

IN THE MATTER OF
AN APPLICATION TO REGISTER LAND
AT STOKE LODGE PARKLAND, BRISTOL, BS9 1BN
AS A TOWN OR VILLAGE GREEN
UNDER SECTION 15 OF THE COMMONS ACT 2006

BETWEEN:

MR D MAYER – APPLICANT

AND

BRISTOL CITY COUNCIL & ORS – OBJECTORS

<p>Applicant's Further Submission</p>
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Applicant's Bundle of Documentation

Our bundle of documents submitted for the Public Inquiry comprises 10 files: -

- File 1: - Applicant's Further Submission and Statement of Case dated 3rd May 2016, together with the witness statements to be heard at the Non Statutory Public Inquiry commencing on Monday 20th June 2016
- File 2: - Evidence in support of File 1 dated 3rd May 2016
- File 3: - TVG Application (volume1 of 3) with evidence dated 4th March 2011
- File 4: - TVG Application (vol 2 of 3) – 31 witness statements dated 4th March 2011
- File 5: - TVG Application (vol 3 of 3) – 23 witness statements dated 4th March 2011
- File 6: - Applicant's submission with evidence dated 30th January 2012
- File 7: - Applicant's submission with evidence dated 31st March 2012
- File 8: - Applicant's submissions with evidence dated: -
5th October 2012, 31st January 2013, 31st July 2013, 26th August 2013
and 16th December 2013

File 9: - Applicant's submissions with evidence dated: -
15th June 2015, 10th July 2015 and 28th January 2016

File 10: - Inspector's Directions and Applicant's responses

(File 11: - Possible rebuttal)

Contained within the Inspector's Further Directions dated 3rd March 2016 we are required to identify the location within our Bundle of: -

i. The witness statements that we intend to call at the Public Inquiry.

These are contained within File 1 tabs 5 onward
Together with our Statement of Case - File 1, tab 4

ii. The witness statements that we rely upon but do not intend to call

These are contained within Files 4, 5, and 6 at tab 8, paginated pages 66 to 155

iii. The documentary evidence in support of our Application

This is contained within Files 2, 3, 6, 7, 8, 9, and 10.

We can also confirm that each of our files (1 - 10) is paginated with consecutive numbers. We have differentiated the paginated numbers for easy identification by using the style: - **<< 25 >>** located at the top, centre, of each page.

A comprehensive "Paginated Page Number Index" is attached to the covering letter within this File

[Additionally all references to File numbers in our bundle of documents and paginated page numbers are highlighted in yellow and included within square brackets]

File 1 is structured in three parts: -

- Our Further Submission dated 3rd May 2016, tab 3
- Our Statement of Case dated 3rd May 2016, tab 4
- Our Witness Statements that we intend to call to be heard at the Public Inquiry commencing on 20th June 2016, tabs 5 onward

We have structured this Further Submission (i.e. the first part of this File 1) into 14 parts (A – N).

- A. Introduction
- B. Inspector's Further Directions 5th November 2015
- C. Pre – hearing meeting 5th February 2016
- D. Statutory Purpose
 - i. Bristol City Council
 - ii. Cotham Academy
 - iii. Coombe Dingle Sports Centre – University of Bristol
 - iv. Rockleaze Rangers
- E. Statutory Incompatibility
- F. Future Development
- G. Written submissions only for matters of Statutory Purpose / Incompatibility
- H. “as of right” – without force – signs
- I. “as of right” – without permission
- J. Commons Act 2006 Section 15 qualifying criteria
- K. Health and Safety
- L. Cotham Academy anti TVG petition
- M. Test(s) regarding Future Development
- N. Conclusion

A. Introduction

1. The sequence of events from the date of our Application, on 4th March 2011, leading up to the Public Inquiry is set out in the Chairman's Report for the AGM of Save Stoke Lodge Parkland dated 10th March 2016 [see File 2, tab 2, pages 3 to 10]
2. We reconfirm our stated objectives as set out in our Application dated 4th March 2011 covering letter:- [see File 3, tab 2, pages 4 to 6]

“Save Stoke Lodge Parkland (SSLP) was formed with overwhelming public support to ensure that this Parkland, which is the last green space in Stoke Bishop, is preserved for the whole community to use both now and in the future. SSLP is a properly constituted community stakeholder group.....”

3. The Constitution for SSLP [see File 2, tab 3, pages 11 to 14] states at objective number 1:-

“To maintain “unfettered access” to, and preserve Stoke Lodge Parkland as safe, open green space providing both, free public amenity “as of right” for the wider local community to the whole of the parkland open spaces, whilst maintaining the existing balanced use of the parkland for formal and informal sport and general family recreation, all to be achieved without additional fencing.”

NB the reference to “*unfettered access*” refers to the way Bristol City Council describe current Community access to Stoke Lodge Parkland in their Briefing Note dated 22nd April 2010, (clause 2.41) [see File 3, tab 10, page 53, clause 2.41] and the reference to “*without additional fencing*”, above, refers to our response to the recommendation by Bristol City Council officers to the Bristol City Cabinet in the same Briefing Note (clause 2.41 and 2.42) advising the Cabinet that the site should be fenced to exclude the Community so as to frustrate any future Town or Village Green Application and hence preserve the Development potential of the site for the Landowner. Please refer to our Application dated 4th March 2011 volume 1 of 3 evidence tab 12 (Appendix viii) [see File 3, tab 12, page 74] providing an easy to read single page summary of the “killer clauses” (setting out the true intent of BCC to protect their development rights) from the Briefing Note, [additionally added for ease of reference within File 2 Tab 4, page 15]. For a copy of the whole Briefing Note (23 pages) please refer to our Application dated 4th March 2011 volume 1 of 3 evidence tab10 (Appendix vi). [see File 3, tab 10, pages 46 to 69]

Please note that copies of our submissions, responses and our Application together with the Directions and Further Directions from the Inspector are all available for easy reference on our web site www.stokelodgetvg.co.uk under the TVG Application tab and as provided to all the parties on a DVD as part of our Bundle dated 3rd May 2016.

4. We reconfirm our support for Formal Sport as highlighted in the covering letter to our Application dated 4th March 2011 [see File 3, tab 2, pages 4 to 6] where we state:-

“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.”

This sentiment has been repeated constantly throughout all our responses.

5. We wish to retain the status quo without the future threat of Commercial Development at Stoke Lodge Parkland, as per the protection afforded to the

Community in the **Redcar** case; as set out in section 7. of our TVG Application Form under the heading “*Justification for application to register the land as a town or village green*” [see File 3, tab 3, page 11 and tab 7, pages 34 to 35]:-

“In summary our justification and motivation is because Town or Village Green registration will provide the protection we seek to ensure that free Community access will continue for existing recreational uses; and to protect this open green space for future generations to enjoy and benefit from, as we have done; and importantly we consider that we do meet the Commons Act 2006 qualifying criteria to secure registration.”

6. We agree that the existing pavilion is not fit for purpose and should be refurbished or rebuilt and is in any case excluded from our Application. Furthermore, we did make an offer to assist with this process in our “List of outstanding issues” issued ahead of the Pre-Hearing meeting.[see File 9, “Outstanding issues”, pages 274 to 277]
7. We support the recommendation made by the Inspector in his Report dated 22nd May 2013 to register Stoke Lodge Parkland as a TVG. [see File 10, tab 3, pages 13 to 35] and contend that we have demonstrated that we have satisfied the qualifying criteria set out in Section 15 of the Commons Act 2006 to achieve registration.
8. We contend that the reasons given in the **Newhaven** Judgement [see File 9, response # 8, tab 1, pages 99 to 147] to rule against TVG registration at Newhaven are not applicable at Stoke Lodge Parkland due to the different circumstances pertaining at Stoke Lodge Parkland. In particular we maintain that no Statutory Purpose and Statutory Incompatibility arguments are relevant at Stoke Lodge Parkland, as set out in our responses dated 14.06.15 [see File 9, response # 8, pages 3 to 98] together with the additional arguments set out below.
9. We contend that within the **Newhaven** Judgement there are arguments that support the TVG registration at Stoke Lodge Parkland, as set out in our responses dated 14.06.15. [see File 9, response # 8, pages 3 to 98] and detailed below in this submission.
10. We maintain our arguments that the three signs at Stoke Lodge are not effective and do not prejudice the Application for Town or Village Green registration.
11. Pertaining to all matters to be addressed at the Public Hearing we refer to, and rely upon, the arguments and evidence we have provided in our Application dated 4th March 2011 and our various responses made on:-
 - i. 30th January 2012
 - ii. 31st March 2012
 - iii. 5th October 2012

- iv. 31st January 2013
- v. 11th March 2013
- vi. 31st July 2013
- vii. 26th August 2013
- viii. 16th December 2013
- ix. 13th February 2014
- x. 15th June 2015
- xi. 10th July 2015
- xii. 18th December 2015
- xiii. 24th December 2015
- xiv. 28th January 2016

In particular we refer to, and rely upon, our three responses dated 15th June 2015 and our response dated 10th July 2015.

All of the above are contained in hard copy in our bundle of ten files, together with an electronic version on DVD, and are also readily available on our web site www.stokelodgetvg.co.uk under the TVG Application tab.

- 12. We now submit and set out below new and compelling arguments to support our TVG Application.
- 13. We maintain that the arguments relating to “Statutory Purpose” and any subsequent “Statutory Incompatibility”, proffered by the objectors in a last ditch attempt to frustrate our TVG Application, have no relevance to the particular circumstances at Stoke Lodge Parkland.

We still submit that the arguments relating to “Statutory Purpose” and “Statutory Incompatibility” are matters of “Law” and as such we rely substantively on the arguments and evidence presented in our bundle of documentation, particularly within Files 1, 2 and 9 and specifically highlighted later in this submission.

We consider this more effective and appropriate than requesting members of the Community to present witness statements setting out their view on matters of Law.

B. The Inspector’s Further Directions 05.11.15

- 14. We contend that the above document from the Inspector [see File 10, tab 8, pages 47 to 53], provides valuable additional clarification, in particular at clauses: - 7, 16, 17, 18, 19, 20, 21 and 25. in support of our TVG Application as set out in detail in our responses dated 15th June 2015 [see File 9, pages 3 to 98] and below in this submission.

C. Pre-hearing meeting dated 5th February 2016

15. We acknowledge receipt of the Inspector's Further Directions dated 3rd March 2016 setting out the process and programme to be adopted prior to and during the Non Statutory Public Inquiry.

D. We submit that the Playing Fields within Stoke Lodge Parkland do not have a site specific "Statutory Purpose".

D.i. Bristol City Council

16. At the time of the Town or Village Green (TVG) Application at Stoke Lodge Parkland, i.e. 4th March 2011. Bristol City Council were (and remain) the landowner of Stoke Lodge Parkland.
17. The Conveyance documents for the purchase of Stoke Lodge Parkland by Bristol City Council in two parcels, i.e. on 13th July 1946 (5.5 acres adjacent to Parry's Lane) and on 19th September 1947 (the remaining 22 acres), do not contain any restrictive covenants and transfer the land *"in fee simple in possession free from incumbrances at the price of Six thousand three hundred pounds"* and *"Twenty five thousand five hundred pounds"*. [see File 2, tab 5, pages 16 to 28]
18. Bristol City Council has ultimately chosen to hold Stoke Lodge Parkland in its Education portfolio, having previously held some of the Land in the Housing portfolio. However, it is free to revise this designation as it has done recently at Stoke Lodge Parkland when the land for the "Children's Play Facilities" was transferred into Parks. We submit that in reality Stoke Lodge Parkland is merely part of the total Land Bank held by Bristol City Council to be used at its discretion.
19. Bristol City Council has also sold land held in its Education portfolio for Commercial Development. Recent examples close to Stoke Lodge Parkland include: -
 - i. Dunmail Primary School, Southmead –sold for Housing (140 new homes) [see File 2, tab 6, pages 24 to 31]
 - ii. Penn Park Secondary School – sold for housing [see File 2, tab 6, pages 32 to 33]
 - iii. Westbury Fields – Now developed as retirement homes [see File 2, tab 6, page 34]
 - iv. Portway Rugby development centre and Manor Farm Football club site. Developed by Bristol City Council and then later leased out to private companies for Formal Sport. [see File 2, tab 6, pages 35 to 36]

- v. Avon Wildlife Trust nature reserve on the Portway
Previously used as playing fields for the old Portway school then sold to Bristol and West Building Society and recently sold to the Avon Wildlife Trust to establish a Nature reserve. For the avoidance of doubt the land in question is between the Portway (Road) and the railway track and does not include the Old Sneyd Park Nature reserve located on the other side of the railway track. [see File 2, tab 6, pages 37 to 39.]
 - vi. Wellington Hill playing fields – registered as a TVG in 2014 despite the argument from Bristol City Council that registration would prevent the sale of the Land for Housing.
[see File 2, tab 7, Doc 2, pages 79 to 86, and in particular paragraphs 44 to 51, pages 85 & 86]
 - vii. More worryingly, Land once part of Stoke Lodge Parkland has already been sold by BCC. For evidence please refer to the conveyance document provided by BCC [see File 2, tab 5, pages 16 to 28] specifically the Memorandums attached to the final page of the second conveyance document [page 28] where the sale of both land and buildings are recorded.
20. This principle of sale of Green Space by Bristol City Council for commercial development is reinforced by: -
- i. The Bristol City Council Briefing Note dated 22nd April 2010 setting out why the Council should exclude the Community from Stoke Lodge Parkland to frustrate any TVG Application to avoid the situation that *“This would reduce opportunities for future capital receipts”* (Clause 2.18) and *“retain opportunities for future development”* (Clause 5.3)
For a copy of the full text please refer to our Application dated 4th March 2011, Volume 1 of 3, evidence tab 10. [see File 3, tab 10, pages 46 to 69]
 - ii. For an easy to use single page summary of the Killer Clauses from the Briefing Note, setting out the true intent of the Briefing Note, including those referred to above. [see File 2, tab 12, page 73]
 - iii. As well as selling land with an Education badge the Council has also sold land with other badges; this includes the Green Spaces sell off in 2012, [see File 2, tab 8, pages 101 to 114], where Bristol City Council offered up 135 Green Spaces across the City for disposal i.e. for sale and / or development including numerous education sites. Notably, this schedule includes but does not comment on sites referred to as “Area Green Space Plan sites”. (This category includes Wellington Hill playing fields, Wellington Hill, Horfield which was registered as a TVG in 2014 despite objections from Bristol City Council based on potential sale for Housing).

- iv. This evidence runs to 14 pages and details the opportunity to provide homes on individual green space sites which add up to 7,575 homes and several Gypsy and Traveller sites. Many, but not all, of the disposals have taken place with the consequential loss of Green Space including education sites.
 - v. We maintain that the above demonstrates that Bristol City Council does have a proven track record of selling Land (Community Assets) for Commercial Development / Gain and we are fully justified in our concern that Stoke Lodge Parkland could be sold if it is not protected by registration as a TVG in accordance with the Inspector's Report and Recommendation dated 22.05.13, based on the qualifying criteria set down in the 2006 Commons Act, enabling the Land to be used for Shared recreation in perpetuity. [see File 10, tab 3, pages 12 to 35]
21. We submit that if it were the case that all the grass pitches belonging to BCC had a site specific Statutory Purpose then the consequence would be that none could be sold at any time or indeed have a change of use within the Authority which is clearly not the case, as demonstrated in paragraphs 19 & 20 above, and is therefore a fallacious and unsustainable argument. For supporting evidence please refer also to the Inspector's Further Directions dated 05.11.15 at paragraphs 23, 24 and 25 [see File 10, tab 8, pages 47 to 53].
22. At the time of the TVG Application at Stoke Lodge Parkland, i.e. 4th March 2011, Bristol City Council had responsibility for and exercised control over Cotham School as a traditional Local Authority school.
- (Cotham School did not apply for, and achieve, Academy status until early September 2011 i.e. six months after the TVG Application was submitted [see File 2. Tab 14 pages 154 to 198].
23. We submit that at the date of the TVG Application the Community had already established prescriptive rights for use over the Application Land at Stoke Lodge Parkland "as of right" as described in the Commons Act 2006.
- This is supported by:-
- i. Section 8 of the minutes of the Neighbourhood Partnership Meeting dated 15th September 2010 i.e. 5 months before the date of the TVG Application. Together with a memo from the Bristol City Council Executive (Cabinet) Member for Children and Young Persons (CYPS) to the Bristol City Council Strategic Director for Children's Services and a statement from David Mayer, both referenced in the minute above. For a copy of the full text please refer to our Application dated 04.03.11 vol 1 of 3 evidence tab 14. [see File 3, tab 14, pages 78 to 83] This evidence runs to 5 pages but is summarised by the resolution passed at the Neighbourhood Partnership Meeting:-

“RESOLVED – that the strength of feeling expressed at the Stoke Bishop neighbourhood forum be noted and that its views had been relayed to the Director of CYPS. It was further noted that the Executive Member had given an assurance that the proposal to fence Stoke Lodge had categorically been dropped and that the parkland would remain with open access for all as of right.” (Emphasis added by Applicant)

Additionally at the above meeting Cllr Clare Campion Smith, the Executive (Cabinet) Member for CYPS made a lengthy statement including: -

- i. *“....Since then the Executive Member had written to Annie Hudson, Strategic Director for Children’s Services advising her of the recent Cabinet decision to support shared use of the site.”*
- ii. *“...It was envisaged that Stoke Lodge could be seen as a flagship for shared use/access for other sites in the city”*
- ii. Given the date of this meeting, 15th September 2010, the resolution it passed (above) *“...that the parkland would remain with open access for all as of right.”* coupled with the fact that the whole debate was predicated on the Bristol City Council Cabinet Briefing Note dated 22. April 2010 which states at clause 2.15 [see File 3, tab 10 pages 46 to 69]: -

“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 3rd March 2010 in the Redcar case. This case has set a precedent which offsets previous mitigation to registration.”

Then it follows that: -

- a. The BCC Cabinet Briefing Note makes it clear that the *“unfettered community access”* (Briefing Note clause 2.41) [see File 2, tab 4 page 15] equates to open access as described in the above paragraph (Briefing Note clause 2.15) and is *“as of right”* i.e. *“without force”*, *“without permission”* and *“without secrecy”* otherwise it would not be necessary to advocate (i) fencing to convert *“without force”* into *“with force”* (briefing Note clause 2.42) or (ii) *“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”* (cause 5.3) to frustrate a TVG Application.

Importantly neither of these two recommendations was carried out prior to the TVG Application date of 4th March 2011.

- b. The Cabinet were fully aware of the implication of agreeing to “*shared use of the site*” because of the contents of clause 2.15 and 5.1 from the Briefing Note. [see File 2 tab 4, page 15] The Briefing Note was addressed to the Cabinet and consequently would have been considered as part of their debate.
- c. When the Executive (Cabinet) Member for CYPS made her statements at the Neighbourhood Partnership meeting dated 15th September 2010 and in supporting the resolution “...*that the parkland would remain with open access for all as of right*” (emphasis added by the Applicant) [see File 3, tab 14, pages 78 to 83] it was made based on a clear understanding of the facts and implications pertaining at Stoke Lodge Parkland and the fact that ongoing use by the Community engaged in lawful sports and pastimes was “as of right”.

Additionally the repeated use of the wording “*Shared use*” in the above exchanges is important because it was an essential plank of the **Redcar** Judgement.

- iii. The Inspector’s Report and Recommendation dated 22nd May 2013. [see File 10, tab 3, pages 12 to 35] This evidence runs to 24 pages and is summarised in the Conclusion, paragraph 75, on page 23 of the Report:-

“(75.) For the reasons set out above, I consider that use of the land by local people has been as of right. The objection based on statutory incompatibility has fallen away in the light of the decision of the Court of Appeal in R (Newhaven Port and Properties Limited) v East Sussex County Council. I consider that the application site is properly registrable as a town or village green and I recommend that the City Council in its capacity as registration authority should so register it. The precise boundary may need sorting out because the red line on the application site may include areas which plainly will not have been available for use⁶². I imagine that this could be sorted out by agreement, although I would give specific advice on this if required.”

Re Note⁶² – We did clarify this matter in our letter dated 11th March 2013 [see File 10, tab 13, pages 60 to 63] regarding areas of Land excluded from the TVG Application.

24. We maintain that since the Education Act of 2002: -

- i. “*The Secretary of State is specifically barred from ordering any school to devote a certain period of time to any particular subject. That [change] had the effect*

of making any Whitehall-sponsored guidelines on the two-hour sport target purely voluntary. In other words, there was no way it could be enforced.” (i.e. before the date of the TVG Application).

- ii. Furthermore: *“The obligation on schools to tell the Department for Education how much time was being spent on sport was lifted in a letter from the Secretary of State to Baroness Sue Campbell on 20th October 2010.”* (i.e. before the TVG Application).

The above are quotes from a Department for Education news-statement on the subject of removing the duty on schools to report whether they met the two-hour-a-week school sport target (in 2010) [see File 2, tab 9, page 115]

Importantly, It also confirmed that:-

- iii. *“This was not a target – it was an unenforceable aspiration.”*
(Emphasis added by the Applicant.)

25. Accordingly we submit that the provision of Sport in Local Authority schools and independent schools (including Academies) is not a Statutory Purpose and by extension there is no site specific Statutory Purpose on the playing fields at Stoke Lodge Parkland.
26. This is not to say that we do not support sport in schools or the community; only that it cannot be used as a claim of “Statutory Purpose” to frustrate a Town or Village Green Application that meets the criteria set out in the Commons Act 2006, Section 15.
27. Stoke Lodge Parkland provides a finite number of grass pitches – as an act of courtesy and good manners the Community avoid the pitches when they are in use by others and have shared the Parkland with various schools including Cotham and the Formal Sports users over the qualifying period of 20 years, and more, all as per the **Redcar** case.
28. BCC has numerous Playing Field facilities to provide the provision of grass pitches throughout the City and if schools under LA control request something other than grass pitches these are also available from BCC at other locations.
29. Importantly in the Education Act 1996, c.56, Part X, Chapter1, Required standards for educational premises Section 543, Relaxation of prescribed standards in special cases, cause 4A.
<http://www.legislation.gov.uk/ukpga/1996/56/section/543>
[see File 2, tab 10, pages 116 & 117] where it is confirmed that: -

“F2(4A) This subsection applies, in relation to any playing fields used by the school for the purposes of the school, if the Secretary of State is satisfied that,

having regard to other facilities for physical education available to the school, it would be unreasonable to require conformity with any prescribed requirement relating to playing fields.

In this subsection “playing fields” has the same meaning as in section 77 of the School Standards and Framework Act 1998 (control of disposals or changing use of school playing fields).”

We submit that this extract confirms the principle that sourcing sports facilities at more than one location is perfectly acceptable and reasonable.

30. It should be noted that at the time of the TVG Application Cotham School had the use of all of the grass pitches at Stoke Lodge Parkland, together with their Sports Centre and the all-weather pitches at their home site, in addition to ongoing use of sports facilities at Whitchurch, plus Golden Hill, plus Coombe Dingle. For evidence of sports facilities at their home site – three all-weather pitches with space for 4/5 more plus indoor sports centre with provision for courts and pitches. [see File 2, tab 11, page 118]. We expand on this argument within section D. ii. below dedicated to Cotham Academy.
31. Conversely, we submit that Bristol City Council did, at the time of the Application, have a Statutory Duty to provide adequate open green space for the benefit of the Community as set out in the “Planning Policy Guidance Note 17” (PPG17) and the “Access to Natural Green Space Standards” (ANGSt) to provide the well documented advantages associated with: -
- i. Newborn babies and toddlers
 - ii. Infants and junior children
 - iii. Local secondary school children during school holidays and weekends i.e. 174 days per year and evenings after school
 - iv. Adolescent and teenage children
 - v. New mothers
 - vi. Families
 - vii. Adults relaxing and keeping fit
 - viii. Older people socialising
 - ix. Disabled people
 - x. Socially excluded people
 - xi. Mental illness patients

Importantly this is also supported in the Inspector’s Report dated 22nd April 2013 at paragraph 24 [see File 10, tab 3 pages 12 to 35] where it states: -

[24] *In the Local Plan.....The rubric to the plan states:*

In particular the City Council is concerned about the protection of existing playing fields, and formal playing facilities. However, it should also be recognised that such facilities often provide valuable amenity space which is enjoyed by local residents, in providing setting to, and relief from the built environment. Bearing this in mind, when

such facilities cease to be required for their original purpose, it does not automatically mean that they should be developed for other uses, as they may be able to meet the growing need for open space in the wider community in providing open space for more informal leisure pastimes¹¹

It is also important that Bristol City Council complies with its own Equalities policy.

We accept that PPG17 has now been updated by PPG, Open Space, sports and recreation facilities, public rights of way and local green space (6/3/2014).

32. Please refer to the Bristol City Council - Henleaze, Westbury on Trym & Stoke Bishop - Area Green Space Plan – Ideas and Options Paper [see File 3, tab 18 pages 98 to 111]. Whilst Stoke Lodge Parkland is not part of that review, and that fact is important for our Application to qualify under the Commons Act 2006, it does set out important local information. Please see: -

- i. Page 1 where it confirms: -

“A City with good quality, attractive, enjoyable and accessible green spaces which meet the diverse needs of all Bristol citizens and visitors.”

- ii. Page 2 where it confirms: -

“This draft Ideas and Options Paper is for the Neighbourhood Partnership Area of Henleaze, Westbury-on-Trym and Stoke Bishop. It sets out ideas for investing in green spaces over the next 20 years to ensure everyone has easy access to a range of good quality green spaces with new and improved facilities, such as children's playgrounds, sports pitches, young people's facilities and wildlife areas. It will also identify if any green space is no longer needed and can be disposed of to fund improvements to other spaces.”

- iii. Page 3 where it confirms that Bristol City Council operate a “Quality Standard” and a “Distance Standard” for Parks and Green Spaces across the City. This is then specified on page 25 of that paper.
- iv. Page 4 where it confirms “**The publicly accessible spaces considered by the Parks and Green Space Strategy as outlined in 2008**” clearly Stoke Lodge Parkland is not included on the plan shown.
- v. Pages 25 – 30 where it highlights the fact that Bristol City Council does not meet its own policies and standards in our neighbourhood / locality.

This demonstrates that, without Stoke Lodge Parkland taking up the slack with “Shared” Community use “as of right”, Bristol City Council has failed to meet its own policies and standards regarding open green space for many residents of Stoke Bishop and Westbury on Trym.

33. In 2008 a national survey was undertaken and a report produced entitled “Understanding the relevance and application of the Access to Natural Green Space Standard” (ANGSt) to which Bristol City Council contributed. [see File 2, tab 12 pages 119 to 126 for an extract from this report]

On page 29 (of that report) it states that: -

“Box 4.1: Bristol Parks and Green Spaces Strategy:

The Bristol strategy conforms with PPG17 in analysing sites based on the uses they provide to the community, but it does not allocate a primary function to individual parks and open spaces, as recommended by the national guidance. Bristol City Council determined that it was not possible to categorise parks in terms of primary uses in many instances and that to do so would underestimate the value of the resource and therefore be poor green space management. The strategy proposes overall distance and quantity standards for all green space, based on the assertion that it is relatively easy to change the management of sites to incorporate different functions and facilities. The open space database that supports the strategy divides parks and spaces into sections, accommodating different uses in different parts of each park. The Bristol strategy sets a distance standard for accessible natural green space at 700m. This distance was based on consultation with local communities, who were asked how far they thought it would be reasonable to travel to access different types of green space.”

In other words, at the time of this report, Bristol City Council has given a commitment to, and wants to be measured and seen as, complying with PPG17.

34. In early 2012 (i.e. after their response to the national survey in 2008) Bristol City Council offered up 135 Green Spaces across the City for disposal i.e. for sale and / or development, [see File 2, tab 8 pages 101 to 114].

This evidence runs to 14 pages and details the opportunity to provide homes on individual sites which add up to 7575 homes and several Gypsy and Traveller sites. Many, but not all, of the disposals have taken place with the consequential loss of Green Space and a reduction in ability to comply with the obligations of PPG17, or subsequent amendments.

35. In summary, we submit that there is no statute requiring either BCC or Cotham School to specifically undertake sport at Stoke Lodge Parkland – hence no Statutory Purpose and consequently no Statutory Incompatibility.

Additionally Cotham has the choice of a range of alternative sporting facilities. This is in stark contrast with the circumstances at Newhaven where the Harbour and Port cannot be separated from the River Ouse which must remain navigable for the sustainability of the Harbour and Port enabling it to meet its Statutory Purpose, established following “the 1847 Newhaven Act”, leading to the

Judgement to deny the TVG Application, due to the particular and special circumstances at Newhaven which are not replicated at Stoke Lodge Parkland.

We also rely on our submissions dated 15th June 2015 and 10th July 2015 [see File 9, pages 2 to 98] arguing why the **Newhaven** Judgement is not applicable at Stoke Lodge Parkland. For ease of reference the **Newhaven** Judgement is also included within that response. [see File 9, response # 8, tab 1, pages 99 to 147]

Furthermore we contend that within the **Newhaven** Judgement there are arguments that support the TVG registration at Stoke Lodge Parkland, as set out in our responses dated 15th June 2015. [see File 9, pages 2 to 98] and detailed in this submission.

36. In addition to all the above arguments in support of our Application we refer to the recent outcome of the TVG Application at Moorside Fields Lancaster [see File 2, tab 13, pages 127 to 153] where Inspector Alison Lea MA (Cantab) made a recommendation on the 22nd September 2015 for the majority of the land to be registered as a TVG despite the Local Authority's claim that the land was held for education purposes and hence could not be registered as a TVG due to Statutory incompatibility. We refer to paragraphs 117 – 125 of the Application Decision and in particular paragraph 124: -

“It seems to me that, in the absence of further evidence, the situation in the present case is not comparable to the statutory function of continuing to operate a working harbour where the consequences of registration as a town or village green on the working harbour were clear to their Lordships. Even if it is accepted that LCC hold the land for “educational purposes”, there is no “clear incompatibility” between LCC’s statutory functions and registration of the Application Land as a town or village green. Accordingly I do not accept that the application should fail due to statutory incompatibility. “

37. Furthermore, merely by granting the 125 year Lease to a school outside Local Authority control, then BCC have confirmed that Stoke Lodge Parkland is surplus to Local Authority requirements for schools.
38. For the avoidance of doubt we reconfirm our stated wish for the Community to continue to engage in lawful sports and pastimes on a shared basis with Cotham Academy and the Formal Sports users at Stoke Lodge Parkland and that we accept, and welcome, that they both do source playing fields and sports facilities at other locations.
39. We therefore put the Objectors to proof to show that Stoke Lodge Parkland has a site specific, critical role, singularly essential for Educational Sport across the whole of Bristol, required by Statute, that would be frustrated by registration as a TVG and if so the nature of any incompatibility in precise terms. (Please note that

the creation of Cotham Academy and the 125 year lease are both post the date of the TVG Application at Stoke Lodge).

D.ii. Cotham Academy

40. At the time of the TVG Application at Stoke Lodge Parkland, i.e. 4th March 2011, Cotham School was a traditional Local Authority school.
41. We maintain that at the date of the TVG Application the Community had already established prescriptive rights for use over the Application Land at Stoke Lodge Parkland “as of right” as described in the Commons Act 2006, see paragraph 23 above.
42. Cotham School applied for and was granted Academy status in September 2011, i.e. in full knowledge that a TVG Application had been submitted six months earlier as advised to them by the Registration Authority.
43. Cotham Academy is registered as “A Company Limited by Guarantee” at Companies House, registration number 07732888 and is formed as an “Academy Trust”. As such Cotham Academy is a self governing body outside the remit of the Local Authority and is managed in accordance with its Articles of Association [see File 2, tab 14, pages 154 to 198] and its funding agreement with the Secretary of State for Education.
44. The Articles of Association for Cotham Academy at clause 4 page 6 (of 45) under the heading “OBJECT” states:-

“4. The Academy Trust’s object (‘The Object’) is specifically restricted to the following:

(a) To advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing a school offering a broad and balanced curriculum (“the Academy”); and

(b) To promote for the benefit of the inhabitants of Bristol and the surrounding area the provision of facilities for recreation or other leisure time occupation of individuals who have need of such facilities by reason of their youth, age, infirmity or disablement, financial hardship or social and economic circumstance or for the public at large in the interests of social welfare and with the object of improving the condition of life of the said inhabitants.

In other words, we submit that, Cotham Academy is prevented by their Articles of Association, in particular clause 4.(b), from seeking to exclude or limit shared Community use of Stoke Lodge Parkland.

45. Furthermore, the 125 year Lease granted by Bristol City Council in favour of Cotham Academy, dated 31st August 2011 (commencing on 1st September 2011) [see File 7, Response to UoB, tab 9, pages 88 to 128] at clause 2, page 15 (of 40) of that agreement, under the heading “Demise Rents and Other Payments” states:-

“2.1 The landlord demises the Property to the Tenant for the term (subject to the provisions for earlier termination contained in this Lease) together with the easements and rights specified in Schedule 2 except and reserved unto the Landlord and all other persons authorised by the landlord and all other persons authorised by the Landlord from time to time during the Term the easements and rights specified in schedule 3 and subject also to all existing rights and use of the Property including use by the community the Tenant paying therefor by way of rent throughout the Term without any deduction counterclaim or set off (whether legal or equitable) of any nature whatsoever:-”

[Emphasis added by the Applicant].

In other words, we submit that, ongoing shared use by the Community “as of right” was recognised and incorporated into the Lease by the Landowner and hence Cotham Academy are prevented from objecting to the TVG Application by the terms of their 125 year lease, as well as the terms of their Articles of Association.

46. Both of the above documents, i.e. Cotham Academy Articles of Association and the 125 year Lease at Stoke Lodge Parkland, would, or should, have been fully scrutinised by the various legal teams and the governors prior to signature and adoption. Furthermore, given that the TVG Application pre-dated the creation of the Academy by six months this professional advice and the decision to accept and sign these documents would, or should, have been made in the clear and certain knowledge that the TVG Application was pending and hence fully contemplated; and therefore accepted the prospect that the TVG Application could succeed.
47. Furthermore, as part of the Lease negotiations in 2011, we consider that Cllr Clare Campion-Smith, in her role as Executive (Cabinet) Member for CYPS, would have kept Cotham fully aware of developments at Stoke Lodge Parkland. In particular her statements and endorsement of the Resolution passed at the Neighbourhood Partnership Meeting held on 22nd September 2010 confirmed Bristol City Council’s Cabinet commitment not to fence the land and to retain Community shared use “as of right”, described as “unfettered access” in the Cabinet Briefing Note dated 22nd April 2010. [see File 3, tab 10, pages 46 to 69, clause 2.41].

These comments apply equally to a) Annie Hudson, Strategic Director for Children’s Services (i.e. the most senior Bristol City Council officer within CYPS, including Education) who was kept abreast of the outcome of the Cabinet

decision and the outcome of the Neighbourhood Partnership Meeting on 22nd September 2010 (See same evidence as above) and b) Liz Peddle, Bristol City Council officer within CYPS who took part in the Stoke Bishop Neighbourhood Partnership Open Forum meeting on the 25th August 2010, and both were party to the Lease negotiations.

We are therefore confident that Cotham would have also been aware of the Briefing Note and the Cabinet decision and the output from the Neighbourhood Partnership meeting held on 22nd September 2010 especially given the profile of the Briefing Note in the Community and the publicity it generated.

48. The Department for Education, Land Transfer Advice, April 2013, pages 4 - 7 sets out a very helpful schedule of the legal duties expected when an Academy is formed and whilst this does refer to transfer of title it does also refer to situations where ownership of the land is retained by the local authority.
49. We have set out above, in paragraphs 24 & 25, why we consider that Sport in Local Authority schools timetables is not a Statutory Purpose and by extension there is no site specific Statutory Purpose at Stoke Lodge Parkland.
50. Cotham Academy is now an independent, self governing, school with fewer constraints than a traditional Local Authority school. They have more discretion when setting their timetables. Please refer to the News Article issued by the Department for Education on school sport targets; [see File 2, tab 9, page 115] (referenced above at paragraph 24) where it includes reference to independent schools and makes it clear that sport in schools is not a Statutory Purpose.
51. We therefore submit that Cotham Academy cannot claim Sports use at Stoke Lodge Parkland as a Statutory Purpose to frustrate the Town or Village Green Application either as a Local Authority school as per the situation at the time of the Application or as an Academy as per the current situation.
52. Additionally, we note from the Cotham Academy Newsletters (freely available on the school web site www.cotham.bristol.sch.uk under the "news" tab) that they provide a full range of Sports facilities on the school site and remote from the school site aside from Stoke Lodge Parkland.
53. We note from the minutes of the Cotham Academy Governors' Meeting minutes dated Feb 2014 that the Head Teacher would prefer to be located back at their previous playing fields site at Golden Hill / Kellaway Ave for commercial reasons. [see File 2, tab 15, pages 199 to 203, paragraph 4]
54. We note from the minutes of the Cotham Academy Governors' Meeting minutes dated 11th February 2015, para 3, pages 1&2 that the Governors are concerned how they will be able to maintain current student numbers in contradiction of the assertions from the previous Headmaster that numbers were set to increase. [see File 2, tab 16, pages 204 to 210, paragraphs 3 & 2]

55. We maintain that the above shows that Cotham is not wholly reliant on the playing fields at Stoke Lodge Parkland (unlike **Newhaven** where the Harbour is required by statute to operate on the river Ouse, not some other random river of convenience) and that Cotham successfully use additional sites as alternatives to Stoke Lodge Parkland as condoned in the Education Act 1996, please see paragraph 29 above. [see File 2, tab 10, pages 116 & 117]
56. The 125 year lease entered into by Cotham Academy and Bristol City Council on 31.08.11 [see File 7, Response to UoB, tab 9, pages 88 to 128] contains a break clause at clause 7 on page 32 of that agreement: -

7. Break Clause

In the event that the Tenant finds suitable alternative playing fields (the Tenant to have absolute discretion to decide the suitability of the alternative arrangements) then subject to the Tenant giving the Landlord no less than three (3) months' written notice the Tenant may determine this lease at any time during the Term hereby created (including any period of holding over) but without prejudice to the respective rights of either party in respect of any antecedent claim of breach of covenant.

This enables Cotham Academy to leave Stoke Lodge Parkland demonstrating clearly that Cotham and Stoke Lodge Parkland are not fundamentally mutually interdependent (i.e. can exist sustainably separately) and hence do not share the complete interdependence highlighted within the **Newhaven** Judgement between the Port and the River and hence we contend that Stoke Lodge Parkland does not have a Statutory Purpose capable of supporting a Statutory Incompatibility claim. We further submit that use of this break clause would open up the site for Commercial Development if it were not protected by registration as a TVG.

57. Furthermore, within the 125 year lease, dated 31st August 2011 [see File 7, Response to UoB, tab 9, pages 88 to 128] at Clause 11 on page 33 of that agreement, Cotham Academy are required to surrender the land shown in purple for the provision of Play Facilities when requested to by BCC, as referred to in our covering letter to the TVG Application dated 4th march 2011. [see File 3, tab 2, pages 4 to 6] This provision in the Lease has been enacted and the Play Facilities were completed in July 2014. This re-enforces our submission that if the Parkland was subject to a Statutory Purpose then this change of use could not have been enacted.
58. We contend that Stoke Lodge Parkland has provided the maximum possible finite number of grass pitches (12) throughout the qualifying period (and before) enabling various schools to engage in outdoor sports including football, rugby, rounders and cricket and at no time have the schools demand for pitches even approached 25% of the capacity of the playing fields whilst Community use "as of right" has extended over the whole of the Parkland for over 68 years. The

Inspector makes reference to use of the Parkland by Cotham in his Report and Recommendation dated 22.05.13 in paragraph 14 on page 4 of the report. [see File 10, tab 3, pages 12 to 35]

59. Should Cotham Academy wish additional sporting facilities, over and above the grass pitches at Stoke Lodge Parkland and the all-weather pitches and indoor courts and pitches at their school site, there is no specific imperative that these must be included at Stoke Lodge Parkland and furthermore Cotham have the options of: -
- i. Sourcing these facilities from alternative providers as they do now [please see evidence tab 14]
 - ii. Building them at their home site
 - iii. Relocating to alternative Playing fields where these facilities exist and opt out of the 125 year lease (as per clause 7 of the Lease).

All three options provide a solution that does not inflict irreparable damage to the natural beauty of the Parkland or introduce “no go” areas for the Community.

60. We also submit that Cotham Academy has the option of using the land at the home site currently dedicated to car parking for over 90 cars to provide additional sports facilities as per the norm with more recent school designs with restricted land.
61. We submit that an example of the “tests” discussed by the Inspector in his Further Directions dated 5th November 2015 paragraph 26 [see File 10. Tab 8, pages 47 to 53] might include the following: - (NB we return to, and expand on, this topic later in this document at section N, paragraph 113).
- i. Should the Land not be registered and If Cotham were to give up the Lease, as per the break clause included in the Lease (possibly encouraged by BCC), then Bristol City Council could then sell the land for commercial development as described in the Bristol City Council Cabinet Briefing Note dated 22nd April 2010 clauses 2.17 and 5.3. [see File 3, tab 10, pages 46 to 69 or File 2, tab 4 page 15]

We submit that this outcome would prevent ongoing Community use “as of right” with the consequential removal of the undoubted benefits to the Community (described in paragraph 31 above) provided by this amenity and we further submit that this outcome should not be enabled by duplicitous argument frustrating registration of the Parkland as a TVG despite the recommendation to register the Land as a TVG in the Inspector’s Report dated 22.05.13.

This is important because the threat of future development is not a legitimate argument to prevent registration in accordance with the

Commons Act 2006 Section 15, hence why this goal is raised under the heading of Statutory Purpose/Incompatibility even though the **Newhaven Judgements** [see File 9, response # 8, tab 1, pages 99 to 147] at clause 101 states: -

(101). In our view, therefore, these cases do not assist the respondents. 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. By contrast, in the present case the statutory harbour authority throughout the period of public user of the Beach held the Harbour land for the statutory harbour purposes and as part of a working harbour

(Emphasis added by the Applicant).

- ii. Additionally, again if the land is not registered as a TVG then Cotham would be free to exclude the Community by fencing the Land and developing the site as a commercial Sports Centre to raise money for the School with the facilities offered for rent 7 days a week and late into the evening by the introduction of floodlights and all weather pitches which would inevitably increase the cost of pitches, as experienced at Coombe Dingle Sports Centre, putting the current range of Formal Sports users at jeopardy.

We have also shown that Cotham are not limited to Stoke Lodge Parkland [see File 2, tab 10, pages 116 & 117] and if they wish create a sterile gated commercial Sports Centre to supplement the funds they receive from central government then they are free to pursue that goal elsewhere, whilst continuing to use the grass pitches at Stoke Lodge Parkland on a shared and harmonious basis with the Community engaged in lawful sports and pastimes as of right as per **Redcar**.

- iii. Alternatively, if the Land was registered as a TVG then Cotham could continue to use the land contained within their Lease, the Formal Sports use by local clubs would continue and the Community could continue to use the Land for Lawful Sports and Pastimes, as of right. As per **Redcar**. Furthermore, we submit that the objectors have not presented any sustainable evidence to prevent registration in accordance with the Commons Act 2006, Section 15, or demonstrated that Stoke Lodge Parkland is subject to any Statutory Purpose or any Statutory Incompatibility.
- iv. In the Budget presentation by the Chancellor of the Exchequer to Parliament on Wednesday 16th March 2016 the Government set out plans to exclude Local Authority involvement in Primary and Secondary Education throughout the whole of England which means that Bristol City

Council cannot legitimately even contemplate offering Statutory Purpose as reason for objecting to this Application.

For the avoidance of doubt, notwithstanding this announcement from the Chancellor, we do not accept that the objectors have any sustainable argument that the Land at Stoke Lodge is subject to Statutory Purpose or Statutory Incompatibility as evidenced above and later in this Submission.

D.iii. Coombe Dingle Sports Centre (University of Bristol)

62. Following the Pre-hearing meeting on Friday 5th February we understand that Coombe Dingle Sports Centre (UoB), the pitch maintenance sub contractor working for Cotham Academy at Stoke Lodge Parkland, is not intending to take an active part in the Public Inquiry scheduled for June 2016.

We are therefore not expecting them to submit a bundle of documents in support of the objectors at the Public Inquiry. However, if they do make a submission we will answer any points that they raise as a rebuttal to be submitted prior to 4pm on 6th June 2016.

D.iv. Rockleaze Rangers Football Club

63. Following the Pre-hearing meeting on Friday 5th February we understand that Rockleaze Rangers Football Club is not intending to take an active part in the Public Inquiry scheduled for June 2016.

We are therefore not expecting them to submit a bundle of documents in support of the objectors at the Public Inquiry. However, if they do make a submission we will answer any points that they raise as a rebuttal to be submitted prior to 4pm on 6th June 2016.

E. We submit that no “Statutory Incompatibility” exists or will be created by registration of the Application Land as a TVG.

64. We submit that for the objectors to make a sustainable point regarding Statutory Incompatibility they must first show that the Land in question has a Statutory Purpose.

We maintain that we have shown in the previous Section of this submission **(D)** that the Land included within this Application does not have a Statutory Purpose. Importantly: -

- i. There is no statute requiring Bristol City Council (or Cotham Academy) to undertake Sport at Stoke Lodge Parkland and without that statute in place to create a Statutory Purpose there cannot be grounds to run a Statutory Incompatibility argument. [see File 2, tab 9 , page 115]

- ii. Furthermore we submit that we have shown previously that Bristol City Council freely disposes of education land on a regular basis, using it as a land bank providing land for sale for commercial development, [see File 2 tab 6 pages 29 to 39 and tab 8 pages 101 to 114] and therefore Bristol City Council cannot make a sustainable claim that this land is a critical factor essential for education *per se* within the Council; especially as Bristol City Council has leased the Land for a period of 125 years (well beyond the foreseeable future) to an independent entity outside the influence and/or control of the Council.
 - iii. Additionally the Chancellor of the Exchequer announced in the Budget presentation to Parliament on 16th March 2016 that by 2020 all Primary and Secondary Schools in England will be outside Local Authority Control.
 - iv. Furthermore we have shown in section (D) above why Cotham Academy are prevented by their Articles of Association and by the Lease that they hold on the Land at Stoke Lodge Parkland from objecting to ongoing Community use engaged in lawful Sports and Pastimes “as of right”.
65. In the **Newhaven** case the “Statutory Incompatibility” fundamental to the Judgement is described in clauses [94 – 97] of that document. [see File 9, response # 8, tab 1, pages 99 to 147]

Importantly at [94] it states that:-

“There is an incompatibility between the 2006 Act and the statutory regime which confers harbour powers on NPP to operate a working harbour,” (emphasis added by the Applicant).

We submit that the circumstances at Stoke Lodge Parkland are different from those in the **Newhaven** case and In support of our argument, at [96] from the **Newhaven** Judgement it states that:-

“..... Such registration would clearly impede the use of the adjoining quay to moor vessels. It would prevent the harbour authority from dredging the Harbour in a way which affected the enjoyment of the Beach. It might also restrict NPP’s ability to alter the existing breakwater.”

We submit that within the Land included in this TVG Application there is no such impediment and no reason why the status quo would not be sustainable should the Land be registered as a Town or Village Green because: -

- i. We have provided evidence [see Files 1-10 and in particular the Inspector’s Report dated 22nd May 2013, File 10, tab 3 pages 12 to 35] that the Community has used the Land included within the TVG

Application for lawful sports and pastimes as of right for over 20 years (68 years in total) on a shared basis with the various schools and Formal Sports clubs as per the **Redcar** case, hence no Statutory Incompatibility exists at present.

- ii. We maintain that the Land included within this Application does not include any vital and critical infrastructure, requiring routine maintenance and is unique to this site, that would be impacted by registration as a TVG, unlike the **Newhaven** case, e.g. the breakwater, [see File 9, response # 8, tab 1, pages 99 to 147, clauses 2 - 11 in particular clauses 8 and 9] and hence we submit that there are no grounds to argue that any future Statutory Incompatibility would be introduced by registration as a Town or Village Green at Stoke Lodge Parkland.
- iii. We submit that registration of the Land included in the TVG Application as a TVG would not hinder routine pitch maintenance, in the same way that the maintenance of the existing golf course in the **Redcar** case continues unabated, hence registration at Stoke Lodge Parkland would not frustrate ongoing maintenance of the grass pitches.
- iv. We reconfirm (again) that the current changing rooms/pavilion is not fit for purpose and is in need of refurbishment/redevelopment. To ensure that this TVG Application did not hinder/prevent that work from progressing we excluded the footprint of the existing pavilion from the Land included within the TVG Application and additionally in our Statement of Outstanding issues dated 28th January 2016 [see File 9, Applicant's List of Unresolved issues, tab 1 pages 274 to 277] we agreed to extend the boundary of the excluded land on the rear elevation of the pavilion up to the boundary with Ebenezer Lane, despite this being land accessed by the Community, but importantly retaining the access point at the end of West Dene. This would have the effect of doubling the available footprint of any new pavilion and we wish to record that the work to refurbish/redevelop the pavilion has at no time been delayed by the TVG Application. Hence, we submit that, the future development of the pavilion cannot be cited as a reason to frustrate the TVG Application, particularly, considering that we have repeatedly pointed out additional suitable sites for the pavilion, located at Stoke Lodge Parkland but critically not included within the Land included within the TVG Application. For examples please refer to the Applicant's submission dated 15th June 2015 in response to Cotham Academy's submission dated 28th April 2015, clause 2.12.iii, page 20 of 30 of that document. [see File 9, response # 8, tab c, page 22]
- v. We submit that should Cotham Academy wish to provide additional specialist sports facilities for their pupils, or for commercial hire, over and above the existing facilities that they use, including the existing grass pitches at Stoke Lodge Parkland, then there is no legal imperative why

these facilities, or commercial ventures, must be provided at Stoke Lodge Parkland. [see File 2, tab 9 page 115 and tab 10 pages 116 & 117]

In other words any hypothetical wish list by Cotham Academy cannot be used to claim a potential future Statutory Incompatibility on the Land included in this TVG Application.

66. We concur with paragraph [25] from the Inspector's Further Directions dated 5th November 2015 [see File 10, tab 8, pages 47 to 53] setting out why it is perfectly possible for not all land owned by a local authority to be capable of supporting the concept of Statutory Incompatibility. This is supported by: - paragraphs [18 – 20] and in particular paragraph [21] from the same Further Directions.
67. We also refer again to paragraph [101] from the **Newhaven** Judgement referenced in the Inspector's Further Directions dated 5th November 2015 at paragraph 16.

“101. In our view, therefore, these cases do not assist the respondents. 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. By contrast, in the present case the statutory harbour authority throughout the period of public user of the Beach held the Harbour land for the statutory harbour purposes and as part of a working harbour (emphasis supplied).”

68. Furthermore, we contend that there is no evidence that ongoing Shared use of the existing facilities would introduce any incompatibility if TVG registration was confirmed.

Importantly, we submit that maintaining the status quo, but with the added protection afforded by registration as a Town or Village Green, will not introduce any Statutory Incompatibility but, conversely, will safeguard the use of the Land as shared playing fields and Community open space, as per **Redcar**, in perpetuity.

69. Additionally, the Land included in the TVG Application is made up from a wooded section comprising a large number of exceptional specimen trees all protected by TPOs [see File 2, tab 27, pages 240 to 242] and the open grassed area laid out as sports pitches including football and rugby in the winter and cricket and athletics in the summer. [see File 2, tab 28, pages 243 to 244] and as defined in the 125 Year Lease [see File 7, response to UoB, tab 9, pages 88 to 128, in particular page 96]

Use of the sports pitches at Stoke Lodge Parkland by Cotham Academy (which has been minimal throughout the whole of the qualifying period) and by Formal Sports Clubs, (which are excluded from our Application because it is bought and

paid for and hence with permission as per the golfers using the course in the **Redcar** case), is tabulated in the Inspector's Report and Recommendation dated 22nd May 2013, page 4 of that document. [see File 10, tab 3, pages 12 to 35, clause 14]

Conversely the Community has engaged in lawful sports and pastimes as of right for more than 20 years on a shared basis as per the **Redcar** case over the whole of the Land (not just the pitches) for 365 days a year not just the 191 days in a school year [see File 3, tab 5, pages 23 to 28, tab 19, pages 112 to 120 , tab 21 pages 123 to 137, File 4, all pages, File 5, all pages, File 6, tab 8, pages 66 to 155, together with the additional statements included in this File]. This reinforces the point that no Statutory Incompatibility has existed over the past 68 years of use by the Community.

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

F. We submit that the threat of proposed future development (imagined or real) cannot be used to frustrate a TVG Application at Stoke Lodge Parkland.

71. We contend that if the proposition of "proposed future development" to frustrate a TVG Application is to be considered under the Commons Act 2006, then we submit that the argument falls away without debate because the section 15 criteria do not extend to consideration of proposals for future development or use of the land.
72. We contend that if the proposition of "proposed future development" is to be considered under "Statutory Incompatibility" it should first be associated with a Statutory Purpose; which we maintain we have demonstrated does not exist at Stoke Lodge Parkland. Hence we submit that the argument fails on there being no grounds to even consider the argument.
73. Additionally, we submit that we have shown previously that no statutory incompatibility exists currently and no statutory incompatibility will be generated if registration is confirmed.
74. The **Newhaven** judgement did not consider future development at that site. See clause [96]

[96]. 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 between the registration of the Beach as a town or village green and the use of the Harbour for the statutory purposes to which we have referred. Such registration would clearly impede the use of the adjoining quay to moor vessels. It would prevent the Harbour authority from dredging the Harbour in a way which affected the enjoyment of the Beach. It

might also restrict NPP's ability to alter the existing breakwater. All this is apparent without the leading of further evidence.

75. Importantly, the **Newhaven** case confirms that even where there is a Statutory Purpose there is no automatic linkage to use the threat of proposed future development (imagined or real) to frustrate a legitimate TVG Application.

And importantly at clause 101 it states that:-

(101). In our view, therefore, these cases do not assist the respondents. 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. By contrast, in the present case the statutory harbour authority throughout the period of public user of the Beach held the Harbour land for the statutory harbour purposes and as part of a working harbour
(Emphasis added by the Applicant).

76. We submit that the above evidence sets out the principle that local authority land does not enjoy an automatic right to deny TVG registration by relying on the threat of future development (real or imagined) and sets out the principle that each case must be decided on its merits. In this case: -
- i. We submit that there is no site specific Statutory Purpose requiring Sport to be conducted at Stoke Lodge Parkland.
 - ii. We submit that no statutory incompatibility exists currently and no statutory incompatibility will be generated if registration is confirmed.
 - iii. We submit that there are no structures on the TVG Application Land
 - iv. We submit that there is no infrastructure on the TVG Application Land
 - v. We submit that ongoing maintenance of the TVG Application Land is not hindered by TVG registration (For a precedent we refer to **Redcar** where fairways and greens are fully maintained for golf whilst retaining shared use “as of right” by the Community.)
 - vi. We submit that there is no automatic right to use the threat of potential future development to frustrate a TVG registration, see paragraph 75 above.
 - vii. We submit that TVG registration based on ongoing shared use of Stoke Lodge Parkland by Cotham Academy, Formal Sports Clubs and the Community for shared Lawful Sports and Pastimes “as of right” is the only way to secure this open space in perpetuity. Without the ongoing threat of

development as proposed in the Bristol City Council Briefing Note dated 22nd April 2010. [see File 2, tab 4, page 15]

- viii. We submit that use of Stoke Lodge Parkland has been undertaken by the Community engaged in free “lawful sports and pastimes”, “as of right” for “period of over 20 years” on a shared harmonious basis with the Schools and Local sports clubs engaged in Formal Sports. Which in the case of the local sports clubs are bought and paid for, as per the **Redcar** case.
 - ix. We submit that there were no planning applications under consideration by the planning authorities on the Application Land at the date of the TVG Application.
 - x. We submit that no planning applications have been submitted on the Application Land since the date of the TVG Application.
 - xi. Also please refer to the Inspector’s Further Directions dated 5th November 2015 clauses: - 7, 17, 18, 19, 20, 21 and 25 re-enforcing the position as set down in the **Newhaven** Judgement. [see File 10, tab 8, pages 47 to 53].
77. Additionally, we submit that it could be argued that, by granting the 125 year Lease to an independent entity over which it has no influence and/or control Bristol City Council has effectively declared that it has no commercial development plans for the playing fields thus preventing the threat of Future development by BCC being used to frustrate the TVG Application. Furthermore with regard to Cotham Academy we have previously made the argument that should Cotham Academy wish to provide additional specialist sports facilities for their pupils, or for commercial hire, over and above the existing facilities that they use, including the existing grass pitches at Stoke Lodge Parkland, then there is no legal imperative why these facilities, or commercial ventures, must be provided at Stoke Lodge Parkland. [see File 2, tab 9 page 115 and tab 10 pages 116 & 117] i.e. is not a relevant condition for consideration under the Commons Act 2006, section 15, is not a Statutory Purpose and hence does not create a Statutory Incompatibility.
78. Please note that we have identified and excluded from the TVG Application Land any obvious areas requiring development to ensure that they are not impeded by any future registration.
79. We agree that the current pavilion is not fit for purpose, but submit that the TVG Application poses no impediment to its refurbishment or replacement at its current location or at three other locations at Stoke Lodge Parkland.

Furthermore in the “List of outstanding issues” submitted for the Pre-Hearing meeting held on 5th February 2016 [see File 9, List of unresolved issues, pages 274 to 277] we confirmed that we are minded to consider extending the excluded

land at the site of the existing pavilion to assist if that is helpful to the Objectors, despite the fact that that land is accessible to the Community.

80. In addition to all the above arguments in support of the Application we refer to the recent outcome of the TVG Application at **Moorside Fields Lancaster** [see File 2, tab 13, pages 127 to 153] where Inspector Alison Lea MA (Cantab) made a recommendation on the 22nd September 2015 for the majority of the land to be registered as a TVG despite the Local Authority's claim that registration would prevent future development. We refer to paragraphs 117 – 125 of the Application Decision [please see evidence tab 18] and in particular paragraph 122 of the decision: -

“I do not agree with LCC’s submission that the evidence of Lynn MacDonald demonstrates the necessity of keeping the Application Land available to guarantee adequate future school provision in order to meet LCC’s statutory duty. Even if at some stage in the future there becomes a requirement for a new school or for additional school places within Lancaster, it is not necessarily the case that LCC would wish or need to make that provision on the Application Land.”

81. In 2010 a TVG application to register **Wellington Hill playing fields**, Horfield, North Bristol, [see File 2, tab 7, pages 40 to 100] was submitted to the Bristol City Council Commons Registration Authority. In January 2014 the Commons Registration Authority issued a report to the Public Rights of Way and Greens Committee (PROWGC) recommending registration and this was agreed by the PROWGC. This evidence comprises four documents: -

- i. Doc 1 – Bristol City Council Registration authority report to the PROW&GC (39 pages). Dated 25th June 2012 regarding the Application to register land at Wellington Hill playing fields.
- ii. Doc 2 – an extract from Doc 1 comprising the Applicant’s response to the letter of objection submitted by Bristol City Council (as Landowner) on 27th May 2011. (8 pages).
- iii. Doc 3 – an extract from Doc 1 comprising the Applicant’s response to the Council’s reply to the Applicant’s Observations October 2011 (3 pages).
- iv. Doc 4 – Bristol City Council Registration authority report to the PROW&GC (11 pages) regarding the Application to register land at Wellington Hill playing fields.

The contents of all four documents (61 pages in total) are highly relevant and pertinent to the Application at Stoke Lodge Parkland because they mirror very closely the circumstances at Stoke Lodge Parkland, and the arguments used by Bristol City Council as landowner and objector at **Wellington Hill playing fields**

are the same as those they rely on at Stoke Lodge Parkland. Clearly the objector's arguments were not successful at **Wellington Hill playing fields** and were ultimately withdrawn by the objector. [see File 2, tab 7, (Doc 4 paragraphs 14 and 16) pages 90 to 100]: -

“14. In February 2013 the Objector requested, and the Applicant agreed, that matter be held in abeyance pending outcome of i) the decision in Newhaven Port and Properties Ltd v East Sussex Council (2013) EWCA Civ 276 and ii) outcome of a similar TVG application.”

“16. On 18 December 2013 the Objector informed the CRA that the Council as Landowner no longer wished to proceed with its objection to the application and that the objections were withdrawn. The CRA informed the Applicant of the situation.”

Importantly we include Docs 2 & 3, pages 79 to 86 as supporting evidence to our Application.

With particular regard to this section of our submission we refer to Doc 2 paragraphs 44, 45, 46 & 47 [see File 2, tab 7, pages 79 to 86] where the Applicant in that case states; -

“44. The Council argue that registration should not be granted as there is a possibility that a future planning permission may be granted, in which case the Merton case may apply. However, the Merton case would not apply because the Application for registration has already been lodged unlike the Merton case. There would not then be an appropriation, sale, grant of planning permission and commencement of development that predates the application for a village green registration.

45. If their argument were accepted then no village green could be registered in respect of land owned by a local authority, because it would always be possible that the local authority might, in the future, appropriate the land, sell it, and then grant planning permission.

46. The Council state at paragraph 4, page 22 that it remains their intention to develop the land for education use. This statement is completely at variance with their recent proposal to sell off the land for residential use.

47. We make no comment as to the effrontery of this claim, but merely state that the argument is improper at best. We ask you, Commons Registration Authority to note its insincerity when judging their case as a whole. The CRA should certainly not allow empty claims of education use to be used as a mechanism to enable the Council to sell the land for profit.”

(Emphasis added by this Applicant)

82. We refer to the Inspector's Further Directions dated 5th November 2015 paragraphs 16, 17, 18, 19, 20, 21 & 25. In particular paragraphs 21 & 25 [see File 10, tab 8, pages 47 to 53]: -

21. *R (Lewis) v Redcar and Cleveland Borough Council (No 2) is potentially more helpful in identifying a category of land held by a local authority that may properly be registrable. The land in question was a local authority golf course. It was not argued that local people had been permitted to go on the golf course⁸. The Supreme Court held that golf course use was compatible with the non-permitted use by local people in the sense that the registration was able to proceed on the basis that the golfers would be able to continue playing golf. In fact by the time the case was considered the local authority wanted to develop it for housing, as Lords Neuberger and Reed were aware. So the Supreme Court evidently did not regard this subsequently arising statutory incompatibility as preventing registration.*

25. *In this connection I think it is useful to have regard to paragraph 94 (and the following paragraphs) of the Newhaven decision set out above. As I read it, Lords Neuberger and Lord Reed are not saying that, where one is considering the land of a statutory undertaker, the concept of statutory incompatibility necessarily applies (ie as matter of law) but that, where one is considering an entity such as a port or harbour it obvious that it applies. If this is the correct interpretation then it is obvious that the concept is not limited to statutory undertakers but might apply to other statutory bodies, such as local authorities. Further, whether it does apply or nor depends on the facts (supplied in the Newhaven case by an examination of the statutory powers). The position may not be as obvious in the case of a local authority as it is in the case of a statutory undertaker (or the particular statutory undertaker considered in Newhaven). I am confident that this nuanced view (as opposed to the "extreme" positions articulated in paragraphs 23 and 24 above) is the correct one.*
(Emphasis added by the Applicant)

83. The Bristol City Council Cabinet Briefing Note dated 22nd April 2010 [see File 2, tab 4, page 15] clearly makes the points that:-

- i. Following the **Redcar** Judgement any TVG Application at Stoke Lodge Parkland is likely to succeed (clauses 2.15, 2.16, 2.41 & 5.1). Please note that the Key clauses on the A4 summary are not listed in numerical order (see note under clause 6a) but in the order that made the purpose of Briefing Note clearer to understand by the Community gathered at the Public Open Forum held at St Mary Magdalene Church, Stoke Bishop, on 25th August 2010. [see File 3, tab 13, pages 75 to 77]
- ii. If the landowner wishes to preserve their development potential they must "take action" to frustrate any future TVG Application (clauses 2.17 & 2.18)

- 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 frame”* (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, pages 151 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 less 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

<i>Site</i>	<i>Hours per site</i>	<i>Cost per school day</i>	<i>Total estimated cost</i>	<i>Total estimated cost</i>

			<i>for 190 school days</i>	<i>for 365 days</i>
<i>Stoke Lodge Playing Field</i>	<i>2</i>	<i>£70</i>	<i>£13,300</i>	<i>£25,550</i>

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 $191 \times 2 \times £10 = £3,820$ 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 I) 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.