

Evidence item 12

Appendix VIII

This section includes;-

- a) Clauses taken from the Council Briefing Note that express the true intent of the document with regard to the risk posed by Town or Village Green Status, the conclusions they draw and the recommendations they make to prevent future application by fencing the perimeter of the site to end free and open public access or to use their words to end the "unfettered community access", clause 2.41.
- b) The version of the extracted clauses included here is how it was distributed at the Public Meeting on 28th July 2010 and the colour coding was for the benefit of easy reference and emphasis on the night.

	Stoke Lodge - True Intent, Long term strategy, Killer clauses
	Extracts from the Bristol City Council Briefing Note for informal Cabinet, 22nd April 2010. NB certain original text has been highlighted in this document for emphasis
2.14	The Commons Act 2006 allows for the registration of land as a town green or village green where: "... 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".
2.15	If an open access policy were to come into effect on school playing fields (this potentially could include informal recreational use,) 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 Unfortunately, this advice has been superseded by a judgement of the Supreme Court on 3 rd March 2010 in the Redcar case. This case has set a precedent which offsets previous mitigation to registration.
2.16	The judgement of the Supreme Court is important in two respects: <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.
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 (off) their land to prevent future registration.
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.
5	CONCLUSION
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 (as town Green) 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.
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.
6	RECOMMENDATION
6 a)	The investment into Purdown and Stoke Lodge should be allowed to continue.
NB!	The extracts below have been inserted out of sequence from the original document to aid understanding of the full extent of the ultimate proposals, albeit that the work may be introduced in phases over time if this document and its recommendations are allowed to proceed to formalisation. The motivation being to prevent Town Green Registration by denying "as of right" public access.
2.41	The playing field (Stoke Lodge Parkland) is currently unfenced and allows unfettered community access.
2.42	The Stoke Lodge Playing Fields project proposes a major refurbishment of the field including the development of community facilities to the edge of the pitch, changing room improvements and pitch improvements. The scheme includes fencing to the perimeter of the site. It will be funded from a section consent for an investment of £1m (from the proposed disposal of a portion of land at the former Romney Infant/Junior Schools) that has DCSF approval. Additionally, a £600k Sport England Grant has been awarded for the scheme.