

Evidence item 5

Appendix I

This section includes;-

The Supplementary Arguments to demonstrate our compliance with the Commons Act 2006 qualifying criteria to secure registration.

Application for the registration of land as a Town or Village Green at Stoke Lodge Parkland, Stoke Bishop, Bristol, BS9 1BN.
Supplementary arguments.

We recognise that under the Commons Act 2006 in order to qualify for “Town or Village Green Status” we must satisfy the conditions that “***a significant number of inhabitants, of any locality or neighbourhood within a locality, have indulged as of right, in lawful sports and pastimes, on the land, for a period of at least 20 years,***” and for the purposes of clause 15.2 to apply then, “***and shall continue to do so at the date of the application***”.

We consider that we can demonstrate compliance with these criteria as explained below;-

a) “a significant number of inhabitants”

The population of Stoke Bishop (which includes Sneyd Park) is between 11,000 and 12,000 as confirmed in the Bristol City Council 2008 Ward Profile for Stoke Bishop, please see Evidence item 20.

The survey of use conducted in August 2010 by SSLP, (see evidence item 19), includes 373 interviews over 6 days during the height of the summer holidays when many residents were away, not all visitors were interviewed when the parkland was busy, and not all periods were covered, also no formal sport was scheduled, meaning that any findings concerning use are very conservative. Some of the major findings are;-

- i) Projected community visits of between 22,000 and 38,000 per year
- ii) Projected school visits of approximately 2160 per year
- iii) Percentage of visits from Stoke Bishop (which includes Sneyd Park), 68%
- iv) Percentage of visits from Stoke Bishop plus Westbury-on Trym and Sea Mills, 86%
- v) Percentage of visitors who walk from home to Parkland 85%
- vi) Percentage exercising without dog, 65%
- vii) Percentage with more than 20 years use, 34%
- viii) Percentage of visitors with no access to alternative open green space within easy walking distance, 71% (corrected)
- ix) Many of the visitors use the parkland on a regular basis. See Excel spread sheet column 8 “days per week”.
- x) During the Football and Rugby seasons the parkland is used extensively for formal and informal sports. The Cricket facilities are also used but not extensively during August, see witness statements

The community sent in excess of 250 letters of objection to the Council regarding the proposals contained in their Briefing Note recommending fencing off the site. See evidence item 21, containing extracts from some of these letters confirming their wish for the Parkland to remain as open green space.

In excess of 690 individuals signed a petition hosted by the Spar supermarket in Stoke Bishop objecting to the Council Briefing Note proposals, which would prevent community free access, (see evidence item 22). Additionally in excess of 170 residents gathered on 22nd August 2010 at a picnic in the park to protest about the recommendations contained in the Council Briefing Note (see evidence item 23 plus photographs in witness statements)

The Minutes of Neighbourhood Partnership Meetings held on 25th August 2010 and 15th September 2010 show that Cllr Clare Champion-Smith confirmed that she and the Council Cabinet were withdrawing the proposals contained in the Briefing Note due to the overwhelming demonstration of weight of public opinion. She confirmed the intent to retain the current status quo including free public access, thus confirming that Bristol City Council considered that the weight of public objection constituted a significant proportion with, importantly, zero community demonstration of support for the Briefing Note proposals throughout the consultation period. (see evidence items 13 and 14).

b) “of any locality, or of any neighbourhood within a locality”

Please see evidence item 6, containing three individual plans detailing the Political Ward Polling Districts (i) Stoke Bishop including Sneyd Park, (ii) Westbury on Trym and (iii) Kingsweston including Sea Mills; together with an extract from an Ordnance Survey Map, headed **“Locality Map”**, for the combined areas marked with a red line to indicate the locality identified within the survey of use, (see evidence item 19), accounting for 86% of use at Stoke Lodge Parkland. The map comprises the Political Ward of Stoke Bishop (excluding Durdham Downs and Clifton Downs which are protected and registered as a City wide amenity), plus the south western section of the Westbury on Trym Ward bordered by the A4015, and the polling district of Sea Mills, from within the Kingsweston Ward bordered by the A4162.

c) “have indulged as of right”

It is apparent from the actions of the community, including ongoing use plus the objections raised to the proposed fencing in the Council Briefing Note and the statements contained in this Application that they consider that when they have used the site, then they “have indulged as of right” in the legal context.

Furthermore the Council Briefing Note dated 22nd April 2010, (see evidence item 10 and particularly the extracts contained in evidence item 12) clearly demonstrates the threat to future development opportunities posed by Town and Village Green Status for Bristol City Council. The Briefing Note acknowledges the current situation of “unfettered public access”, clause 2.41. It then proceeds to set down their strategy to prevent free public access to frustrate achieving Town or Village Green Status.

The minutes of Neighbourhood Partnership meetings dated 25th August and 15th September, prepared by Council officers, clearly confirm that the Briefing Note recommendations have been withdrawn by weight of public opposition and that the current status quo of shared use with Cotham School by the Community shall continue “As of Right”. It should also be noted that the statements made by Cllr Clare Champion-Smith at the September meeting were endorsed by the Bristol City Council Cabinet, reinforcing the as of right statements.

In 1995 the only other green space in Stoke Bishop was sold for development. As a condition of Bristol City Council Planning Permission the developer was required to enter into a Section 106 agreement and make an agreed payment for the provision of Children’s Play equipment to be located specifically on Stoke Lodge Parkland. This is further demonstration that Bristol City Council considered that the community (including children) were entitled to use the Parkland as of right.

i) Without force

Stoke Lodge Parkland is accessible via numerous openings around the perimeter of the site, these openings are permanently available and no force is required to gain

access to the site, indeed the Briefing Note to Council dated 22nd April 2010 clause 2.41 states *“The playing field is currently unfenced and allows unfettered community access.”*

There are two signs on the Parkland (see evidence item 16a i & ii) installed by the now defunct County of Avon; these two identical signs are located at the West Dene Road access and the eastern corner of the site on Parrys Lane, adjacent to the recent Gas infrastructure installation. These signs do not deny access, they simply warn of the potential consequences of “trespass” under certain circumstances. To our knowledge these signs have never been enforced and no prosecutions have ever ensued, despite complete knowledge of community use, by the landowner, over many years.

There is also one newer sign installed by Bristol City Council in the grounds of the Grade 2 listed House, (see evidence item 16a iii). It is unclear if this sign applies to the House or the Parkland (or Playing Fields, which is the alternative nomenclature used by Bristol City Council); but in any event the sign does not deny access and simply warns of the potential consequences of “trespass”. To our knowledge this sign has never been enforced and no prosecutions have ever ensued, despite common knowledge of community use, by the landowner, over many years.

It is also perfectly possible to gain entry via recognised access points without seeing any one of these signs. At the Cheyne road access, (no signage), the Council have placed staggered logs and a bollard to prevent vehicular access whilst permitting pedestrian access with prams and buggies etc, (see evidence item 16b).



Any reference to “shared use” is on the basis of retaining the status quo i.e. as of right by the community but, not with permission.

ii) Without secrecy

Throughout the past 64 years the community have openly and without any subterfuge used the Parkland in the ways described in the witness statements and evidence questionnaires. Throughout this period the landowner has been fully aware of community access and use.

iii) Without permission

Both the House and Parkland are owned by Bristol City Council. The House is utilised as an adult learning centre, and the Parkland is administered by the Education Department now referred to as Children and Young People's Services. Bristol City Council has granted Cotham School the use of the Parkland and sporting pitches. However, Cotham School is located approximately 3 miles by road from this site and as well as the school's own use of the sports facilities, which is limited, they administer the renting of pitches to local clubs on afternoons, evenings and at weekends via their sub-contracted pitch maintenance team. Hence, the Education Department do use the Parkland for educational sporting activities, and Cotham School do raise revenue by renting out the pitches to local sports clubs for formal sports activities, i.e. not free and open access for formal sport activities albeit the money raised is retained by the pitch maintenance sub-contractor to pay for their services of, grass cutting, pitch marking and goal post erection etc.

However, in complete contrast, the parallel Community recreational use and informal sports are not administered and are conducted without permission and/or supervision. See evidence item 12, clause 5.3 where it is apparent that one of the tactics proposed by the Council Briefing Note to prevent Town or Village Green Status is to grant permission, thus confirming that they have not done so to date.

As part of this application it is intended that sporting use by Cotham School and local clubs should continue on the current basis with the current level of facilities, with the exception of improvements to the changing rooms which are currently not fit for purpose, pending repair/replacement.

iv) Local authority land

Stoke Lodge Parkland is administered by Children and Young People's Services and is not recognised as "Green Space" within Bristol City Council, and is not administered as public open space, see evidence item 18.

Achieving Town or Village Green status would protect the existing community use, as of right, in perpetuity, whilst retaining the shared use with the school and local sporting clubs sporting with the current level of facilities, with the exception of improvements to the changing rooms which are currently not fit for purpose pending repair/replacement.

Previous cases have confirmed that:-

Cutting the grass by the local Authority does not imply or grant permission for community use (*Beresford v Sunderland City Council*).

Additionally, where community use is conducted in parallel with formal sporting activity, and the community use defers to the sporting activity then, the community use as of right is maintained. (*Regina v Redcar and Cleveland Borough Council*)

d) "in lawful sports and pastimes"

We have no evidence to identify any unlawful activities such as cockfighting, badger baiting or prize fighting taking place on Stoke Lodge Parkland in the past 64 years. Conversely all the recreational activities and informal sporting activities described in the witness statements and evidence questionnaires fall into the category of "lawful sports and pastimes".

e) **“on the land”**

All of the land included in this application as shown on the plan relating to Application Form 44 section 5 and included as evidence item 5 is used by the community in the various ways described in the witness statements and evidence questionnaires throughout the year, and in the ways described in the survey of use.

f) **“for a period of at least 20 years”**

The witness statements and evidence questionnaires plus the survey of use demonstrate consistent use by the community throughout the whole ownership period by Bristol City Council of 64 years, continuing to date with no period of exclusion.

Indeed there is anecdotal evidence that the previous owners and occupiers of the House and Parkland, The Butlin Sisters allowed the Parkland to be used as a Cricket Field for the local club and they so much enjoyed the events that they constructed the Folly that has recently been restored, to watch the matches and encouraged the community to attend.

i) **Agriculture**

Not applicable

g) **“and continue to do so at the date of the application”**

i) **Use continuing**

See “f” above

ii) **Use ended no more than two years ago**

Not applicable

iii) **Use ended before 6th April 2007**

Not applicable

h) **The legislative framework**

We have used the Legislative framework extract from the Ashton Gate, Application for the registration of land as a Town or Village Green for guidance, (see evidence item 24); in particular page 8 clause 15 where it states “*It is important to note that a section 15 application can only succeed if (or to the extent that) the land the subject of the application is proved to satisfy the criteria set out in section 15(2), 15(3) or 15(4). Conversely, if those criteria are met, the application must be granted. No regard can be had to considerations of the desirability of the land’s being registered as a green on one hand, or of its being developed or put to other uses on the other hand. All such considerations are wholly irrelevant to the statutory questions which the registration authority has to decide, namely whether the land (or any part of it) is land which satisfies the specified criteria for registrability*”.

i) **Save Stoke Lodge Parkland AGM**

The progress regarding the pending submission of our Application for the registration of land as a Town or Village Green was discussed at the formal AGM of our stakeholder group on Friday 4th February 2011 and was ratified unanimously by the re-elected committee and community attendees.

j) **Conclusion**

In conclusion we trust that you find these arguments helpful and compelling, and we would be pleased to answer any questions that you might have.