

Scott's schedule of DN & SJ Mayer comments, and basis of objection to the recommendations drawn in Bristol City Council Briefing Note dated 22nd April 2010, Community Access to School Playing Fields with specific reference to the issues relating to Stoke Lodge Parkland

The basic premise of the report with regard to Stoke Lodge appears to be flawed.

This point at issue relates to Public ownership and whether or not Public ownership of Stoke Lodge has been gifted to Cotham Grammar school or whether they are a tenant given that they chose to exploit their previous playing fields in a conversation area to develop a sports centre for the benefit of their pupils and now wish to exploit Stoke Lodge for the exclusive benefit of their pupils, denying local residents access to the only safe sporting facility and green space in Stoke Bishop.

This raises serious issues of fiscal prudence, particularly baring in mind the recent introduction of the ability for schools to opt out of Local Authority control. If applied to Cotham Grammar School would this effectively transfer ownership from BCC to a private enterprise resulting in a financial loss to BCC to add to the current fiscal debt of £381 million that they have already created on our behalf?

In addition I would particularly refer to

- (a) Clause 2.14 – 2.18 of the Briefing note and comments 16 – 19 below to set the correct way forward.
- (b) Clause 2.19 – 2.22 of the Briefing note and comments 20 – 23 below which either, potentially highlights a Health and Safety risk that if not currently in hand is a serious breach, or, if it is currently being managed, then it does not present any additional burden and as such cannot be used as a reason for not sharing.

Given the overwhelming weight of evidence below which challenges the veracity of the Briefing document when applied to Stoke Lodge, which has a particular history, ownership, amenity and ongoing heritage value, we have set out in this document counter arguments challenging the intent to take away the most important green space in Stoke Bishop a then restrict access exclusively to the pupils of Cotham Grammar school, when better alternatives are available in terms of sharing and/or alternative sites.

Clearly we cannot agree with the three recommendations proffered since we consider the basis of review to be flawed when applied to Stoke Lodge, failing to address the key issue of ownership and the contributing arguments relating to Health and Safety, and Village Green Status!

We are not requesting special consideration or increased amenity. But we are insisting that this long established, shared and treasured amenity is not taken away in this underhand and devious way.

It should be possible to provide permanent sporting facilities at the south eastern end of the Parkland, where the land topography is more suitable and where sporting activity is currently concentrated, including access for local sporting clubs; and dedicate the North Western end of the Parkland where the land is not suitable for sports pitches and is poorly drained as Green space for public access.

Should you choose to dismiss our objections we believe there is a case to answer under judicial review on the grounds of unreasonableness and discrimination?

Bristol City Council Briefing Note 22 nd April 2010 Community Access to School Playing Fields	DN & SJ Mayer comments 22th June 2010.
RECOMMENDATION	
a) The investment into Purdown and Stoke Lodge should be allowed to continue.	Recommendations rejected based on counter arguments below
b) Schools should be approached individually to see whether they are willing to allow open access to the playing fields and an evaluation of the cost implications for those schools established and reported back to informal cabinet for further evaluation and possible wider scrutiny and discussion.	<ol style="list-style-type: none"> 1. Who owns Stoke Lodge buildings and Land? BCC or Cotham Grammar school? Particularly baring in mind clause 5.3 where BCC are clearly considering how to retain and protect their ability to sell the land for development at some future date 2. If it is leased to Cotham Grammar school, what are the terms of the lease, how much do they pay in rent, and how long is the agreement for? And what is the rent used for? 3. Why should Stoke Bishop residents be denied access to Stoke Lodge 4. Where do fees from Local sports clubs go currently?
c) In undertaking an evaluation of the cost implications for open access arrangements the revenue and capital implications are identified and possible funding sources identified.	
1. INTRODUCTION	
1.1. Tenders have been received for the construction of the playing field at Fairfield School on Purdown and the erection of a bridge link across Muller Road (from Fairfield School to the new playing field). Authority to award the tenders, valued in total £496,930, is subject to delegated approval.	
1.2. Additionally, funding is available to complete a major refurbishment of the Cotham School playing fields at Stoke Lodge. This is to be funded from Section 77 funding and a grant from Sport England.	5. Clause 1.2. Does this confirm that the land has already been gifted to Cotham? Surely Sport for England would expect their money to be used for the benefit of all.
1.3. The Executive member has indicated that the schemes should be frozen until a decision on the future of open access to school playing fields is made.	
2. BACKGROUND INFORMATION	
2.1. There has been a growing concern within local communities about the loss of green space within the city. Although the city has an extensive green heritage, there are still a number of communities where there is insufficient access to quality green space. Work, undertaken by the Parks Team within the Neighbourhoods Department, to develop the Area Green Space Strategy (and associated Green Space Plans) has identified a number of CYPS sites that might contribute to accessible open space provision.	6. Clause 2.1. Do any of these CYPS sites serve Stoke Bishop, Shirehampton and Westbury on Trym? A cursory glance at the Green Spaces maps attached as appendix (i), (ii), (iii), & (iv) demonstrates in stark contrast the inequity of provision across the City. When considering green spaces in Stoke Bishop, Shirehampton and Westbury on Trym, then Clifton Downs should be discounted as it is City Wide facility as Merchant Venturers would confirm. Also this amenity could equally have been included on the Clifton map giving a very different perspective; we are then left with Chock Mill, a marshy flood plain, liable to flooding and fly tipping, leaving Canford Park where public investment has been denied and all recent play equipment upgrades have been funded privately, and finally Stoke Lodge which has not been highlighted

		<p>as green space despite the fact that it is widely used by local sports clubs on fee paying basis. The Public do use the amenity and have done so for over 50 years, attendees at the Adult Education Facility also use the Magnificent Grounds. Who provides the Third Party and Public Liability insurance for Stoke Lodge BCC (i.e. parkland) or Cotham (i.e. school premises?)</p>
	<p>2.2. The following Neighbourhood Partnership Areas are under the minimum quality standard of 18m² per person (and where no resident is further than 400m from an accessible open space) as established within the strategy. These are:</p> <ul style="list-style-type: none"> • Bishopston, Cotham and Redland; • Cabot, Clifton and Clifton east; • Ashley, Easton and Lawrence Hill 	<p>7. Clause 2.2. Where are the remaining “safe” green areas in Stoke Bishop, Shirehampton and Westbury on Trym? See appendix (i), (ii), (iii), & (iv). Furthermore it is perverse in the extreme That Cotham and Redland are singled out for special consideration for more Green spaces when Redland school was built on Green Land playing fields and Cotham Grammar school used its playing fields to provide a sports facility for its own pupils and now wishes to monopolise Stoke Lodge for its sole use denying access to the public, most importantly the local sports clubs extensively use the pitches, providing an essential amenity to all members of the community including some underprivileged local areas. Please confirm how many children living within a one mile radius of Stoke Lodge have been successful in their application to attend Cotham Grammar school or Redland School in the past decade? If Cotham needs fenced and protected sports facilities they should be given access to the playing fields at the Brigstowe Academy on the Portway where the school is struggling because of falling numbers, following the recent injection of millions of pounds to provide excellent services. Alternatively perhaps BCC should spend the section 77 funding and Sport for England grant on purchasing the now derelict DTZ sports facility on the Portway to provide facilities that they could allow Cotham to use and then deny them to anyone else? Or Coombe Dingle which has spare capacity? Or Redland School? As raised previously Clifton Downs should be included in the Clifton review and not dedicated to Stoke Bishop. Given that much of the proposed funding has been generated by the sale of schools in the Muller Road area, then would it not be more appropriate for the money to be invested in that locality for the benefit of these residents primarily and secondly for use by Cotham Grammar School.</p>

	<p>2.3. During the delivery of the Secondary School Investment Strategy, through the Building Schools for the Future Programme and earlier capital schemes (including the development of Fairfield School), representation has been made by local communities about the loss of access to green space and some school playing fields associated with the investment initiative.</p>	
	<p>2.4. In November 2009, four cases were highlighted by Informal Cabinet:</p> <ul style="list-style-type: none"> • Fairfield School – the loss of green space to the proposed development of playing pitch facilities at Purdown; • St Bede’s – the loss of access to playing fields following the removal of gated access to school playing fields (this issue has since been resolved by the creation of additional community access to existing public open space adjoining the school); • Stoke Lodge Playing Fields – the proposed exclusion of public access to school playing pitches; • Bishop Road Playing Fields – the exclusion of the public to school playing fields 	<p>8. Clause 2.4. Same issue, does Stoke Lodge belong to Cotham Grammar school?</p>
	<p>2.5. This report seeks to address the issues raised and identify an acceptable way forward which meets the needs of the schools and local communities.</p>	<p>8a Clause 2.5. This report provides one option for Cotham Grammar School, but ignores a number of better options for Cotham (see 7 above) but fails in spectacular terms to recognise the rights and needs of the local community, including continual legitimate use “as a right” over the past 50 years. Consequentially failing to provide a balanced recommendation. Although not stated the proposals recommended would require the whole of this wonderful wooded parkland to be converted into an inaccessible barren and sterile vista of fenced pitches rarely used.</p>
	<p>2.6. The report is structured into seven key areas to address the questions that open access would generate:</p> <ul style="list-style-type: none"> • What is the DCSF view on community access to school playing fields? • What powers does the local authority have to direct a governing body to provide open access to school playing fields? • What impact would open access have in terms of the potential for registration of land as a town green or village green under the Commons Act 2006? • What are the health and safety implications of a decision to provide open access to school playing fields? • What are the crime/antisocial behaviour impacts of adopting open access to school playing fields? • What are the potential revenue implications of a decision to provide open access to school playing fields? • What are the implications for Stoke Lodge and Purdown if investment were frozen in favour of open access? 	<p>9. Clause 2.6. The missing question is; should a tenant that has the right to vacate decide BCC policy? Also does any rent reflect this very special position of privilege over the rights of others? The other questions are written from the point of view that the Land belongs to Cotham Grammar school and that the governors have power to decide the fate of this land!</p>

DCSF GUIDANCE ON COMMUNITY USE	
2.7. The DCSF have published guidance to local authorities in their document 'The Protection of School Playing Fields and Land for Academies - July 2007'. In this publication the DCSF consider that school premises are a resource not only for pupils, but also for the wider community. With this in mind, local authorities and schools are encouraged to seek out opportunities to develop their community role in a formalised access arrangement to protect the playing field from wear and tear, and possible abuse. A summary of the DCSF perspective is provided in Appendix A.	10. Clause 2.7. Once again makes the assumption that the land is "school premises". Cotham Grammar School is not a community school for our community, but Stoke Lodge is a community facility that provides valuable amenity to the wider community of all social backgrounds including local sports clubs, and has delivered this service "as a right" for over 50 years.
2.8. Many schools in Bristol do allow structured community access to playing fields. This demonstrates that solutions are possible, but need to be progressed on a bespoke basis that recognises the needs of local communities; the status of individual schools; and their vision/values etc.	11. Clause 2.8. Once again written from the wrong perspective, but does confirm that sharing is an option, not social exclusion. It also fails to recognise that sharing already exists on this site!
THE LOCAL AUTHORITY'S POWER OF DECISION	
2.9. The control of school premises is subject to the provisions of the School Standards and Framework Act 1998 ¹ (SSFA). This includes playing fields (both detached and not detached) in educational use. Appendix B summarises the Local Authorities powers in terms of community, foundation and voluntary schools.	12. Clause 2.9. ongoing wrong premise
2.10. The SSFA states that the occupation and use of school premises (both during and outside school hours) within a community school is under the control of the governing body ² and is subject to any directions given by the Local Education Authority ³ .	13. Clause 2.10. ditto, also the parkland is currently closed and locked at night to restrict out of hours use.
2.11. In practical terms the direction given by the Local Authority to community and voluntary controlled schools relates only to how the school premises should be used. The direction does not take away the governing body's responsibility, but can cover matters such as making sure that the community use of the school's facilities does not affect the day-to-day use of the facilities by pupils (e.g. making sure the outdoor sports pitches are not overused).	14. Clause 2.11. ditto
2.12. A decision to agree open access to school playing fields by a foundation school or voluntary school would be at the discretion of the governing body.	15. Clause 2.12. ditto, should a tenant have these powers? What would happen if they seek to opt out of Local authority control, or if they seek alternative arrangements for provision of sporting facilities given that they have already given up their own facilities once before?
2.13. When a local authority is considering an open access policy to school playing fields it is Counsel's opinion ⁴ that the Authority should seek to persuade the governing body that they themselves should	16. Clause 2.13. ditto, and when and how did power shift from BCC to Cotham governors

¹ School Standards and Framework Act 1998 Schedule 13

² School Standards and Framework Act 1998 Schedule 13 paragraph 1

³ School Standards and Framework Act 1998 Schedule 13 paragraph 1(3)

⁴ Nigel Giffin QC, Bristol City Council: Access To School Playing Fields, 14th December 2009, par 7, pp 2, fn 3

	willingly adopt a policy of open access.	
	THE LEGAL STATUS FOR SCHOOL PLAYING FIELDS	
	<p>2.14. The Commons Act 2006⁵ allows for the registration of land as a town green or village green where:</p> <p><i>“... a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on land for a period of at least 20 years</i></p>	17. Clause 2.14. Game set and match to register Stoke Lodge as a “Village Green”. We have considerable evidence of ongoing public use over the past 50 years including paid use of pitches, demonstrating lawful sports and pastimes in excess of the qualifying period of 20 years
	<p>2.15. If an open access policy were to come into effect on school playing fields (this potentially could include informal recreational use⁶), and remain so for a period of twenty years or more the prerequisite qualification for registration would potentially be met. Appendix D summarises earlier Counsel Advice on the potential mitigation for the establishment of registration rights under the Commons Act 2006. Unfortunately, this advice has been superseded by a judgement of the Supreme Court on 3rd March 2010 in the Redcar case⁷. This case has set a precedent which offsets previous mitigation to registration.</p>	18. Clause 2.15. The comments are irrelevant because it is considered on the basis that any sharing would start in the future. Ignoring the fact that sharing at Stoke Lodge has a long and established history of providing sporting facilities to all.
	<p>2.16. The judgement of the Supreme Court is important in two respects:</p> <ul style="list-style-type: none"> • It has made it materially easier to register new greens; • It has further explained the consequences of the registration of a new green. 	
	<p>2.17. The outcome of the decision is that registration is now possible, after twenty years open access use, even though the land owner had given revocable permission for such access. The implications for a landowner requiring the land in the future for development purposes are that such future aspiration will be frustrated where a period of twenty years or more has elapsed since community access was available. Landowners now need to proactively take steps to keep people their land to prevent future registration.</p>	19. Clause 2.17. this sets the strategy that should be adopted based on the history to establish the qualifying criteria
	<p>2.18. For the City Council, this implies that there is no option for revocable permission after twenty years community use of a school playing field if there is a desire to utilise the playing field for other development uses in the medium/long term future. Subsequent registration would impact on the ability to declare a playing field surplus in the future. This would reduce opportunities for future capital receipts.</p>	20. Clause 2.18. Fails to recognise that the qualifying criteria already exists at Stoke Lodge
	HEALTH AND SAFETY ISSUES	
	<p>2.19. There is a duty of care owed to pupils in a school in relation to their physical safety. It is possible that if members of the public were to make use of a school playing field they may leave behind detritus that could pose a risk to the health and safety of pupils using the field</p>	21. Clause 2.19. These comments address the issue from the wrong direction. BCC is not facing a new potential risk enabling them to use this excuse as a reason not to share. The Parkland is already used by

⁵ Commons Act 2006 s15

⁶ *R v Oxfordshire CC ex p. Sunningwell PC* [2000] AC 335

⁷ *R v Redcar and Cleveland Borough Council & anor* [2010] UKSC 11

	for sport as part of the delivery of the curriculum. Such detritus could include broken glass, dog faeces and 'sharps'. There is also the possibility that the grounds themselves, or equipment (such as goal posts and artificial cricket wickets) could be damaged creating additional health and safety risks.	Cotham in partnership with Coombe Dingle and Local Sports Clubs
	2.20. Appendix E identifies the potential liability arising from open access.	22. Clause 2.20. see above
	2.21. There would be a need to undertake individual risk assessments for each school playing field where open public access was permitted. Although some risks will be similar, there are some which would be bespoke and related to the proximity of the field to residential dwellings or other facility such as a public house or off-licence.	23. Clause 2.21. This should already be in place and the school taking appropriate action. If they are not, then they are in serious breach of Health and Safety Legislation!
	2.22. It is inevitable that the each school would be required to undertake an inspection and risk assessment on a daily basis (and possibly several times a day where access was occurring on a 24 hour a day basis).	24. Clause 2.22. Clearly Cotham Grammar school should already be doing this!
	2.30. The existing maintenance costs for school playing fields are based on a bespoke regime negotiated between the school and the grounds maintenance contractor. The cost reflects the frequency of maintenance for each feature (grass is usually cut on a ten day frequency), the facilities on site and the level of security on the site. Secure sites tend to have less detritus than unsecured sites and therefore require less litter collections and a less intense inspection regime prior to mowing.	25. Clause 2.30. This comment fails to recognise that this site is currently maintenance cost free because Coombe Dingle Sports Facility carries out the works in return for their own use and commercial use by local sports clubs.
	<u>Cotham School - Stoke Lodge Playing Fields</u>	
	2.38. Stoke Lodge (including the north western side of the site) was acquired for education purposes in 1947. The south east site was an earlier acquisition for temporary housing purposes in 1946 and transferred to education in 1950.	
	2.40. In august 2009 Cotham School entered into a short term agreement with Bristol University which allows the University to utilise the field for sport activity. The University, during the period of the agreement, undertake the management of the facility as part of the remuneration for this exclusivity.	26. Did Cotham School enter into this arrangement as tenant of Stoke Lodge? What happens if they leave or change status? What happens to funds generated by Coombe Dingle under this arrangement? NB see clause 5.3.
	3. FINANCE	
	<u>Revenue Funding</u>	
	3.2. The community use of school playing fields is not eligible use of the Dedicated Schools Grant which funds the education of pupils at the school. As such funding for the daily inspection/clean and costs for repairing vandalism would need to be provided by the Council (e.g. through the devolved Neighbourhood Partnership Budget).	27. This is not an additional cost as it is already in place, conducted by Coombe Dingle and local residents.
	3.4. Some schools have indicated that charges made for community access to their facilities is an important funding stream for the school. This income is often used to subsidise the extended maintenance of the facility where the school allow 'authorised' community access.	28. Ongoing revenue from local sports clubs is clearly a major benefit and as such should be factored in when assessing the cost of maintenance compared with the income collected by Coombe Dingle.
	4. CONSULTATION WITH SCHOOLS	

	<p>4.2. The schools have indicated that they believe the health and safety of their children will be compromised especially as the children often use the playing fields first thing in the morning before the start of the school day. If there were a dangerous substance on the field and access was gained prior to the inspection there is a danger that the children may come to harm.</p>	<p>29. Attendees at Cotham Grammar school would not face this risk at this remote site. The risk to local children is already managed.</p>
	<p>4.3. Schools have indicated a concerned about damage to property and the danger of possible trespass into the playground and school buildings. Many playing fields are not segregated from the main school buildings and would normally only be accessible through the school or a secure gated access. Open access would remove the security of the play ground and class room direct access unless additional investments were made into formal segregation of the playing fields from the school buildings and play grounds.</p>	<p>30. Not applicable to Stoke Lodge.</p>
	<p>5. CONCLUSION</p>	
	<p>5.1. The Council is in a position to give direction or impose an open access policy on community schools and voluntary aided schools (where the playing fields form part of the Council's estate). This is not possible for foundation schools (including Trust Schools) or some voluntary controlled schools. If such a policy were adopted, there is a high probability that an application for registration would take place if the open access has been, or is permitted, for a period of twenty years or more. Previous mitigation against registration has been eroded by virtue of the Redcar case.</p>	<p>31. Since Cotham Grammar School is a community school, does this override previous statements that this is a Governors responsibility, and BCC will consider the established amenity value to local residents of all social backgrounds</p>
	<p>5.3. If the City Council wishes to retain opportunities for future development on school playing fields, options to avoid registration will need to be secured by placing a time restriction on the open access arrangement to ensure that the open access is only permitted for a period of less than twenty years in total. There would be a need to pass or publish a formal resolution to the effect that the open access would represent the granting of a revocable permission within this time frame.</p>	<p>32. See Village green status above</p>
	<p>6. RECOMMENDATION That:</p> <ul style="list-style-type: none"> a) The investment into Purdown and Stoke Lodge should be allowed to continue. b) Schools should be approached individually to see whether they are willing to allow open access to their playing fields and an evaluation of the cost implications for those schools established and reported back to informal cabinet for further evaluation and possible wider scrutiny and discussion. c) In undertaking an evaluation of the cost implications for open access arrangements, the revenue and capital implications are identified and possible funding sources identified. 	<p>33. rejected by weight of evidence above</p>
	<p><u>THE DCSF PERSPECTIVE – A SUMMARY OF ‘The Protection of School Playing Fields and Land for Academies - July 2007</u></p>	
	<p>1.1. The DCSF consider that school premises are a resource not only for pupils, but also for the wider community. With this in mind, local</p>	<p>34. agreed.</p>

	<p>authorities and schools are encouraged to seek out opportunities to develop their community role. This is because community use may bring about a sense of ownership and belonging to the school. In seeking these opportunities, authorities and schools are asked to give priority to activities which support and promote pupils' learning and the wider community generally. This includes homework and after-school club activities; other study support activities; basic skills courses; adult education; youth service activities; and family learning opportunities.</p>	
	<p>1.2. The DCSF understand that in many locations the school is the main or even only place that can provide the local community with sports and other facilities. The DCSF have decided that, in assessing applications for disposal or fencing of school playing fields under section 77, it is right that the Secretary of State takes into account community use of school playing fields. Where the fencing off of a school playing field displaces or disadvantages authorised community users, the Secretary of State will take into account the circumstances of the closing off of the playing field and of the alternative provision, if any, provided to the former users.</p>	35. agreed
	<p>1.3. It is the DCSF view⁸ that only authorised community use of playing fields should be taken into account, whether or not such authorised use is covered by formal or informal agreements. Such use may be by:</p> <ul style="list-style-type: none"> • local sports clubs for practice or the playing of arranged games; • local youth and community groups for sport or recreation, for example local scout groups; • nursery, pre-school and day care groups; • after school and out of hours groups; • groups involved with educational programmes run in partnership with schools; • Charitable groups for fetes, sports days, and other fund raising events on an annual or more regular basis. 	36. Stoke Lodge qualifies in all respects
	<p>1.4. There may be a misconception in the local community that school playing fields are public parks and, therefore, are open to any public access and use. The DCSF emphasise that school playing fields are provided primarily for the physical education and the enjoyment of children attending the school⁹.</p>	37. This is a remote site and should continue to provide Sports facilities (for a fee as at present) and Green space for residents of this Locality. Both can be accommodated see Front page.
	<p>1.5. Although schools and authorities make their playing fields available for authorised community use, the DCSF are aware that unauthorised use may cause damage to these resources. Although</p>	38. The author is failing to recognise that the local sports clubs would welcome improved facilities, including protective fences, and that this does not preclude public access to the less suitable sports land at the North West of the site.

⁸ 'The Protection of School Playing Fields and Land for Academies July 2007', DCSF (2007), par 74. pp23

⁹ 'The Protection of School Playing Fields and Land for Academies July 2007', DCSF (2007), par 75. pp23

	<p>it may appear to be harmless to allow children ad hoc use of school playing fields to kick a ball about at evenings and weekends, there is a likelihood that the quality of school sports pitches may suffer as a result. Sports pitches can only be used for a limited amount of time, particularly in extremes of dry or wet weather, and must be allowed periods to recover.</p>	
	<p>1.6. When the Secretary of State considers applications for the enclosure or closure of school playing fields no account is taken of unauthorised uses. Such unauthorised uses include:</p> <ul style="list-style-type: none"> • local residents exercising and walking dogs; • unauthorised 'kick-around' by local children or as a golf practice range by local residents (unauthorised use of school grounds may also be considered to be trespass); • Use as an unofficial picnic, camping, or caravan site. 	<p>39. We cannot see why the rules governing Clifton Downs cannot be applied to a portion of the parkland, maintaining the minimum quality standard enjoyed in other areas whilst enabling sports to be enjoyed in a protected area, by a remote school and the local sports clubs, similar to Canford Park.</p>
	<p><u>JUDICIAL REVIEW</u></p> <p>1. The courts may intervene to quash a decision if they consider it to be so demonstrably unreasonable as to constitute 'irrationality' or 'perversity' on the part of the decision maker. The benchmark decision on this principle of judicial review was made in the <i>Wednesbury</i> case¹⁰:</p> <p><i>"If a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere... but to prove a case of that kind would require something overwhelming..."</i></p> <p>2. However, the threshold will be a lower one, that of proportionality, when European Union law or Human Rights Act breaches are involved. In general terms, the concept of proportionality requires a balancing exercise between, on the one hand, the general interests of the community and the legitimate aims of the authority and, on the other, the protection of the individual's rights and interests.</p> <p>3. One approach to assess the risk of judicial review is to ask:</p> <ul style="list-style-type: none"> • Is the Authority's objective legitimate? • Is the measure suitable for achieving it? • Is it necessary, in the sense of being the least intrusive means of achieving the aim? And • Does the end justify the means overall? <p>4. The onus also lies upon the Authority to show that these conditions can be met¹¹.</p>	<p>40. Should our request be denied we consider that we have grounds under the terms set out under this heading to seek a Judicial Review.</p>
<p><u>THE LEGAL STATUS FOR SCHOOL PLAYING FIELDS</u></p>		

¹⁰ Lord Greene Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, HL.

¹¹ Public Law Project Information Leaflet 3

<p>5. <i>The Redcar case makes it easier to register new greens by disapproving the judge-made rule that land cannot be registered as a new green where it has been used by both the landowner for his own purposes and by local people for recreation in circumstances where the local people deferred to the landowner's use. Landowners will need in future to take active steps to exclude recreational trespassers. The judgement has also explained the consequence of registration in terms of future landowner development opportunities¹².</i></p>	<p>41. Supports our application for Village Green status</p>																																								
<p>INSPECTION REGIEME AND REVENUE IMPLICATIONS</p>																																									
<p>6. There is a legal requirement for schools to be open for 190 days each year. This means that the inspection regime would potentially cost between £6,650 (primary) to £14,250 (secondary) per school during school time. Open access beyond the 190 days would be substantially more costly (See Table One).</p> <p>1. There is a legal requirement for schools to be open for 190 days each year. This means that the inspection regime would potentially cost between £6,650 (primary) to £14,250 (secondary) per school during school time. Open access beyond the 190 days would be substantially more costly (See Table One).</p> <p style="text-align: center;"><u>Table One: Estimated Inspection Costs (for six example sites)</u></p> <table border="1" data-bbox="185 842 1155 1257"> <thead> <tr> <th>Site</th> <th>Hours per site</th> <th>Cost per school day</th> <th>Total estimated cost for 190 school days</th> <th>Total estimated cost for 365 days</th> </tr> </thead> <tbody> <tr> <td>Luckwell School</td> <td>1</td> <td>£35</td> <td>£6,650</td> <td>£12,775</td> </tr> <tr> <td>Compass Point</td> <td>1</td> <td>£35</td> <td>£6,650</td> <td>£12,775</td> </tr> <tr> <td>Bishop Road Playing Field</td> <td>2</td> <td>£70</td> <td>£13,300</td> <td>£25,550</td> </tr> <tr> <td>Stoke Lodge Playing Field</td> <td>2</td> <td>£70</td> <td>£13,300</td> <td>£25,550</td> </tr> <tr> <td>Salcombe Road</td> <td>1.5</td> <td>£55</td> <td>£10,450</td> <td>£20,075</td> </tr> <tr> <td>Purdown</td> <td>3</td> <td>£80</td> <td>£15,200</td> <td>£29,200</td> </tr> <tr> <td>TOTAL COST</td> <td></td> <td></td> <td>£65,550</td> <td>£125,925</td> </tr> </tbody> </table>	Site	Hours per site	Cost per school day	Total estimated cost for 190 school days	Total estimated cost for 365 days	Luckwell School	1	£35	£6,650	£12,775	Compass Point	1	£35	£6,650	£12,775	Bishop Road Playing Field	2	£70	£13,300	£25,550	Stoke Lodge Playing Field	2	£70	£13,300	£25,550	Salcombe Road	1.5	£55	£10,450	£20,075	Purdown	3	£80	£15,200	£29,200	TOTAL COST			£65,550	£125,925	<p>42. See 35, 36, 37 above. Also fees for out of term access by sports clubs would assist in funding. Also fails to recognise that this is not an additional cost as it is being undertaken to suit authorised use currently.</p>
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¹² Mr Vivian Chapman QC, notes dated 12th March 2010 – referring to *R (on the application of Lewis) v Redcar & Cleveland Borough Council & anor [2010] UKSC 11*