

Public Rights of Way and Greens Committee Agenda



Date: Monday, 13 March 2017

Time: 2.00 pm

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

Distribution:

Councillors: Peter Abraham (Chair), Tim Kent (Vice-Chair), Donald Alexander, Charlie Bolton, Paul Goggin, Chris Jackson, Mike Langley and Jon Wellington

Copies to: Nancy Rollason (Service Manager Legal), Anne Nugent (Legal Officer), Tom Dunsdon (Solicitor), Christine Pouncett, Duncan Venison (Network Operations Manager) and Louise deCordova (Democratic Services Officer)

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Date: Friday, 3 March 2017



Agenda

1. Welcome, Introductions and Safety Information

(Pages 5 - 6)

2. Apologies for Absence and Substitutions

3. 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.

4. Minutes of Previous Meeting

To agree the minutes of the previous meeting as a correct record.

(Pages 7 - 12)

5. 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 **5pm on Tuesday, 7th March 2017**.

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 Friday, 10th March 2017**.



6. Public Rights of Way : Current Claims, Inquiries and Miscellaneous Rights of Way Matters

Committee to note the report for information on the present position with regard to claims under Section 53 of the Wildlife and Countryside Act 1981.

Report to follow.

7. Town or Village Green applications update

Committee to note the report for information on the present position with regards Town or Village Green applications duly made under the Commons Act 2006.

(Pages 13 - 18)

8. Exclusion of Press and Public

Recommendation - that under Section.100A(4) 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 likely disclosure of exempt information as defined in Part 1 of schedule 12A of the Act (as amended).

Bristol City Council is fully committed to openness. The Council will not withhold information unless there are good reasons for doing so. The following reports are not available to members of the public because they contain information which is about individuals, labour relations or is commercially or legally sensitive. The particular reasons are given in each case.

9. Guidance and Briefing on Decision Making

Committee to note the guidance and briefing on decision making.

Exempt under category 5

5 – Information in respect of which a claim for legal professional privilege could be maintained in legal proceedings

Report to follow.



Public Information Sheet

Inspection of Papers - Local Government
(Access to Information) Act 1985

You can find papers for all our meetings on our website at www.bristol.gov.uk.

You can also inspect papers at the City Hall Reception, College Green, Bristol, BS1 5TR.

Other formats and languages and assistance
For those with hearing impairment

You can get committee papers in other formats (e.g. large print, audio tape, braille etc) or in community languages by contacting the Democratic Services Officer. Please give as much notice as possible. We cannot guarantee re-formatting or translation of papers before the date of a particular meeting.

Committee rooms are fitted with induction loops to assist people with hearing impairment. If you require any assistance with this please speak to the Democratic Services Officer.

Public Forum

Members of the public may make a written statement ask a question or present a petition to most meetings. Your statement or question will be sent to the Committee and be available in the meeting room one hour before the meeting. Please submit it to democratic.services@bristol.gov.uk or Democratic Services Section, City Hall, College Green, Bristol BS1 5UY. The following requirements apply:

- The statement is received no later than **12.00 noon on the working day before the meeting** and is about a matter which is the responsibility of the committee concerned.
- The question is received no later than **three clear working days before the meeting**.

Any statement submitted should be no longer than one side of A4 paper. If the statement is longer than this, then for reasons of cost, only the first sheet will be copied and made available at the meeting. For copyright reasons, we are unable to reproduce or publish newspaper or magazine articles that may be attached to statements.

By participating in public forum business, we will assume that you have consented to your name and the details of your submission being recorded and circulated to the committee. This information will also be made available at the meeting to which it relates and placed in the official minute book as a public record (available from Democratic Services).

We will try to remove personal information such as contact details. However, because of time constraints we cannot guarantee this, and you may therefore wish to consider if your statement

contains information that you would prefer not to be in the public domain. Public Forum statements will not be posted on the council's website. Other committee papers may be placed on the council's website and information in them may be searchable on the internet.

Process during the meeting:

- Public Forum is normally one of the first items on the agenda, although statements and petitions that relate to specific items on the agenda may be taken just before the item concerned.
- There will be no debate on statements or petitions.
- The Chair will call each submission in turn. When you are invited to speak, please make sure that your presentation focuses on the key issues that you would like Members to consider. This will have the greatest impact.
- Your time allocation may have to be strictly limited if there are a lot of submissions.
- If there are a large number of submissions on one matter a representative may be requested to speak on the groups behalf.
- If you do not attend or speak at the meeting at which your public forum submission is being taken your statement will be noted by Members.

Webcasting/ Recording of meetings

Members of the public attending meetings or taking part in Public forum are advised that all Full Council and Cabinet meetings and some other committee meetings are now filmed for live or subsequent broadcast via the council's [webcasting pages](#). The whole of the meeting is filmed (except where there are confidential or exempt items) and the footage will be available for two years. If you ask a question or make a representation, then you are likely to be filmed and will be deemed to have given your consent to this. If you do not wish to be filmed you need to make yourself known to the webcasting staff. However, the Openness of Local Government Bodies Regulations 2014 now means that persons attending meetings may take photographs, film and audio record the proceedings and report on the meeting (Oral commentary is not permitted during the meeting as it would be disruptive). Members of the public should therefore be aware that they may be filmed by others attending and that is not within the council's control.



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



12 December 2016 at 2.00 pm

DISCLAIMER

The attached Minutes are DRAFT. Whilst every effort has been made to ensure the accuracy of the information and statements and decisions recorded in them, their status will remain that of a draft until such time as they are confirmed as a correct record at the subsequent meeting.

Members Present:-

Councillors: Peter Abraham (Chair), Tim Kent (Vice-Chair), Donald Alexander, Charlie Bolton, Chris Jackson and Mike Langley

Officers in Attendance:-

Anne Nugent (Legal Officer), Tom Dunsdon (Solicitor), Duncan Venison (Network Operations Manager) and Louise deCordova (Democratic Services Officer)

1. Welcome, Introductions and Safety Information

The Chair led the welcome and introductions.

The Chair stated that he was the ward councillor for the Stoke Lodge area and would not be declaring an interest.

The Chair confirmed that he was open minded, would listen to the arguments presented and that being the local councillor did not preclude him from taking part.

2. Apologies for Absence and Substitutions

Apologies were received from Councillor Wellington.

3. Declarations of Interest

There were no declarations of interest received.

4. Minutes of Previous Meeting



The Committee Resolved:

That the Minutes of the Public Rights of Way and Greens Committee AGM held on 19 September 2016, be confirmed as a correct record.

5. Public Forum

Statements

Members of the Committee had received Public Forum Statements in advance of the meeting.

Due to the exceptionally high number of statements received, the Chair asked attendees in the public gallery to select representatives from their number to speak to the statements.

The Statements were heard before the application and were taken fully into consideration by the Committee prior to reaching a decision. (A copy of the public forum statements are held on public record and can be accessed via Democratic Services).

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

The Committee considered the report of the Commons Registration Authority, Application to Register Land at Stoke Lodge as a Town and Village Green under the Commons Act 2006, Section 15(2). The Solicitor introduced and summarised the report.

- a. The Committee noted that the applicant's request for a deferment (*Recommendation 1*) had been withdrawn. The Committee was asked to determine the application to register a site known as Stoke Lodge Playing Fields, Stoke Bishop, as a Town Green. (*Recommendation 2*)
- b. The Committee noted that the following sentence had been omitted from the covering report *...(ref. para 407 of the Inspectors report).*

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.

In response to a Member's question the following point was clarified:



- c. The application was not out of time (*ref. Para 407*). The Solicitor confirmed that the law had not been the same at that time and therefore now was the correct time for Committee to look at the matter. The relevant date being the date of the application.

The Committee noted the conclusion of the inspector:

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.

The Committee noted that all but one leg of the test had been satisfied.

The Committee noted that the numbering in the officers report was incorrect after para. 43 and needed to be amended.

In response to Members questions the following points were clarified:

- d. The scope of the decision to be determined excluded all but the statutory test (*para 14 of the report refers*).
- e. The Inspector had previously recommended approval of the application in 2013, but the law had been clarified by the *Winterburn vs Bennett[2016] EWCA Civ 482* case and therefore impacted the inspector's current recommendation to reject the application.
- f. The issue of a waste bin on site, that appeared to be in the Council's ownership, did not feature in the inspector's report and Officers were not aware of it or how long it had been on the site. Officers confirmed that this would not affect the statutory test.
- g. Officers were unable to provide additional details outside of those detailed in the inspector's report with regard to the court transcript or judgement of the *Winterburn vs Bennett* case in relation to the use of visibly clear signage or to the amount of signage at the entrance to the carpark.

During the debate there was wide ranging discussion over the weight applied to the signage at the site and Members raised the following points:

- h. 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' and some members agreed with the inspector that the sign erected by Bristol City Council in 2009 had not been sufficiently clear.
- i. 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, Avon County Council or Bristol City



Council 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.

- j. Members agreed that the judgement reached in the Winterburn case set out the law to be applied on signage.
- k. Some Members considered that the size and nature of the site in the *Winterburn vs Bennett* case could not reasonably be compared to the Stoke Lodge site. A photograph of the car park in the Winterburn case was shown.
- l. A Member commented that the Council's management of the land had sent subtle and contradictory signals which undermined the weight and authority of the signage by not enforcing the signs or challenging use of the site, by installing a bollard which stopped vehicles but not pedestrians, installation of a Bristol City Council dog waste litter bin and by developing a playpark, examples of actions which had allowed the public to re-establish their rights over time.
- m. A Member commented that the inclusion of community use within the 125 year lease between the Cotham School and Bristol University implied that community use was allowed.
- n. A Member commented that it was very clear that the burden of proof had been on the applicant to prove that there had been 20 years of use 'as of right'.
- o. Some members considered that the signage was sufficiently clear between 1991 and 1996 and in addition some entrances to the site had other obstacles such as bollards or felled trees to deliberately block the entrance and identify to people that they were 'forcibly' entering the land which was under private ownership and therefore that access to the site would be 'contentious' and not 'as of right'.
- p. Some Members considered that it was not reasonable to expect a Local Authority to have to fence off the land or erect additional signage to indicate that the site was under private ownership. The site had been leased to another organisation and did not have the character of a site that was being used 'as of right'. It had the character of a site that had permitted people to use it but had clearly demonstrated that it was under private ownership.
- q. Members recognised the importance of children's safety, in respect of controlling ingress and egress from the site and in respect of prevention of dog fouling but noted the inspector's response that this was outside of the qualifying period in respect of the application.

In response to some of the points raised in debate Officers clarified the following points:

- r. Committee must be careful not to consider the Councillors' comments as evidence.



- s. The inspector carried out the investigation, took into account all the facts, heard evidence over 9 days , had visited the site twice and the inspector had concluded that the erection of three signs, the size of the signs and the location of the signs in prominent positions on the land, at principle entrances would have been considered reasonable enough by a land owner to render the use of the land contentious.
- t. That it was not what was in the minds of the individual to interpret the wording on the signs which determined whether they had entered the land by force.
- u. The inspector had concluded that current activity by the landowner was not sufficient to render use of the site contentious but the qualifying period was the 20 years from 1991 to 2011.
- v. The inspector had noted that the judgement in the Winterburn case made it clear that the signs could be sufficient by themselves. The Winterburn case had set out clearly that neither protests nor further actions were necessary and it was enough that signage made it clear that the use of the land is contentious.
- w. 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.
- x. With respect to the tree trunk felled at one of the site entrances the inspector concluded that not much significance should be attached to this.
- y. With reference to complaints received by the parks department and other issues other than signage the inspector did not find in favour of the objectors on these issues.
- z. The contents of the lease did not fall within the 'test' relevant to the Committees decision.

Cllr Bolton moved to reject the inspector's recommendation and grant the application to register the land at Stoke Lodge as a Town and Village Green. Cllr Kent seconded the motion.

On being put to the Vote

The Committee Resolved: (3 against, 3 for, the Chair exercised a casting vote)

That the Committee reject the inspector's recommendation and that the application to register the land at Stoke Lodge as a Town and Village Green be granted.

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 a 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 in Winterburn v Bennett [2016] EWCA Civ 482 were not the same as the facts of 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 number of signs on such a large site was not sufficient to make the use of the land contentious.

7. Town or Village Green applications update

The Committee considered an information report of the Commons Registration Authority, which outlined the present position with regard to Town or Village Green (TVG) applications duly made under the Commons Act 2006 and the annual external spend for TVG applications.

The Committee Resolved to note the report.

8. Public Rights of Way Update

The Committee considered an information report of the Service Director for Transport, which outlined 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, presented by the Network Operations Manager.

The Committee Resolved to note the report.

Meeting ended at 4.10 pm

CHAIR _____



BRISTOL CITY COUNCIL

PUBLIC RIGHTS OF WAYS AND GREENS COMMITTEE

13 March 2017

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

Contact Telephone Number: 0117 922 3424

RECOMMENDATION

To note the present position with regards Town or Village Green applications

Summary

This report contains a schedule of the present position with regards Town or Village Green applications duly made under the Commons Act 2006

The significant issues in the report are:

The present position with regards Town or Village Green applications and 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

4. To update the Schedule of Town & Village Green Applications to show the current position and the annual external spend for TVG applications

Proposal

5. The annual external spend for Town or Village Green Applications, as invoiced, from 31.08.15 to 14.11.16 is £47,775.00 plus VAT.
6. To note the present position with regards Town or Village Green 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. Each Application will have a separate report to Committee at the appropriate time.

Legal advice provided by: Anne Nugent, Team Leader/Solicitor, Legal Services.

Financial

(a) Revenue

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

(Financial advised 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

Appendix A – Schedule of the current position with regards Town or Village Green applications duly made under the Commons Act 2006

Appendix B- Map of Stoke Lodge Playing Field – Application No: 24
Map of Colston’s School Playing Field – Application No: 30

Local Government (Access to Information) Act 1985

Background Papers:

Application papers available by request at City Hall, College Green, Bristol.

Section 15 Commons Act 2006

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

Appendix A

Schedule of current Town or Village Green Applications that have been duly made.

Updated 23rd November 2016

Stoke Lodge Playing Fields (file number JD5.450)

- **Application No:** 24
- **Date Application received:** 7 March 2011
- **Description of Application land:** Stoke Lodge Playing Fields,
- **Location of Application land:** Stoke Lodge Playing Fields, Shirehampton Road, Stoke Bishop, Bristol BS9 1BN. (Application Map Appendix B)
- **Applicant:** Save Stoke Lodge Parkland
- **Landowner:** Bristol City Council
- **State of Application:** Please see separate Officers Report

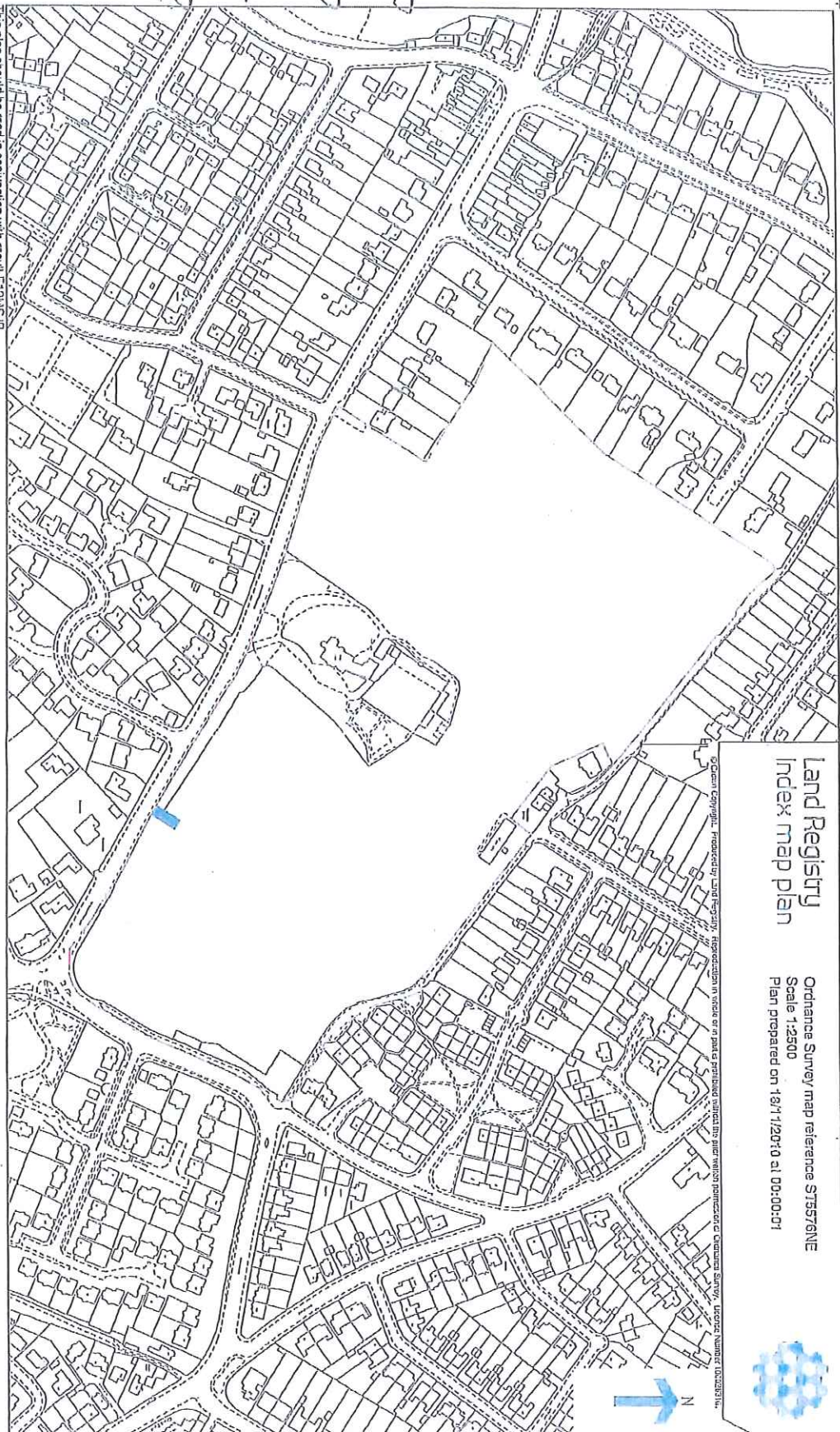
Colston's School Playing Fields (file number JD5.587)

- **Application No:** 30
- **Date Application received:** 10 March 2015
- **Description of Application land:** Land at Colston's School Playing Fields Bell Hill Bristol described in the application as also sometimes referred to as 'Colston's Field', 'Colston's Lower Field', or 'The Field'.
- **Location of Application land:** Colston's School Playing Fields, Bell Hill Bristol (Application Map Appendix B)
- **Applicant:** Mr Christopher Ian Faulkner Gibson
- **Landowner:** Merchant Venturers of the City of Bristol
- **State of Application:** The parties are proposing registration of a smaller area of land. The CRA must now put notices up on the site asking for submissions.

JD5.621

APPLICATION 24 Stoke Lodge playing fields

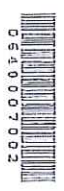
This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.



Land Registry
Index map plan

Ordnance Survey map reference ST55761NE
Scale 1:2500
Plan prepared on 19/11/2010 at 00:00:01

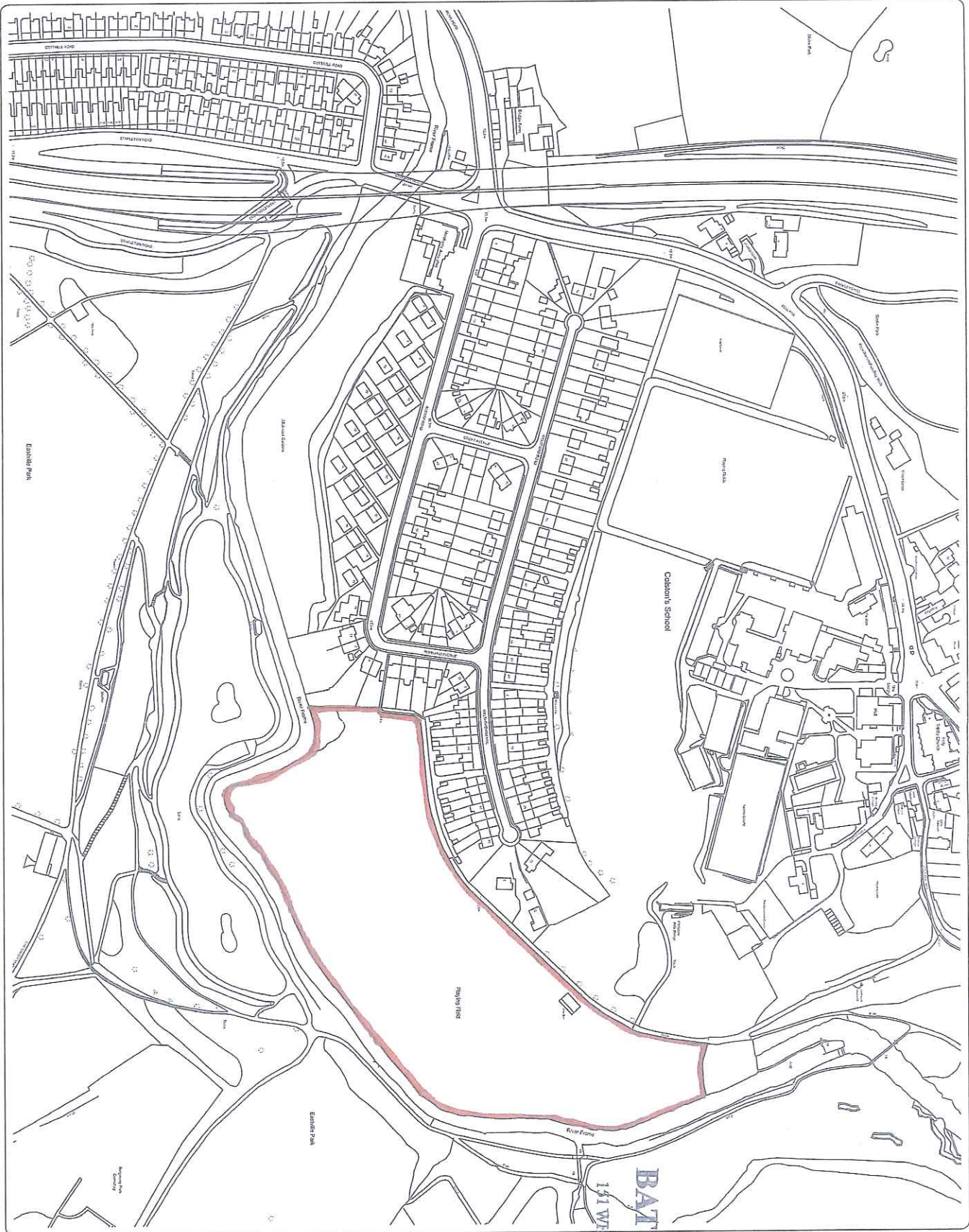
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0540007002

PLAN ONE

Application 30 Colston's School Playing Field



CORPORATE PROPERTY
 2nd Floor West Wing, Redwood Campus,
 Millennium Way, Bristol BS1 4 9JL
 www.bristol.gov.uk

PROPERTY

Plan No : N6810a
 Prop ID Ref : N/A
 Polygon Ref : 1-2,500 @A3
 Scale : 1:2,500 @A3
 Date : 05/05/2015

SITE NOTES : To ensure boundary accuracy, please refer to deeds.
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 Ordnance Survey 100023406.

BATTRICK CLARK
 Solicitors
 1/1 WHITE LADIES ROAD, CLIFTON
 BRISTOL BS8 2RA

27/05/2015

Coltons Fields,
 Stapleton,
 Bristol.

Plan necessary
Barra

[Handwritten signatures]