (instructed by **Harrison Grant Solicitors**)
The Defendant was represented by S**tephen Morgan** (instructed by **The Defendant's Legal Services Department**)
The First Interested Party was represented by **Andrew Sharland QC** (instructed by **DAC Beachcroft**)
The Second and Third Interested Parties did not appear and were not represented

Hearing dates: 21 and 22 November 2017
Further written submissions on behalf of the Claimant dated 20 April 2018, the First Interested Party dated 22 April 2018 and the Defendant dated 23 April 2018

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Approved Judgment

Sir Wyn Williams:

Introduction

1. The Defendant is the registered owner of the freehold interest in an area of land known as Stoke Lodge Playing Fields, Shirehampton Road, Stoke Bishop, in the city of Bristol (hereinafter referred to as "the land"). It is also the Commons Registration Authority empowered to register land as a town or village green pursuant to section 15 Commons Act 2006 ("the 2006 Act"). In the remainder of this judgment I will refer to the Defendant either as "Bristol City Council", "the landowner" or the "registration authority" as the context dictates.

2. On 7 March 2011 the First Interested Party, Mr Mayer, made an application to the registration authority to register the land as a town or village green. He was acting on behalf of an unincorporated association known as "Save Stoke Lodge Parkland". Objections to the application were received from the landowner, the Second and Third Interested Parties and the Claimant. In the face of conflicting views about whether the land should be registered the registration authority decided that it would appoint Mr Philip Petchey (hereinafter referred to as "the Inspector") to make a recommendation about whether the land should be registered. At the time of his appointment in 2011, the Inspector was a barrister in private practice with considerable relevant expertise and experience.

3. On 22 May 2013, the Inspector issued a report in which he recommended that the land should be registered as a green. However, that recommendation was not implemented. In the years immediately following the publication of the Inspector's report there were a number of cases proceeding through the courts which were relevant to the issues raised in this case. Ultimately a decision was taken that before a decision was made as to whether the land should be registered the Inspector should conduct a non-statutory public inquiry at which oral evidence would be given before him by all those who wished to attend the Inquiry and give such evidence.

4. Over 9 days during June and July 2016 the Inspector conducted such an inquiry. Mr Mayer represented Save Stoke Lodge Parkland; Leslie Blohm QC represented the landowner; Richard Ground QC and Ashley Bowes represented the Claimant. They each called a number of witnesses although most of the witnesses were called by Mr Mayer on behalf of Save Stoke Lodge Parkland. On 14 October 2016 the Inspector produced a comprehensive written report. In it, he recommended that the land should not be registered as a green. He expressed the view that one aspect of the statutory test for registration had not been satisfied – as to which see below.

5. The Inspector's report was considered at the Public Rights of Way and Greens Committee of Bristol City Council ("the committee") at a meeting which took place on 12 December 2016. In advance of the meeting a large number of representations were sent to the committee by local inhabitants. A substantial number urged the committee to reject the Inspector's recommendation and grant the application for registration. Members of the committee were provided with a written report prepared by officers of Bristol City Council in which it was suggested that the committee should accept the Inspector's recommendation. At the meeting oral submissions were made by a number of persons. In the event the committee resolved (on the Chair's

casting vote) to reject the Inspector's recommendation and to grant the application for registration.

6. Currently, the land is occupied by the Claimant. It has been occupied since 31 August 2011 pursuant to a lease granted by the landowner for a term of 125 years commencing 1 September 2011. It is common ground that the creation of the lease was and is no bar to the registration of the land as a green.

7. In these proceedings, issued on 9 March 2017, the Claimant seeks an order quashing the decision of the committee. It alleges that the decision of the committee is vitiated by legal errors and five grounds are advanced which, it is submitted, justify the making of a quashing order.

8. The application for a quashing order is resisted, strenuously, by the registration authority and Mr Mayer. The primary contention of both is that none of the five grounds advanced by the Claimant is made out. However, with varying degrees of enthusiasm, it is also submitted that even if one or more of the grounds are made out, no relief should be granted to the Claimant. At the conclusion of the oral hearing before me it was agreed that this judgment should focus upon whether any of the grounds of challenge were made out. In the event that I found that one or more of the grounds were made out, the issue of withholding relief would be dealt with discretely either at or following the handing down of judgment.

9. During the course of the hearing I was informed that two first instance decisions relevant to the resolution of ground 5 had been the subject of appeals to the Court of Appeal. In that court the appeals were heard together and they are now reported as *R (Lancashire CC) v Secretary of State for the Environment, Food and Rural Affairs* and *R (NHS Property Services Ltd) v Surrey CC* [2018] EWCA Civ 721. At the hearing it was not known when judgment would be given by the Court of Appeal. I expressed the view that my own consideration of ground 5 would be assisted by waiting for the Court of Appeal to hand down judgment. In the event judgment was handed down in the appeals on 16 April 2018.

The nature of the land, its history and the relevant physical features upon it.

10. The Inspector's report of 14 October 2016 contains a detailed account of all these matters which is accepted by the parties to be accurate or, at least, not challenged in these proceedings. In consequence this section of my judgment is a short summary of the Inspector's findings so far as they are relevant to the issues which I must determine.

11. The land has an area of approximately 22 acres. It is mostly grassland which "wraps around" a large Victorian house called Stoke Lodge. The area which is the subject of the application for registration was, originally, the grounds of the house. The house itself and its immediate surroundings are not part of the application. Shortly after the end of the Second World War the then landowner sold to Bristol City Council, as it was then constituted, approximately 5.5 acres of the land for the purpose of temporary housing. The house and the remainder of the land were sold to the Council in 1947 for educational purposes. Shortly after this transaction the 5.5 acres originally sold for temporary housing were appropriated for educational purposes.

12. Within a comparatively short time of the disposals to the Council, large parts of the land were laid out as playing fields. There have been football and rugby pitches on the land in the winter and a cricket field and an athletics track in the summer for many years. Until about 2000 these pitches were used as school playing fields for Fairfield School; thereafter Cotham School became the user of the pitches. Over many years the pitches were also used by local sports clubs under arrangements made with the schools and/or the local education authority.

13. Following the coming into force of the Academies Act 2010, Cotham School became an academy. The Claimant, which is a company limited by guarantee, operates and manages the academy.

14. The land is not entirely typical of playing fields. There are a number of trees upon it – not all confined to the perimeter. Further it is not entirely flat. It has a slightly rolling character which has the effect of enhancing its generally attractive appearance.

15. Following the sale of the land in the 1940s until 1974 the land was owned by Bristol City Council. Upon re-organisation of local government in 1974, Avon County Council became the landowner. Following further local government re-organisation the county council ceased to exist in 1996 whereupon the land was again vested in Bristol City Council.

16. There are a number of access points to the land which have existed for many years. These are shown numbered 1 to 12 upon a plan within the Trial Bundle (page 195). Some of the 12 access points depicted upon the plan are, on the ground, more than one point of access albeit in close proximity to each other. The same plan and a photograph at page 194 show the relationship between the land and the residential areas nearby.

17. As at the time of the Inspector's inspection there was a sign measuring about 4 feet 6 inches x 2 feet 6 inches (about 1.37m x 0.76m) situated in close proximity to access point 3. It had upon it in bold the following words:-

> ***"MEMBERS OF THE PUBLIC ARE WARNED NOT TO TRESPASS ON THE PLAYING FIELD"***

It went on to prohibit named activities which caused nuisances and threatened that persons committing any such nuisances would be liable to prosecution. Any person wishing to be authorised to use the playing field was advised to make a request to the Director of Education. The words "County of Avon" appeared beneath the words I have just summarised. This sign was clearly visible at the times Inspector inspected the land.

18. The Inspector also saw that there was an identical sign in the vicinity of access point 2. He also found a sign under the logo of Bristol City Council near access point 12. This sign was headed "Private Grounds" and was in similar although not identical terms to the signs I have just described. The Inspector concluded that this sign was erected by the City Council in 2009 but at or near the site of a similar sign which had been erected by Avon County Council. He concluded that Avon County Council had erected at least three signs upon the land having words identical to those set out and

paraphrased at paragraph 15 above. The Inspector also concluded that these signs had first appeared on the land in the mid 1980s.

19. There is no dispute that the land has been used as playing fields by educational establishments and sports clubs since the late 1940s. The Inspector found that the land had also been used over many years by local inhabitants for informal recreational purposes. After a very detailed review of the oral and written evidence the Inspector expressed his conclusions thus:-

> "334. The core facts of this case are not in dispute. The land has been used for use by schools for games and athletics. It has been used by sports clubs for football, rugby and cricket. It has been used by local people for dog walking and informal recreation. Access for that dog walking and informal recreation has been freely available. At all relevant times two Avon County Council signs were positioned on the land and still are. There was a third sign Avon County Council sign on the land which must be contemporaneous with the other Avon County Council signs and survived down from the mid 1980s until at least 18 June 2007. Cotham school have a lease of the land and could fence it off, subject to it not having become a town or village green by virtue of long use by local people. However, the existence of these core facts has not precluded extensive argument."
>
> …..

Statutory Framework

20. Section 15 of the Commons Act 2006, so far as is relevant, is in the following terms:-

> (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.
>
> (2) This subsection 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.
>
> (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 relevant period.
>
> [(3A) In subsection (3), "the relevant period" means—
>
> (a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b); …"

21. Later in this judgment (when dealing with Ground 5) it will be necessary to consider other statutory provisions. So far as is necessary, however, I will set out those provisions in the section of this judgment which deals with that Ground.

The Inspector's conclusions in relation to section 15 of the 2006 Act.

22. The Inspector found that a significant number of the inhabitants of the locality in which the land is situated had used it for recreational purposes (i.e. lawful sports and pastimes) for the requisite 20 year period i.e. between March 1991 and March 2011. He also found that over that same period the recreational use of the land undertaken by the local inhabitants co-existed with the use made of the land by educational establishments and sports clubs. He further concluded, however, upon one discrete basis, that the user undertaken by the local inhabitants over the requisite period had not been "as of right". It is this finding which led him to recommend that the land should not be registered. The Inspector's analysis of the meaning of the phrase "as of right" is long and detailed. In summary, however, the Inspector was of the view that in order that the use of the land by the local inhabitants could be categorised as being "as of right" during the requisite period it had to satisfy the Latin maxim *nec vi, nec clam, nec precario* (not by force, not secretly and not by permission). The first limb, *nec vi,* would not be satisfied if the use relied upon had been made contentious by appropriate action on the part of the landowner. The Inspector considered himself bound by decided cases to conclude that the erection of signs on the land in the mid 1980s might make the use contentious and, on the facts as he found them to be, he concluded that the 3 signs erected by Avon County Council had been sufficient to render the use made of the land by the local inhabitants contentious. At paragraph 389 of his report he set out his views as follows:-

> "I consider that the 3 Avon County Council signs were at the time of their erection as a matter of fact sufficient to make the use of the land contentious. … many people would necessarily have walked passed the signs … and, of course, quite a few did. Moreover I have accepted that local people have gone all over the land. The corollary of this is that they would have seen one of the signs. I appreciate that not everyone may have "registered" the signs but given that they are of reasonable size and in prominent positions on the land that is not the fault of

> Avon County Council …. Thus I think that the reasonable landowner would have considered that he had done enough to render use contentious i.e. by posting notices at what he perceived to be the principal entrances to the site. There was a suggestion that they may from time to time have been obscured by vegetation but as of my site visits they were clearly visible and there is no reason to think that they were not clearly visible at all times throughout the relevant period."

In reaching this conclusion there is no doubt that the Inspector was influenced by a number of decisions of the higher courts but especially the decision of the Court of Appeal in *Winterburn and another v Bennett* [2017] 1WLR 646.

The committee's decision and the events preceding it

23. Following the receipt of the Inspector's report, the registration authority decided that it should be considered at a meeting of the committee on 12 December 2016. In the weeks leading to that date, Mr Mayer engaged in a campaign to persuade the committee that it should not accept the Inspector's recommendation. He contacted his local councillors. He sought to galvanise public support for the view that the land should be registered. At least one public meeting was held and local inhabitants were encouraged to write to the registration authority registering their support for the registration of the land. He also contemplated seeking to challenge the decision in *Winterburn* and, to that end, made a request to the committee that it should adjourn consideration of the application. Ultimately, Mr Mayer did not seek to challenge the decision in *Winterburn* and the adjournment application to the committee was not pursued.

24. Mr Mayer's campaign generated a lot of local support. Hundreds of people sent emails supporting the registration of the land. Many of these emails were sent to a dedicated email address provided by Bristol City Council so as to permit local inhabitants to make representations about decisions to be made by the Council. Many of the representations were copied to local councillors, Mr Mayer and Councillor Abrahams who was the chair of the committee. It is clear, too, that some emails were sent directly to Councillor Abrahams. He replied to the emails sent to him; to the extent that it is necessary to do so the emails and replies are considered in this section of the judgment which considers Ground 2.

25. On or about 2 December 2016 officers of Bristol City Council produced a report for consideration by the committee. That report recommended that the land should not be registered for the reasons articulated by the Inspector. In the view of the officers the Inspector's report contained "detailed justification for his recommendation". However, the officers' report also advised the committee that if it considered that despite the recommendation of the Inspector the land should be registered it should provide reasons for that decision.

26. Councillor Abrahams chaired the meeting of the committee on 12 December 2016. Six committee members were present. Notes of the debate were taken by an officer of the Council. A number of persons spoke and there were interventions from members of the committee. At the conclusion of the debate a vote was taken and the committee

was equally split. Councillor Abrahams exercised his casting vote in favour of registering the land.

27. The record of what occurred at the meeting is contained in what are described as the "draft minutes". No one suggested before me that, although in draft, the minutes are not an accurate account of what occurred and what was decided at the meeting. Accordingly, henceforth, I will refer to the record as "the minutes". The following points which emerge from the minutes are worth noting. First, the committee was made aware, expressly, that the Inspector had recommended that the land should not be registered. Second, it was advised that its task was to apply the statutory test in section 15 of the 2006 Act. The members were advised orally that the Inspector had concluded that "the erection of the signs and the location of the signs in prominent positions on the land, at principal entrances would have been considered reasonable enough by a landowner to render the use of the land contentious". Third, the committee was advised that it should be "careful not to consider the Councillors' comments as evidence". Fourth, it was clear to the committee that the only basis upon which the Inspector had recommended as he did was on account of his view of the significance of the signs which had been erected on the land by Avon County Council. Fifth, a wide ranging discussion occurred about the significance of those signs. The minutes record that in that discussion, "Members agreed that in 1985 Avon County Council signage had made the position sufficiently clear that use of the site was contentious and not "as of right" but "Some members considered that this had changed over time and due to the size of the site, circa 22 acres, there was not sufficient number or sufficiently clear … signage to affect public perception that use of the site was contentious and not 'as of right' and this had been exacerbated by Avon County Council ceasing to exist." In response to the point made by some members that Avon County Council had ceased to exist officers advised:-

> "In respect of Avon County Council becoming defunct the inspector concluded irrespective of whether or not the Council became defunct that the signs which were sufficient to render the use of land contentious were in place at the beginning of the 20 year period in 1991 and that such use was contentious until at least 1996."

28. As it had been advised to do, the committee formulated reasons for its decision (no doubt with the assistance of officers). They were as follows:-

> "(i) Other than the "as of right" element the Committee accepted the inspector's findings that all the elements of the statutory test were proven on the balance of probabilities.
>
> (ii) That between 1991 and 1996 there were three Avon County Council signs attempting to make the use of the land contentious.
>
> (iii) In Winterburn the Court of Appeal found that landowners can prevent rights being acquired by third parties by displaying clear visible warning signs that the land is private.

> (iv) Three members of the Committee considered that the facts of Winterburn…. were not the same as the facts in this case. Unlike the car park in that case Stoke Lodge Playing Fields is a large piece of land (about 22 acres) and there were only three signs. The small numbers of signs on such a large site was not sufficient to make the use of the land contentious."

The grounds

Grounds 1 and 3

29. It is convenient to take these grounds together. The Claimant alleges that the registration authority erred in law when it concluded that the use of the land by the local inhabitants between 1991 and 2011 was "as of right" (Ground 1). It also alleges that the registration authority failed to provide adequate and sufficient reasons for reaching that conclusion thus rendering its decision unlawful (Ground 3).

30. In summary, Mr Ground QC submits that the Inspector's analysis of the law relating to the meaning of the phrase "as of right" in the context of signs erected by a landowner aimed at preventing unauthorised use of land was correct – see paragraphs 361 and 373 to 387 of his report. Further, he submits that the Inspector's application of the law to the facts, as he found them to be in this case, was also correct. Mr Ground QC points out that the minutes of the meeting of the committee on 12 December 2016 expressly record that the members of the committee accepted the finding of the Inspector that between 1991 and 1996 there were three signs on the land erected by Avon County and, further, that the erection of those signs in the 1980s made the use of the land contentious. Despite the view of the majority of the committee that this state of affairs had changed over time there was no evidence to support a conclusion that this change had occurred before March 1991 and accordingly, as at the date of the application for registration, it could not be established that the use made of the land between 1991 and 2011 was "as of right" over that whole period of time. It necessarily followed, says Mr Ground QC, that it was not open to the registration authority to conclude that that the local inhabitants had used the land for recreational use "as of right" for the necessary period of 20 years immediately prior to the date of the application for registration.

31. Mr Morgan, for the registration authority, accepts that the Inspector's analysis of the law relating to the phrase "as of right" is accurate. He submits, however, that the issue of whether the signs erected by Avon County Council were ever sufficient to render the use of the land contentious is factual. It was open to the committee to take a different view of the facts relevant to that issue than that formed by the Inspector. He submits that this is precisely what the committee did and, accordingly, there was nothing unlawful about its decision. Inherent in Mr Morgan's submission is the contention that the committee did not agree that at the date of the erection of the signs in the mid 1980s they rendered contentious the use of the land by local inhabitants.

32. Mr Sharland QC, for Mr Mayer, supports the stance taken by Mr Morgan. Additionally, however, he invites me to conclude that the Inspector's legal analysis of the concept of "as of right" was erroneous. He submits that the Inspector's reliance upon *Winterburn* was misplaced because that decision was concerned with the law relating to the acquisition of private easements and, accordingly, it did not apply

directly when the statutory provisions governing whether an area of land is to be registered as a green were being considered. As a fall-back position, Mr Sharland QC submits that *Winterburn* was wrongly decided and he invites me so to conclude.

33. So far as the reasons challenge is concerned, Mr Ground QC submits that reason (iv) (set out at paragraph 28 above) is wholly inconsistent with the finding by the Inspector that many users of the land saw the signs. Further, he submits that the committee did not explain the basis upon which it was proper to depart from the Inspector's factual conclusions particularly given that he heard all the evidence as to where people walked upon the land and what they saw when they were upon it. Mr Morgan does not dispute that the committee was obliged to provide reasons for its decision. However, he advances a robust defence of the committee's reasoning process. Essentially, Mr Sharland QC aligns himself with Mr Morgan on this issue although he is less inclined to accept, unequivocally, that the committee was obliged to give reasons for its decision.

34. I was referred to a number of authorities which have considered the expression "as of right" both in the context of registration of town and village greens and in the context of the acquisition of other public and private rights. In my judgment, it suffices to confine my own discussion of the authorities to those which have considered that phrase in the context of the registration of land as a town or village green, together, of course, with the decision in *Winterburn* given that it featured so prominently in the argument before the Inspector and the committee.

35. The starting point is the decision of the House of Lords in *R v Oxfordshire County Council & Anor ex parte Sunningwell Parish Council* [2000] 1 AC 335. In this case the parish council applied to the registration authority (Oxfordshire CC) to register glebe land as a village green pursuant to section 22(1) of the Commons Registration Act 1965 (the predecessor section to s15 of the 2006 Act). The relevant part of that section permitted registration if "the inhabitants of any locality [had] indulged in sports and pastimes as of right for not less than 20 years". Having identified the principal issue in the case as being the meaning of the words "as of right", Lord Hoffmann considered that:-

> "The language is plainly derived from judicial pronouncements and earlier legislation on the acquisition of rights by prescription. To put the words in their context, it is therefore necessary to say something about the historical background".

There followed an exposition of the historical evolution of the doctrine of prescription and statutory provisions closely connected with that doctrine including the Prescription Act 1832. Thereafter Lord Hoffmann concluded succinctly:

> "There is in my view an unbroken line of descent from the common law concept of nec vi, nec clam, nec precario to the term "as of right" in the Acts of 1832 ……and 1965."

All the other Law Lords agreed with the speech of Lord Hoffmann thereby confirming that the words "as of right" in the 1965 Act were to be equated with the meaning given to the Latin phrase "nec vi, nec clam, nec precario".

36. In *R (Beresford) v Sunderland City Council* [2004] 1 AC 889 a new town development corporation created a town plan which identified an area of land as "park land/open space/playing field". More than 20 years later the applicant, Mrs Beresford, applied to the registration authority for the registration of that land as a green. The authority refused registration. Mrs Beresford's application for judicial review was refused by the High Court and the Court of Appeal but upheld in the House of Lords.

37. The principal issue to be determined by the House of Lords was whether the land had been used by local inhabitants for the requisite period of 20 years "as of right". Accordingly, their Lordships revisited how that phrase was to be interpreted in the context of the case before them.

38. The approach adopted by Lords Bingham, Hutton, Rodger and Walker was, essentially, the same as that adopted by Lord Hoffmann in the *Oxfordshire County Council* case. Lord Scott, however, approached matters somewhat differently. He was of the view that although the phrase "as of right" was derived from the maxim *nec vi, nec clam, nec precario,* that did not mean, necessarily, that the phrase ought to be given the same meaning and effect in statutes concerned with the acquisition of public and private rights. At paragraph 34 of his speech he said:

> "It is a natural inclination to assume that these expressions "claiming right thereto" (the 1832 Act) "as of right" (the 1932 and 1980 Act) and "as of right" in the 1965 Act all of which import the three characteristics, nec vi, nec clam, nec precario, ought to be given the same meaning and effect. The inclination should not, however, be taken too far. There are important differences between private easements over land and public rights over land and between the ways in which a public right of way can come into existence and the ways in which a town or village green can come into existence. To apply principles applicable to one type of right to another type of right without taking account of their differences is dangerous".

39. In the paragraphs that followed Lord Scott explained some of the differences he had in mind especially insofar as differences existed in relation to how the various public and private rights might be acquired. That said, he did not spell out in any detail, if at all, how he anticipated that the phrase "as of right" in the 1965 Act might be interpreted or applied differently from the same words used in other statutory provisions or under the principles of the common law. Further, the difference of approach between Lord Scott and the other Law Lords made no difference to the result in the *Beresford* case. All their Lordships concurred in concluding that Mrs Beresford's claim was well founded because the use of the land in question in that case had subsisted for the requisite 20 year period and it had occurred with the permission of the landowner as the courts below had concluded.

40. The next important decision (in time) concerning the phrase "as of right" in the context of registration is *R (Lewis) v Redcar and Cleveland Borough Council (No. 2)* [2010] 2 AC 70 – a decision concerning section 15 of the 2006 Act. During the course of his judgment, with which all the other Supreme Court Justices agreed, Lord

Walker provided yet another authoritative exposition of the phrase "as of right" – see paragraphs 17-20 of his judgment. Paragraph 20 is worth quoting in full:-

> "The proposition that "as of right" is sufficiently described by the tripartite test nec vi, nec clam, nec precario (not by force, nor stealth, nor the licence of the owner) is established by high authority. The decision of the House of Lords in *Gardner v Hodgson's Kingston Brewery Co Ltd* [1903] AC 229 is one of the clearest: see Lord Davey, at p 238, and Lord Lindley, at p 239. Other citations are collected in *Gale on Easements*, 18th ed (2008), paras 4-80 and 4-81. The proposition was described as "clear law" by Lord Bingham of Cornhill in *Beresford* [2004] 1 AC 889, para 3. The opinion of Lord Rodger of Earlsferry, at para 55, is to the same effect. So is that of Lord Scott of Foscote, at para 34, though with a cautionary note as to the difference between the acquisition of public and private rights."

It is worth noting that the Supreme Court considered that authorities which had considered the phrase "as of right" in the context of the 1965 Act were equally applicable when interpreting or applying that phrase in the Act of 2006.

41. I turn next to the decision of the Court of Appeal in *Taylor v Betterment Properties (Weymouth) Ltd* [2012] 2 P&CR. 3. This case is important not just for the principles formulated by the Court but also because the court was concerned to resolve a debate about the efficacy of signs to render contentious use of the land in question. Let me begin with the facts in summary. In 2001 Dorset County Council registered 46 acres of former grazing land as a green under the 1965 Act. The land had been owned for many decades by the Curtis family who had opposed the registration. One of the grounds of opposition had been that the user by local inhabitants had not been "as of right" because until approximately 1984 the Curtis family had repeatedly erected and re-erected clearly visible signs stating that the land was "private" or that the public were to "keep out" or that the public's presence would be a "trespass". There had, from time to time, been a need for signs to be re-erected on account of acts of vandalism towards the signage. Following registration, the Curtis family sold the land. However, the new owner applied to remove the land from the register by way of an application for rectification to the High Court. One of the grounds for the application was that there had not been user "as of right" for at least 20 years prior to the application to register. Morgan J granted the application for rectification of the register. He held that there had not been user "as of right" of the land for at least 20 years prior to the application for registration because the use by local inhabitants had been contentious during the period that the Curtis family were erecting and re-erecting the signs described above. An appeal against the judgment of Morgan J by a local inhabitant was dismissed by the Court of Appeal.

42. The lead judgment in the Court of Appeal was delivered by Patten LJ. At paragraphs 27 to 64 he dealt at some length with the principles which had been formulated in the cases concerning the interpretation the phrase "as of right" and the application of those principles to the facts with which the court was concerned in that case. He identified the principal issue as being whether the Curtis family had taken sufficient steps so as to effectively indicate that they were not acquiescing in any use of the land

by local inhabitants. At paragraphs 36 to 38 he set out the principles by which that issue was to be determined. Paragraph 36 reads:-

> "It is common ground on this appeal that, following the decision of the House of Lords in *Sunningwell*, registration of a town or village green on the basis of twenty or more years' user as of right depends upon showing that such user was *nec vi, nec clam, nec precario*. This test is traceable back to the common law and to the Prescription Act 1832. It has subsequently been applied in *R (on the application of Beresford) v Sunderland City Council* [2004] 1 AC 889 and, most recently, by the Supreme Court in *R (on the application of Lewis) v Redcar and Cleveland BC (No 2)* [2010] 2 AC 70."

At paragraph 37 he set out what he regarded as "the most informative explanation of the content of this principle" quoting extensively from the judgment of Lord Rodger in *Lewis* – see paragraphs 87 to 90 of that judgment – before continuing at paragraph 38:-

> "If the landowner displays his opposition to the use of his land by erecting a suitably-worded sign which is visible to and is actually seen by the local inhabitants then their subsequent use of the land will not be peaceable."

In the paragraphs that followed Patten LJ considered how these principles were to be applied given findings of fact by Morgan J to the effect that the Curtis family had erected signs which had been vandalised and/or torn down but also that a number of local inhabitants using the land had never seen any signs. His conclusions on these issues are to be found at paragraphs 59, 60, 63 and 64. The salient parts are as follows:-

> "59. … The issue between the parties is therefore a relatively narrow one which is whether the Curtis family had, in the circumstances, done enough by putting up and from time to time replacing the signs or whether they should have taken other steps such as the notices in the local papers or the leaflets suggested by [a local inhabitant].
>
> 60. It seems to me that there is a world of difference between the case where the landowner simply fails to put up enough signs or puts them in the wrong place and a case such as this one where perfectly reasonable attempts to advertise his opposition to the use of his land is met with acts of criminal damage and theft. The judge has found that if left in place, the signs were sufficient in number and location; and were clearly enough worded; so as to bring to the actual knowledge of any reasonable user of the land that their use of it was contentious. In these circumstances is the landowner to be treated as having acquiesced in that user merely because a section of the community (I am prepared to assume the minority) were prepared to take direct action to remove the signs?

…..

> 63. It would, in my view, be a direct infringement of the principle (referred to earlier in the judgment of Lord Rodger in *Redcar (No. 2)*) that rights of property cannot be acquired by force or by unlawful means for the Court to ignore the landowner's clear and repeated demonstration of his opposition to the use of the land simply because it was obliterated by the unlawful acts of local inhabitants. Mrs Taylor [a local inhabitant] is not entitled in effect to rely upon this conduct by limiting her evidence to that of users whose ignorance of the signs was due only to their removal in this way. If the steps taken would otherwise have been sufficient to notify local inhabitants that they should not trespass on the land then the landowner has, I believe, done all that is required to make users of his land contentious.
>
> 64. It follows from this that the Curtis family were not required to take other steps such as advertising their opposition in order to rebut any presumption of acquiescence. In my view, the judge was correct to hold that there was not user as of right for the requisite twenty years."

43. It should be noted that other issues arose in *Taylor* upon which there was something of a divergence of view in the Court of Appeal. Upon the issue relating to the application of the phrase "as of right", however, Sullivan and Carnwath LJJ expressly agreed with the analysis and conclusion of Patten LJ as set out above.

44. I am bound by the decision in *Taylor* unless it has been overruled by a decision of the Supreme Court. As far as I am aware, the only decision of the Supreme Court subsequent to *Taylor* which has any potential bearing upon it is *R (Barkas) v North Yorkshire County Council* [2015] AC 195.

45. The facts in *Barkas* are sufficiently stated in the headnote. A local authority acquired land under section 80 of the Housing Act 1936 as a site for the erection of houses. It laid out and maintained a field lying within the land as a recreation ground for the benefit of those living in the houses as it was entitled to do pursuant to the same section and its successor, section 12(1) of the Housing Act 1985. A local resident applied to the registration authority to register the field as a green pursuant to section 15 of the 2006 Act. The registration authority refused the application finding that although the local inhabitants' use of the field met all the other requirements under section 15, user had been by right and so not "as of right", within section 15(2). The consequent application for judicial review of the registration authority's decision was dismissed and appeals to the Court of Appeal and Supreme Court failed.

46. *Taylor* is not referred to in any of the judgments of the Justices of the Supreme Court. There is nothing within the judgments of their Lordships to suggest that they considered that *Taylor* was wrongly decided and/or should be overruled. The only real significance of *Barkas* to the arguments before me is the references in the judgments of Lords Neuberger and Carnwath to the suggestion made in the speech of Lord Scott in *Beresford* to the effect that the phrase "as of right" might have a

different meaning and/or may be applied differently in different statutory contexts. Lord Carnwath was prepared to accept the validity of this approach – see paragraphs 58 to 68. Lord Neuberger (with whom Baroness Hale, Lord Reed and Lord Hughes agreed) was prepared to accept that it might be possible (exceptionally) that cases involving claims relating to the registration of greens might arise in which a straightforward application of the tripartite test (*nec vi, nec clam, nec precario*) would not be sufficient to determine the question of whether user had been "as of right", but he "was doubtful about that" – see paragraph 60 of his judgment.

47. So far, all the cases discussed are cases in which registration under the Acts of 1965 or 2006 was under consideration. The case which has caused so much debate in this case was not. The *Winterburn* case was about the acquisition of a private right – an easement. The facts were these. For a period of more than 20 years the claimants had operated a fish and chip shop that was adjacent to a car park which formed part of club premises. Throughout that period the claimants' suppliers would park their vehicles in the car park up to nine times a day while making their deliveries and the claimants' customers would park there while buying their fish and chips. This was despite the fact that, for most of that period, two signs erected by the club owners, one attached to a wall at the entrance to the car park, the other in the window of the club premises, stated that the car park was private and for the use of club patrons only. Following a dispute with the occupiers of the club, the claimants applied for registration of a right of easement for themselves and their customers to park in a particular part of the car park on the ground that they had acquired such right as a result of 20 years' continuous user "as of right". The First-Tier Tribunal upheld the claim. However, on appeal to the Upper Tribunal, the decision of the First-Tier Tribunal was reversed and the claimants' subsequent appeal to the Court of Appeal was dismissed.

48. Before the Court of Appeal the issue to be decided was formulated by David Richards LJ as follows:-

> "8. The issue on this appeal is whether the signs were sufficient to prevent the claimants acquiring a right to use the disputed land as a car park for themselves and their suppliers and customers or whether the owners of the car park had acquiesced in such use so as to entitle the claimants to such a right, notwithstanding the presence of the signs."

He went on to describe that the claimants based their claim to such a right upon the doctrine of prescription by "lost modern grant". In the words of David Richards LJ, this required the claimants to show "20 years' uninterrupted user 'as of right' that is to say without force, without secrecy and without permission (nec vi, nec clam, nec precario)". In his view, with which Sharp LJ and Moylan J (as he then was) agreed, the existence of the signs were sufficient to prevent the claimants in that case from acquiring the rights in question.

49. For much of his judgment David Richards LJ considered and analysed a number of authorities including *Sunningwell*, *Lewis* and *Taylor*. A significant part of his judgment was devoted to an analysis of the judgment of Patten LJ in *Taylor*. At paragraph 31 David Richards LJ noted that although *Taylor* was a commons

registration case "it is common ground that the same principles apply to the law of prescription".

50. In my judgment there can be no doubt that *Taylor* and *Winterburn* constitute authority for the proposition that where an owner of land has made his position about its use clear through the erection of clearly visible signs, the unauthorised use of the land cannot be said to be "as of right" – see the paragraphs from *Taylor* quoted at paragraph 40 above and paragraph 40 in *Winterburn* itself. That is so, in my judgment, whether the claim relates to registration of a town or village green or the acquisition of a private right.

51. The judgment of the Court of Appeal in the appeals mentioned in paragraph 9 above, namely, *R (Lancashire CC) v Secretary of State for the Environment, Food and Rural Affairs* and *R(NHS Property Services Ltd) v Surrey CC* [2018] EWCA Civ 721, are significant, principally, by reason of the issues raised in relation to ground 5. It is worth noting at this stage, however, that one of the issues for determination in the *Lancashire CC* case was whether the user of the land in question by local inhabitants had been "as of right". In his judgment (with which Jackson and Thirlwall LJJ agreed) Lindblom LJ considered this issue at paragraphs 81 to 86. It is clear that he equated the phrase "as of right" in the 2006 Act with the phrase nec vi, nec clam, nec precario and that he considered that the issue of whether user had occurred "as of right" under the 2006 Act was to be determined by applying the Latin phrase to the facts of the particular case. In my judgment, nothing contained in paragraphs 81 to 86 of *Lancashire* casts any doubt upon the principles formulated by Patten LJ in *Taylor* or David Richards LJ in *Winterburn*.

52. In the light of the authorities to which I have referred I have reached the clear conclusion that the decision in *Taylor* is binding upon me. There is no basis for concluding the speeches of Lord Scott in *Beresford* or Lord Carnwath in *Barkas* somehow overrule the ratio in *Taylor*. Such a conclusion would drive a coach and horses through the doctrine of precedent. The debate in those cases, such as it was, about whether the phrase "as of right" might be open to differing interpretations depending upon the context in which the phrase was being applied, interesting as it may be, cannot deflect me from my obligation to apply authorities which are clearly binding upon me. To repeat, the principles formulated in *Taylor* are directly applicable in this case and its ratio is binding upon me. *Winterburn* applies *Taylor* in the context of private easements and at the level of the High Court and Court of Appeal, at least, it is perfectly clear that those decisions sit side by side, consistent with each other, and binding upon me.

53. When writing his report the Inspector was obliged to ascertain the legal principles relevant to the interpretation of the phrase "as of right" and then apply that phrase in accordance with those principles. I have reached the clear conclusion that the Inspector's analysis of the law relating to the phrase "as of right" was correct. He was also correct, in my judgment, when he concluded that the use of land by local inhabitants would be made contentious by the erection of sufficient and suitably placed signs which were visible to users of the land and which had been seen by a significant number of persons using the land. That was the clear and concise legal basis upon which he approached the evidence as to whether the local inhabitants' use of the land was "as of right".

54. I have set out the Inspector's conclusions about the sufficiency and location of the signs from the mid 1980s at paragraph 22 above. In summary, he considered that the signs erected by Avon County Council were sufficient to render the inhabitants' use of the land contentious. Further, and very importantly, his view was that at the time of his inspection of the land 2 of the 3 signs were still in situ and still obviously visible. A close scrutiny of the Inspector's reasoning demonstrates that he did not consider that there had been any material change of circumstances following the erection of the signs (so far as their visibility was concerned or the significance of their location) save of course that one of the signs had been removed in or about 1996/7.

55. Was the committee entitled to reach a different view from that of the Inspector upon the legal significance of the 3 Avon County Council signs? In my judgment it was not given the clear record in the minutes that the committee accepted that when the signs were erected "the Avon County Council signage had made the position sufficiently clear that use of the site was contentious and not 'as of right'." I appreciate that some members of the committee went on to conclude that this state of affairs had changed "over time". From the evidence available, however, (including the witness statement of Councillor Abraham dated 9 November 2017) there is no basis upon which it would be proper to conclude that the committee ever considered whether this change had taken place by March 1991 i.e. by the beginning of the requisite 20 year period. The Inspector's view was clear, namely, that between 1991 and 1996 the signage which existed on the land was sufficient to make the use of the land by the local inhabitants contentious. I simply do not accept that the committee addressed its mind to this part of the Inspector's findings which were central to the issue of whether 20 years' user "as of right" had been established.

56. In my judgment, this is not a case in which the Committee took a decision to depart from the conclusion of an inspector on the basis of a justified difference in view about the relevant facts. Rather, this is a case in which the Committee, having accepted a crucial finding by the Inspector as to the legal significance of the signs when they were first erected, failed, erroneously and unlawfully, to analyse the evidence and the further findings of the Inspector as to when, if at all, the situation "on the ground" had changed materially so as to permit of a conclusion that the signs were no longer sufficient to make contentious the use of the land by the local inhabitants. Once the Committee had adopted the findings of fact made by the Inspector as to the extent and visibility of the signage as at the date the signs were erected it was necessary for the committee to consider in detail whether the state of affairs existing at the date of the erection of the signs had changed, materially, at the commencement of the 20 year period. That was especially so given the clear findings of the Inspector that the signs were in existence between 1991 and 1996 and, further, his findings that a significant number of local inhabitants had actually seen the signs during that period. The committee did not undertake that analysis. In reality what the committee decided was that the case before them was very different on the facts from the facts in *Winterburn*. That, so far as it goes, is not controversial. However, that was no basis upon which to depart from the Inspector's conclusions given that both the Inspector and the committee were at one as to the legal significance of the signs when Avon County Council first erected them.

57. In my judgment ground 1 is made out.

58. I can deal with ground 3 much more succinctly. I am satisfied that the committee was under a duty to provide reasons for its decision to depart from the recommendation of the Inspector. That is conceded on behalf of the registration authority but, in any event, in my judgment, it would be unthinkable that it would be permissible for the registration authority to depart from the recommendation of an Inspector who had produced a closely reasoned and detailed decision letter after hearing oral evidence over many days without providing its own reasons for that departure.

59. The obligation of the committee was to provide sufficient reasons to enable the parties to understand why it had departed from the recommendation of the Inspector and reached a different conclusion as to the legal significance of the existence of the Avon County Council signs. The only reason provided which, potentially, fell into that category was reason (iv) (paragraph 28 above). Reduced to its essentials, the majority of the Committee was of the view that the number and nature of the signs erected by Avon County Council did not make the use of the land contentious given the size of the area of land in issue. That reasoning, however, did not begin to explain how such a conclusion was justified given that the committee had expressly concluded that, upon erection, the signs had been sufficient to make the use of the land contentious. Further, it was necessarily central to the committee's decision that sometime after the erection of the signs but before March 1991 there had been material changes of circumstances which meant that the signs were no longer sufficient. No attempt was made by the committee to identify the material change of circumstances and/or to explain the reasons why the members were satisfied that the changes had occurred by March 1991.

60. I should say that I am satisfied, too, that the Committee failed to explain the basis upon which it felt able to reject the Inspector's conclusion upon the sufficiency of the signs based, as it was, upon a minute examination of the oral and written evidence and visits to the site. In my judgment, it was not sufficient simply to assert that the facts in *Winterburn* were very different from the facts in the instant case (although I accept that to be correct, so far as it goes) and to point out that the area of land in the instant case was so large that 3 signs were not sufficient. There was no attempt by the Committee to explain the significance or lack of it of the finding by the Inspector that a substantial number of persons using the site had seen the signs. As is clear from his report that finding was crucial to the Inspector's reasoning and yet, apparently, it was ignored by the Committee.

61. I have taken account of the written and oral submissions of Mr Morgan who has sought to defend, robustly, the reasoning process of the Committee. In essence, however, he has proceeded on the basis that the Committee was entitled to depart from the Inspector's recommendation by virtue of its view, said to be justified, as to the sufficiency of the signs erected by the County Council given the area of the land in question. The difficulty is that Mr Morgan was unable to advance any argument which suggested that the Committee had grappled with let alone given reasons for the inconsistency between its "ultimate" view about the sufficiency of the signs and its finding that the signs, as erected, were sufficient to make the use of the land contentious.

62. In my judgment, ground 3 is also made out.

Ground 2

63. There are two aspects to this ground of challenge. First, it is submitted that the committee took account of irrelevant matters in that, during the course of the proceedings on 12 December 2016, Councillor Abraham, in particular, raised matters which were irrelevant. Second, the Claimant complains that it was given no indication, prior to the committee's decision, that it had received a substantial number of representations to the effect that the Inspector's reliance upon *Winterburn* was wrong and/or that the decision in *Winterburn* was distinguishable on the facts. That is said to constitute a breach of a duty upon the committee to act fairly in its consideration of the application for registration.

64. I can deal with the first aspect very shortly. I have no doubt that during the course of a public hearing such as took place on 12 December 2016 lay members of a decision-making committee may, from time to time, raise points which, strictly, are not relevant to the issue under consideration. No doubt, too, some of the persons who were invited to speak at such a meeting are likely to raise matters which are of limited relevance or no relevance at all. That does not mean that a court should conclude that irrelevant matters have been taken into consideration. In my judgment, in the absence of specific evidence pointing to a contrary conclusion, the normal inference to be drawn is that the decision-making body will, through a process of discussion and debate, establish what is relevant and what is not and base its decision on relevant material only. In my judgment that was very likely to be the case, when, as here, the committee was advised expressly not to take account of comments by councillors – see paragraph 27 above.

65. In my judgment there is a dearth of any reliable evidence which suggests that any member of the committee took account of irrelevant material. In reaching that conclusion I appreciate, of course, that Councillor Abrahams acknowledges in his witness statement that he did raise points about which complaint is now made. By way of example only the Councillor frankly acknowledges that during the course of the meeting he raised the issue of dog fouling in the context of why it was that Avon County Council had erected the signs.

66. I am far from convinced that the so called extraneous matters raised by Councillor Abrahams were wholly irrelevant. In my judgment it was not impermissible for him to provide the committee with his recollection as to the circumstances in which the signs had been erected and the purpose for which they were erected – to combat dog fouling. That said, there is no indication that this issue or any other matter about which complaint is made played any real part in the decision reached either by the committee as a whole or by Councillor Abrahams in particular. He is unequivocal in his witness statement that the basis for the decision reached by those in favour of a registration was that the signs erected by Avon County Council were not and had never been sufficient to make the use of the land contentious. I am disposed to accept that evidence notwithstanding that it is evidence of a type about which a court is naturally cautious given that it is an "after the event" explanation of a reasoning process.

67. I am not prepared to hold that the committee took account of irrelevant matters in reaching its conclusion about registration.

68. I turn to the issue of whether the Claimant was treated fairly.

69. There can be no doubt that Councillor Abrahams received email correspondence following the Inspector's report which was directed to him personally. Without exception, the correspondence was from those who favoured the land being registered. Councillor Abrahams responded to some, if not all, of those emails by informing the correspondent that his/her views would be taken into account by the committee in its decision-making process.

70. It is also the case that a very substantial number of emails were sent to Bristol City Council via an email address which was dedicated for the purpose of receiving representations about decisions to be made by the Council.

71. It is common ground that no steps were taken by the registration authority to disclose any of these representations to the Claimant prior to the meeting on 12 December 2016.

72. I would accept that a registration authority faced with competing views upon an application to register land as a town or village green should consider whether the views expressed by those on one side of the debate should be disclosed to those expressing a contrary view before a decision is taken. However, whether a duty of disclosure arises in any particular case in order to satisfy the requirements of fairness must, inevitably, depend upon the nature and quality of the representations which have been made. I am certainly not persuaded (if it is being suggested) that the duty of fairness in all cases of this type demands that every piece of paper received by a decision-making authority must be disclosed to every person having an interest in the outcome under consideration.

73. The representations received by Councillor Abrahams personally and by the registration authority via the dedicated email address were either general expressions of support for registration or an expression of view to the effect that the factual circumstances pertaining in *Winterburn* were wholly different from those pertaining in this case. I am satisfied that the duty to act fairly did not mean that it was necessary for the registration authority to disclose to the Claimant general expressions of support. Was it necessary for the authority to disclose specific representations about the effect of the decision in *Winterburn* i.e. send all the representations on this issue to the Claimant? In my judgment, it was not. It was plain and obvious from the time of the public inquiry that Mr Mayer and those in favour of registration would seek to persuade the Committee that *Winterburn* was distinguishable on the facts. That is what he had done before the Inspector. This was not a novel point despite the suggestion to the contrary in the submissions by Mr Ground QC. Indeed, far from being novel, the effect of the decision in *Winterburn* was one of the main battles which were fought at the inquiry. In my judgment, it was obvious that Mr Mayer and/or any other person who supported registration who was permitted to speak at the Committee meeting would argue that the Committee should not consider itself bound to follow *Winterburn* because its facts were so very different. In substance the representations received in advance of the meeting on 12 December 2016 said nothing more than that.

74. It is perhaps more debateable as to whether the duty to act fairly required the registration authority to have at least alerted the Claimant to the fact it had received a

large number of representations suggesting that *Winterburn* was distinguishable on its facts and that the committee should take a different view from the Inspector about the significance of that case. On balance, however, I am not persuaded that was necessary on the facts of this case. After all, the Claimant was represented by a formidable legal team who could have been under no illusions as to what was going to be said by Mr Mayer and others about *Winterburn*; the claimant was well able to anticipate what would be said about *Winterburn* and deal with those submissions appropriately.

75. I would not uphold ground 2. If contrary, to my view, ground 2 was made out I could envisage a lively debate, at the very least, about whether any relief should be afforded but that does not arise given my conclusion.

Ground 4

76. During the course of the inquiry evidence was adduced to the effect that when organised sports were being played upon those parts of the land upon which pitches were laid out (as they were throughout the relevant period) local inhabitants did not have access to the areas upon which the sports were being played. Further, evidence was presented to the Inspector that from time to time "sports days" took place on the land and that when these events occurred much of the land was in use and, in consequence, local inhabitants had no access to it. In the light of this evidence, the Claimant sought to argue before the Inspector that the proper inference to be drawn from these "exclusions" was that the use of the land by local inhabitants on other occasions was with the permission of the landowner and in consequence the use of the land by the local inhabitants was not "as of right". Central to the argument on this issue was the decision of HHJ Robert Owen QC in *R (Mann) v Somerset County Council* [2017] 4 WLR 170.

77. In *Mann* the application for registration related to a field which was in the same ownership as an adjoining hotel and car park. The field was used by local inhabitants for recreational purposes but the landowner occasionally used part of the field for a beer festival and funfair. A charge was made for entrance to the field when the festival was taking place. Following an inquiry the Inspector concluded that the occasional exclusive use of part of the field by the landowner implied that the use of the entirety of the field by local inhabitants on other occasions was with the permission of the landowner. HHJ Owen QC (quite correctly) described the issue before him as being whether the Inspector was entitled to come to that conclusion in the light of the evidence before him. He concluded that he was. It is to be noted that it had been argued before the Inspector on behalf of the applicant for registration that the facts in *Mann* where such that it was indistinguishable from the case of *Lewis* – as to which see below. The Inspector had concluded otherwise and HHJ Owen QC was of the same view.

78. Ground 4 as formulated in the statement of facts and grounds is an allegation that the committee fell into legal error in that it failed to give reasons for rejecting the Claimant's submissions based upon *Mann*.

79. As is already apparent the reasons given by the committee for acceding to the application for registration were very short. However, that is not altogether surprising since on all aspects of the case, save for the sufficiency of the signs on the land, the

committee accepted the reasoning and recommendations of the Inspector and said so in terms in reason (i) (see paragraph 28 above).

80. Somewhat surprisingly, although *Mann* was cited to the Inspector he does not mention it in his report. In his earlier report of 22 May 2013 a whole section had been devoted to the arguments which had been presented on the basis of *Mann* but there was no such section in the Inspector's report of 14 October 2016.

81. Following the publication of the report of 14 October 2016 the landowner made representations to the registration authority to the effect that if it was going to depart from the Inspector's recommendation and accede to the application for registration the committee should provide reasons for rejecting the submissions that had been made on the basis of *Mann*. As is I have pointed out already the committee gave no reasons other than to say it accepted the Inspector's findings except for those relating to signs.

82. It is tempting to uphold this ground on the narrow basis that neither the Inspector not the committee grappled with the decision in *Mann*. It is not mentioned in the Inspector's report of 14 October 2016; nor is it referred to by the committee either in the minutes or in its reasons. However, such an approach would be over simplistic. In my judgment the real issue is not whether the Inspector/committee should have made specific reference to the decision in *Mann* but rather whether the Inspector grappled with the argument which I have set out at paragraph 76 above and gave sufficient reasons for concluding that the use of the land by local inhabitants had not been permissive i.e. with the permission of the landowner.

83. At paragraph 19 above I have set out the Inspector's summary of the "core facts". He concluded that there had been a number of uses upon the land over many years. Between paragraphs 343 and 360 the Inspector analysed the evidence relating to these uses under the heading "Co-existence of the significant use for lawful sports and pastimes with the use of the land by schools and sports clubs". At paragraph 354 he concluded that "as a matter of fact …school and sports club use co-existed with use by local inhabitants throughout the relevant twenty year period". It was upon that basis that the Inspector concluded that it was not appropriate to infer that the use of the land by local inhabitants had been permissive as suggested by the Claimant and the landowner.

84. In so concluding it is clear that the Inspector was following the approach of the Supreme Court in *Lewis*. In this case the land which was the subject of the application for registration had been used within the relevant 20 year period as part of a golf course which was regularly used by members of a private golf club. During the same period local inhabitants had used the land for informal recreation without interfering with or interrupting play by the golfers. The Inspector found that the local inhabitants' use of the land was not "as of right" because the local inhabitants had "overwhelmingly deferred" to the extensive use of the land by the golfers and recommended against registration of the land. The registration authority accepted his recommendation and a claim for judicial review of that decision was rejected at first instance and in the Court of Appeal. In the Supreme Court the appeal by the applicant for registration succeeded. The Court held that it was possible for the rights of the local inhabitants and landowner to co-exist, depending, always, upon the precise factual circumstances. Upon the facts as found by the Inspector the court concluded

that the correct inference was not that the use of the land by the local inhabitants was permissive but rather that both the landowner and the local inhabitants had rights over the land.

85. In substance that is what the Inspector concluded in the instant case. That conclusion is not challenged. In my judgment there can be no doubt that the Inspector gave appropriate reasons for reaching that conclusion both in the paragraphs which I have referred at paragraph 83 above and at paragraph 364 of his report in which he considered whether the landowner ever permitted the use of the land by local inhabitants.

86. In making a judgment about whether it is proper to infer that the use of land by local inhabitants has taken place with the permission of the landowner the facts are all important. I accept Mr Morgan's submissions to that effect. In my judgment the Inspector was entitled to conclude on the facts as he found them to be that the rights of the landowner and the rights of the local inhabitants were capable of co-existing and that it was not appropriate to infer that the inhabitants' use had been with the permission of the landowner. Ultimately, of course, the Inspector found that the local inhabitants had not established that they had used the land "as of right" on account of signs erected upon the land in order to prohibit use by local inhabitants. Upon the assumption that legal effect of the signs had not been as found by the Inspector he was entitled to conclude that the local inhabitants had not used the land with the permission of the landowner. Further, I do not consider that the decision in *Mann* compelled the contrary conclusion. *Mann* is a case which turns very much on the facts found by the Inspector and the inferences drawn by him.

87. I consider that adequate reasons were given by the Inspector (which were adopted by the committee) for concluding that the use of the land by the local inhabitants was not permissive and accordingly I do not consider that this ground of challenge is made out.

Ground 5

88. I turn to the issue of statutory incompatibility. In *R (Newhaven Port & Properties Ltd) v East Sussex County Council* [2015] AC 1547 the Supreme Court held that section 15 of the 2006 Act did not apply to land which had been acquired by a statutory undertaker (whether by voluntary agreement or by powers of compulsory purchase) and which was held for statutory purposes that were inconsistent with its registration as a town or village green. That conclusion was reached in the context of an area of land within a port and over which the port authority exercised statutory functions and powers. In the instant case the Claimant argued before the Inspector that the land was held for statutory purposes and that these purposes were inconsistent with its registration under section 15 of the 2006 Act. Following a detailed analysis of the points for and against the Claimant's contention, the Inspector concluded that registration under the 2006 Act was not incompatible with the various statutory provisions which had been relied upon by the Claimant to support its argument – see paragraphs 413-452 of the Inspector's Report.

89. By the time of the hearing before me there were two first instance decisions which had applied the principles formulated in *Newhaven*. They were the decision of Ouseley J in *R (Lancashire County Council) v The Secretary of State for the*

Environment, Food and Rural Affairs [2016] EWHC 1238 (Admin) and the decision of Gilbart J in *R (NHS Property Services Ltd) v Surrey County Council* [2016] 4 WLR 130. Notwithstanding that both Ouseley J and Gilbart J were applying principles formulated in *Newhaven*, I found it difficult to reconcile aspects of their respective reasoning. I was told that each of their judgments was under appeal and that both judgments were being considered by the same constitution of the Court of Appeal. As I have said, I determined that I should await the judgment of the Court of Appeal before determining ground 5 – see paragraph 9 above.

90. Following the handing down of the decision in these appeals (henceforth referred to as "*Lancashire*") the legal representatives of the parties provided me with written representations upon the effect of the decision upon the issues in this case. I am very grateful to the lawyers for producing their submissions so promptly. That enabled me to complete my judgment relatively swiftly.

91. As I would expect from such experienced lawyers there is no material difference between the parties as to the approach which I must follow. The judgment of Lindblom LJ in *Lancashire* makes it clear that the overarching principles to be applied are those formulated by Lord Neuberger in *Newhaven*. The task of the Court in every case in which statutory incompatibility is said to arise is to apply those overarching principles to the relationship between the provisions of the 2006 Act concerning registration and the statutory powers and duties said to relate to the land in question. Statutory incompatibility will be made out so as to defeat registration as a green only if the land in question is held for a defined statutory purpose and the registration of the land would allow local inhabitants to acquire rights which were incompatible with the continuing use of the land for those statutory purposes. In each case the relevant statutory provisions must be interpreted with care so as to permit of an analysis as to whether the statutory purposes for which the land in question is held would be defeated by registration.

92. It is also worth emphasising that Lindblom LJ specifically approved the approach which Ouseley J had adopted in the *Lancashire* case. That has some importance given the way in which the Inspector reached his conclusions on the issue of statutory incompatibility. It is important, too, because the somewhat different approach adopted by Gilbart J had been relied upon to a significant extent in the original submissions advanced by Dr Bowes on behalf of the Claimant.

93. Let me begin with the approach of the Inspector. He began the section of his Report dealing with statutory incompatibility by setting out what he considered to be the relevant statutory powers and duties of the landowner, education authority and occupier of the land. It is as well to identify the statutory provisions referred to by the Inspector. First, he referred to the duty under sections 507A and 507B of the Education Act 1996 whereby a local authority must secure that facilities for primary and secondary education include adequate facilities for recreation and social and physical training for children and young persons. Second, he referred to the powers conferred upon local authorities under sections 120 to 122 of the Local Government Act 1972 to acquire land, either by agreement or compulsorily, and to appropriate land within its ownership from one purpose to another. Third, the Inspector identified provisions specific to academies. At paragraph 418 he wrote:

> "As regards the statutory duty of an Academy to provide outdoor space, by section 94 of the Education and Skills Act 2008, the Secretary of State may by regulations prescribe standards for independent educational institutions, of which Academies (specific provision for which is contained in the Academies Act 2010) are one. By regulation 3 of the Education (Independent Schools Standards) Regulations 2014, the relevant standard is provided by paragraph 29 to Schedule 1 of the Regulations:-
>
> "(1) The standard in this paragraph is met if the proprietor ensures that suitable outdoor space is provided in order to enable—
>
> (a) physical education to be provided to pupils in accordance with the school curriculum; and
>
> (b) pupils to play outside."

Earlier in his Report (paragraph 256) the Inspector had referred to evidence given by the Head Teacher of the academy, Ms Joanne Butler, to the effect that the academy had a duty under the same Regulations to keep its pupils safe. The fourth statutory provision referred to by the Inspector was the provision within the Academies Act 2010 which precludes an academy from "disposing" of a playing field without the consent of the Secretary of State.

94. It has not been suggested by the Claimant, nor could it be, that the Inspector failed to identify the statutory provisions which were relevant to the determination of the issue of statutory incompatibility.

95. Before setting out my conclusions upon this aspect of the case I should also identify one other matter which has exercised the parties. The Inspector found that the issue of whether registration should be refused on the grounds of statutory incompatibility should be determined by reference to the circumstances prevailing at the date of the application for registration. Mr Morgan and Mr Sharland QC submit that the Inspector was correct so to conclude. Mr Ground QC submits, however, that the Inspector fell into error in this conclusion. He submits that this issue should properly be addressed as at the date when the decision upon registration is being made. For reasons which will become apparent, it is unnecessary for me to reach a conclusion upon this discrete point. That being so, I decline to do so. The point is not without difficulty and, in my judgment, the point would be much better decided, definitively, when it matters and unencumbered by an *obiter dictum* of a retired judge.

96. With the exception of those provisions of the Academies Act 2010 which relate to the disposal of playing fields, none of the statutory provisions relied upon by the Claimant specifically relate to the land. There is no doubt that the land is and has been, at all material times, held by the landowner for educational purposes, but none of the specific statutory provisions either in the Education Act 1996 or in the relevant Regulations relate to the land itself. That is, in my judgment, obvious. Upon a fair reading of paragraphs 413 to 445 of the Inspector's Report he has concluded that the duties and functions of the landowner (as education authority in respect of educational

provision) can be carried out – albeit with difficulty (including financial difficulty) in some instances – even if registration takes place. I accept the submissions of Mr Morgan and Mr Sharland QC to that effect.

97. These conclusions of the Inspector are unimpeachable. They are based on a careful appraisal of the relevant statutory provisions and the evidence adduced before him. In my judgment, they are valid, equally, whether the assessment of alleged incompatibility is made as at the date of the application, October 2016, December 2016 or now.

98. I turn to the statutory provisions governing disposal of playing fields within the Academies Act 2010. This point arises, of course, upon the assumption that the date for assessing statutory incompatibility is the date of the decision upon registration. As at the date of the application the academy did not exist.

99. The relevant provisions are to be found in Schedule 1. Part 3 is headed "*Land held for the purposes of an academy*". Paragraph 17 is in the following terms:

> "(1) This paragraph applies to a disposal of publicly funded land that is held by a person ("P") for the purposes of an Academy.
>
> (2) P must give the Secretary of State notice of P's intention to dispose of the land.
>
> (3) In determining whether, and how, to give notice to the Secretary of State under sub-paragraph (2), P must have regard to any guidance given from time to time by the Secretary of State.
>
> (4) On receipt of the notice, the Secretary of State must—
>
> (a) decide whether to make a direction under sub-paragraph (7) in respect of the land specified in the notice, and
>
> (b) notify P of that decision.
>
> (5) P may not dispose of the land until P has been notified of the Secretary of State's decision.
>
> (6) If the Secretary of State decides to make a direction in respect of the land, P may not dispose of the land except in accordance with the direction.
>
> (7) The Secretary of State may make one or more of the following directions—
>
> (a) a direction that the land or any part of the land be transferred to such local authority as the Secretary of State may specify, subject to the payment by that local authority of such sum by way of consideration

(if any) as the Secretary of State determines to be appropriate;

(b) a direction that P pay, either to the Secretary of State or to such local authority as the Secretary of State may specify, the whole or any part of the value, as at the date of the direction, of the whole or any part of the land;

(c) a direction that the land or any part of the land be transferred to a person concerned with the running of an Academy, subject to the payment by that person or the Secretary of State of such sum by way of consideration (if any) as the Secretary of State determines to be appropriate;

(d) in the case of playing field land, a direction that the disposal is not to be made.

(8) In this paragraph—

(a) "playing field land" means land in the open air which is provided for the purposes of physical education or recreation, other than any land falling within a description prescribed under section 77(7) of SSFA 1998;

(b) references to a disposal of land include references to a change of use of the land in cases where the land is no longer to be used for the purposes of an Academy."

100. The Claimant submits that the acquisition of rights over the land by local inhabitants as a consequence of the registration of the land as a green would constitute a disposal of the land by the Claimant. It follows, submits Dr Bowes, that paragraph 17 of Schedule 1 applies and the acquisition of such rights consequent upon registration of the land would, inevitably, be incompatible with the Secretary of State's right, in appropriate circumstances, to refuse a disposal of the land.

101. The Inspector was disposed to doubt whether the registration of the land constituted a "disposal" within paragraph 17. Having given the matter some thought I would go further. In my judgment, the words "dispose" or "disposal" which are used in the legislation convey a state of affairs whereby the person making a disposal is voluntarily making a transfer of the land or rights over it or voluntarily changing the use of the land as the case may be. I do not accept that the words are apt to encompass circumstances in which transfers of land and/or rights over land and or changes of use of land occur against the will of the landowner or occupier and as a consequence of unrelated statutory provisions under which local inhabitants can acquire public rights through long and continuous user.

102. *Newhaven* and *Lancashire* make it clear that issues of statutory incompatibility are to be determined by reference to the appropriate interpretation of the statutes in question. I do not consider that the legislative provisions relating to the disposal of playing field land held for the purposes of an academy preclude the registration of such land as a town or village green.

103. I should also say that I agree with the Inspector that even if registration is to be regarded as a disposal, statutory incompatibility is still not made out. If registration constitutes a disposal, paragraph 17 provides a mechanism for seeking the consent of the Secretary of State for the disposal in question which must be obtained for the disposal to be lawful. In my judgment it must follow that he might intervene to argue that in a particular case registration would fall foul of the principle of statutory incompatibility. I stress, however, that I determine the issue of whether there is statutory incompatibility between Part 3 of Schedule 1 of the Academies Act 2010 and the 2006 Act in favour of the Defendant on the basis that there would be no disposal of the land in question.

104. In my judgment, ground 5 is not made out.

Conclusion

105. The Claimant has established grounds 1 and 3. It is, of course, open to the Defendant and or Mr Mayer to seek to persuade me that notwithstanding that conclusion no relief should be granted. I am sure that Mr Morgan and Mr Sharland QC will appreciate that this is likely to be a very difficult task given my reasons for finding that the committee acted unlawfully. However, I make it clear that I will receive and evaluate any submissions which they wish to make on that issue either at the handing down of the judgment or following receipt of written submissions. If the parties can agree an order consequent upon this judgment there need be no attendance at the handing down. If there are matters outstanding I will deal with them either at the handing down of this judgment or following the receipt of written submissions as the parties prefer.

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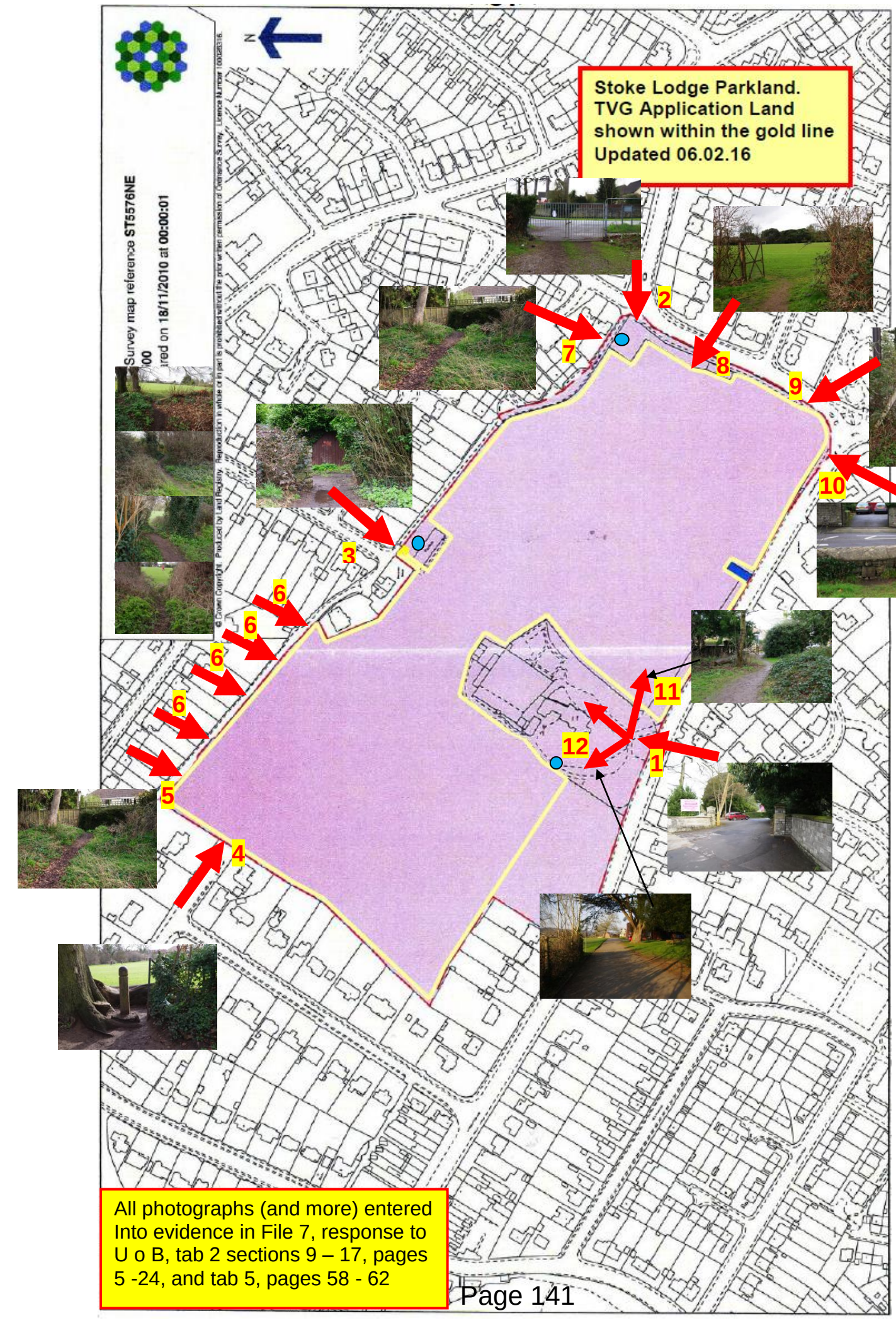

All photographs (and more) entered Into evidence in File 7, response to U o B, tab 2 sections 9 – 17, pages 5 -24, and tab 5, pages 58 - 62

BRISTOL CITY COUNCIL

PUBLIC RIGHTS OF WAYS AND GREENS COMMITTEE

25 June 2018

Report of: Commons Registration Authority

Title: Current applications for registration of land as town or village greens

Ward: Citywide

Officer Presenting Report: Anne Nugent, Team Leader/Solicitor, Legal Services Ref Legal/AN/JD5.709

Contact Telephone Number: 0117 922 3424

RECOMMENDATION

To note the annual external costs incurred since the last AGM and the present position with regards Town or Village Green (TVG) applications

The significant issues in the report are:

To note the annual external spend for TVG applications

Policy

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

Consultation

Internal

2. Not applicable

External

3. Not applicable

Context

3. To show the annual external spend for TVG applications and to update

the Committee on the current position with TVG applications.

4. There are currently no applications. The CRA has received an application to register land as a TVG. However this application awaits assessment and has not yet been duly made.

Proposal

5. To note that the annual external spend for TVG, as invoiced, from 17.07.17 (the last time that the external spend was reported) to the end of May 2018 is £20,360.00 plus VAT. However, the Council has also paid the successful claimant's costs capped at £25,000, arising from the Judicial Review of the Stoke Lodge TVG application.

6. To note the present position with regards TVG applications

Other Options Considered

7. None

Risk Assessment

8. None undertaken as no decision is being taken at this stage

Legal and Resources Implications

Legal

9. There is no specific legal implication arising from this report.

Legal advice provided by: Anne Nugent, Team Leader/Solicitor, Legal Services.

Financial

(a) Revenue

10. Awaiting comment

(Financial advice provided by Tony Whitlock, Principal Accountant, Corporate Finance)

(b) Capital

11. There are no specific policy implication arising from this report

Land

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

Personnel

13. Not applicable

Appendices

None

Local Government (Access to Information) Act 1985
Background Papers:

Section 15 Commons Act 2006

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

BRISTOL CITY COUNCIL
PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE
25 June 2018

CURRENT CLAIMS, INQUIRIES AND MISCELLANEOUS RIGHTS OF WAY MATTERS
(Report of the Executive Director for Transport, Growth and Regeneration directorate)

(Ward: Citywide)

Purpose of Report

1. To report for information on the present position with regard to claims under Section 53 of the Wildlife and Countryside Act 1981; public inquiries; and miscellaneous rights of way orders, agreements and legal proceedings.

Background

2. As Surveying Authority for the purposes of the Wildlife and Countryside Act 1981 the City Council has a duty, as imposed by Section 53(2)(b) of the Act, to keep the Definitive Map and Statement under continuous review and to determine any valid applications for Modification Orders which it receives.

3. There are currently nine outstanding claims that are waiting to be determined by the Authority, the most recent of which was validated by Legal Services in November 2016. See table at Appendix A for present position with applications.

4. There is no statutory advice relating to the order in which claims should be processed. However, the Council's standard practice is to deal with each application in chronological order of receipt, unless the claim is affected by a planning application in which case it is prioritised.

Consultation None.

Appendices

Appendix A - Table of Definitive Map Modification Order applications.
Appendix B - Table of miscellaneous rights of way orders, agreements and legal proceedings.
Appendix C - List of 'Legal Events' which require the making of a modification order under s53(3)(a) of the Wildlife & Countryside Act 1981

Policy Implications — There are no specific policy implications arising from this report.

Resource Implications — There are no specific resource implications arising from this report.

Other approvals necessary None.

Recommended - that the report be noted

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
Background Papers

Contact Officers:

For queries relating to rights of way matters:
Joanne Mansfield, Solicitor, Legal Division, Planning Transport and Regulatory Team

Mary Knight, Public Rights of Way, Traffic Services, Growth and Regeneration

APPENDIX (A)

APPLICATIONS FOR MODIFICATION OF DEFINITIVE MAP AND STATEMENT UNDER SCHEDULE 14 OF WILDLIFE AND COUNTRYSIDE ACT 1981

LOCATION	DATE RECEIVED / VALIDATED	CURRENT POSITION**
Claimed footpath at Argyle Place, Cliftonwood	24.04.98 [Validated 1998] (Ref. ID3.83)	The Property Portfolio Officer is in the process of arranging the transfer to and adoption of the land by the Council, as required by the S106 Agreement.
Claimed footpath at South Hayes and Parkside Gardens, Lockleaze	15.06.06 [Validated 15.03.2007] (Ref. ID3.640)	Awaiting investigation
Claimed footpath at Ridgehill, Henleaze	14.10.06 [Validated 24.11.06] (Ref. ID3.654)	A meeting with the landowner to enquire about the possibility of an express dedication of the claimed route was positive. A confirmatory letter from the owner, of the discussion and understanding is awaited by the officers.
Claimed footpath rear of Shaldon Road and Morris Road, Lockleaze	09.05.07 [Validated 18.05.2007] (Ref. ID3.665)	Part of the claimed route is affected by development proposals - planning application No. 17/01920.F. The report to this committee should be ready for the next committee meeting
Claimed footpath from Blackberry Hill (south of Frome Bridge) to FP153	28.06.08 [Validated 11.07.2008] (Ref.ID3.685)	The lead claimant lodged an appeal with the Secretary of State which has not resulted in a direction to BCC. The land has subsequently been registered as a Town & Village Green.
South Purdown, Lockleaze – route B-C	14.03.2011 [Validated 21.09.11] (Ref. ID3/739)	Officers are to prepare a report to committee, taking into consideration recent legal advice on a discrete point of law.
Claimed footpath from Machin Rd to Crow Lane, Henbury	15.10.13 [Validated 11.12.13] (Ref.ID3.776)	DEFRA has issued a direction that this claim should be investigated by 01.09.2018.
Claimed footpath Trymwood Close /Henbury Hill to Arnall Drive	March 2014 [Validated June 2014] (Ref. ID3.788)	Awaiting investigation
Claimed footpath Fishponds Road to Laburnum Grove.	26.02.2007 [Validated 24.11.16] (Ref. ID3/651)	Awaiting investigation

Claimed footpaths West Dene to Stoke Lodge, Cheyne Rd to Druid Hill, Cheyne Rd to Stoke Lodge, Cheyne Rd to West Dene.	30.05.2018 [awaiting validation]	Awaiting investigation after validation.
** Valid applications will be dealt with in chronological order of receipt, with the exception of those which must be prioritised as a result of development proposals.		

APPENDIX (B)

1. To report for information on the present position with regard to miscellaneous rights of way orders, agreements and legal proceedings.

Item	Ward	Site address/ description	Remarks
PUBLIC PATH ORDERS – Town and Country Planning Act 1990			
1	Filwood	Public Footpath 547(part) – combined order	Diversion Order made on 07.09.2018 Awaiting confirmation
2	Bedminster	Public Footpaths 207 & 424 (part) Ashton Vale – combined order	Diversion order made on 29.05.2017 Confirmed on 01.08.2017 Awaiting certification
PUBLIC PATH ORDERS – Highways Act 1980			
3	Avonmouth & Lawrence Weston, Henbury & Brentry	Public Footpaths 8 & 11(part), Atwood Dr and Avon Riding Centre - combined order.	Diversion Order made 06.02.2018 Confirmed on 17.04.2018
4	Lockleaze	Public Footpaths 141 &142 (part), Dovercourt Rd to Brangwyn Grove combined order.	Diversion Order made 13.03.2018 Confirmed on 05.06.2018
PUBLIC INQUIRIES			
4	None		
Miscellaneous Rights of Way Matters			
4 See list of outstanding 'Legal Event' Orders at Appendix C .			

APPENDIX (C)

'Legal events'* requiring the making of a modification order under Section 53(3)(a) of the Wildlife & Countryside Act 1981

[N.B. List incomplete – comprises list of events between 1999 to 2014 – see footnote**]

*The term 'Legal Event' under s.53(3)(a) of the Act comprises the coming into operation of any enactment or instrument, or any other event, whereby:

"(a) a highway shown or required to be shown in the map and statement has been authorised to be stopped up, diverted, widened or extended;

"(b) a highway shown or required to be shown in the map and statement as a highway of a particular description has ceased to be a highway of that description; or

"(c) a new right of way has been created over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path."

1) Burfords, Lawrence Weston Road – Public Path Diversion Order BCC/1A & BCC/1B Confirmed 27.04.2000 *(Ref. FRP/TC/24/1)* & BCC/1A Certified 28.11.2011

2) Cabot park, Avonmouth – Public Path Diversion Order BCC/1 (part) (two Orders – 2004 & 2006)

3) Wintour House, Kingsweston Lane – Public Path Diversion Order BCC/563 *(Ref. DJE/IA2/323)*

4) Units 1-4 Foundry Lane, Fishponds – Public Path Diversion Order BCC/246 (Part) *(Ref. ID3.461)*

5) Church Lane, St George – Public Path Stopping Up Order BCC/339 (Part) *(Ref. IA5/296)*

6) Meg Thatchers Gardens, St George – Public Path Diversion Order BCC/373 (Part) *(Ref. ID3/518)*

7) Sturminster Road, Stockwood – Public Path Diversion Order BCC/514 (Part)

8) Greystoke Avenue/Cricket Lane, Southmead – Dedication of public footpath linking BCC/41 to Cricket Lane & Public Path Order BCC/41 (Part) *(Ref. ID3.599)*.

9) Briarwood, Westbury on Trym – Public Path Stopping Up Order BCC/112 (Part) *(Ref. ID3.533)*

10) Wilson Street, St Pauls – Public Path Extinguishment Order BCC/548 (Part) *(Ref. ID3.269)*

11) Blackswarth Road bridge, St Annes – Public Path Diversion Order BCC/524 (Part) *(Ref. ID3.567)*

12) George & Dragon Lane, Church Road, Redfield – Stopping Up Order BCC/340 (Part) *(Ref. GOSW-SW/THM/8247/258)*

13) Bentley Close, Whitchurch – Public Path Diversion Order BCC/520 (Part) *(Ref. IA5/304).*

14) Temple Way – Public Path Diversion Order BCC/345 (Part) *(Ref. ID3.636).*

15) Dovercourt Road – Public Path Diversion Order BCC/140 *(Ref. ID3.635).*

16) Cabot Park Avonmouth – Public Path Diversion Order BCC/1 (Part) 2004 (Ref. ID3.570) & Public Path Diversion Order BCC/1 (Part) 2006.

17) Wessex Water Works, Avonmouth – Public Path Diversion Order BCC/5 *(Ref. ID3.642).*

18) Eastwood Road/Wyndham Crescent, Brislington – Public Path Diversion Order BCC/416 *(Ref. DP5/45).*

19) Malago Sidings, Bedminster – Public Path Diversion Order BCC/437A (Part) 2003 (Ref. IA5/283) & Public Path Diversion Order BCC/437A (Part) 2007 *(Ref. ID3.670).*
20) South Purdown, Lockleaze – Public Path Diversion Order BCC/223 (Part) *(Ref. ID4.189).*
21) Wickham Glen, Stapleton, Eastville – Public Path Diversion Order BCC/236 *(Ref. ID4.341)*
22) Hallen Marsh, Avonmouth – Public Path Extinguishment Orders BCC/553 (part), BCC/555 (Part) & BCC/1A (Part) *(Ref. ID3.715)*.
23) Hallen Marsh, Avonmouth – Public Path Diversion Order BCC/1A (part) *(Ref. ID3.716).*
24) Crabtree Slip Wood, Shirehampton – Section 25 Highway Act Creation Agreement of footpath BCC/588 – *(Ref. ID3.710).*
25) Avon Meads, St Philips Marsh - Section 25 Highway Act Creation Agreement of footpath BCC/589 *(Ref. ID3.711).*
26) Little Mead to Kings Weston Road, Kingsweston – Deed of Dedication of public footpath BCC/595 *(Ref. ID3.737).*
27) Lodge Hill to Woodland Way, Fishponds - Deed of Dedication of footpath BCC/590 *(Ref. ID3.733).*
28) Dundridge Farm Open Space, St George East – Deed of Dedication of circular public bridleway BCC/591 *(Ref. ID3.546)* & Deed of Dedication of extension of bridleway through car park BCC/591A.
29) Headley Park, Broadleas to Crox Bottom open space – Deed of Dedication of footpath BCC/582 *(Ref. ID3.722 & 728).*
30) Barracks Lane Open Space, Avonmouth – Section 25 Highway Act Creation Agreement of footpaths BCC/592, 593 & 594 *(Ref. ID3.546).*
31) Severn Way Link Path, Shirehampton – Deed of Dedication of various footpaths between Riverbank and Sea Mills Lane BCC/588A & 596-599 *(Ref. ID3.747).*
32) Dundry Hill Farm, Whitchurch Park – Section 25 Highway Act Creation Agreement BCC/519A (Part) *(Ref. ID3.688).*
33) Smoke Lane Avonmouth to BCC/543 – Deed of Dedication BCC/543A *(Ref. ID3/757).*
34) Station Road, St Werburghs – Deed of Dedication of bridleways BCC/209A & 209B *(Ref. ID3.760).*
35) Extension of Whitchurch Railway Path to Craydon Grove, Stockwood – Deed of Dedication of Restricted Byway from County boundary to Craydon Grove BCC/601 *(Ref. ID3.110).*
36) Old Sneyd Park, Stoke Bishop – Deed of Dedication of footpath BCC/602 *(Ref. ID3.765)*
37) Orpen Gardens, Lockleaze – Section 25 Highway Act Creation Agreement of footpath BCC/603A and Deed of Dedication of footpath BCC/603 *(Ref. ID3.768 & 769).*
38) Gatehouse Close & Gatehouse Way, Hartcliffe – Deed of Dedication of four footpaths BCC/604-607 *(Ref. IE3.397).*
39) St. Anne's Wood, Brislington – Deed of Dedication of Footpath BCC/608 made on 16.06.2017.

****** Section 51 and paragraph 2 of Schedule 5 to the Countryside and Rights of Way Act 2000 inserted a new section 53A into the WCA 1981. The Combined Orders Regulations were published in 2010 [S.I. 2010 No. 2127]. Section 53A enables surveying authorities to include,

in orders satisfying the criteria in section 53A(1), provisions to modify the definitive map and statement, thereby avoiding the need for a separate ‘legal event’ modification order.