iii. They recommend excluding the Community by erecting a perimeter fence consequently rendering Community use non compliant with the section 15 qualifying criteria of “as of right” for a continuous period of 20 years. Or to *“issue a formal resolution to the effect that the open access would represent the granting of a revocable permission within this time fame”* (clauses 5.3, 6a & 2.42). Neither of which had been done at the time of the TVG Application in March 2011 (or to date).

Please note that the assertion contained in clause 2.42 that Bristol City Council had sufficient funds to pay for the recommendations contained in the Briefing Note was found to be untrue. The disposal funds from Romney School (sale of education land) had been spent elsewhere and no application was made to Sport England for a Grant and consequently was not made. This is not indicative of transparency and honesty.

84. We also rely on our previous response(s) dated 15th June 2015. [see File 9]

G. Written submissions only for the Matters of Statutory Purpose and Statutory Incompatibility

85. We request that the matters of Statutory Purpose and Statutory Incompatibility are included in this Public Inquiry as written submissions, together with supporting printed evidence, because they are matters of law not reliant on the evidence of members of the Community based on their experiences of use of the Land included within the TVG Application.

We submit that we have set out our case in this written submission together with the submissions and supporting evidence referenced within the 10 Files comprising our bundle of documents for the Public Inquiry.

We shall supplement this submission: -

i. In our Statement of Case
ii. By rebuttal to the submissions submitted by the objectors on 3rd May 2016
iii. In our Opening Statement at the Public Inquiry
iv. In our Closing Statement at the Public Inquiry

We shall not be calling on witnesses from the Community to provide evidence on this matter of Law at the Public Inquiry

However, we reserve the right to comment during the Public Inquiry on statements made by the objectors’ representatives and to cross examine verbal evidence introduced by witnesses

86. We are pleased to note that the Inspector has personal, specialist knowledge and experience of the ***Newhaven*** case based on the particular details surrounding that case and consequently its implication in other circumstances.

87. We also refer to the evidence pertaining to a further TVG Application in Bristol at ***Wellington Hill Playing Fields.*** Previously referred to in paragraph 81 above. [see File 2, tab 7, pages 40 to 100]

At Doc 2 paragraph 1 the Applicant in that case states: -

> ***"As an initial point the Council ask that the officer for the Commons Registration Authority ("CRA") agree to a hearing of the issue of whether the use of the playing field has been "by right" ("BR") or "as of right" ("AOR"). They seek this as it will, they claim, save them costs and time. This presupposes that the application will be successful because if it not then the cost to the Applicants will have increased and the time taken to reach a final conclusion will have been greater. If the CRA determine that the use has been AOR then there will need to be a subsequent hearing and this will increase the overall costs to the Applicants who are essentially funded by a voluntary organisation comprised of local people without funding, unlike the Council. This is an abuse of process by the Council, with the intention of outspending an Applicant."***
> (Emphasis added by this Applicant)

We make the same point as the Applicant in that case, as we feel that the continued rejection of the Inspector's Report and Recommendation, dated 22nd May 2013, and repeated change in reliance on "signs" and "permission" show that Bristol City Council seeks to embarrass this Applicant financially.

H. "As of right" – without force - signs

88. We submit that the three signs on Stoke Lodge Parkland are not effective and we refer to our previous submissions / responses / evidence regarding the effectiveness of signs on, or adjacent to, Stoke Lodge Parkland and where we have argued that the recognised legal precedents listed by ourselves and the objectors do not prejudice this Application but conversely support it: -

   i. Our Application dated 4th March 2011 volume 1 of 3
   Evidence tabs: 1, 5, 10, 12, 14,16,17,19, 21 and 22 in that document.
   [see File 3]

   ii. Our Application dated 4th March 2011 volume 2 of 3
   Evidence tabs: (witness statements) 1 – 30 in that document.
   [see File 4]

iii. Our Application dated 4th March 2011 volume 3 of 3
Evidence tabs: - 1 – 23 (witness statements) in that document.
[see File 5]

iv. The Applicant's submission dated 30th January 2012 in response to the objection from Bristol City Council dated 18th November 2011
Evidence tab: 3, sections 4, 13 and 15 to 26 in that document.
[see File 6, tab 3, pages 7 to 31]

v. The Applicant's submission dated 30th January 2012 in response to the objection from Cotham Academy dated 29th November 2011
Evidence tab: 4, sections 1 and 8 to 13 in that document.
[see File 6, tab 4, pages 32 to 38]

vi. The Applicant's submission dated 30th January 2012 in response to the objection from The University of Bristol in the form of Coombe Dingle Sports Centre dated 10th November 2011
Evidence tab: 5, sections 1, 7, 9, 11 (para 6), 15, 16 and 17 in that document.
[see File 6, tab 5, pages 39 to 46]

vii. The Applicant's submission dated 30th January 2012 in response to the objection from Rockleaze Rangers dated 14th November 2011
Evidence tab: 6, sections 1 and 17 in that document.
[see File 6, tab 6, pages 47 to 53]

viii. The Applicant's submission dated 30th January 2012 –
Evidence tab: 8 in that document comprising 81 additional witness statements specifically relating to "signs" and access "as of right".
[see File 6, tab 8, pages 66 to 155]

ix. The Applicants submission dated 31st March 2012 in response to the objection from The University of Bristol in the form of Coombe Dingle Sports Centre dated 9th March 2012
Evidence tab: 2, sections 2 -18 and 34 – 36 in that document.
[see File 7, Response to UoB, tab 2, pages 5 to 24]

x. The Applicant's submission dated 31st March 2012 in response to the objection from Rockleaze Rangers dated 9th March 2012
Evidence – Signs not considered important enough to be raised by the objector – hence not included in the Applicant's response in that document.
[see File 7, Response to Rockleaze Rangers, tab 2 pages 157 to 165]

xi. The Applicant's submission dated 5th October 2012 in response to the objection from Bristol City Council dated 21st August 2012

Evidence – Sections 2, 4 - 20, 22 – 31, and 40 in that document.
[see File 8, response # 3, pages 3 to 31]

xii. The Applicant's submission dated 31st January 2013 in response to the objection from Bristol City Council dated 21st December 2012
Evidence tab 2: - sections 3 – 8, and 12 – 15 in that document.
Evidence tab 3: all 68 pages contain pertinent responses
Evidence tab 4; Legal Statement as requested by the Inspector
[see File 8, response # 4, pages 35 to 134]

xiii. The Applicant's submission dated 31st July 2013 in response to the objection from Cotham Academy dated 25th July 2013
Cotham make a passing remark with regard to signs at section 13: but we submit that they fail to raise, in that document, any specific comments regarding the effectiveness of signs or provide any of the evidence regarding signs requested by the Inspector.
[see File 8, response # 5, pages 136 to 149]

xiv. The Applicant's submission dated 26th August 2013 in response to the objection from Bristol City Council dated 25th July 2013
All 27 pages contain pertinent responses, in particular sections 31 – 40 and 42 – 45. However, we submit that the objector fails to raise, in that document, any specific comments regarding the effectiveness of signs or provide any of the evidence regarding signs requested by the Inspector.
[see File 8, response # 6, pages151 to 180]

xv. The Applicant's submission dated 16th December 2013 in response to the to the statement issued by Bob Hoskins (Bristol City Council) on behalf of the objectors on 25th October 2013
All 14 pages contain pertinent responses. However, we submit that the objector fails to raise, in that document, any specific comments regarding the effectiveness of signs or provide any of the evidence regarding signs requested by the Inspector.
[see File 8, response # 7, pages 217 to 230]

xvi. The Applicant's submission dated 16th December 2013 in response to the to the statement issued by Simon Hinks (Coombe Dingle Sports Centre) on behalf of the objectors on 24th October 2013
All 15 pages contain pertinent responses. However, we submit that the objector fails to raise, in that document, any specific comments regarding the effectiveness of signs or provide any of the evidence regarding signs requested by the Inspector.
[see File 8, response # 7, pages 202 to 216]

xvii. The Applicant's submission dated 16th December 2013 in response to the to the statement issued by Mel Sperring (Cotham Academy) on behalf of the objectors (unsigned and undated)
All 10 pages contain pertinent responses. However, we submit that the objector fails to raise, in that document, any specific comments regarding the effectiveness of signs or provide any of the evidence regarding signs requested by the Inspector.
[see File 8, response # 7, pages 182 to 191]

xviii. The Applicant's submission dated 16th December 2013 in response to the statement issued by Ross Burnham (Rockleaze Rangers) on behalf of the objectors on 1st November 2013
All 10 pages contain pertinent responses. However, we submit that the objector fails to raise, in that document, any specific comments regarding the effectiveness of signs or provide any of the evidence regarding signs requested by the Inspector.
[see File 8, response # 7, pages 192 to 201]

xix. The Applicant's submission dated 15th June 2015 in response to the objection from Cotham Academy dated 4th March 2015
All 31 pages contain pertinent responses. However, we submit that the objector fails to raise, in that document, any specific comments regarding the effectiveness of signs or provide any of the evidence regarding signs requested by the Inspector.
[see File 9, response # 8, pages 33 to 63]

Furthermore, based on the further research leading to our comments in Sections D and E of this document regarding the absence of any statute relating to the amount of sport required to be undertaken within schools, we now object to the comments by the objector contained within section 5 [see File 9, response # 8, page 45], referenced in that paragraph, where the Objector predicates his assertion on the basis of ***"required"*** sporting facilities. Which we now submit is false and intended to deceive.

xx. The Applicant's submission dated 15th June 2015 in response to the objection from Cotham Academy dated 28th April 2015.
All 31 pages contain pertinent responses. However, we submit that the objector fails to raise, in that document, any specific comments regarding the effectiveness of signs or provide any of the evidence regarding signs requested by the Inspector.
[see File 9, response # 8, pages 3 to 32]

xxi. The Applicant's submission dated 15th June 2015 in response to the objection from Bristol City Council dated 28th April 2015.
All 35 pages contain pertinent responses. However, we submit that the objector fails to raise, in that document, any specific comments regarding

the effectiveness of signs or provide any of the evidence regarding signs requested by the Inspector.
[see File 9, response # 8, pages 64 to 98]

xxii. The Applicant's submission dated 10th July 2013 in response to the objection from Cotham Academy dated 29th June 2015
All 7 pages contain pertinent responses. However, we submit that the objector fails to raise, in that document, any specific comments regarding the effectiveness of signs or provide any of the evidence regarding signs requested by the Inspector.
[see File 9, response # 9, pages 266 to 272]

xxiii. Applicant's submission dated 18th December 2015 in response to the witness statement issued by Susan Comer, on behalf of Bristol City Council, dated 20th January 2015 (issued by the RA on 27th November 2015 following receipt from the Landowner).
[see File 10, tab 16, page 69]

Importantly, this witness statement from Susan Comer [see File 2, tab 21, pages 218 to 225] provides important new evidence which we introduce into our submission in paragraph 93 below. However, we submit that the objector fails to raise, in that document, any specific comments regarding the effectiveness of signs or provide any of the evidence regarding signs requested by the Inspector.

xxiv. Applicant's submission dated 24th December 2015 in response to the witness statement issued by Nathan Allen (Cotham Academy) undated but issued by BCC CRA on 22nd December 2015.
[see File 10, tab 17, page 69]

Mr Allen makes only a passing reference to signs at paragraph 4, 8 & 10 of his statement. However, we submit that the objector fails to raise, in that document, any new specific comments regarding the effectiveness of signs or provide any of the evidence regarding signs requested by the Inspector.

Importantly, Mr Allen's statement at paragraph 10 does support our contention that the sign outside the Adult Learning Centre was installed in 2009 (We expand this argument at paragraph 93 below).

89. We refer to the Inspector's Report dated 22.05.13 [see File 10 tab 3, pages 12 to 35] containing the recommendation that the TVG Application Land at Stoke Lodge Parkland should be registered as a Town or Village Green and setting out the rationale in concise and precise detail for that recommendation including the matter of signs at paragraphs 4, 5, 6, 12, 13 and 68 – 72.

90. We refer to other Further Directions from the Inspector where the ongoing debate regarding the issues of signs is once again well documented and actions set down.

    i. Dated 11.09.13 pages 1 - 5
    [see File 10, tab 4, pages 36 to 41]

    ii. Dated 30.01.14, paragraphs 5,8, 10.11 & 12
    [see File 10, tab 5, pages 42 to 44]

    iii. (Applicants letter) dated 13.02.14
    [see File 10, tab 15, pages 65 to 68]

    iv. Dated 26.03.14, at the end of paragraph 2
    [see File 10, tab 6, page 45]

    v. Dated 03.03.16, page 3 of that document
    [see File 10, tab 9, pages 54 to 56]

    We submit that the objectors have repeatedly failed to provide any evidence regarding the effectiveness of the three signs located either on the Land or within the grounds of the Adult Learning Centre as requested in the Further Directions listed above.

91. Avon signs

    i. We have set out in our previous responses, listed in paragraph 88 above, why we consider that the two Avon signs are not effective or determinative. This is supported by the contents of the Inspector's Report dated 22.05.13 as referenced in paragraph 89 above in particular at paragraphs 4, 5, 6, 12, 13 and 68 – 72 of that document. [see File 10, tab 3, pages 12 to 35]

       In the Inspector's Further Directions dated 11th September 2013 [see File 10, tab 4, pages 36 to 42] at the top of page 4, of that document, the Inspector said: -
       "It is possible that Mr Mayer does dispute the posting of these additional signs, but I do not think that would make any difference to my conclusion as to the effect of the signs put up in 1985/86….".

       We maintain that these arguments are still relevant and these two signs are *"not determinative"* to this Application.

    ii. The application to register Wellington Hill Playing Fields, Horfield, Bristol, was ultimately successful. [see File 2, tab 7, (Doc 4), pages 90 to 100] During the application process Bristol City Council suggested that signs

with the same wording as those installed at Stoke Lodge Parkland were installed at Wellington Hill playing fields, although this was disputed by the applicant. However, the applicant did set out in considerable detail [see File 2, tab 7, (Doc 3), pages 87 to 89] why they considered that they would have been ineffective anyway. We include this evidence to support our contention that the Avon signs are ineffective at Stoke Lodge Parkland.

iii. Interestingly, Bristol City Council's claim that signs at Wellington Hill playing fields containing the same wording as those at Stoke Lodge Parkland was led by Peter Clarke and Bob Hoskins who used photographs of the signs at Stoke Lodge Parkland to make their case at Wellington Hill playing fields which was strenuously rejected by the applicant.

This matter was taken up by the Local Newsletter the "Bristolian" which made their feelings on the matter very clear [see File 2, tab 17, pages 210 & 211].

iv. We await the final submission from the objector's on 5th May 2016 to see if they present any new arguments to support their case supported by credible evidence.

92. New Bristol City Council sign outside the Adult Learning Centre

i. We have set out in our previous responses above in paragraph 88, why we consider that the new sign outside the Adult Learning Centre is not effective. This is supported by the contents of paragraphs 89 and is further discussed, and further information / evidence requested, in the Inspectors Further Directions listed in paragraph 90 above.

We maintain that our arguments are still relevant and this sign is *"not determinative"* to this Application, for any one of the following reasons.

ii. The sign could easily be considered to apply to the Adult Learning Centre because it refers to "Grounds" not "playing fields" or "pitches" or "Sports Grounds" and "Grounds" is more associated with Houses with gardens than Open Parkland or sports pitches; i.e. in exactly the way the Inspector refers to the land immediately surrounding the Adult Learning Centre in his Report and Recommendation dated 22nd May 2013 at paragraph 10 in that document. [see File 10, tab 3, page 14]

In support of this argument please see attached photographs

a. The sign outside the Adult Learning Centre at Stoke Lodge Parkland referring to "Grounds". [see File 2, tab 18, page 212]

b. The sign at Kellaway Avenue playing fields, which importantly is the facility that Cotham left to transfer to Stoke Lodge Parkland, with far more unambiguous wording and mounted on two posts to prevent it from being rotated. [see File 2, tab 19, page 213 to 215]

c. Hence, we submit that either Bristol City Council recognised that their sign outside the Adult Learning Centre was deficient before erecting a sign at Kellaway Avenue or that the sign outside the Adult Learning Centre is not typical of signs associated with playing fields.

d. Either way we submit that it is not effective and is not capable of being determinative in this case.

iii. We maintain that the new sign adjacent to the Adult Learning Centre has been constantly rotated, since the date of its installation, which adds to the confusion. Please refer to our previous response to the statement by Bob Hoskins dated 16th December 2013 section 18 [see File 8, Response # 7, tab 4, pages 217 to 230] where we state that: -

"We contend that there is not a factual dispute that the "Bristol City Council" sign has been re-orientated as it was admitted by Mr Simon Hinks in his second objection [see File 7, response to UoB, tab 2 page 6] *where he states that: - "**We agree that the signs have been ignored, changed and moved over a period of time.........**" . Please refer to our response dated 31st March 2012 to the University of Bristol* [see File 7, response to UoB, tab 2, pages 5 to 24] *paragraph 5 on pages 2 and 3 of 20 which additionally refers to our response dated 30th January 2012 to Bristol City Council* [see File 6, tab 3, pages 7 to 31] *paragraph 13, second bullet point, where we provide evidence to support our assertion based on the difference in reflected images in the photograph contained in the Application and the current reflection. The statement by Mr Hinks above was therefore made in response to our assertion that this sign had been rotated after we had presented the evidence of change. We have reproduced this evidence on page 14* [see File 8, response #7, tab 4 page 230] *of this* [that] *response with additional photographs to provide proof that the sign was rotated post Application.*

Having established that the Bristol City Council sign has been rotated at least once post Application we submit that the possibility exists that the sign could have been rotated during the period it was installed prior to the Application with the further possibility that it could have faced the field not the house.

Furthermore, our argument that this sign could relate to the Adult Learning Centre is only one of a number of standalone arguments, each of which we contend renders this particular sign ineffective in determining "as of right"

use within the Town or Village Green Application. Please refer to our responses: -

a. *Firstly on issues specifically relating to the Bristol City Council sign*
   i. *Our response dated 30th January 2012 (tab 3) to Bristol City Council paragraph 13 pages 12,13 &14* [see File 6, tab 3, pages 7 to 31]
   ii. *Our response dated 31st March 2012 to the University of Bristol paragraph 5 pages 2 & 3* [see file 6, tab 5, page 39 to 46]

b. *Secondly relating to signs across the site as a whole including issues of legal precedent, public understanding (Sunningwell etc), non effectiveness, and non enforcement of the signs which satisfy "as of right" use i.e. without force, without permission, and without secrecy*
   i. *Our response dated 30th January 2012 (tab 3) to Bristol City Council paragraphs 13, 16 to 26 incl* [see File 6, tab 3, pages 7 to 31]
   ii. *Our response dated 30th January 2012 (tab 5) to the University of Bristol paragraph 10* [see File 6, tab 5, pages 39 to 46]
   iii. *Our response dated 31st March 2012 to the University of Bristol paragraphs 2 to 19 incl* [see File 7, response to UoB, tab 2, pages 5 to 24]
   iv. *Our response dated 5th October 2012 to Bristol City Council paragraphs 4 & 8 to 19 incl* [see File 8, Response #3, tab 2, pages 3 to 31]
   v. *Our Legal Statement contained as a separate document within the bundle dated 31st January 2013, paragraph 5."* [see File 8, response #4, tab 4, pages 124 to 134]

[For ease of reference the photographic evidence referred to above is included in File 2, tab 22, page 226.

iv. We maintain that this is one sign at one entrance and represents a very small proportion of Community use "as of right"; [see File 4 all pages, File 5 all pages, File 6, tab 8, pages 66 to 155] but does provide an important point of access for Formal Sports users from visiting teams that use the car park. Formal Sports use is excluded from our Application as per ***Redcar***.

v. There are numerous other entrances, certainly in excess of 20 (please refer to our response dated 31st March 2012 to Coombe Dingle Sports Centre: Evidence tab 2 – section 15 and Evidence tab 5, in that document, for the photographic evidence). [see File 7, response to UoB, tab 2, pages 5 to 25 and tab 5, pages 58 to 62]

vi. We have provided considerable evidence of Community use: -

a. 54 witness statement contained in our Application volumes 2 & 3 of 3. [see Files 4 and 5]

b. The survey of use conducted in August 2010. See Application vol 1 of 3 evidence tab 19 (appendix xv) recording 373 interviews of individuals and groups extrapolated to give an annual use of between 22,000 and 38,000. [see File 3, tab 19, pages 112 to 120]

c. Extracts from letters of objection to the Bristol City Council Briefing Note to Cabinet dated 22nd April 2010. Please see Application vol 1 of 3, evidence tab 21 (appendix xviii). [see File 3, tab 21, pages 123 to 137]

d. A petition (dated August 2010) with 690 signatures objecting to the proposal within the Briefing Note to Bristol City Council Cabinet dated 22.04.10 recommending fencing to exclude the Community from Stoke Lodge Parkland to frustrate any TVG Application. Please see Application vol 1 of 3, evidence tab 22 (appendix xviii). [see File 3, tab 22, pages 138 to 181]

e. 81 additional witness statements concerning signs and access "as of right" For evidence see our response dated 30th January 2012 evidence tab 8. [see File 6, tab 8, pages 66 to 155]

vii. It is possible to access at one end of the field and leave at the other without ever seeing a sign, as confirmed by the Inspector in his Report dated 22nd May 2013, paragraph 69. [see File 10, tab 3, pages 12 to 35, paragraph 69]

We do not dispute the existence of two Avon signs (which we maintain are not effective) and one new Bristol City Council sign in the grounds of the Adult Learning Centre (which we also maintain is not effective). We do however make the point that there are in excess of twenty "unfettered" Community access points plus at least 12 (at the last count) private gates from gardens bordering the Parkland.

We also make the point that Community use has always been without secrecy, without force and without permission as shown by the extensive evidence listed so far in this submission. In particular we refer to the questionnaires contained within the Application dated 4th March 2011, Volumes 2 & 3 [see Files 4 & 5 all pages], where the vast majority of the 54 witnesses who provided a questionnaire to support the Application in March 2011 answered 'No' to questions 31 and 33 (have you ever asked for permission to use Stoke Lodge Parkland? and has anyone ever given you permission to use Stoke lodge Parkland?). Three witnesses did

answer 'Yes', but we set out below their rationale for doing so, which we submit does not mitigate against the TVG Application

Two witnesses did qualify their 'Yes' answer to question 31 or 33 confirming that they did seek permission to use of a pitch for Formal Sport, not Community use for lawful sports and pastimes, in the same way that a dog walker in Redcar might pay for a round of golf at Redcar Golf Club.

Please refer to our Application dated 4th March 2011, volume 2, tab 17, John Parsons [see File 4, tab 17, pages 116 to 122] where he states: - *"Yes – In the 1960's to play cricket for the University of Bristol staff cricket club."*

Please refer to our Application dated 4th March 2011, volume 3, tab 15, Philip Smith [see File 5, tab 12, pages 85 to 91] where he states: - *"For a cricket match from the University of Bristol"*

One witness did qualify their 'Yes' answer to questions 33. Please refer to our Application dated 4th March 2011, volume 2, tab 31, Nicholas Rose, [see File 4, tab 31, pages 223 to 230] where he states: - *"Yes – users have told me it is general knowledge anyone can use it".* Which we submit is not the same as requesting permission from the Landowner or their agents.

Three witnesses did qualify their 'No' answer to questions 31 or 33 which we submit adds additional support to the Application.

[see File 5, tab 8, page 60] where he states: - *"have never seen any indication that permission was necessary".*

[see File 5, tab 14, page 102] where he states: - *"Not directly – but I do have access through my gate (in my garden)".*

[see File 5, tab 19, page 139] where he states: - *"No – we just used it".*

All other answers to questions 31 and 33 were a simple 'No'

viii. Access via the new sign in question is only one of three or four options to access the Parkland when entering via the gateway on Shirehampton Road and we submit that this option has a low foot fall except for Formal Sports users using the car park. Furthermore some residents still claim not to have seen the new sign in question at the time of the Application. [see File 2, tab 20, pages 216 & 217]. Please note the date of this e-mail - July 2013, i.e. over 2 years after the date of the Application.

ix. If residents saw it and if they considered that it applied to the playing fields they simply ignored it because it was never enforced. As acknowledged by Simon Hinks (from the University of Bristol, employed by Cotham

Academy as their pitches maintenance contractor) and included in our response dated 31st March 2012, evidence tab 2, section 5, page 2 of 20 of that document [see File 7, response to UoB, tab 2, section 5, page 6] where he states that: -

> **"We agree that the signs have been ignored, changed and moved over a period of time and this reflects the nature of the change of casual access points by members of the public across the site."**

x. We maintain that the new sign is not determinative based on the above arguments, all of which have been presented by us in previous submissions as referenced above.

93. We have long believed that the timing of when this "*new sign*" was installed has been exaggerated by the objectors to give it increased status, but previously we have not been able to corroborate our concerns. However: -

i. Following receipt of the statement from Susan Comer dated 20th January 2015 on behalf of the objectors we can now accurately establish a short period during which the sign was installed. [see File 2, tab 21, pages 218 to 225]

ii. By reference to Exhibit SC.1 within her statement dated 26th March 2009 (e-mail subject: - "No trespassing signs" with attachment: - NT 01- Stoke Lodge.pdf..) it can be shown that the sign was erected between 26th March 2009, i.e. the date of the e-mail, (more probably April/May to allow for approval, manufacture and installation) and July 2009 as evidenced by the letter from Lynne Randall dated 16th July 2009 see Exhibit SC.2.

iii. This shows conclusively that this sign was installed <u>less</u> than two years before the TVG Application was submitted on 4th March 2011.

iv. We submit: - that under the Section 15 criteria it is recognised that if use is prevented for a "Grace Period" of up to two years an Application can still be made and can be successful. [15. (3)]

Importantly, we are not changing the grounds of our Application under section (2). We are merely making the point that there is a further question regarding the validity / non validity of this sign to be "*determinative*" in this Application.

94. However this new evidence regarding the timing of when this sign was installed brings into question previous statements by BCC officers which contained inaccuracies and puts into question their motivation for doing so.

i. Please refer to our response to Bristol City Council dated 30.01.12 section 13 [see File 6, tab 3, pages 7 to 31 paragraph 13] where BCC states: -

"…. and one more recent sign which it is believed was erected approximately five years ago."

Given that this statement was included in the BCC submission dated 18th November 2011 that means that they are claiming that the sign was erected in 2006 and not 2009 as we have shown above.

Importantly, the wording of this claim has been changed from the original report that we obtained from Susan Comer [see File 2, tab 23, pages 227 to 233 paragraph 14] which formed the basis of the submission made by Bristol city Council on 18th November 2011 [see File 6, tab 3, pages 7 to 31, paragraph 13]. Clearly this false claim emanated from Mr Tony Havens.

This false claim is now contradicted by Mr Havens in his new statement dated January 2016 [see File 2, tab 25, pages 237 to 238, paragraph 6] where he claims that the new sign was erected in 2008 / early 09, close, but still completely wrong.

We have to ask why Mr Havens made this false claim. Clearly his memory is better now than it was in 2011 so we can only conclude that it was a deliberate act, possibly intended to mislead and aid BCC in their quest to frustrate the TVG Application.

ii. Please refer to Tony Havens' e-mail dated 15th August 2012, i.e. after the initial claim above, included as Exhibit SC.4 [see File 2, tab 21 page 224] within the witness statement from Susan Comer dated 21.01.15.

The e-mail chain includes a comment from Sue Comer (BCC officer) to Liz Peddle (BCC education officer) stating that: -

"Yes, the sign to the left of the house was there last year when I visited the playing fields. Tony Havens advised that it was put up 5 – 6 years ago. ….."

We submit that it was actually 3 years prior to the date of the e-mail, i.e. less than 2 years before the date of the TVG Application.

Please note also that Liz Peddle (BCC education officer) commented on the fact that it looked new as at 09.08.12 and makes reference (and raises an implied question) to the fact that the wording included: - "***Property & Local Taxation"?*** [see File 2, tab 21, page 224] as the department to seek permission for access; not the "Education Department" which would have been more logical if the sign did relate to the playing fields and hence added to the confusion.

Please note that at the time of the Application the Adult Learning Centre was administered by "Libraries" and hence the link with ***"Property and Taxation"*** and the Adult Learning Centre could be seen as more logical.

iii. With regard to the various statements by Mr Bob Hoskins: -

a. Mr Hoskins made a statement, dated 31st August 2011, regarding the TVG Application at **Wellington Hill** playing fields, Horfield, Bristol and the alleged Avon signs at that location. [see File 2, tab 7, Doc 1, pages 68 to 73] Clearly his statement could not be corroborated and was vehemently disputed by the applicant in that case [see File 2, tab 7 Doc 3, pages 87 to 89] That Applicant submitted very cogent and powerful arguments why, had these signs ever existed (disputed by the Applicant) then, they would be ineffective in any event. Additionally, Mr Hoskins' employers (Bristol City Council) apparently did not find his evidence credible either as shown by their decision to withdraw their objection and consequently allowing the CRA to recommend registration of the Land at **Wellington Hill** as a Town or Village Green. [see File 2, tab 7, Doc 4, pages 90 to 100]

   We incorporate the arguments put forward by the Applicant in the **Wellington Hill** TVG Application in Doc 3 listed above in this submission [see File 2, tab 7, Doc 3, pages 87 to 89] in support of our Application.

b. Mr Hoskins has made two statements regarding this TVG Application, one on 1st August 2013 and one on 25th October 2013.

c. With reference to his statement regarding this TVG Application dated 1st August 2013. Please see our previous response dated 26th August 2013, sections 35 to 40 [see File 8, Response #6, tab 1, pages 151 to 178, sections 35 to 40] where this statement is referenced by Leslie Blohm QC; and where we challenge the unsupported claims contained in the statement by Mr Hoskins. These claims are similar to those made by Mr Hoskins in the Wellington Hill playing fields TVG application where BCC withdrew their objection, also there are several recurring themes including disappearing signs.

   Importantly Mr Blohm makes the point (disputed by the Applicant and by the Inspector in his Report dated 22nd April 2013) that the Avon signs render use by the Community contentious i.e. 'with force'; but crucially he also recognises (not disputed) that Community access was 'without permission'. [see File 8, Response #6, tab 1, section 36, page 170]

d. For a copy of Mr Hoskins's statement dated 1st August 2013. [see File 2, tab 24, pages 234 to 236] The content of this statement bears a striking resemblance to the statement issued by Mr Hoskins in the **Wellington Hill** playing fields TVG application. [see File 2, tab 7, Doc 1, pages 68 to 73] Importantly Mr Hoskins does confirm that Community use is without permission

e. With regard to Mr Hoskins's statement dated 25th October 2013 please refer to our previous response dated 16th December 2013, [see File 8, Response # 7, tab 4, pages 217 to 230] where we dispute at length the unsubstantiated assertions made by Mr Hoskins with regard to the Avon signs and the new Bristol City Council sign in the grounds of the Adult Learning Centre.

   Additionally, now that we can definitively show the date when the new sign was erected we now dispute the assertions made by Mr Hoskins in section 7 where he claims that the sign was erected "approximately 5 years ago" i.e. October 2008. Clearly wrong, but more significantly claiming it to be more than two years before the TVG Application, where as we submit that we have shown that it is less than two years before the TVG Application date. Also there is a recurring theme of missing/ disappearing signs, prevalent in his statement in the Wellington Hill TVG Application, none of which can be corroborated and are contradicted by the 150+ statements that we as Applicant have included previously and in this bundle of documents

   Furthermore within our response dated 16th December 2013 we list under the sections based on Mr Hoskins statement the evidence repeatedly requested by the Inspector which Mr Hoskins and the objectors have failed to provide [see File 8, Response #7, tab 4, pages 222 to 230, sections 11 to 24]

I. "As of right" – without permission

95. With regard to ***Barkas***, and use in that case *"with permission";* we contend that the circumstances at that North Yorkshire site are different and hence not relevant at Stoke Lodge Parkland. Furthermore we believe the objectors share that view. [see File 9, Response # 8, tab e, section 24, page 94] and Mr Grounds makes no reference to Barkas in his submission dated 28th April 20, [see File 9, Response #8, tab c, pages 3 to 32].

96. However if the objectors reintroduce this argument in their submission dated 3rd May 2016 as a point they wish to pursue we will respond in our rebuttal to be issued prior to 4.00pm on 6th June 2016.

J. Commons Act 2006, Section 15 qualifying criteria

97. The legal test for registration sets out that: -

Section 15(1) CA 2006 provides that '*Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies'.* For the application to succeed the legal test under Section 15(2)(a) and (b) of the Commons Act 2006 must be met.

The test is as follows: -

– *"That a significant number of the inhabitants of any locality, or of any neighbourhood in a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at 20 years, and they continue to do so at the time of the application"*.

The burden of proof rests with the Applicant to demonstrate that the criteria are satisfied. The standard of proof is the civil one – that is "on the balance of probabilities", or put simply, that it is more likely than not.

We support the Inspector's Report dated 22nd May 2013 [see File 10, tab 3, pages 12 to 35] recommending registration as a Town or Village Green.

We understand that future development (imagined or real) is excluded from the Section 15 qualifying criteria.

We understand that Health and Safety concerns (imagined or real) are not included in the Section 15 qualifying criteria.

We have argued elsewhere why Statutory Purpose and Statutory Incompatibility are not relevant to this Application.

K. Health and Safety

98. The Health and Safety at Work etc Act 1974 (as amended) places a general duty to "ensure so far as is reasonably practical the health, safety and welfare at work of all their employees".

99. In other words a management obligation, not a "**raison d'être**", or a "Statutory Purpose", and is capable of being discharged in various ways at the discretion of the school and does not require unreasonable measures.

This is usually undertaken by adopting tailored H&S policies and procedures including risk assessments, awareness and functional training coupled with reviews that lead to safe working practices and processes.

100. BCC officers have provided us with a very helpful report on how the obligations of the Act should be applied at Stoke Lodge Parkland within their Briefing Note to Cabinet dated 22nd April 2010 at Appendix E (page 18 of that document). Please refer to our Application dated 4th March 2011, vol 1 of 3, evidence tab 10 [see File 3, tab 10, pages 64 and 65]

> ***"1. There is a duty of care owed to pupils in a school in relation to their physical safety. The potential liability arising from open access can be considered at two levels:***
>
> - ***The Liability of the staff at the school. They would have to exercise reasonable care, in light of the policy, to ensure they take reasonable steps for the maintenance of the field…………….***
> - ***……………..***
>
> ***2. Counsel had suggested that there might be a possibility that any insurance cover the local authority may have for the playing fields may require a sizeable excess or that the cover could be invalidated if public access were permitted. This has been investigated with the City Council's Underwriter and is not the case. ……………..***
>
> ***3. ……***
>
> ***4. It is inevitable that 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). Counsel has stated that the legal duty is not to eliminate risk of injury but to take reasonable care in all circumstances in the same way as a reasonably careful parent would. Parents do allow their children to play games in open grassed spaces to which the public have access, and which is not inspected. Often this land is within local authority ownership and there have been few challenges under health and safety legislation or public liability claims. (Emphasis added by the Applicant)***

101. Additionally BCC officers have provided us with a very helpful report on the cost of inspecting grass playing fields within their Briefing Note to Cabinet dated 22nd April 2010 at Appendix F (page 20 of that document) [see File 3, tab 10, page 66]: -

> ***"4. Officers from the Parks Team within the Neighbourhoods Department have identified the cost of an operative and vehicle to undertake general site inspections, emptying bins, collecting litter and walking the site looking for sharps, general litter and debris on a daily basis would be a better option."***

Table One contains the lines

Site	***Hours per site***	***Cost per school day***	***Total estimated cost***	***Total estimated cost***

			for 190 school days	*for 365 days*
Stoke Lodge Playing Field	***2***	***£70***	***£13,300***	***£25,550***

102. Should Cotham consider that it is not reasonable for the teaching staff to carry out the inspections to discharge their duty of care they could employ a member of staff locally to undertake the task. That person will not need a company vehicle and will not be required to empty bins or remove waste from the site as since the date that the Community paid for general waste bins (including dog waste) to be provided and emptied by the Council that task is undertaken separately. The total number of days included by Cotham in the year 2015/16 is 191 (See table above). The time estimated by BCC for the task is 2 hours per school day, hence the salary cost would be say 191 x 2 x £10 = £3,820 plus employment costs at say 20% = £4,584.00 say £5,000.00 as an upper limit.

    We offer the above calculation as an academic exercise not a solution because Cotham use is less than 3 visits per week in term time only and does not extend to all the available pitches, and to demonstrate that the cost of a perimeter fence to exclude the Community is not proportionate or reasonable.

    In stark contrast Community use is conducted 365 days per year engaged in lawful sports and pastimes, as of right, on a shared basis as per the ***Redcar*** case.

103. We do accept that the school does have a duty of care to take reasonable steps to protect their staff and students (Not a Statutory Purpose or a raison d'être) but we maintain that their response needs to be proportionate and reasonable and we maintain that that does not require the site to be fenced and the Community excluded.

    Importantly the Formal Sports users, in particular the junior Football Clubs whose use has not diminished, face the same Health and Safety obligations as do Cotham Academy and they abide by their own Health and Safety policies and procedures which include site inspections and removal of any litter etc.

104. Additionally in our previous response dated 15th June 2015 to Cotham Academy's letter dated 4th March 2015 (at section 8, pages 23 & 24 of 31 and evidence tabs 6 & 7 in that document) [see File 9, Response to Cotham's submission dated 04.03.15, section 8, pages 49 to 56] we evidenced what actions the school should be undertaking to comply with their own rules at any site that they use.

    At page 55 we stated that: -

"We contend that the matter of dog faeces, as experienced at Stoke Lodge Parkland, is minimal, not significant, and does not present an unacceptable risk to school children, provided that use is undertaken in accordance with appropriate risk assessment policies and procedures, as adopted by Cotham Academy. (And the world at large).

Cotham Academy has a "Child Protection and Safeguarding Policy". (See Appendix 6 for a copy this document, taken from the Cotham web site on 26.03.15) [see File 9, response # 8, tab 6, page 219 to 228] *This document is an overarching Policy document that makes no mention of Dog Faeces. However, on page 6 it does refer to a separate "Health and Safety policy". See Appendix 7 for a copy of this document, taken from the Cotham web site on 26.03.15.* [see File 9, response # 8, tab 7, pages 229 to 264] *On page 17 of this policy document under the heading of Playing fields it states: -*

3.20.1 An inspection of playing fields must be included as part of the seasonal three times a year inspection programme. This will be to look for physical defects to the grounds which may increase the likelihood of slips, trips, and falls, as well as checking that fields are free from broken glass and other sharps. A visual inspection of playing fields will also be carried out before organised games and contact sports and all debris removed.

We submit that the School and its pupils can rely on these policies and procedures, as deemed appropriate by Cotham Academy, being enacted to keep Cotham users safe and hence enabling Cotham Academy to discharge their duty of care with regard to Health and Safety."

105. We note that Cotham Academy publicises with pride on their web site and in their Newsletter pupil participation in the "Ten Tors" annual, overnight, expedition/hike on Dartmoor and other adventure holidays. We support these activities and accept that they are beneficial to pupils. We are aware that they involve training/practice in advance to properly prepare and hence are not limited to one weekend per year. To the best of our knowledge "Ten Tors" is not subject to close supervision and the ground that they cover is not inspected. We therefore question how Cotham reconcile accepting the risk(s) posed by "Ten Tors" and seeking to change the status quo at Stoke Lodge Parkland, especially when considering that they have their own policies and procedures in place that do not mention use of only fenced and gated facilities that exclude Community access.

106. The School is fully insured therefore, by extension, their insurer is happy that the existing status quo at Stoke Lodge Parkland is not unreasonable and consequently an acceptable insurable risk.

107. Cotham Academy maintains that Coombe Dingle Sports Centre (300 yards from Stoke Lodge Parkland) is a safe alternative to Stoke Lodge and is the reason why they use those facilities.

However we submit that Stoke Lodge Parkland is just as safe as Coombe Dingle Sports Centre because: -

i. Whilst Coombe Dingle Site is closed at night for security reasons the various gates are wide open throughout the day and evenings up until 10.30.pm.

ii. It is a condition of their funding that there is public access at all times during the day and evening.

iii. All facilities are available to rent by the public; this includes non sporting facilities including meeting rooms and the bar.

iv. Spectators are welcome including those from visiting schools and teams.

v. The internal car park is open and available to all including buses and coaches.

vi. There is a Public Right of Way that splits the site into two with easy access to the secluded and very quiet Cemetery/ Crematorium.

vii. There are no security checks on any of the gates.

viii. Spectators are often accompanied by their dogs.

ix. The grass pitches at Coombe Dingle are unfenced and are inspected ahead of use.

x. Locking the gates at night is not a guaranteed solution to prevent access at night. There is a history of damage to the old pavilion and the Applicant's garden shed was burgled at night by perpetrators accessing his garden from within Coombe Dingle Sports Centre.

xi. We speak with authority on this topic because the Applicant's house backs on to the Land and we (the Community) often rent meeting rooms.

108. Dog faeces

i. We agree that failure to pick up and remove dog faeces is undesirable, but not a major issue at Stoke Lodge Parkland and less of a problem than other grass pitches in Bristol such as the pitches on the Downs or at Blaise Castle.

ii. Following the funding of two dog bins by the Community this small issue has become even smaller.

iii. Cotham Academy has H&S procedures comparable with other schools to deal with faeces (not just dog but also fox faeces which would remain an issue if the site was fenced).

iv. Rockleaze Rangers FC has similar procedures in place.

v. Shire Colts FC has similar procedures in place.

vi. If Stoke Lodge Parkland is registered as a Town or Village Green we will be eligible to call on the services of BCC dog wardens to prosecute dog owners who do not pick up.

vii. We are not aware of any reported and logged medical issues resulting from dog faeces at Stoke Lodge Parkland.

viii. We accept that dog owners that do not pick up are anti social, but excluding the whole Community is disproportionate.

ix. We refer to our previous response to Rockleaze Rangers Football Club dated 31st March 2012 Section 15, paragraph l) pages 6, 7 & 8. Where we discuss dog use / fouling at Stoke Lodge Parkland. [see File 7, response to Rockleaze Rangers, tab 2, pages 157 to 165, section15]

109. However, we do suspect that the motivation to exclude the Community under the banner of H&S may be driven by Commercial considerations to frustrate the TVG Application and not solely the welfare of the students as confirmed in the Briefing Note to Cabinet dated 22.04.10. [see File 3, tab 12, pages 73]

We are concerned to note the apparent heightened paranoia with regard to Health and Safety risk management by Cotham Academy following the submission of the TVG Application in March 2011 which leads us to the conclusion that it is being used purely in an attempt to try and frustrate the Application.

Otherwise it is illogical that this matter only suddenly required special attention by Cotham Academy over 10 years after they had started to use the grass pitches at Stoke Lodge Parkland i.e. following the submission of the TVG Application

For example during the period 2000 to 2011 Cotham School freely changed their remote grass pitch facility to SLP from their favoured site at Kellaway Avenue in circa 2000 and: -

i. Did not install any additional signs at SLP

ii. Did not take any actions to restrict Community use
iii. Did not upgrade the changing rooms
iv. Did not report any H&S concerns to the police

Furthermore if this was such a serious problem Cotham Academy could have taken advantage of the situation when signing the 125 year lease and insisted that the Landowner provide measures to restrict Community use as opposed to including ongoing Community use, as of right, as a condition of the lease.

Additionally we reconfirm our submission that ongoing H&S risk management is not included as part of the qualifying conditions set down in the Commons Act 2006, Section 15, is not a raison d'être i.e. not a Statutory Purpose as defined in the ***Newhaven*** case and is therefore not capable of having a Statutory incompatibility and furthermore Community exclusion would be "unreasonable" as defined in the Health and Safety at Work Act etc 1974 (as amended) because Cotham already has what they consider adequate policies and procedures in place, which importantly mirror the policies and procedures adopted by the Formal Sports Clubs.

110. Stoke Lodge is remote from the Cotham home site and it is reasonable to expect them to inspect the pitches before they are used as per good practice, as do the Formal Sports clubs users.

111. We submit that the proposition to fence Stoke Lodge Parkland to exclude the Community on the pretext of managing Health & Safety legislation is disproportionate and unreasonable, and in itself would not exclude other wildlife from accessing the Parkland such as foxes, badgers, cats, squirrels and rats resulting in the need for users to continue to inspect pitches ahead of use with or without a fence.

Finally we therefore submit that whilst Health and Safety risk management is an important management obligation it is not a reason to frustrate this TVG Application for the reasons set out above.

L. We are concerned that the Cotham anti TVG petition is misleading and is knowingly based on a false premise to garner support

112. We are concerned that certain Governors and Teaching Staff at Cotham Academy are promoting a petition on the school website, supported by a Facebook page that we consider misleading and knowingly garnering support on false pretences. [see File 2, tab 29, page 245]

The front page of their petition states: -

> ***"TO: THE INSPECTOR MR PHILIP PETCHY***
>
> ***Please reject the application for a Town or Village Green status at Stoke Lodge***

Why is this important?

Stoke Lodge becoming a Town/Village Green (TVG) would prevent Cotham School, and community sports clubs who regularly use the playing fields, from continuing to provide sports in a safe and secure manner at that location.

Alternative playing fields available to schools and organised community sports users in North Bristol are limited and TVG status on Stoke Lodge Playing Fields could force the many local clubs which includes Shirehampton Colts FC, Rockleaze Rangers FC, Bristol Ladies Union FC and Twyford House Cricket Club who regularly use the Land to cease operating at this location.

Cotham School, as leaseholder to the land at Stoke Lodge, wishes to provide a safe and secure school and community sports playing field at Stoke Lodge as is the intended purpose of the land.

How it will be delivered

The petition will be presented at a public meeting on Friday 5th February 2016"

We maintain that this presents a very biased and totally false interpretation of the purpose of the Town or Village Green Application, which we have repeatedly stated is to protect the status quo of shared use by the School, the Formal Sports users and the Community, engaged in lawful sports and pastimes as per the ***Redcar*** case, in perpetuity.

We therefore request that the Inspector attaches no weight to this flawed petition and dismisses it as irrelevant, particularly as the use of Facebook and the internet based petition provide a non local response.

M. Test(s) regarding Future Development

113. In the Inspector's Further Directions dated 5th November 2015 at paragraphs 26 & 27 [see File 10, tab 8, page 53] he requested that the parties submit their suggested test(s) that they consider should be applied to verify if a claim that an argument of "Statutory Incompatibility" can be developed on the premise of Future Development (real or imagined).

114. Clearly for this TVG Application, dated 4th March 2011, Future Development is not considered relevant grounds to object to registration based on the qualifying criteria contained within the Commons Act 2006 Section 15. We accept that this condition has changed for later Applications where a planning application has been submitted prior to the date of a TVG Application.

115. Within the ***Newhaven*** Judgement dated 25th February 2015 at paragraph 96 [see File 9, response # 8, tab 1, page 132] the Supreme Court did not consider the point of Future Development determinative in reaching their decision.

> ***"In this case, which concerns a working harbour, it is not necessary for the parties to lead evidence as to NPP's plans for the future of the Harbour in order to ascertain whether there is an incompatibility ……"***

116. Within the ***Newhaven*** Judgement dated 25th February 2015 at paragraph 101 [see File 9, response # 8, tab 1, page 133] it states that; -

> ***"…… The ownership of land by a public body, such as a local authority, which has statutory powers that it can apply in future to develop land, is not of itself sufficient to create a statutory incompatibility……."***

117. Within the ***Newhaven*** Judgement dated 25th February 2015 at paragraphs 98 to 100 [see File 9, response # 8, tab 1, pages 132 & 133] the Court comments on a list of examples, proffered by the objectors in that case, where public land held by public bodies had been registered as town or village greens. They state that in these examples ***"In our view they can readily be distinguished from this case".***

118. Within the Inspector's Further Directions dated 5th November 2015 at paragraphs 17 to 21 [see File 10, tab 8, pages 50 & 51] he comments on the same cases as the Supreme Court in the paragraph above and adds additional facts surrounding their registration, in particular with regard to Redcar where the local authority had attempted to use the Future Development of houses on the golf course to frustrate the TVG Application.

119. We submit that the Land at Stoke Lodge Parkland can also be "***distinguished"*** (differentiated) from the Land at ***Newhaven*** because as we have argued previously, in this document, the Land at Stoke Lodge Parkland does not have a site specific Statutory Purpose.

120. In the Inspector' Further Directions dated 5th November 2015 at paragraphs 26 & 27 [see File 10, tab 8, page 53] he requested that the parties comment on the suggestion from a previous hearing i.e: -

> ***"In Newhaven at first instance, Ouseley J suggested a "reasonably foreseeability" test, namely whether at any time within the relevant 20 years it was reasonably foreseeable that the land would be required for purposes inconsistent with registration of the land as a town or village green. Lord Neuberger and Lord Reed did not address whether this was the correct test."***

121. We submit that the above test, in isolation, is inadequate to consider all the relevant issues.

We submit that if "Future Development" is to be considered at all, and used as a basis, to frustrate a TVG Application that meets all the qualifying criteria set down in the Commons Act 2006, Section 15, it should be subject to a series of tests, all of which must be satisfied, including: -

i. Firstly, the Land in question should have a site specific clear and demonstrative Statutory Purpose linking together the Statutory Purpose and the specific land where the Purpose must be performed as per the Harbour and Ouse Lower Navigation Act 1847 (" the 1847 Newhaven Act") as amended [see File 9, response 8, tab 1, paragraphs 2 – 7, pages 101 & 102]

   We submit that we have shown elsewhere in this document that the Land at Stoke Lodge Parkland does not have such a Statutory Purpose and hence no argument of Statutory Incompatibility can be considered

ii. If the Land in question is found to have a site specific Statutory Purpose then the objector must also be able to show that there is an absolute imperative to develop the Land in a way that is not available to them elsewhere.

iii. Absolute imperative: - must provide proof to demonstrate that:

   a. Any proposed new facility is required (not just wanted) i.e. the school would fail without it as an addition to the existing grass pitches (12) i.e. similar to the critical need to maintain the breakwater at the Newhaven Port and Harbour and additionally that the loss of any grass pitches will not be detrimental.

   b. Any proposed new facility can be shown to be Strategically essential and judged independently to be necessary and appropriate with regard to the use of the Land i.e. playing fields.

   c. The proposed Future Development is sustainable without any secondary funding that the facility may provide. i.e. the proposal is not a commercial venture to increase school funds at the expense of the Community exclusion.

iv. "Not available elsewhere" is a requirement because we have shown elsewhere in this document that under the Education Act 1966 the provision of sports facilities are not required to be provided by the school on their premises if they are available elsewhere.

v. Specifically with regard to ***"Reasonably Foresee ability"*** we submit that the only appropriate test for this condition is to provide evidence of a planning application, within the 20 year qualifying period, setting out the details of

the proposed development relied upon by the objector as the basis of their incompatibility argument together with the business case to support the sustainability of the development.

122. Otherwise, if the essential nature of any proposed Future Development and the absolute need for this to be located at Stoke Lodge Parkland is not demonstrated incontrovertibly, then the mere threat of Future Development can be used as a convenient vehicle on any local authority land at any time to frustrate a TVG Application in order to retain Development rights by the Landowner or the occupier. Which we submit is unsustainable and is not in accordance with the principal set out in Paragraph 101 from the ***Newhaven*** judgement. [see File 9. Response # 8, tab 1, page 133]

> ***"…… The ownership of land by a public body, such as a local authority, which has statutory powers that it can apply in future to develop land, is not of itself sufficient to create a statutory incompatibility……."***

123. These proposed tests also have the symmetry of adopting the changes with regard to planning applications to be included within the qualifying criteria set down in the Commons Act 2006, Section 15, together with the principal of requiring a series of pertinent qualifying tests to be complied with as per the Commons Act 2006.

124. Additionally we refer to the fact that Cotham Academy (with the knowledge of their legal advisors) signed the 125 year lease at the end of August 2011 in the clear and certain knowledge that a TVG Application had been submitted on 4th March 2011 and was being processed by the CRA and furthermore that they were fully aware that it was possible for the Land to be registered as Town or Village Green preventing Future Development.

125. We are compelled to point out that should the Land be registered and Cotham Academy is unhappy with that decision they have a remedy within their lease at clause 7 [see File 7, response to UoB, tab 9, page 120] to terminate the Lease, go elsewhere and leave the Land unspoilt by Future Development retaining the status quo and available for both Local Sports clubs engaged in Formal Sport and the Community engaged in lawful sports and pastimes as of right. The Community do not have a similar remedy.

126. We therefore submit that the above test(s) should also include an additional condition that if a lease is signed after the date of a Town or Village Green Application the tenant is precluded from objecting to the registration of the Land because they had prior knowledge and were not coerced into signing the lease (Buyer beware).

127. Additionally, we have always accepted that the existing pavilion is not fit for purpose and should be refurbished / redeveloped. Accordingly, we have

excluded several tracts of land from the TVG Application to ensure that this work can be undertaken now and in the future without hindrance. [see File 10, tab 18, pages 70 to 81]

N. Conclusion

128. We submit that we have shown that: -

i. We have met all the qualifying criteria set down in the Commons Act 2006, section 15.

ii. We have shown that the Land at Stoke Lodge Parkland included within the TVG Application is not subject to a site specific Statutory Purpose.

iii. Without a Statutory Purpose it is not possible to construct a sustainable Statutory Incompatibility argument.

iv. Even if it is found that Stoke Lodge Parkland is subject to a Statutory Purpose we have shown that no Statutory Incompatibility exists at present and would not be created if the Land was registered as Town or Village Green.

v. We have suggested tests that we consider appropriate to establish if Future Development can be applied to construct a Statutory Incompatibility argument.

vi. We have shown why the threat of Future Development (imagined or real) cannot be used to frustrate this TVG Application.

vii. We have shown why Health and Safety management obligations cannot be used to frustrate this TVG Application.

viii. The summary of these arguments is also contained within our Statement of Case include at tab 4 within this File.

ix. We therefore submit that there is no impediment preventing our Application from being, once more, recommended for registration as a Town or Village Green.