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

APPLICANT'S STATEMENT OF CASE

1. The trigger point for this Town or Village Green (TVG) Application was the Briefing Note to Bristol City Council Cabinet dated April 2010. [see File 3, tab 10, pages 46 to 69]

2. For a convenient single page summary of the relevant clauses from the Briefing Note. [see File 3, tab 12, page 74]

3. Contained within this Briefing Note, Bristol City Council (BCC) local government officers warn the City Council Cabinet that following the outcome of the ***Redcar*** case [clause 2.15], that should the Cabinet wish to retain BCC development rights on the Land at Stoke Lodge Parkland (SLP) then they must take action to frustrate any future TVG Application [2.17 & 2.18]. It also confirms that the site is currently unfenced and allows unfettered community access.[2.41]

4. The Briefing Note made recommendations on how to frustrate any future TVG Application and these include: -

   a. Fence the perimeter of the site to exclude Community access [2.42]

   b. [5.3] *"If the City Council wishes to retain opportunities for future development on school playing fields, options to avoid registration will need to be secured by placing a time restriction on the open access arrangement to ensure that the open access is only permitted for a period of less than twenty years in total. There would be a need to pass or publish a formal resolution to the effect that the open access would represent the granting of a revocable permission within this timeframe".*

Importantly neither of these options had been enacted by the date of the Application, nor to date.

5. The contents of this Briefing Note are important because it shows that BCC acknowledged and accepted unreservedly, that following the Supreme Court Judgement regarding the ***Redcar*** case, the qualifying criteria for the registration of the Land at SLP in accordance with the Commons Act 2006 section 15 was in place and that any TVG Application would succeed.

   Otherwise why would they need to take action to frustrate any future TVG Application to protect their future development rights?

   Importantly we submit that this also demonstrates that at this time the Community had established prescriptive rights to use the Land at SLP for lawful sports and pastimes as of right.

6. This Briefing Note was issued for public consultation, via the BCC Neighbourhood Partnership, in June 2010 and was the subject of three public meetings

   a. The public meeting organised by Save Stoke Lodge Parkland at St Mary Magdalene Church, Stoke Bishop on 28th July 2010

   b. The Stoke Bishop Open Forum at St Mary Magdalene Church on 25th August 2010. [see File 3, tab 13, pages 75 to 77]

   c. The BCC Neighbourhood Partnership (NP) meeting held on 15th September 2010 at the United Reform Church, Henleaze. [see File 3, tab 14, pages 78 to 83]

7. The NP meeting on the 15th September 2010, comprised Ward representatives, local Councillors and the public, and importantly included one of the Councillors for Henleaze, Cllr Clare Campion-Smith who, at the time of the meeting, also held the position of BCC Cabinet Executive Member for Children and Young Persons Services (CYPS), including education, who supported the Resolution to: -

   > ***"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."*

   The Executive Member, Cllr Clare Campion Smith also stated at that meeting that: -

a. *"It was envisaged that Stoke Lodge could be seen as a 'flagship' for shared use/access for other sites in the city."*

b. *"The Cabinet also agreed that no fencing should be erected and …"*

c. *"The Cabinet had requested that the capital programme for CYPS be amended to reflect this decision."*

d. *"…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"*

[See File 3, tab 14, pages 78 to 83]

8. Importantly this resolution confirmed the retention of the status quo with ongoing shared Community use as of right as per ***Redcar.*** In other words: -

   a. Not "by right"
   b. Not "with permission"
   c. Not "with revocable permission"
   d. Not "with implied permission"
   e. Not "by force"

9. The TVG Application for SLP was submitted (3 volumes) [see Files 3, 4 & 5] on 4th March 2011.

   The Application was submitted on the prescribed Forms and was declared "Duly Made" by Bristol City Council in their letter dated 12th April 2011.

10. We later clarified the terminology, re "Neighbourhood and Location", in our Application as pointed out by the Inspector in his Report dated 22nd May 2013 at paragraph 73 [see File 10, tab 3, pages 12 to 35, paragraph 73] where he correctly interpreted our intention. On 15th February 2016 we subsequently clarified our Application and confirmed the Inspector's interpretation. [see File 10, tab 18, pages 70 to 80]

11. On 15th February 2016 we also clarified the Land included within our TVG Application [see File 10, tab 18, page 81]

12. We still maintain that our Application (subject to 10 and 11 above) is complete with regard to the qualifying criteria contained within the Commons Act 2006, Section 15, and that the Land should be registered as a Town or Village Green.

13. Following Receipt of our Application the CRA notified the interested parties and this resulted in objections from: -

a. Bristol City Council (BCC)
b. Cotham School / Academy (NB Academy status granted 1st September 2011)
c. University of Bristol, (Pitch maintenance sub contractor to Cotham)
d. Rockleaze Rangers Junior Football Club

14. This precipitated a recurring cycle of claim and counter-claim regarding the merits of our TVG Application [see Files 6, 7 & 8] where we submit that we have shown that the objections submitted are not relevant.

15. In Mid 2012 the CRA appointed Mr Petchey as an Independent Inspector to provide a Report on the merits of this Application with regard to the disputed issues and make a recommendation on registration of the Land (or not).

16. Mr Petchey weighed the evidence and issued his Report dated 22nd May 2013 recommending that the Land should be registered as a Town or Village Green. [see File 10, tab 4, pages 12 to 35, paragraph 75]

17. In paragraph [76] of that Report the Inspector suggested that the parties should be given the *"opportunity to comment on this Report".*

18. Unsurprisingly we commented that we agreed with the Report and the Recommendation.

19. Inevitably the objectors wanted to continue their argument that use was not "as of right" and the cycle of claim and counter-claim continued. [see File 8, responses numbers 5, 6 & 7, pages 135 to 230]

20. We submit that the objectors have failed to introduce any new evidence or argument to provide grounds for the Inspector to consider changing his Report and Recommendation dated 22nd May 2013 based on the qualifying criteria set down in the Commons Act 2006, Section 15. [see File 8, responses numbers 5, 6 & 7, pages 135 to 230]

Signs

21. Importantly the Inspector has repeatedly requested evidence regarding the signs, please refer to: -

a. The Inspector's Report dated 22nd May 2013, paragraphs 4 – 6 & 68 – 72. [see File 10, tab 3, pages 12 to 35, paragraphs 4 -6 & 68 – 72]

b. The Inspector's Further Directions dated 11th September 2013, pages 1 – 5 [see File 10, tab 4, pages 36 to 41]

c. The Inspector's Further Directions dated 30th January 2014, paragraphs 5, 8, 10, 11, & 12
[see File 10, tab 5, pages 42 to 44, paragraphs 5, 8, 10, 11, & 12]

d. The Inspector's Further Directions dated 26th March 2014, at the end of paragraph 2
[see File 10, tab 6, page 45, paragraph 2]

e. The Inspector's Further Directions dated 3rd March 2016, page 3
[see File 10, tab 9, page 56]

We submit that the objectors have failed, in spite of these multiple Directions, to provide any sustainable relevant evidence to support their objections, in stark contrast to the evidence of use by the Community engaged in Lawful sports and pastimes as of right provided by the Applicant demonstrating that the three signs are insufficient in number, are ineffective and have never been enforced.

Statutory Purpose and Statutory Incompatibility

22. Latterly the objectors have introduced the argument of Statutory Purpose and Statutory Incompatibility (with the Commons Act 2006) citing the ***Newhaven*** case as a potential precedent to frustrate this TVG Application.

23. In the Inspector's Further Directions dated 30th January 2014 and 26th March 2014 he confirmed his decision and the rationale for deferring any further Directions until after the outcome of the ***Newhaven*** case was known. [see File 10, tabs 5 & 6, pages 42 to 45]

24. The Supreme Court handed down its Judgement on the ***Newhaven*** case on 25th February 2015. [see File 9, tab 1, pages 99 to 147]

25. In the Inspector's Further Directions dated 6th March 2015 [see File 10, tab 7, page 46] he invited the objectors to comment on the ***Newhaven*** Judgement and for the Applicants to respond to their submissions.

26. On 15th June 2015 and 10th July 2015 [see File 9] we responded on the ***Newhaven*** Judgement and the objector's submissions showing: -

a. Why the Supreme Court decision in ***Newhaven*** case is not relevant to the different circumstances at Stoke Lodge Parkland. Notably paragraphs 1 – 11, 14 & 98 – 101 from the Judgement.

b. Why the matters raised by the objectors are not relevant to this TVG Application

c. Why some of the clauses contained within the ***Newhaven*** Judgement are supportive of the TVG Application at SLP. Notably paragraphs 98 - 101

27. In the Inspector's Further Directions dated 5th November 2015 [see File 10, tab 8, pages 47 to 53] at paragraphs 13 - 25 he clarified his understanding of the ***Newhaven*** Judgement with regard to this Application, particularly with regard to paragraphs 92 – 96 and 98 – 101 from the Judgement i.e. the same points that we made in our response dated 15th June 2015

28. We concur with all the points made by the Inspector in his Further Directions dated 5th November 2015 particularly paragraphs 16 - 25 which we submit supports our TVG Application.

29. We submit that the Inspector has repeatedly stated that he requires further explanation and substantiation from the objectors to support their assertion that a Statutory Purpose argument leading to a sustainable Statutory Incompatibility with the Commons Act 2006 point is applicable at SLP. Please refer to: -

    a. The Inspector's Report dated 22nd May 2013, paragraph 67.
    [see File 10, tab 3, pages 12 to 35, paragraph 67]

    b. The Inspector's Further Directions dated 11th September 2013, page 5 under the heading "**Newhaven".**
    [see File 10, tab 4, page 40]

    c. The Inspector's Further Directions dated 30th January 2014, page 1, para 1.
    [see File 10, tab 5, page 42]

    d. The Inspector's Further Directions dated 5th November 2015 pages 1-6, in particular paragraphs 21 & 25
    [see File 10, tab 8, pages 47 to 53]

    e. The Inspector's Further Directions dated 3rd March 2016, page 2, final paragraph.
    [see File 10, tab 9, page 55]

30. We submit that the objectors have consistently failed to provide any sustainable rationale for Statutory Purpose to be considered as a relevant point for consideration to explore if Statutory Incompatibility is relevant or not.

31. Conversely we submit that we have shown in our responses dated 15th June and 10th July 2015 [see File 9] that there is no site specific "Statutory Purpose" at Stoke Lodge Parkland.

32. Additionally we submit that if it is found that SLP has a “Statutory Purpose” then there is no existing “Statutory Incompatibility” and furthermore no “Statutory Incompatibility” will be created by registration of the Land as a Town or Village Green.

33. A Pre-hearing meeting was held on 5th February 2016 in an attempt to narrow the issues and agree the programme and process leading up to, and during, the NSPI.

34. The Inspector issued his Further Directions dated 3rd March 2016 [see File 10, tab 9, pages 54 to 56] confirming the action points agreed and the timetable to be adopted in the period up to and including the NSPI.

35. Following the Pre-hearing meeting we submitted the requested clarification regarding: -

    a. Neighbourhood and Locality
    b. The land included within this TVG Application

    [see File 10, tab 18, pages 70 to 81]

36. Following the Pre-hearing meeting the objectors have confirmed that, in addition to the matter of “Statutory Incompatibility”, they wish to continue to include the matters relating to: -

    a. “all signs”
    b. “Neighbourhood and Locality”
    c. “Lawful” use of the Land? We await more details and clarification of the point that the objectors wish to make on this matter so that we can include our response in our future rebuttal dated 6th June 2016. Together with any other new issue they deem appropriate to introduce at this late stage.

    We are compelled to point out that at the time of the Inspector’s Report dated 22nd May 2013 the objector’s had confirmed that they either accepted that we had made these points or they considered them *“not determinative of the application”.* [see File 10, tab 3, pages 12 & 13, paragraphs 3 – 6]

    Hence our bundle includes our evidence relating to all matters submitted by us regarding our Application in accordance with the Commons Act 2006, section 15 and our submission regarding the relevance of the Newhaven case following the Supreme Court Judgement dated 25th February 2015.

37. As part of our bundle of documents within Files 1 & 2 (of 10) we have now included new and compelling evidence and arguments supporting our submission that assertions by the objectors of “Statutory Purpose” and “Statutory Incompatibility” are not applicable or relevant at SLP. Including: -

a. A news article dated 8th August 2012 [see File 2, tab 9, page 115] from the Department for Education confirming that ***"the two-hour-a-week-school-sport-target was not a target – it was an unenforceable aspiration";*** because since ***"Under the Education Act 2002, the Secretary of State is specifically barred from ordering any school to devote a certain period of time to any particular subject".***

   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 20 October 2010."***

   Hence we submit that sport at school, in particular at Stoke Lodge Parkland, is not a Statutory Purpose that can be relied upon to develop a Statutory Incompatibility argument capable of frustrating this TVG Application under the Commons Act 2006 Section 15.

b. Under the 'Education Act 1996, c 56, part X, Chapter 1. Required standards for education premises, section 543' there have been changes and clarifications made and recorded at the National Archives under the legislation.gov.uk web site. http://www.legislation.gov.uk/ukpga/1996/56/section/543
   [see File 2, tab 10, pages 116 &117]

   Where it states at clause F2 (4A) 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)."

   In other words, not only is playing sport at SLP not a Statutory Purpose (see above) but the development of Specialist Sports Facilities at SLP that are available elsewhere, in place of the grass pitches, is also not a Statutory Purpose because they are available elsewhere e.g. Coombe Dingle Sports Centre etc.

c. The Articles of Association for Cotham Academy at clause 4 page 6 (of 45) under the heading "OBJECT" [see File 2, tab 14. Pages 145 to 198, clause 4] 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.

d. 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 <u>and subject also to all existing rights and use of the Property including use by the community</u> 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.

38. Further to our comments regarding the three signs on SLP contained in paragraphs 20 & 21 above and based on the evidence provided by Ms Susan Comer in her witness statement dated 20th January 2015 [see File 2, tab 21.

pages 218 to 225] we can show from Exhibit SC. 1. (an e-mail from Shaun Burns to Lynne Harvey dated 26th March 2009) that at the date of the e-mail i.e. 26th March 2009 the new sign could not have existed at SLP as it was still being designed and the wording approved for manufacture prior to installation. This confirms that the new sign was installed less than 2 years prior to the TVG Application.

39. This new and compelling evidence is in direct contradiction to statements provided by other witnesses for the objectors seeking to establish that the new sign was installed considerably more than 2 years before the date of the TVG Application. We make no comment on the motivation for their actions but left unchallenged this would have misled the Inquiry.

Barkas

40. Within the ***Newhaven*** Judgement there was reference to the revised Judgement in the *R (Barkas) v North Yorkshire Council* **[2014] UKSC 31** handed down by the Supreme Court on 21st May 2014.

Within our Inspector's Further Directions dated 6th March 2015, there was also reference to the same revised Judgement *(**Barkas**)* and its possible relevance to the Application at Stoke Lodge Parkland.

We contend that the revised judgement re ***Barkas*** clarifies the position that where land is held for the purpose of "free open public recreation", then public use is "with permission" and hence "by right" and not "as of right".

However, clearly we have shown that the Land at Stoke Lodge Parkland is not held for the purpose of "free open public recreation" (not disputed by the objectors) and hence this Judgement re ***Barkas*** is not relevant to the Application at Stoke Lodge Parkland and should be ignored.

41. We also submit that there is no question of Community use "with permission" as evidenced by the responses to questions 31 and 33 in the 54 questionnaires included in the TVG Application dated 4th March 2011 [see Files 4 & 5] and the 80 statements included in our response dated 30th January 2012, tab 8, [see File 6. Tab 8, pages 66 to 155] where not one single response indicated having requested or been granted permission for Informal Community use.

42. We also submit that there is no question of "implied permission", given; -

a. the existence of signs (albeit ineffective) and

b. the wording of the Briefing Note to Cabinet dated 22nd April 2010 [see the single page summary, File 2, tab 4, page 15] and

c. the minutes of the Neighbourhood Partnership meeting dated 15th September 2010, section 8 [see File 3, tab 14, pages 78 to 83] confirming ongoing shared use as of right i.e. as per Redcar and

d. The Inspector's Report dated 22nd May 2013 paragraphs 69, 70 and 71. [see File 10. Tab 3, pages 12 to 35, paragraphs 69 - 71] Notably describing use as ***"a classic one of acquiescence"*** at paragraph 70

Lawful use

43. At the Pre- hearing meeting on Friday 5th February 2016 Mr Blohm raised the matter of "lawful use" as a point that he intended to pursue. We are unclear on the point that Mr Blohm intends to argue and will respond to his submission as part of our future rebuttal scheduled for 6th June 2016. However we do point out that in the Inspector's Report dated 22nd May 2016 at paragraph 28 [see File 10, tab 3, pages 12 to 35, paragraph 28] he states that: -

"…… One would expect an area of open space like the application site, if available, to be used by local people for lawful sports and pastimes and, of course, it is not in dispute that it was so used. The witness statements thus speak, as one would expect, to a range of recreational uses including football, cricket, rounders, kite flying, walking and dog walking and games[14]. They also speak of community events; a Fun Day, a tour by a tree expert, community picnics, a South Dene v West Dene cricket match, parties organised by Woodland Grove residents. The land has been used by Scouts and also by Brownies."

Furthermore, I can confirm that there is no record that 'Non lawful sports and pastimes', such as cock-fighting, badger-baiting or prize-fighting have been conducted on the Land in the 20 year period prior to the TVG Application date i.e. 4th March 2011

Neighbourhood and Locality

44. On 7th March 2016 Mr Nathan Allen on behalf of Cotham Academy confirmed that: - "*We are grateful to have received the clarification on neighbourhood and locality. Having reviewed the material we do not concede the point but require the applicant to prove their case."*

We submit that we have made our case. If the objectors believe that we have not they should provide argument and evidence to support their assertion so that we can respond.

Health and Safety

45. Cotham Academy argues that Health and Safety concerns (real or imagined) are a reason to deny the TVG Application.
We submit that genuine Health and Safety concerns should always be managed to reduce risk but that they do not form part of the qualifying criteria set down by the Commons Act 2006, section 15.

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

In other words this is a management obligation, not a "**raison d'être**", nor a "Statutory Purpose", and importantly is capable of being discharged in various ways at the discretion of the school and does not require unreasonable measures. We submit that excluding the Community to engage in lawful sports and pastimes, as of right, on a shared basis as per ***Redcar*** would be unreasonable.

46. Health and Safety responsibilities are 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.

We have shown in our response dated 15th June 2015 to Cotham Academy's letter dated 4th March 2015 [see File 9, response # 8. Tab d, pages 33 to 63, section 8 in the landscape table, pages 49 to 56] that Cotham do have "Child Protection and Safeguarding Policy" and a "Health and Safety policy" in place, freely available on their web site, which they consider adequate to cover the situation at SLP and importantly they do not include the need to exclude the Community [see File 9, response # 8, tabs 6 & 7, pages 219 to 262]

Importantly the Formal Sports Clubs that use SLP have H&S policies and procedures in place and they mirror the procedures currently in place at Cotham i.e. inspection and removal of any litter or detritus and place in the bins provided.

47. 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] These are extracts from that Appendix: -

> ***"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). <u>Counsel has stated that the legal duty is not to eliminate risk of injury but to take reasonable care</u> 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)***

We therefore submit that the above report by the Landowner, specifically relating to Stoke Lodge Parkland, supports our assertion that fencing the land to exclude the Community from engaging in lawful sports and pastimes as of right on the Land included within the TVG Application, on the pretext of Health and Safety risk, is both unnecessary and unreasonable, especially when Cotham Academy's own Child Protection Policy and separate Health and Safety Policy mirror the recommendations made by the Landowner above. Health and Safety procedures are perfectly capable of being conducted without providing an excuse for exclusion.

Furthermore we repeat our arguments that Health and Safety Risk is not included within the qualifying criteria set down in the Commons Act 2006, section 15 and Health and safety management is not a Statutory Purpose.

Test(s) regarding Future Development

48. 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).

49. 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.

50. 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 ……"***

51. 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……."***

52. 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".***

53. 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.

54. 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.

55. 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."

56. 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: -

a. 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 <u>must</u> 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

b. 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.

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

   i. 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.

   ii. 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.

   iii. 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.

d. "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.

e. 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.

57. 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……."***

58. 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.

59. 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.

60. 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.

61. 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).

62. 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]

Cotham Petition

63. 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]

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.

Other matters

64. We reserve the right to add to this Statement of Case should additional issues be raised by the objectors in their submissions due to be issued on 3rd May 2016.

65. We confirm that the witnesses called by the Applicant are not expert witnesses and are not qualified to be cross examined on matters of law, they are witnesses of fact based on personal experience.

Conclusion

66. In conclusion we submit that our Application meets the qualifying criteria set down in the Commons Act 2006, Section 15 and that the Land included within the TVG Application is not the subject of Statutory Purpose or Statutory Incompatibility and accordingly the Land should be registered as a Town or Village Green.