IN THE MATTER OF TWO APPLICATIONS TO REGISTER STOKE LODGE PLAYING FIELDS STOKE BISHOP, BRISTOL AS A TOWN GREEN UNDER THE COMMONS ACT 2006.

FURTHER REPRESENTATIONS TO THE PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE ON BEHALF OF MS BURGESS AND MS WELHAM

Introduction and summary

1. These further representations respond to the Inspector's Note dated 18 May 2023. They do not seek to address each and every point that arises in relation to the two applications to register the Stoke Lodge Playing Fields ("the Land") as a Town and Village Green ("TVG"). These representations should be read together with the Applicants' previous representations to the Public Rights of Way and Greens Committee ("the PROWGC") dated 11 April 2023 and the Applicants' earlier submissions to the Inspector dated October 2022 and December 2022 which were attached to the Applicants' April 2023 representations.

2. For the reasons set out below and in the Applicants' previous submissions, all elements of the legal test for registration of the Land as a TVG are met and therefore the PROWGC is obliged to register the land at Stoke Lodge Playing Fields as a TVG. Whilst the Inspector recommended that the Land should not be registered as a TVG because, in his view, use was not "as of right" for the relevant twenty year period, the Inspector's various reports/notes on this issue are legally flawed. Further, the Inspector, amongst other things, failed to follow a fair procedure by refusing to hold a public inquiry, misunderstood/misrepresented the Applicants' case on certain issues and failed to consider relevant evidence or properly address the Applicants' arguments.[1] In such

[1] See further, paras 6-24 of the Applicants' April 2023 Representations.

circumstances, the conclusions in his report on the “as of right” issue should be rejected and the Inspector’s Report cannot simply be accepted in its entirety by the PROWGC which must instead consider the individual issues based on the evidence before them.

3. The PROWGC are in a better position to address the key factual disputes relevant to that issue. Even if one proceeds on the basis that the Inspector’s analysis of the law on the “as of right” issue is correct (which is not accepted), it is common ground that it is open to the PROWGC lawfully to conclude that use was “as of right”.[2]

Structure

4. These representations will address the following issues:
    i) the roles of the PROWGC and the Inspector;
    ii) the Inspector’s conclusions on the signage;
    iii) the Inspector’s conclusions on the 2016 Inquiry and whether it was a “cause celebre”;
    iv) the statutory incompatibility issue;
    v) the findings that the PROWGC should make.

The roles of the PROWGC and the Inspector

5. It is important to remember that, in relation to the present case, Parliament has entrusted the Council (the registration authority), to decide whether or not the Land should be registered as a TVG. The Council has delegated this decision to the PROWGC. Parliament could, if it wished, have provided for a legally qualified judge to determine the issue but it took the view that this was not appropriate and that it should be

[2] At paragraph 25 of his May 2023 Note, the Inspector acknowledged that it was open to the PROWGC lawfully to take a different view on the factual position on the “as of right” issues (namely the signs and whether the 2016 Inquiry was a “cause celebre”) provided that it gave adequate reasons for its conclusions. In stating that it is for the Applicants to show the PROWGC that the legal test is met on the facts (paragraph 23 of his May Note), he clearly acknowledges that such a conclusion is open to the Committee.

democratically elected local councillors who determined such matters no doubt, at least in part, because of their local knowledge and expertise.

6. The Inspector's role is to ensure a fair procedure particularly where, as here, there are factual disputes about important issues. Where there is a serious application to register a piece of Land as a TVG, the registration authority is required to appoint a legally qualified inspector to hold a <u>non-statutory public inquiry</u> and make recommendations <u>following that inquiry.</u>

7. The Court of Appeal in *R (Whitmey) v Commons Commissioners* [2005] QB 282 stated:

> "The registration authority must act reasonably…In order to act reasonably, the registration authority must bear in mind that its decision carries legal consequences….<u>If the dispute is serious in nature,</u> I agree with Waller LJ that if the registration authority has itself to make a decision on the application….it should proceed only after receiving the report of an independent expert (by which I mean a legal expert) who has at the registration authority's request held <u>a non-statutory public inquiry."</u>
>
> (emphasis added)

8. The only purpose of appointing an Inspector is to ensure a fair procedure by holding a public inquiry. Given the complexity of this matter, the multiple legal and factual disputes and the importance of the matter to, amongst others, the local inhabitants, a public inquiry was necessary as a matter of law and also to comply with the clear terms of the PROWGC's Outline Procedure.[3] The Inspector repeatedly stated at earlier stages that he assumed these applications would be a 'straightforward case with no conflict on the facts' and only in his final Note admits that the arguments on the facts are complicated (paragraph 16), thus undermining his own conclusion that a public inquiry was not required.

[3] This is, of course, not the only legal error the Inspector made in the procedure adopted. He also unlawfully predetermined various matters, see paras 17-22 of the Applicants' April 2023 representations to the PROWGC.

9. As the Inspector expressly acknowledged, the PROWGC is not bound by the Inspector's factual findings or ultimate recommendation; it is entitled to take a different view provided it acts lawfully when doing so and, inter alia, gives reasons for its decision.

10. No doubt the PROWGC will be mindful of the fact that in December 2016 it rejected the Inspector's recommendation in relation to Mr Mayer's application and decided to register the Land as a TVG, and that its decision was subsequently quashed by the High Court. However, it is important to note the narrow basis for the High Court's quashing the PROWGC's earlier decision. The High Court acknowledged that it is open to registration authorities to "depart from the conclusion of an inspector on the basis of a justified difference in view about the relevant facts".[4] However, the PROWGC fell into error with its decision on that occasion because its conclusion was inconsistent with certain of the Inspector's findings of fact which it had expressly accepted. Further, it failed to give reasons for its decision.

11. The PROWGC is of course not, in any way, bound by its subsequent June 2018 decision not to register the land following Mr Mayer's application. The two applications that are now before the Committee relate to a different period of time and importantly are based on very different evidence that was not before the Inspector (or the PROWGC) at the time of the 2011 application. Whilst in relation to the 2011 application, it is not surprising that the PROWGC ultimately deferred to the Inspector's factual conclusions on the issue of "as of right" because he had held a lengthy public inquiry where he had heard and seen witnesses give oral evidence and be cross-examined on such evidence, there is no similar basis for deferring to the Inspector's conclusions because he has declined, in breach of both the law and the PROWGC's Outline Procedure, to hold a public inquiry.

The Signs

<u>Introduction</u>

12. The Applicants have previously addressed the signage in detail at:

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[4] See *R (Cotham School) v Bristol City Council* [2018] EWHC 1022 (Admin), para 56.

i) paragraphs 70-86 of the Applicants' October 2022 submissions and the 47 page annex to these submissions);

ii) paragraphs 31-47 of the Applicants' December 2022 submissions in reply;

iii) paras 25-42 of the Applicants' April 2023 representations to the PROWGC.

13. The Applicants would ask the PROWGC to consider its previous submissions on this issue which are not repeated here. In summary, the Applicants accept that the erection of signs may, depending on the factual circumstances (including the wording of the signs, the number of the signs and other relevant circumstances), render any subsequent use of Land by local residents as contentious and thus not as of right. However, whether the signs are sufficient to render the use contentious is a question of fact and judgement for the PROWGC taking into account the surrounding circumstances. In the present case, the two Avon County Council signs[5] were not sufficient to render the use of the large area of Land with multiple entrances contentious. Nothing in the Court of Appeal's judgment in *Winterburn v Bennett* (or any other judicial authority) prevents the PROWGC from lawfully reaching this conclusion. Further, and in any event, the actions of the landowners both before and during the relevant twenty year period contradicted the signs and made clear that use by local inhabitants for lawful sports and pastimes was acquiesced in so that such use was not contentious.

14. The Inspector addresses signage issues at paragraphs 10-17 of his May 2023 Note.

The Inspector's reliance on *Winterburn v Bennett*

15. At paragraph 10 of his May 2023 Note, the Inspector makes reference to the correct interpretation of the Court of Appeal's judgment in *Winterburn v Bennett.* The Applicants have consistently maintained that the Inspector erred in his interpretation of the Court of Appeal's judgment in this case.[6]

[5] The third sign was not located at a public entrance but a service yard, see paras 241 and 389 of the Inspector's 2016 Report.

[6] See eg, paras 27-33 of the April 2023 representations.

16. At paragraphs 68-70 of his 2013 report, the Inspector concluded that whilst the Avon CC signs appeared to render use of the Land by local inhabitants contentious, the signs had to be considered in context and that bearing in mind the limited number of signs, the fact that a significant number of the residents would not have seen the signs, that the local inhabitants consistently ignored the signs, and that the Council took no steps to restrict use by local inhabitants, this was a 'classic case of acquiescence'. The sole reason for the Inspector's change of view in 2016 was the Court of Appeal's decision in *Winterburn*. He took the view that as a result of this judgment, if a landowner put signs up prohibiting use of the land this was all that the landowner had to do to render use contentious regardless of the other circumstances and issues of sufficiency. The Inspector now accepts in paragraph 16 of his Note that if his interpretation of the case is wrong, or <u>if the use of the Land was at all times being acquiesced in despite the notices</u>, then the Land should be registered.[7]

17. The Inspector has clearly misinterpreted the Court of Appeal's judgment in *Winterburn*. What the Court of Appeal held was that the continuous presence of legible signs <u>may</u> be sufficient to render use contentious, see para 23 of the judgment. It did not hold that erection of prohibitory signs will <u>necessarily</u> be sufficient to render use contentious, nor did it hold that the landowner's subsequent actions were irrelevant. The Court's analysis in *Winterburn* was clearly premised on the particular facts of the case which were very different to the present case. The Court stated:

> 'the circumstances must indicate to persons using the land that the owner objects <u>and continues to object</u> to the parking… On the facts of the present case, the presence of the signs in my judgement clearly indicated the owner's <u>continuing objection</u> to unauthorised parking.'
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> (paragraph 37, emphasis added)[8]

18. Whilst the landowner in *Winterburn* had made its position 'entirely clear' given the wording of the signs and the fact that they were placed at the sole entrance and thus seen

[7] Indeed, if this evidence had been before the PROWGC on Mr Mayer's application that should in fact have been registered.

[8] See also para 40 of *Winterburn*: "…<u>where the owner has made his position entirely clear through the erection of clearly visible signs,</u> the unauthorised use of the land cannot be said to be "as of right".

by everyone who entered the car park, it cannot be sensibly said that the erection of two signs at a small minority of the entrances to the Land makes the position 'entirely clear'. Contrary to the Inspector’s view in his report and paragraph 10 of his May 2023 Note, the Court of Appeal’s judgment in *Winterburn* does not mean that the issue of “sufficiency” of the signage is somehow irrelevant.

Sufficiency of the signs

19. As set out in the Applicants' April 2023 Representations at paragraphs 32-33, the facts in the present case are starkly different to those in *Winterburn*. That case concerned a small car park approximately 450 square metres in size (with space for only 7 cars). There was only one entrance and there were two clear prohibitory signs present ('private car park, for the use of club patrons only') which would inevitably be seen by all persons who entered the car park through that one entrance. In such circumstances, it is unsurprising that the Court of Appeal concluded that such clearly worded signs were sufficient, on the facts, to render use contentious. However, the Land is over 200 times larger at 88,110 square metres with more than 30 formal and informal entry points including residential back gates giving household access onto the field. It was accepted in TVG1 that one of the three Avon CC signs was in a service yard, not a public entrance to the land[9] - so the Inspector's conclusions rested on only two of the three signs (behind the pavilion at West Dene and in the car park of Stoke Lodge House - both being locations where school and club sports users would be likely to see them, but not informal users entering via multiple other access points). Attached to these representations is an aerial photograph of the Land with the car park that was the subject of judgment in *Winterburn* superimposed upon it (to scale). It is clear from this aerial photograph how different the sites in question are.

20. Sir Wyn Williams in the High Court stated that it was 'not controversial' to decide, as the Committee did in December 2016, that the two sites were very different. This is unsurprising; it is self-evident that the two sites are entirely different and that the two signs would not be seen by a great number of users. It has never been suggested that

[9] See para 241 of the Inspector’s 2016 report where he records evidence to that effect. The Inspector’s conclusion on the signage issue is based only on the signs at [1] and [3], see para 389.

Avon County Council took even such simple steps such as writing to the householders who have back gates opening directly onto the field. It is clear that the landowner had not, by these two signs, done enough to make any objection clear. In the judicial review claim, the Council took the position before the High Court that the signs were not sufficient; the Council also accepted that sufficiency was a relevant issue in these applications but the Inspector chose not to consider it.

21. The Inspector has now admitted in his May 2023 Note at paragraphs 11-15, that, contrary to what he said in his March 2023 report, the High Court did not uphold his previous conclusion about the effect of the notices[10]. The judge held that it was open to the PROWGC to reach a different view on the relevant facts generally and the adequacy of the signs in particular provided it did not reach an internally inconsistent decision and provided reasons for departing from the Inspector's recommendation. The Inspector has now indicated the same in his May 2023 Note. It is thus open to the PROWGC to prefer the Applicants' evidence on this point, based on the submissions before them, and to decide that two signs were insufficient on a site of this size to make clear any objection by the landowner to informal use (if such an objection even existed).

Signs rendered ineffective by inconsistent actions

22. Further and in the alternative, even if the signs were sufficient in number and clarity to potentially render use contentious if considered in isolation, the relevant factual circumstances and, in particular, the conduct of the landowner (ie Avon County Council and the successor council, Bristol City Council) and the schools who used the Land during the relevant period, making clear that they acquiesced to informal use of the Land by local inhabitants, was sufficient to negate any effect of the signs. This is set out in detail in our submissions[11] and the underlying evidence was not contested by either the School or the Council, nor did either of those parties submit any evidence to the contrary.

[10] However, based on his incorrect understanding that the High Court had upheld his previous conclusion, he had refused to consider the Applicants' submissions on the interpretation or sufficiency of the signs in his Report. Such matters must therefore be decided by the PROWGC.
[11] See paras 83-85 of the December 2022 submissions and paras 36-41 of the April 2023 Representations.

23. The Applicants' April 2023 Representations set out how the Inspector had misquoted Avon County Council's 1982 report and minutes of the Ad Hoc Committee of the County Council at paragraphs 94-102 of his report. These minutes expressly record that Avon CC had for some years tacitly accepted informal use of playing fields. The Inspector has not, in his May Note, explained his selective and misleading quotation of passages from the report and minutes.

24. The Inspector accepted at paragraph 118 of his March 2023 Report that from 23 January 1990 Avon City Council had no formal policy in relation to informal use of the Land. Thus, from this date, Avon City Council did not seek to prohibit use of the Land by local inhabitants. Similarly, Bristol City Council, when it came into existence in 1996, had no formal policy in relation to informal use of the Land and thus was not seeking to prohibit such use. The power to regulate use of the Land throughout the relevant period (1998-2018) lay with the relevant school and the school alone (in the absence of a direction from the Council). It is common ground that during the relevant period the Schools (initially Fairfield Grammar and then Cotham School) took no steps to erect prohibitory signs or otherwise prohibit use.

25. The Inspector has failed to address, in his May 2023 Note, how he reached a conclusion that the schools somehow 'adopted' the Avon County Council signs by not removing them, particularly given that this analysis is inconsistent with the evidence. Ms Sandra Fryer, Chair of Governors at Cotham School gave evidence before the Inspector at the 2016 public inquiry that the informal use of the playing fields 'had been satisfactory from the School's point of view'.[12] In short, the School had not taken steps to prohibit informal use because it did not find such use problematic. There is significant evidence (detailed in the signage annex to the Applicants' October 2022 submissions) that the School did not adopt the signs. On the ground, the evidence is that Council and School staff such as groundskeepers were frequently present and had regular friendly interactions with local inhabitants demonstrating acquiescence to such use rather than adopting the (ambiguous and limited number of) signs.

[12] See para 279 of the Inspector's 2016 report.

26. The Applicants' April 2023 Representations also explained at paragraph 39 why the Inspector's conclusions in relation to the 2009 sign located near Stoke Lodge House could not be correct. The Inspector has failed to address either this issue or his misinterpretation of the 2010 Cabinet Briefing Note (which stated that the Land allowed unfettered access and that there was a potential concern about accruing TVG rights (specifically at Stoke Lodge), but that the Council's policy remained one of encouraging schools to accept shared use). The Briefing Note was written more than 20 years after the point at which neither Avon CC or the Council had any policy on the informal use of the Land.

27. The Applicants' April 2023 Representations also referred to the Inspector's conclusion that, by announcing in the local newspaper in January 1990 that it was considering installing a kissing gate at the Cheyne Road entrance (where there has never been any sign), Avon CC was somehow subtly signalling that if individual members of the public wrote to it seeking permission to use that entrance, that permission would be given. This remains a bizarre conclusion on the evidence and in the context of the geography of the site. Such a conclusion is irrational bearing in mind that this occurred three weeks prior to the Council declaring that it had no policy on informal use and that the Inspector is of the view that in relation to every other entrance to the Land, including entrances located just a few metres away, use would be contentious and would amount to trespass. It was never the Applicants' case that use via this entrance was somehow being permitted, as he appears to have incorrectly assumed; this is supported by the evidence of householders whose use of residential gates onto the field was never challenged or 'permitted'. This is another example of a key issue that would have been clarified during a public inquiry, had the Committee's Outline Procedure been followed, and of the detriment to the Applicants from the failure to follow proper process in this matter.

28. As the Inspector acknowledges in his May 2023 Note, if the Applicants' arguments on acquiescence are accepted then the Land must be registered and 'on the face of it, the land should have been registered upon Mr Mayer's application'. For the reasons set out above and in the previous submissions and representations, the PROWGC should conclude that both the Council and the Schools did acquiesce to informal use of the Land by local inhabitants throughout the relevant 20 year period.

The 2016 Public Inquiry and "Cause Celebre"

29. The Applicants have previously addressed this issue in detail at:

    i) paragraphs 87-98 of the Applicants' October 2022 submissions;

    ii) paragraphs 49-54 and annex 1 to the Applicants' December 2022 submissions in reply;

    iii) paras 43-57 of the Applicants' April 2023 representations to the PROWGC.

30. The Applicants would ask the PROWGC to consider its previous submissions on this issue which are not repeated here. In summary, there is a factual dispute as to whether the 2016 Inquiry was a "well-publicised cause celebre", the existence of which was sufficient to render any subsequent use of the Land as contentious. The Applicants have consistently disputed that the 2016 Inquiry was such a "cause celebre"; it did not render subsequent use contentious and thus not "as of right". What follows is a response to the points made by the Inspector in his May 2023 Note at paragraphs 18-20.

31. In relation to paragraph 18 of the May 2023 Note, the Inspector accepts that he misunderstood the Applicants' case and that he was mistaken when he stated that the Applicants did not dispute the School's and Council's assertion that the 2016 inquiry was a "well publicised cause celebre". In fact the Applicants had disputed this assertion on multiple occasions both previously[13] and in its most recent submissions to the Inspector including their December 2022 submissions. The Applicants have repeatedly set out detailed arguments and evidence why the 2016 Inquiry was not a cause celebre. The fact that the Inspector thought otherwise strongly suggests that he did not properly consider the Applicants' submissions and evidence on this issue.

32. The Applicants' April 2023 Representations highlighted that the Inspector had ignored their December 2022 submissions on this issue. In his May 2023 Note, the Inspector admits that those submissions 'contained a considerable amount of material about the significance of the 2016 inquiry' but says that they 'did not take the simple point that it

[13] See paragraphs 9-14 of the Applicants' April 2023 representations which detail where the Applicants have repeatedly made their position clear.

was not a cause celebre'. This is manifestly incorrect. Annex 1 to those submissions, which is in the hands of the Committee, sets out facts and cross-references supporting evidence on this matter: Committee members can see for themselves from page 1 of that Annex that, contrary to the Inspector's comment, the evidence submitted shows that:

i) the conduct of the Council and School at the public inquiry in 2016 did not convey any clear message in relation to ongoing informal use of the Land;

ii) neither the School nor the Council had authority under the terms of the School's lease to render use contentious by their words or actions at or after the public inquiry;

iii) the School and the Council were in discussions about the possibility of making a landowner statement under the Commons Act 2006 to bring 'as of right' use to an end; they did not consider that such use had already ended (meaning that they and their advisers did not consider that any protest had been 'made clear' as a result of the public inquiry);

iv) the evidence demonstrates (a) that neither the School nor the Council genuinely considered that use had been made contentious by virtue of the 2016 public inquiry or following that inquiry, and (b) <u>that the public at large was also unaware of any such hypothetical message having been communicated</u>.

33. In particular, section 4 of the Annex addresses the 'cause celebre' issue.

i) Paragraph 4.5 sets out that it was not the School's understanding that informal use had been prohibited or permitted as a result of the 2016 public inquiry, together with a cross-referenced list of evidence to which the Inspector has made no reference at all.

ii) Paragraph 4.6 sets out that it was not the Council's understanding that informal use had been either prohibited or permitted as a result of the 2016 public inquiry, together with a cross-referenced list of evidence to which the Inspector has made no reference at all.

iii) Paragraphs 4.7 and 4.8 make clear that since a change in ongoing 'as of right' use had not been made clear to/understood by either of the Objectors, it could not be said to have been made clear to the community at large, and provides a cross-referenced list of evidence to which the Inspector has made no reference at all.

iv) The subsequent conduct of the Council and the School is also discussed in section 3 and paragraph 4.9 onwards, making clear that both parties considered that 'as of right' use was continuing, including discussions about the making of a landowner statement to bring 'as of right' use to an end. The Inspector has completely failed to recognise the significance of these issues.

34. The Inspector has never properly addressed his mind to the evidence on the 'cause celebre' issue because he proceeded in his Report on the basis that it was not in dispute (and he did not analyse the Applicants' evidence in his May 2023 Note). The Applicants' evidence on this issue includes Neighbourhood Partnership minutes showing that use was not considered to have become contentious as a result of the 2016 inquiry.[14] The Inspector has also failed to address or even mention in any way the 'smoking gun' issue that in 2018 the School and the Council were discussing ways to end 'as of right' use via a landowner statement, so clearly they did not consider that it had ended prior to that point. Since neither the School nor the Council (nor their expert advisers) considered that 'as of right' use had ended as a result of the public inquiry there is no basis whatsoever for concluding that local inhabitants would have been aware. It is now known that the Council obtained and considered legal advice on whether or not to make a landowner statement and took a decision not to do so; it recognised ongoing 'as of right' use, had the opportunity to end that use, and chose not to end it.

35. The Inspector also suggests in paragraph 19 of his May 2023 Note that it would have been open to the Applicants 'to produce witness statements from people using the land in 2016 who were ignorant of the public inquiry'. This is a remarkable comment given the

[14] For example, the minutes of the final Neighbourhood Partnership meeting in 2017 record a decision to fund an additional dog waste bin on the playing fields, which is a clear indication that the community did not consider that there had been any change to their informal use of Stoke Lodge.

fact that the Applicants provided 166 witness statements in which every single witness specifically attests that the nature of their use of the field has not changed up to the date of their witness statement (these were obtained in August/September 2018 for Ms Burgess' application and in June/July 2019 for Ms Welham's application) - that is, none of these witnesses thought that their use had become contentious for any reason, whether or not they knew that a public inquiry had taken place in 2016. Obviously, witnesses could have been questioned about this at a public inquiry but due to the decision of the Inspector to depart from the CRA's agreed Outline Procedure and the requirements of the law, that opportunity was denied to the Applicants. The Inspector has not, despite multiple reminders on the point, considered the 166 witness statements and the CRA has never provided them to him notwithstanding the Applicants' repeated requests.[15] However, he is simply not in a position to ignore the evidence contained within them. Given the absence of a public inquiry where the Applicants' could adduce oral evidence on this issue, the Inspector was required to proceed on the basis of the factual position set out by the Applicants, namely that the Inquiry was not a 'well-publicised cause celebre'.

36. In relation to the issue on the 2016 public inquiry and whether this was a 'well-publicised cause celebre', the Applicants made clear in their April 2023 Representations that the Inspector had completely misunderstood the evidence he used to support his argument. In paragraph 20 of his May 2023 Note, he has retreated from his previous position and now states only that the posters displayed in 2018 'indicate an appreciation in the neighbourhood that the use of the Field was contentious'. However, these posters related to a completely separate issue about the proposed erection of a fence (a proposal that the Council itself was also opposing at the time). Such "evidence" does not come close to supporting the specific conclusion he had reached that the public generally would have considered that their use had ceased to be 'as of right' due to their awareness of the 2016 public inquiry. It is also the case that the Inspector has not had sight of the poster on which he now claims to be relying, as it was not submitted in evidence. It is simply not possible for him to have reached a proper conclusion based on what he imagines that poster to have said.

[15] See paragraphs 15-16 of the Applicants' April 2023 representations.

37. The PROWGC should therefore reject the Inspector's conclusion on the 'cause celebre' issue because he has failed to consider the relevant evidence and has reached his conclusion on an obviously flawed basis. Members of the PROWGC are in a better position than the Inspector to make a factual finding on this because:

    i) they are not proceeding on the incorrect basis that this issue is not in dispute;

    ii) they are able to consider all the relevant evidence on this issue.

    The PROWGC should accept the Applicants' evidence, as set out in their submissions, on this point and conclude that the 2016 Inquiry was not a "cause celebre" sufficient to render any subsequent use contentious.

Statutory incompatibility

38. This is an issue of law. The Inspector has repeatedly concluded that no issue of statutory incompatibility would arise if the Land was registered as a TVG. The Inspector's analysis on this issue, unlike his analysis of the "as of right" issue, is correct. The PROWGC should therefore accept his recommendation on this issue.

Suggested Reasons

39. For the reasons set out above and in the Applicants' submissions of October and December 2022 and their Representations to the PROWGC dated 11 April 2023, use by local inhabitants of the Land was 'as of right' for the whole of the relevant 20 year period. The Inspector's conclusions to the contrary are inconsistent with both the factual and legal position. The PROWG Committee is therefore required to register the Land as a TVG.

40. The PROWGC should resolve as follows:

    i) that the signs placed on the land by Avon County Council in the mid-1980s were not sufficient in number to be effective to render use of the Land contentious during the relevant period. Similarly, the sign erected by Bristol City Council in 2009 did not render use of the Land contentious;

ii) further, in addition to the insufficiency of the signs, the conduct of both the landowner and the schools throughout the relevant period for these applications was inconsistent with the wording on the signs and consistently indicated acquiescence to informal use by local inhabitants;

iii) that the Inspector's conclusion as to the effect of the 2016 public inquiry should be rejected as he has erroneously proceeded on the basis that the 2016 Inquiry was a 'well-publicised cause celebre' in reliance on evidence which, properly analysed, does not support his conclusion. Having considered the Applicants' submissions and evidence, the Committee considers that the evidence shows that use did not cease to be 'as of right' by reference to the 2016 public inquiry;

iv) that there is no other reason to consider that 'as of right' use has not been carried on continuously throughout the relevant period;

v) that the Inspector's conclusion on statutory incompatibility should be accepted, for the reasons set out in his Report;

vi) that all other elements of the legal test for registration as a Town or Village Green are met; and

vii) that Stoke Lodge Playing Fields should therefore be registered as a Town or Village Green.

Andrew Sharland KC

11 KBW

9 June 2023

Annex 1