

	<p align="center"><u>Objection by Bristol City Council</u> to the Town or Village Green Application at Stoke Lodge Parkland</p>	<p align="center"><u>Response by Save Stoke Lodge Parkland</u> to the arguments raised in the TVG objection submitted by Bristol City Council</p>
1	<p align="center">IN THE MATTER OF AN APPLICATION TO REGISTER LAND KNOWN AS STOKE LODGE PLAYING FIELDS BRISTOL AS A NEW TOWN OR VILLAGE GREEN</p> <p align="center">AND IN THE MATTER OF SECTION 15(1) COMMONS ACT 2006</p> <p align="center"><u>NOTICE OF OBJECTION ON BEHALF OF BRISTOL CITY COUNCIL</u></p>	<p align="center">IN THE MATTER OF AN APPLICATION TO REGISTER LAND KNOWN AS STOKE LODGE PLAYING FIELDS (PARKLAND) BRISTOL AS A NEW TOWN OR VILLAGE GREEN</p> <p align="center">AND IN THE MATTER OF SECTION 15(1) COMMONS ACT 2006</p> <p align="center">RESPONSE TO NOTICE OF OBJECTION ON BEHALF OF BRISTOL CITY COUNCIL</p>
2	<p>We write to you on behalf of the Director of Children and Young People's Services (CYPS) of Bristol City Council ('the Council') in connection with the above application and give notice of objection to the proposed registration of this land. The Council makes these representations in its capacity as freeholder of the land at Stoke Lodge Playing Fields ("the Site") which is the subject of this application for a Town and Village Green Registration.</p>	<p>We write on behalf of the applicant to present our responses to the objections submitted by Bristol City Council.</p> <p>The Bristol City objection comprises largely of a history of Stoke Lodge and references to cases, which have been decided in connection with various Town Green applications. Bristol City Council fail consistently though to show that these judgements apply in the case of Stoke Lodge. Our Town Green application and this response seek to provide sound evidence upon which a balanced judgement, relevant to the circumstances, can be made based on the section 15 qualifying criteria.</p>
3	<p>Grounds of Objection</p> <p>The grounds of the objection are:</p> <p>(1) That the usage of the land by the public for 'lawful sports and pastimes' has not been 'as of right', as required by section 15(2) Commons Act 2006;</p>	<p>We consider that this objection is flawed and should be disallowed due to the reasons given below throughout this document and in the application.</p> <p>It is important to register that our application is on behalf of the long term community use for informal sport and recreation and should not be confused with the formal (booked and paid for) sports club users all as fully detailed in the Application.</p>
4	<p>Documentation</p> <p>The Council has researched its archives in order to discover material relevant to the acquisition and appropriation of the land at Stoke Lodge Playing Field. The documentation we refer to below we have included in the file that is supplied with this letter and we have numbered the documents in accordance with the Schedule annexed to this letter. We do however make this point at the outset. Since 1950 local government in Bristol has passed through two major re-organisations. In 1974 the functions of Bristol Corporation passed to Bristol City Council. In 1996 Bristol City Council became a unitary authority on the demise of Avon County Council. The consequence of these transfers, and of the other internal reorganisations that have taken place from time to time (which are detailed below) is that some documentation that relates to the use of the application land may not be available. If the Authority or the Applicants wish to make enquiries as to the existence of any other documentation that may be available, the Council would of course be willing to assist so far as it is able. The Council has sought to obtain and put before the Registration Authority copies of all relevant documentation in its possession whether supporting or contrary to the Council's case.</p>	<p>There is no dispute regarding the ownership and date of purchase of Stoke Lodge Parkland.</p> <p>However we consider that it is very significant and important that Bristol City Council have not responded to or commented on the Bristol City Council Briefing Note dated 22nd April 2010, the minutes of Stoke Bishop Open Forum 25th August 2010 and minutes of Neighbourhood Partnership Meeting 15th September 2010 all referred to in the Application.</p> <p>Please see Application vol 1 section 12 (also evidence item 12 in this folder) detailing clauses taken from the Briefing Note that express the true intent of the Council with regard to the risk posed by Town or Village Green status, the conclusions they draw and the recommendations they make to prevent future TVG applications from succeeding by fencing the perimeter of the site to end free and open public access (or to use a direct quote from the Briefing Note) to end the "<i>unfettered community access</i>", see clause 2.41.</p> <p>Please see also Application vol 1 section 10 for a full copy of the Briefing Note. The Briefing Note was issued for consultation via the Neighbourhood</p>

4 cont		<p>Partnership and was on the agenda of the Stoke Bishop Neighbourhood Open Forum on 25th August 2010 for Community feedback. Cllr Clare Campion-Smith the Bristol City Cabinet Member with responsibility for CYPS (Education) was in attendance and acknowledged that it received unanimous and overwhelming rejection of the recommendations in the Briefing Note. For a copy of the minutes please see Application vol 1 section 13.</p> <p>As part of the Neighbourhood Partnership process this issue was then taken to the Neighbourhood Partnership Committee meeting held on 15th September 2010.</p> <p>For a copy of the Official Bristol City Council minutes please see evidence item 7 in this folder. Please see also Application vol 1 section 14 for a copy of section 8 of the minutes including a copy of the statement by Save Stoke Lodge Parkland and a letter to Annie Hudson both referred to in the minutes.</p> <p>It can be seen from the minutes at section 8:-</p> <p>8. AREA CO-ORDINATOR'S REPORT</p> <p><i>The Area Coordinator, Hayley Ash presented the report which outlined the agreement made so far by the Partnership in respect of the Wellbeing Fund, Formalising of the Wellbeing Process, Older Persons Wellbeing Fund and New Projects. In addition updates were given in respect of the three wards of the Partnership area.</i></p> <p><i>The Partnership then received public forum submissions in respect of the following items - (The statements will form part of the formal record of the meeting and a copy will be kept on the Minute Book).</i></p> <p>Canford Park submitted by Hilary Long <i>The Partnership noted the statement.</i></p> <p>Stoke Lodge Playing Fields submitted by David Mayer and Hilary Long <i>The Partnership noted the statements and a debate then ensued.</i></p> <p><i>Arising from consideration of the statements the following points were clarified -</i></p> <ul style="list-style-type: none"> ● <i>the Stoke Lodge playing fields were not just about a 'natural freedom' of access but also their significant contribution to the local landscape character of the local area and Bristol;</i> ● <i>the recommendations of the briefing note submitted to the Stoke Bishop Neighbourhood Forum be rejected in their entirety, not just the fencing, by the Executive Member;</i>
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- *that the existing status quo to allow unfettered public access, to ensure open access as of right, be continued;*
- *that the support of the Neighbourhood Forum for the creation of a joint officer/resident/councillor working group to consider any possible improvements to Stoke Lodge be noted;*

The Executive Member Clare Champion-Smith confirmed that she had met with members from Friends of Stoke Lodge on site last year. She also confirmed that she recognised that fencing on the site was not wanted by the community and that she was pleased that there was strong support for her suggestion to form a Working Group to steer future changes to the site.

Since then the Executive Member had written to Annie Hudson, Strategic Director for Children's Services (copy of the letter to form part of the formal record of the meeting and be kept on the Minute Book) advising her of the recent Cabinet decision to support shared use of the site.

The Cabinet also agreed that no fencing should be erected and that a working party be set up to provide dialogue between the different users of the field and to be a problem solving forum if difficulties arose. The Cabinet had requested that the capital programme for CYPS be amended to reflect this decision.

With regard to proposed improvements to the pitch, changing room facilities and drainage these would be subject to standard planning regulations which would ensure proper public consultation before any work commenced.

It was envisaged that Stoke Lodge could be seen as a 'flagship' for shared use/access for other sites in the city.

The Chair encapsulated the debate by making the following statement –

'Neighbourhood Partnership notes the strength of feeling expressed at the Stoke Bishop neighbourhood forum has been relayed to the Director of CYPS and further notes the Executive Member's 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.'

On being put to the vote there was unanimous agreement to support the Chair's statement. The Executive Member was specifically asked by the Chair for her agreement and this was confirmed.

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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.

It is important to note

1. The Community view that the Parkland should be retained for both Formal Sport by the school and local clubs alongside the long term Community use for informal sport and recreation (*lawful sports and pastimes*) “as of right”
2. The attendees and voting members included; Councillor Clare Campion Smith Executive Cabinet member for CYPS. For other attendees including local Councillors please refer to the official minutes: see evidence item 7 in this Folder.
3. Annie Hudson is the Director (Full time Council officer in charge) of CYPS
4. The Cabinet is the highest decision making vehicle in Bristol City Council
5. The Cabinet discussed this issue and agreed that fencing should not be erected, i.e. retaining free public access “as of right”
6. The resolution indisputably confirms

“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.

7. The minutes were confirmed at the Neighbourhood Partnership Meeting held on 6th December 2010

5	<p>The History of the Site</p> <p>The land shown edged red on the attached plan 'Stoke Lodge 1' (enclosure 1) has been used as the basis for the investigations into the history of the land.</p> <p>The land now forming Stoke Lodge Playing Fields was purchased by BCC as two separate parcels of land in 1946 and 1947 - see plan entitled 'Stoke Lodge 2' (enclosure 2).</p> <p>Stoke Lodge playing fields are now registered at H M Land Registry under title no. BL100993 - see enclosure 3.</p>	<p>Noted.</p> <p>However, enclosure 1 and the plan included as the last page of the objection arguments headed Stoke Lodge Playing Fields TVG Application is factually incorrect as it includes the area set aside for Children's Play Facilities and hence excluded from the Application. Please see Application vol 1 section 2 - Covering Letter and section 4 statutory declaration, page 3, notes of explanation.</p> <p>It is important that the Town or Village Green Application is not used as an excuse to frustrate the installation of the Children's "Play Facilities" which have funding in place.</p>
6	<p><u>Land shaded yellow on plan 'Stoke Lodge 2' (enclosure 2)</u></p> <p>This part of the playing fields which comprises approximately 5 ½ acres, was purchased by Bristol City Council from Emily Butlin (and others) on 13th July 1946 (archive ref. 4743) - see enclosure 4 for a copy of the Conveyance. Para (6) of the recitals to this Conveyance which is dated 13th July 1946 state that the Corporation have agreed to purchase the land</p> <p><i>'in pursuance of the powers conferred upon them by the Housing Acts 1936 - 1944</i></p> <p>The relevant record card is H13/1 (see enclosure 5). This card indicates that the purchasing committee was the Housing Committee and that it was intended to use the land for temporary housing. The purchase was approved at a meeting of the Housing Committee held on 8th April 1946 - see copy Minutes at enclosure 6.</p>	<p>Noted</p>
7	<p><u>Appropriation of part of yellow shaded land to 'education' use</u></p> <p>Almost immediately, following the completion of BCC's purchase of this land, the minutes of a meeting of the Housing Committee held on 15th July 1946 report that a deputation had been received from the Education Committee with a request that the land be used for education purposes instead of temporary housing - see copy Minutes at enclosure 7. At this meeting it was resolved that the Housing Committee's proposal for the erection of 34 houses be abandoned in return for various concessions by the Education Committee - see extract from this meeting below:-</p> <p><i>'RESOLVED – That in the circumstances the Committee's proposal for the erection of 34 houses upon the site at Parry's Lane be abandoned on the understanding that the Education Committee would in turn withdraw their objection to the use of the Myrtle Hall site at Shirehampton for the erection of temporary houses; would abandon their claim upon a portion of the site for</i></p>	<p>Noted</p>

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B.I.S.F houses at West Town Road, Avonmouth, and would transfer to this Committee upon terms to be agreed, the land adjoining the Tynning Estate to which reference had been made.'

Subsequently a Report by the Education Committee to a full Council meeting on 11th February 1947 advised that a separate report would be submitted by the Health Committee regarding 1 ¼ acres of land proposed to be used as the site of a clinic and (enclosure 8) recommended that that the Council:-

'approve the appropriation by the Education Committee of 4.25 acres of land in the possession of the Housing Committee at a figure of £4,700 and application being made to the Minister of Health for his consent to the appropriation'

The minutes of the report indicate that it was resolved:-

'That, subject to the approval of the Minister of Health, 4.25 acres of land acquired for housing purposes be appropriated for education purposes on the terms set out in such part of the Report'

This consent was obtained on 22nd October 1947 and a copy is attached at enclosure 9.

This appropriation to 'education use' prompted the creation of a new record card H13/5 see enclosure 10. The associated historic plan (enclosure 11) shows the extent of the part appropriated to 'education' (map ref. (5)) as well as the part for a proposed health centre – see map ref. (1).

The remaining 1.25 acres was to be appropriated by the Health Committee for the purposes of a new Health Centre. The minutes of a meeting of the Housing Committee held on 27th January 1947 provide (enclosure 12)

'056 TEMPORARY HOUSING – PARRY'S LANE – STOKE LODGE SITE, STOKE BISHOP

The Committee were informed that the City Valuer had provisionally agreed with the District Valuer that the terms for the appropriation by the Education and Health Committees of land at Parry's Lane shall be as follows:-

<u>Area</u>	<u>Committee</u>	<u>Price</u>
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- (a) 4 ¼ acres – Education Committee £4,700
 (b) 1 ¼ acres - Health Committee £1,600

RESOLVED – That the Council be recommended to approve the appropriation of the land in question by the Committee concerned upon the above terms.

The Report by the Health Committee to a full Council meeting held on 15th April 1947 recommended appropriation of this remaining land - see **enclosure 13**. At this meeting it was resolved:-

That so much of the Report as relates to the appropriation from the Housing Committee of an area of 1 ¼ acres of land at the Stoke Lodge Estate, shown coloured yellow on a plan exhibited in the Council Chamber, for the purposes of a site for a Health Centre for the sum of £1,600 be approved and that application be made to the Minister of Health for his consent to the appropriation'

The plan referred to in the above Report has not been retained but it appears that the land concerned is that referenced (1) on the historic plan 'H13' – see **enclosure 11**. We have been unable to trace any ministerial consent.

A proposed appropriation from 'housing use' to 'education use' is referred to in 1963. A Report of the Housing Manager to the Housing Committee on 18th February 1963 (**enclosure 14**) recorded that:-

Approximately 1.19 acres of the Stoke Lodge Playing Field, shown coloured pink on the plan exhibited, is still under the control of your Committee but forms part of the site of the future Fairfield Grammar School. The Committee is recommended to agree to the appropriation of this land for education purposes on terms to be reported to both Committees by the City Estates and Valuer.

The Housing Committee meeting of 18th February 1963 resolved:-

That the appropriation for education purposes of the land referred to in the report be approved and the City Valuer be requested to report on terms.

8	<p><u>Land shaded blue on plan 'Stoke Lodge 2' (enclosure 2)</u></p> <p>This land, which comprises approximately 22 acre, was purchased by BCC from Emily Gertrude Butlin (and others) on 19th September 1947 - the Conveyance states that the Corporation purchased the land</p> <p><i>'in pursuance of the powers conferred upon them by the Local Government Act 1933 and of all other powers statutory or otherwise'</i></p> <p>The purchasing Committee was the Education Committee and the title page of the Conveyance has been endorsed with the the following:-</p> <p><i>Recorded in the books of the Ministry of Education under Section 87 (3) of the Education Act 1944. (see extract from Act attached at enclosure 32).</i></p> <p>A copy of the Conveyance is attached (enclosure 15) as well as a copy of the relevant record card, ref. H13/2 (enclosure 16).</p> <p>Since BCC purchased the land in the late 1940's, a number of small pieces of land/properties have been sold - see attached plan 3 (enclosure 17).</p>	Noted
9	<p><u>1974 Avon County Council</u></p> <p>In 1974, the major part of the playing fields were transferred to Avon County Council along with all other land managed by Bristol City Council's Education Committee.</p> <p>The only part of the playing field which remained with Bristol CC in April 1974 was the 1.19 acres (approx) which had been the subject of a purported appropriation from 'housing use' to 'education use' in 1963 (see above at enclosure 14). It would seem that there may have been some dispute between Avon County Council and Bristol City Council over whether this part of the playing fields should remain with Bristol CC or go to Avon CC with the rest of the 'education' land.</p> <p>In any event, this dispute appears to have been resolved by December 1980. I attach minutes of a meeting of the Land and Buildings Committee held on 2nd December 1980 as well as a copy of a Report of the Director of Administration and County Solicitor, Director of Estates Services, County Engineer and Surveyor and Director of Education to that meeting – see enclosure 18. Please see item 45 of List B of the Report and minute ref. '51 Transfer of Property: Proposed settlement of outstanding disputes with Bristol City Council' of the Committee meeting. This 'late' transfer is confirmed by a comment on the relevant Terrier Section record card H13/1 (enc. 5) – 'vested in Avon 1-10-80'.</p>	Noted

<p>9 cont</p>	<p>When Avon CC disbanded in 1996, Stoke Lodge Playing Field returned to Bristol City Council's control and the majority of the land began to be managed by the Education Committee.</p> <p>A small part however had been used as a depot (see plan at enclosure 19) and, when returned to Bristol CC, this area was managed by the Policy and Resources Committee of Bristol City Council. This area formed part of the 1.19 acres. The northern part of this small site is now leased to Wales and West Utilities Ltd and does not form part of the TVG application site. However the southern strip of land which includes the depot building is part of the playing field and is now part of the area leased to Cotham School – see copy Lease at enclosure 25.</p> <p>Following re-structuring of the Council in 2000, the functions of the Education Committee were taken over by the Department of Education and Lifelong Learning and the functions of the Policy and Resources Committee were taken over by the Department of Central Support Services – see enclosure 20 for minutes of a meeting of the full Council held on 9th May 2000.</p> <p>The majority of the land at Stoke Lodge Playing Fields, ie the area managed by the Department of Education and Lifelong Learning, subsequently became part of the Department of Children and Young Peoples Services in 2008 following another restructuring – see minutes of a meeting of the full Council held on 1st May 2008, see enclosure 21.</p> <p>The small 'depot' site was declared surplus by Central Support Services in March 2005 and was 'transferred' to the Department of Education and Lifelong Learning on 16th May 2005 – see attached notification Form B3270 – see enclosure 22.</p> <p>The northern part of the depot site now has a gas governor built on it and is leased to Wales and West Utilities Ltd – this leased area does not form part of the TVG application site. I attach a copy of the lease and associated easement – see enclosures 23 and 24.</p> <p>The depot building itself is situated to the south of the gas governor and is now within the extent of the 'academy' lease to Cotham School – see enclosure 25. Please note that the lease does not include the partly wooded area to the south east of Stoke Lodge House.</p>	<p>However, it is important at this point to register that the Adult Learning Centre including its grounds and car park, is not administered by “CYPS (education)”. It is administered by “Libraries” and due to the silo nature of Bristol City Council there is little or no communication or co-operation between the two departments and /or their assets.</p>
<p>10</p>	<p><u>Recent Valuation Practice files</u></p> <p>Corporate Property have retained files relating to Stoke Lodge from 1994 to the present – these are very thick folders and amongst other things reveal the following:-</p> <ul style="list-style-type: none">• the playing fields were used by Fairfield School until about 2000• Cotham School have had the use of the playing fields since about 2000	<p>Whilst nothing turns on these facts, to avoid any confusion BCC should confirm when Fairfield started to use Stoke Lodge.</p> <p>Whilst we agree that Cotham are the current “Education” users of Stoke Lodge we believe their start date was later than 2000.</p>

10 cont	<ul style="list-style-type: none"> Over the years, there has been a number of discussions with regard to the site being used for the site of a new secondary school for north Bristol. The pavillion was erected in 1966 The University of Bristol had been using the playing fields for a number of years under an informal arrangement with Cotham School prior to the Transfer of Control Agreement mentioned below. A Transfer of Control Agreement was granted by Cotham School to the University of Bristol 1st September 2010 - see enclosure 26. 	<p>This admission declares the true intent of Bristol City Council to retain the development potential of the land including the exclusion of the community. Any protection against development of Stoke Lodge afforded by the issuing of the lease to Cotham school is easily overcome by Bristol City Council providing them with alternative playing fields. The construction date for the Pavilion is Noted</p> <p>We agree that Coombe Dingle Sports Centre (CDSC) has been employed as a grounds maintenance sub-contractor for some time whereby CDSC cut the grass, mark the pitches and erect the goal posts etc. They also manage the pitch booking system and keep the booking fees to pay for their other duties.</p> <p>The recent formal agreement merely formalises the above arrangement but does not bestow any rights of ownership and we note that the attached agreement is out of date, reconfirming the uncertain status of who shall provide these services and the possibility that it could be awarded to a different contractor. Whilst CDSC wish to maximise their commercial return this should not influence the TVG Application.</p>
11	<p><u>Development Plans</u></p> <p>Both the 1966 and 1972 Development Plans show the playing fields as 'education use – secondary schools and further education'.</p> <p>The 1997 Local Plan shows the playing field as 'L1' – Playing Fields and Recreation Grounds.</p>	<p>Noted</p> <p>However, Within the estate of Bristol City Council there are sports fields which are effectively fenced against public access (e.g. the sports fields attached to the secondary school at Kingswood and Knowle) and sports fields which are not fenced against public access (e.g. Highridge). Bristol City Council have never fenced Stoke Lodge, which indicates that Bristol City Council has not sought to prevent public access.</p>
12	<p><u>'Uniform' Database held by Corporate Property</u></p> <p>I attach an extract from the 'Uniform' database relating to Stoke Lodge Playing Field, see enclosure 27. There is also still a separate database record for the 'depot' site and an extract from this is attached at enclosure 28.</p>	<p>Noted</p>
13	<p><u>Signs</u></p> <p>There are three signs on the site. Attached is a plan showing the location of these signs – see enclosure 29. Two date from the time of Avon CC and are identical (enclosure 30) and one more recent sign which it is believed was erected approximately five years ago (enclosure 31)</p>	<p>We have set out our reasons in the application why the local residents did not consider that these 3 signs denied them access to Stoke Lodge, and we will present further evidence to support our view below and in evidence item 8 of this folder (Additional statements.)</p> <p>With regard to the two signs located on the Parkland they are ineffective in denying public access for any one of a number of reasons:</p>

13 cont		<ol style="list-style-type: none"> 1. The Public are merely "WARNED" of the potential risk of prosecution if they trespass in the manner described. It then allows the community to decide if they are committing any such offence; and they have clearly decided in large numbers over the life of the signs that they had a right to use the Parkland for informal sport and general recreation. (Please see evidence listed in paragraph 16 of this document below.) 2. The signs do not deny access as they do not expressly prohibit entry as they do not pass the "Private Land. Keep out" test established in case of <i>R (Cheltenham Builders Ltd) v South Gloucestershire District Council (2004) JPL 975</i>. 3. Bristol City Council has not prosecuted anyone over the past 64 years of community use "as of right". 4. This right could be argued was established 20 years after the land was acquired by BCC (long before the signs were installed) and such use "as of right" was maintained to the present date by constant community use. 5. Furthermore since Bristol City Council have not even challenged anyone's use of Stoke Lodge, we can only assume that Bristol City Council has continually accepted the informal "as of right" use of the land by local residents, as supported by the Cabinet's statement: See paragraph 4 above. 6. Furthermore as the legislation stands for an application to succeed it is not necessary to show that users had undertaken the activity in the belief that they had a right to do so. (<i>R v Oxfordshire County Council ex parte Sunningwell Parish Council (2000) 1 AC 335; (1999) 3 All ER 385</i>) only that they exercised their right <i>in the same manner as if</i> the people who indulged in them had a legal right to do so. Please see evidence of use listed in paragraph 16 of this document below. 7. Whilst two signs do exist on the Parkland (which local residents consider to have no application) they do not exist at all the entrances (see collection of 12 photographs included in the Application at vol 1 evidence item 16b; see also arguments contained in the Application vol 1 evidence item 5) and they still refer to the Council of Avon which has not existed since 1996. It is perfectly understandable, therefore, why local residents consider these signs as having no application. The evidence provided by local residents shows that not all community users were even aware of the signs, and those who were aware considered that they did not prohibit ongoing community use "as of right" as per the "Redcar Case". (See evidence later in this paragraph below.)
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13 cont		<p>With regard to the newer sign located alongside the driveway in the Adult Learning Centre, it is ineffective in denying public access for any one of a number of reasons:</p> <ol style="list-style-type: none"> 1. It should be recognised that this sign is placed immediately behind gates which afford access to the Adult Learning Centre. These gates are locked outside of office hours and the sign is obviously for the attention of users of the Centre. It seems clear, therefore, that this sign is not relevant in relation to the “as of right” use of Stoke Lodge by local residents 2. As a point of detail we must report that the sign has been rotated (i.e. position changed) after our application was submitted and then photographed, and used in the BCC objection in this new position to try and give a false impression of its purpose. We can only assume this was because our argument contained in the application was considered too persuasive. Our assertion can be proved by examining the reflection on the sign contained in our application evidence item 16 of the red-roofed houses in Shirehampton Road, which could not exist with the sign in its new position because the Adult Learning Centre which the sign now faces is grey not red 3. As advised in section 9 the Adult Learning Centre is not administered by CYPS (education) and operates outside their control 4. Furthermore, given that there is a fourth sign at the road entrance to the Adult Learning Centre (see evidence item 10 contained in this folder) stating that there is no right of access to the Parkland via the Grounds of the Grade 2 listed building, why would anyone put another sign in the position of the 3rd sign, tucked away as it is in relation to the Parkland, except to prevent access to the Adult Learning Centre from the Parkland? 5. Even if the 3rd sign was judged to apply to the Parkland it would be ineffective because of the inadequate wording and also because of the very small numbers who access the Parkland from this entrance when compared with the number of other entrances without a sign. (See argument above regarding true intent of this sign plus Application vol 1 evidence item 5 & 16b photos of access without signs, plus additional community statements highlighting confusion and/or lack of knowledge of this newer sign - evidence item 8 contained in this folder) 6. It should also be recognised, as stated above, that the Adult Learning Centre gate is locked shut outside office hours once again reducing any access that may have taken place via this route to an insignificant proportion. (See para 25 below, The Inspectors Recommendation clause 42 and His Honour Judge Waksman QC Conclusion clause 93 regarding the siting of signs and their ability to influence the whole community) 7. Also the ruling following the <i>R v Oxfordshire County Council ex parte</i>
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Sunningwell Parish Council regarding the manner of use by the community set out above shall apply. Also for evidence of community use “as of right” see evidence listed in para 16 below

Our arguments relating to the older signs and the newer sign are supported by the case of *Lewis v Redcar and Cleveland Borough Council and other respondents*;

See High Court ruling;- (2008) EWHC 1813 (admin) paras 9-23; in particular para 23 “.....*For these reasons, the claimants first ground of challenge succeeds*” i.e. “*They were simply warning notices not prohibitory notices*” (see para 9 from ruling). Copy available at evidence item 11 of this folder.

See also the Appeal findings regarding this case in the Supreme Court held on 18th, 19th & 20th January 2010 and reported on 3rd March 2010. (UKSC11)

1. No free standing test of deferment/adjustment. “*Deference by the public to what the owner does on his land may be taken as an indication that the two uses can in practice co exist*” (Lord Hope para 75)
2. ‘*The quality of the user is a critical factor*’ (Lord Hope para 69; also Lord Brown para 107, and Lord Kerr para 114). “*The question is whether the user by the public was of such amount and in such manner as would reasonably be regarded as the assertion of a public right*” (Lord Hope para 75)
3. “*If confronted by such use (nec vi, nec clam, nec precario) over a period of 20 years, it is ipso facto reasonable to expect an owner to resist or restrict the use if he wishes to avoid the possibility of registration*” (Lord Kerr para 116)
4. “*If ...(the owner) has done nothing with his land (during the 20 year period), he cannot complain that upon registration the local gain full and unqualified recreational rights over it*” (Lord Brown para 105)
5. Where “*the owners and the locals are using land in theoretically conflicting ways but in fact harmoniously....the owner remains entitled to continue his use of the land as before*” (Lord Brown paras 104-5); “*where it is feasible , co-operative, mutually respecting uses will endure after the registration of the green*” (Lord Kerr para 115)
6. The owner can continue to use his land “*as before*” (Lord Brown para 105) Presumably he can change his use, but not so as to interfere (by quality or intensification) with the lawful sports and pastimes of locals

<p>13 cont</p>		<p>Please see also <i>Oxfordshire NHS (2010) EWHC 530 para 17ff, and obiter dictum of Lord Hoffmann in Godmanchester (2007) UKHL 28: (2008) AC 221 para 24.</i></p> <p>Please see also <i>R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and another v Oxfordshire County Council (2010 also known as the Wameford Meadow (2010) case, discussed below at para 25, in particular the importance of entrances without any signs.</i></p> <p>Please see also <i>R v Oxfordshire County Council ex parte Sunningwell Parish Council (200) 1 AC 335 (1999) 3All ER 385.</i> As discussed in <i>Getting Greens Registered by The Open Spaces Society, para 22. "This phrase does not mean that the use of the land must have been by virtue of some pre-existing legal right: on the contrary, the phrase requires the opposite, namely that the users must technically have been trespassing throughout the qualifying period, even though they may not have realised that they were doing so".</i></p> <p>We therefore contend that existence of these two signs on the Parkland and a further sign on the boundary with the Adult Learning Centre cannot be used as a credible argument by the Bristol City Council to establish "use of force" by the community.</p> <p>It is also relevant to note that no sign has ever been placed at the entrance near Cheyne Road, which is heavily used and which was previously the site of a stile. This would have been a prime site to erect a sign, if Bristol City Council had intended to deny access to Stoke Lodge. However, Bristol City Council has never sought to do this, not even when it took action to avert the driving of motorcycles onto Stoke Lodge. Tree trunks were merely placed there to act as barriers to motorcycles, but in such a way that they did not prevent pedestrian access.</p>
<p>14</p>	<p>Acquisition and Use</p> <p>Where land is acquired by a local authority, it must be held according to a statutory function of the holder. The majority of the Site (22 acres) was acquired by way of a Conveyance in 1947 with the remainder being appropriated to educational purposes in 1947 (4.25 acres) and 1980 (1.19) respectively. The land has therefore been held pursuant to the Education Act 1944, now the Education Act 1996. Since its acquisition, its use has inherently been for the purposes of education as evidenced in the valuation practice files and by the transfer of control agreement.</p>	<p>The purpose of the Town or Village Green Application is to make sure that the current education use for sports use and formal sports use by local clubs is protected in its current form, whilst recognising and ensuring that the long established community use "as of right" for informal sport and general recreation continues in its current form, and to ensure that the risk of future development is removed.</p> <p>Hence Town or Village Green status would not pose a threat to the ongoing education use of the Parkland nor to formal sports use.</p>

15

Use By Right

Use as of right will be precluded whenever it is enjoyed by force, by stealth or with the express or implied license of the landowner. The significance of these 3 factors is that they are all situations where it would be unacceptable for someone to acquire rights against the owner. User by force is not confined to physical force. It includes use which is "contentious". A landowner may render use contentious by, among other things, erecting prohibitory signs or notices in relation to the use in question.

It is the Council's submission that access to the land is gained by way of permissive rights in the form of organised games and activities and on other occasions appears to be by force ignoring prohibitory notices on the land thus rendering the use contentious so that an uninterrupted 20 year period of such use could not be shown as at the date of the application. In addition, the Council's stance is supported by policy L01 Open Space Protection of Playing Fields and Recreation Grounds (para 10.4) contained in its statutory plan currently Bristol Local Plan Written Statement adopted December 1997 which is a saved policy.

The Council contend that the land has been used as a school playing field, maintained by the Council and also used for the wider community for recreation by permission and also in accordance with policy 10.4 Open Space Protection of Playing Fields and Recreation Grounds at 10.4.7 of the 1997 Written Statement provides *.."Included within this category the following facilities should be taken into consideration: (i) Facilities such as pitches (eg Football,) ...owned by Local Authorities, whether at Country, District or Parish level. (ii) Facilities described in (i) within the educational sector and which, as a matter of practice and policy are available for public use.*

The signs on Site were put up on all Avon County Council education sites as a matter of Council policy in the late 1980's see paragraph 1.7 of the statement of R V Hoskins relating to another council site (**enclosure 33**). The more recent signs which carry the Bristol City Council logo make it clear that the site is Private Property. These signs make it clear to members of the public that they should not trespass on this playing field and that a request for authorised use should be made to the Director of Education.

Where the landowner has signified his objection to trespass on his land by for instance (a) putting up signs warning people to keep off the land or (b) erecting fences then user cannot be as of right since the landowner is not, by his conduct, acquiescing in the creation of a right by long use. The right to prosecute in the event of a trespass is discretionary and would also be subject to the evidential and public interest tests under the Code for Crown Prosecutors.

We are not interested in what "as of right" is not, only what qualifying criteria exists and whether or not we have satisfied that test as set out in the legislation. "As of right" is defined as "without force, without secrecy and without permission".

As detailed in para 13 above, following (*R v Oxfordshire County Council ex parte Sunningwell Parish Council*) this should be tested on the basis that the Community exercised their right *in the same manner as if* the people who indulged in them had a legal right to do so. See evidence listed in paragraph 16 below to confirm manner of use. We have detailed previously why the existing signs do not, in Bristol City Council terminology, render the use "contentious" and do not lead to a sustainable argument that the Community used force in exercising its use of the Land.

We do not rely on the Formal Organised Sporting Activities (with permission) to support our application. It is important to recognise that our application is based on the principal that shared community use for informal sport and recreation alongside formal use by others is a legitimate basis for an application as confirmed in the "Redcar" case. (see paragraph 13 above).

With regard to BCC retained policy, L01 paragraphs 10.4 and 10.4.7 (copy attached as evidence item 9 of this folder) have no bearing on this case as the reference to use with permission relates to Formal Sport which forms no part of our Application. The Application is not seeking to change use to "unrelated development"; we also refer to line 8 of clause 10.4.1 *"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 a relief from the built environment."*

Whilst we acknowledge that the Parkland has been used as a school playing field by Fairfield school and Cotham school as one of a number of sites used by both schools, it is important to remember that this is a remote site for both schools and importantly the use by schools has always been on a shared basis with the more local community. We acknowledge that the formal sports use booked by Coombe Dingle is clearly with permission and hence forms no part of our Application. However, the extensive long term community use for informal sport and general recreation complies with the definition of "as of right" defined as "without force, without stealth and without implied licence", for the reasons given in our Application and is supported by arguments in para 13 above. Public use here refers to paid-for pitches i.e. excluded from our application.

The statement of Mr R V Hoskins is irrelevant and has no bearing on this case. The statement refers to a different site with different conditions of use by the Community (i.e. fencing previously in place, not continuous unfettered access as per Stoke Lodge). The statement makes reference to exhibit

15 cont		<p>RVH/1; given the date of installation we assume that these are similar to the two signs sited on the Parkland (see Application vol 1 evidence items 5 and 16). If so they have been shown to be ineffective, (para 13). The more recent sign is not mentioned in the statement by Mr R V Hoskins which we contend has also been shown to be ineffective, (para 13).</p> <p>The final paragraph has no bearing on this case as the signs have been shown to be ineffective in denying access; also there are no fences. As mentioned above in relation to para13, if Bristol City Council had wished to deny access then it could easily have erected a fence at the Cheyne Road entrance when it was seeking to prevent motorcycles gaining access to Stoke Lodge. But it did not. Furthermore the Landowner has confirmed its acceptance (not permission) of ongoing community access “as of right” in the Minutes of the Neighbourhood Partnership Meeting held on 15th September 2010, see paragraph 4 above.</p>
16	<p>Legal Submissions</p> <p>In Megarry & Wade (6th Edition) at 18-124 there is this statement of the law in relation to forcible user in the context of easements obtained by prescription which is considered to be persuasive in Town and Village Green cases.</p> <p><i>(a) Vi. Forcible user extends not only to user by violence, as where a claimant to a right of way breaks open a locked gate, but also to user which is contentious or allowed only under protest. User is considered to be forcible ‘once there is knowledge on the part of the person seeking to establish prescription that his user is being objected to and that the use which he claims has become contentious. Thus if there is a state of ‘perpetual warfare’ between the parties there can obviously be no user as of right; and if the servient owner chooses to resist not by physical but by legal force, as by making unmistakable protests or taking legal proceedings, the claimant’s user will not help a claim by prescription’.</i></p>	<p>The intimation that there is a state of “perpetual warfare” does not reflect the harmonious nature of the way the Education and formal sport users have co-existed alongside the community use for informal sport and general recreation over a period of 64 years, with the community use always deferring to the Education or formal sports use. The Bristol City Council argument is ill-founded and should be ignored.</p> <p>Conversely we contend that:</p> <ol style="list-style-type: none"> 1. No “physical force” has ever been necessary to gain access 2. The signs have been shown to be ineffective in that local residents are either unaware of them or consider them as having no application 3. Many entrances have no sign (in fact, it is possible to walk the whole length of Stoke Lodge without seeing a sign) 4. No “unmistakable protest” on behalf of the owner is known to exist 5. Local residents use of Stoke Lodge is not challenged and no “legal action” has been taken on behalf of the owner 6. No “state of perpetual warfare” exists 7. Lack of evidence at Stoke Lodge to support the objection 8. For contra evidence that supports the Application see: <ol style="list-style-type: none"> a. Additional statements of use, see appendix at section 8 of this folder b. Witness statements, Application vol 2 (31 off) c. Witness statements, Application vol 3 (23 off) d. Extracts from Letters, Application vol 1 section 21 (over 80 off) e. Survey of community use, Application vol 1 section 19 f. Petition, Application vol 1 section 22. g. Minutes of N P meeting, Application vol 1 section 14.

16 cont		<ul style="list-style-type: none"> h. Supplementary arguments, Application vol 1 section 5 i. Letters of support sent directly to the registration authority (to be provided by the registration authority)
17	<p>In <u>Newnham v Willison (1988)</u> (which concerned a disputed right of way), Kerr LJ stated that the authorities showed <i>'that there may be vi – a forceful exercise of the user – in contract to a user as of right once there is knowledge on the part of the person seeking to establish prescription that his user is being objected to and that the use which he claims has become contentious'</i></p>	<p>This argument is flawed if Bristol City Council is trying to apply this in the case of Stoke Lodge and it should be ignored due to lack of evidence to support the argument. Conversely this Community did not consider its use had been objected to or that it had become contentious. (see <i>R v Oxfordshire County Council ex parte Sunningwell Parish Council (2000) 1 AC 335; (1999) 3All ER 385</i> i.e. the Community have acted in the same manner as if they had a legal right to do so). See evidence listed in paragraph 16 above.</p>
18	<p>In <u>R (Cheltenham Builders Ltd) v South Gloucestershire District Council [2003]</u> Sullivan J at para 64, expressed the view that "The landowner does not have to meet force with force. He can achieve the same effect by making non-forcible objection or protests directed towards users of the land"</p>	<p>This argument is irrelevant and should be ignored because:</p> <ol style="list-style-type: none"> 1. The community have not used force (open access and signs ineffective) 2. The owner has not responded with forcible or non-forcible objection or protest 3. See contra evidence listed in paragraph 16 above
19	<p>Therefore we are not dealing here solely with the use by physical force where locked gates are broken or where fences and prohibitory signage are torn down. Use may be by force (and thus non peaceable) whenever it is contentious or allowed under protest.</p>	<p>This argument is again flawed and should be ignored because:</p> <ol style="list-style-type: none"> 1. The signage has been shown to be ineffective and hence the use is not contentious: see paragraphs 13 & 14 above & contra evidence listed in paragraph 16 above 2. No evidence to show use by the Community has been allowed under protest
20	<p>In <u>Betterment Properties (Weymouth) Ltd v Dorset County Council [2010]</u> the owner was successful and the registration was cancelled because the judge came to a wholly different conclusion to that of the panel of members on non-peaceable user which he ruled had been made out on the facts. Betterment had been a case where the previous landowner had effectively given up in the face of mass trespass and years of damaged signage and fencing. He had not acquiesced but had been unable to take effective measure to prevent local residents from coming on to the land for the purpose of informal recreation.</p>	<p>This argument has no application in the case of Stoke Lodge and should be ignored because of lack of evidence to show:</p> <ol style="list-style-type: none"> 1. Any objection to community use i.e. nothing <i>"given up in the face of mass trespass"</i> 2. No damage to signs and or fences (no fences) 3. See contra evidence listed in paragraph 16 above
21	<p><i>The test was (at 121 of the judgment) whether the circumstances were such as to indicate to the persons using the land, or to a reasonable person knowing the relevant circumstances, that the owner of the land actually objected and continued to object and would back his objection either by physical obstruction or by legal action. For these purposes, a user was contentious when the landowner is doing everything, consistent with his means and proportionately to the user, to contest and to endeavour to interrupt the user.</i></p>	<p>This test fails, as shown by the instances reported by local residents which show their use has not been challenged by grounds staff working on Stoke Lodge, and the argument should be ignored because there is no evidence to</p> <ol style="list-style-type: none"> 1. Demonstrate that the owner actually objected and continued to object and would back his objection either by physical obstruction or by legal action 2. Demonstrate that the owner did anything consistent with his means and proportionately to the user to contest and to endeavour to interrupt the user 3. See contra evidence listed in paragraph 16 above

22	<p>Trap Grounds case in the Court of Appeal [2005] EWCA 175, Carnwath LJ said that the purpose of a notice which was worded in the following terms: 'Oxford City Council trap grounds and reed beds. Private Property. Access Prohibited except with the express consent of Oxford City Council' was 'to put an end to the period of qualifying use by ensuring that it could no longer be used as of right'. This aspect of the Court of Appeal's decision was not considered by the House of Lords. In the result, provided notices make it sufficiently clear to local users that the landowner was not acquiescing in their use of its land for recreational purposes they will have the effect of rendering subsequent use forceful and not as of right.</p>	<p>This argument is flawed in any application to Stoke Lodge and should be ignored because of no evidence to demonstrate that the Landowner objected to the community use.</p> <p>Conversely, we have demonstrated that:</p> <ol style="list-style-type: none"> 1. The signs at Stoke Lodge were not understood by local residents as denying community access 2. The community used the land unchallenged, see evidence listed in para 16 above
23	<p>In R (on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and another) v Oxfordshire County Council [2010] also known as the Warneford Meadow [2010] case, HH Judge Waksman QC stated that the following 8 principles should be applied when it came to signage:</p>	
24	<p>[22] <i>From those cases I derive the following principles:</i></p> <ol style="list-style-type: none"> (1) <i>The fundamental question is what the notice conveyed to the user. If the user knows or ought to have known that the owner was objecting to and contesting his use of the land, the notice is effective to render it contentious; absence of actual knowledge is therefore no answer if the reasonable user standing in the position of the actual user, and with his information would have so known.</i> (2) <i>Evidence of the actual response to the notice by the actual users is thus relevant to the question of actual knowledge and may also be relevant as to the putative knowledge of the reasonable user.</i> (3) <i>The nature and content of the notice, and its effect must be examined in context.</i> (4) <i>The notice should be read in a common sense and not legalistic way.</i> 	<ol style="list-style-type: none"> 1. We have demonstrated that notices on the Parkland did not, in any way, convey to local residents the message that the owner was objecting to or contesting their use of the land. This is supported by the extensive informal use of Stoke Lodge by local residents. In the survey that we conducted 373 uses were shown over a period of six consecutive days (excluding any School or Formal Sports use). This was extrapolated to between 22,620 and 37,899 for a whole year's use. See Application vol 1 section 19 (Survey of use August 2010). See also evidence listed in paragraph 16 of this document 2. For evidence of how the community actually responded to the signs see the evidence listed in paragraph 16 of this document 3. We demonstrated in paras 13 and 15 (above) that the signs are ineffective 4. The test of common sense is demonstrated by "how did the community interpret them". See the evidence listed in paragraph 16 of this document, i.e. they considered them ineffective in denying public access

<p>24 cont</p>	<p>(5) <i>If it is suggested that the owner should have done something more than erect the actual notice, whether in terms of a different notice or some other act, the court should consider whether anything more would be proportionate to the user in question. Accordingly it will not always be necessary, for example, to fence off the area concerned or take legal proceedings against those who use it. The aim is to let the reasonable user know that the owner objects to and contests his user. Accordingly, if a sign does not obviously contest the user in question or is ambiguous a relevant question will always be why the owner did not erect a sign or signs which did. I have not here incorporated the reference by Pumfrey J in Brudenell-Bruce (supra) to "consistent with his means". That is simply because, for my part, if what is actually necessary to put the user on notice happens to be beyond the means of an impoverished landowner, for example, it is hard to see why that should absolve him without more. (The reference to means by Pumfrey J seems to have its source in the quotation in the judgment from Dalton v Angus (1881) 6 App Cas 740 at p 773, 46 JP 132, 50 LJQB 689 where Fry J quotes Willes J's reference to the need of a party claiming a right by acquiescence to show that the servient owner could have done some act to put a stop to the claim "without an unreasonable waste of labour and expense". That suggests that reasonableness comes into any means-related argument. So a simple consideration of means does not seem to be enough. Hence my reservation about Pumfrey J's formulation.) As it happens, in this case, no point on means was taken by the Authority in any event so it does not arise on the facts here.</i></p>	<p>5. The Landowner has done nothing "more" to object to the free and open community use; and they are not an "impoverished landowner". (This response does not imply that we accept that the notices register an objection in the first place)</p> <p>The Landowner</p> <ul style="list-style-type: none">a. has not updated signs in the face of ongoing Community useb. has not replaced one particular sign which fell into total decayc. has not challenged locals' use of Stoke Lodge, even when this has coincided with grounds staff working on the landd. has not intimidated, by sign or by action, that it was permitting access "on licence".
<p>25</p>	<p><i>In my judgment the following principles also apply:</i></p> <p>(6) <i>Sometimes the issue is framed by reference to what a reasonable landowner would have understood his notice to mean – that is simply another way of asking the question as to what the reasonable user would have made of it;</i></p> <p>(7) <i>Since the issue turns on what the user appreciated or should have appreciated from the notice, it follows that evidence as to what the owner subjectively intended to achieve by the notice is strictly irrelevant. In and of itself this cannot assist in ascertaining its objective meaning;</i></p> <p>(8) <i>There may, however, be circumstances when evidence of that intent is relevant, for example if it is suggested that the meaning claimed by the owner is unrealistic or implausible in the sense that no owner could have contemplated that effect. Here, evidence that this owner at least did indeed contemplate that effect would be admissible to rebut that suggestion. It would also be relevant if that intent had been communicated to the users or some representative of them so that it was more than merely a privately expressed view or desire. In some cases, that might reinforce or explain the message conveyed by the notice, depending of course on the extent to which that intent was published, as it were, to the relevant users.</i></p>	<p>6. When does "Sometimes" apply? We have no way of knowing what the "Landowner understood" the sign to mean. We do know what the "reasonable user made of it". See evidence listed in paragraph 16 above. However, clause 6 seems "strictly irrelevant" in this case given the content of clause 7 below. This argument is also contradictory to the case being presented by the objector.</p> <p>7. <u>We agree whole heartedly with this principle!</u></p> <p>8. These special conditions do not apply at Stoke Lodge</p>

His Honour Judge Waksman QC then went on to consider as part of this judgement:

41. Then, under “Contentiousness” at paragraph 369, the Inspector said this:

"I find that in January 1989, the landowner erected a number of signs stating "No public right of way". Two of these signs were on Warneford Meadow (as subject to the present application). These were at points B and C on Mr Banbury's plan JNB1. Point B was where FP 111 left Roosevelt Drive in a southerly direction. That sign was referential to FP 111. Point C was near the Hill Top Road entrance to the Meadow. I find that the sign at point C was referential to FP 111 and the diagonal path. Although Mr Banbury claimed that the purpose of the signs was to restrict general access to the Meadow, I find that the purpose of the signs was to prevent FP 111 and the diagonal path from acquiring the status of public rights of way. First, the case of the landowner in relation to the modification order was that it had no objection to general public recreational access to the Meadow, but only to the creation of public rights of way. Second, if the signs had been intended to forbid general access to the Meadow, I do not understand why they did not say so. With hindsight, it seems odd to challenge the creation of public footpaths but not the creation of a new green, but this is explained by the fact that the landowner was unaware of the law relating to new greens."

The Inspector's recommendation

42. Section 9 of the Report is headed “Applying the law to the facts” and under the heading “...as of right...” at paragraph 384 the Inspector said this:

"In my judgement, recreational use of the application land by the inhabitants of Hill Top Road ... was not...contentious. Access was predominantly by way of the Hill Top Road entrance to FP 80 which was at all times an open and unobstructed lawful entrance. For the reasons explained above, I do not consider that the landowner took any steps which made informal recreational use of the application land by local people contentious..."

25
cont

- The 1989 "no public right of way" signs were erected in an attempt to prevent FP 111 and the diagonal path from becoming public rights of way and did not purport to, were not intended to, and did not in fact restrict general use of the Meadow for recreation by local people ...

If one asked whether the landowner was doing everything, consistent with his means and proportionately to the user, to contest and to continue and to endeavour to interrupt recreational use of the Meadow as a whole, one could only answer in the negative. The cases explain that the thinking behind the *nec vi* requirement is that if use is *vi* (being forcible or contentious) such use negatives the inference that the landowner is acquiescing in the recreational use of his land. It appears to me in this case that the evidence strongly shows that the landowner did acquiesce in general recreational use of his land. He said as much in his case to the footpath inquiry."

46. On 28 January 2009 the Inspector produced his Further Report. On the question of the Notices he simply said this in paragraph 14:

"I have reviewed again the advice in my Report ..in the light of the objectors' comments. I adhere to the view that these signs did not render contentious general recreational use of the Meadow and I re-affirm the findings and comments at paragraphs 369 and 384 of my Report. I find the arguments in paragraphs 7-20 inclusive of the applicant's response to be convincing."

CONCLUSION (by His Honour Judge Waksman QC)

93. *"Accordingly, this application for judicial review must be dismissed."*
(i.e. The registration as Town or Village Green Application was upheld)

It can be seen from the above that His Honour Judge Waksman QC clearly found that the tests set out in paragraphs 24 and 25 above were met in this case including clause 42 above i.e. the relevance of the location or omission of signs and impact on numbers of users is highly relevant and had no *"practical effect"*. (Redcar)

26

Conclusion

The council contend that the erection of the signs was specifically to prevent any prescription rights arising. The signage gives clear authority that members of the public were not to trespass on the land and in lists examples of the activities which may result in prosecution. It also indicates authorised use may be requested. The fact that no prosecutions have taken place would accord with this since, as mentioned, it is the council's policy to allow the public access when the fields are not in use by either the educational user or some other specifically permitted user eg a football club. However, such user is not 'as of right' since it is only permitted to the extent that land is not already in use by the educational or some other permitted user.

The Council considers that the user knew or ought to have known that the owner was objecting to and contesting his use of the land. The Notice can be read in a common sense way and it is the Council's view that the notice is effective to render it contentious. This was a policy decision across all educational site including remote playing fields within Bristol. The Council's action is reasonable and proportionate to its funding.

We would therefore ask the Registration Authority to consider the matters set out in this letter and its enclosures and dismiss the application.

We contend that the objector has failed to make a sustainable case, supported by evidence, to demonstrate his assertion at paragraph 3.

"Grounds of Objection

That the usage of the land by the public for 'lawful sports and pastimes' has not been 'as of right' as required by section 15(2) Commons Act 2006"

Conversely we have provided argument and precedent and evidence to demonstrate:

1. Community use "as of right", defined as without force, without secrecy and without permission, has been established
2. The Community has not used force to enter the Parkland because the signs are ineffective in denying access and have been treated as irrelevant to ongoing free and open public access by the Community i.e. "no practical effect"; also numerous entrances exist without signs.
3. The community use is without permission. This should not be confused with Sports Club use which we agree is with permission but forms no part of our application
4. The community use is without secrecy (see evidence in para 16) and has been done "in the same manner as if the people who indulged in them had a legal right to do so" (see paragraph 13 above)
5. The community use has been for lawful sports and pastimes (see evidence at paragraph 16 above)
6. Deferment by a co-existing user is not grounds to prevent 'as of right use' See *Lewis v Redcar - Lewis v Redcar Appeal in the Supreme Court 2010. (UKSC11)* with relevant paragraphs reproduced in paragraph 13 above, bullet points 1, 2, 5 & 6
7. The community use has not been objected to by the Landowner. See evidence listed in para 16 above; please see also "*Lewis v Redcar - Appeal in the Supreme Court 2010. (UKSC11)* with relevant paragraphs reproduced in paragraph 13 above, bullet points 3 & 4.
8. The legal submissions put forward by Bristol City Council (See paragraphs 16 - 25 above) have been shown to be either:
 - a. irrelevant to this case
 - b. no evidence to show that the Community have acted contrary to the provisions of "as of right" use
 - c. actually helpful to the application
 - d. any relevant issues have been shown to have been satisfied by the Applicant
9. Bristol City Council have confirmed the community use "as of right" (see paragraph 4 above)

We therefore request that this objection on behalf of Bristol City Council be dismissed and the Application judged on the merits of the Application alone.

SCHEDULE

<u>Enclosure</u>	<u>Description</u>
1.	Plan showing application site
2.	Plan showing the extents of the two acquisitions
3.	H M Land Register – Register and title plan
4.	Conveyance dated 13 th July 1946
5.	Terrier Section record card ref. 'H13/1'.
6.	Minutes of a meeting of the Housing Committee held on 8 th April 1946
7.	Minutes of a meeting of the Housing Committee held on 15 th July 1946
8.	Minutes of a full Council meeting held 11 th February 1947
9.	Consent dated 22 nd October 1947
10.	Terrier Section record ref. 'H13/5'.
11.	Historic plan ref. 'H13'.
12.	Minutes of a meeting of the Housing Committee held on 27 th January 1947
13.	Minutes of a meeting of the full Council held on 15 th April 1947
14.	Minutes of a meeting of the Housing Committee held on 18 th February 1963.
15.	Conveyance dated 19 th September 1947
16.	Terrier Section record card ref. 'H13/2'.

28	<ol style="list-style-type: none">17. Plan showing land sold18. Minutes of a meeting of the Land and Buildings Committee held on 2nd December 198019. Plan showing location of depot site20. Minutes of a meeting of the full Council held on 9th May 200021. Minutes of a meeting of the full Council held on 1st May 200822. Form B327023. Lease of land for gas governor to Wales and West Utilities Ltd dated 8th April 201124. Easement granted to Wales and West Utilities Ltd dated 8th April 201125. Lease of playing fields to Cotham School dated 31st August 201126. Transfer of Control Agreement dated 1st September 201027. Extract from database re playing fields28. Extract from database re depot site29. Plan showing location of signs30. Photograph of Avon CC sign31. Photograph of Bristol CC sign32. Extract from Education Act 193227 October 201133. Statement of R V Hoskins	
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