

BRISTOL CITY COUNCIL**PUBLIC RIGHTS OF WAYS AND GREENS COMMITTEE****25TH JUNE 2012****Report of:** Commons Registration Authority**Title:** Application for land known as Wellington Hill Playing Field to be registered as a town or village green Bristol made under the Commons Act 2006**Ward:** Horfield/Bishopston**Officer Presenting Report:** Anne Nugent, Senior Solicitor, Legal Services**Contact Telephone Number:** 0117 922 3424**RECOMMENDATION**

Before arriving at a final determination of the application to register the land known as Wellington Hill Playing Field, Bristol as a town and village green it is recommended that as the land is owned by the Council an independent inspector be appointed to consider representations on the interpretation and legal effect of the objector's evidence in relation to the signage.

Summary

This report relates to an application for land known as Wellington Hill Playing Field, Bristol to be registered as a town or village green made under the Commons Act 2006

The significant issues in the report are:

Whether or not the land, the subject of the application, has been used 'by right' or 'as of right'

Policy

1. There are no specific policy implications arising from this report.

Consultation
Internal

2. Not applicable

External

3. Not applicable

Context

4. The Council as registration authority has received an application to register land known as Wellington Hill Playing Field, Horfield, Bristol (the application land) to be registered as a town or village green Bristol made under the Commons Act 2006.
5. The plan of the application land is set out in Appendix A to this report.
6. The application in the prescribed form, Form 44, was verified by a statutory declaration of Mr Gavin Boby. The application is supported by two bundles of signed evidence questionnaires (220) relating the use of the land and a petition with numerous signatures.
7. The Applicant asserts that the land has been used by a significant number of inhabitants, in Horfield, Lockleaze and Bishopston. Inhabitants have indulged as of right in lawful sports and pastimes for activities including cricket, football, cub-scouting and walking on the land for a period of at least 20 years (from 1989) under section 15(2) of the Commons Act 2006 and continue to do so at the date of the application.
8. An objection to the registration of the application land has been received from the landowner, Bristol City Council (the Objector) as *'the usage of the land by the public for 'lawful sports and pastimes' has not been 'as of right', as required by section 15(2) Commons Act'* and submitted detailed documentary evidence to support its objection. The Council's submission is that the use of the Wellington Hill Playing Fields has not been as of right because use of the application land has been either: With the Council's permission, or by force, as evidenced by broken fencing and the ignoring of notices which have made the use contentious. Included with the objection bundle is a site history and explanation of the supporting evidence (Appendix B).
9. The Applicant was given, and accepted, an opportunity to make representations on the Objector's submissions/evidence (applicant's reply); appendix C to this report.
10. As a result further submissions were made by the objector. The objector submitted a witness statement from Bob Hoskins who exhibited signs which had been erected on the site. Statement and photographs

attached to this report at appendix D.

11. Having received the further evidence from the Objector the Applicant was given, and accepted, an opportunity to make representations on the Objector's submissions/evidence. In summary (which is not exhaustive): The applicant contends that the vast majority of their statements make it clear that the users have never sought permission to use the Playing Fields, and that the many activities for which they have used the field fall outside the purposes contemplated under the Education Act. Also as regards the use by force the applicant notes that the objector's own evidence confirms that there has not been a fence where the Playing Fields abut Wellington Hill since 1980. Since 1980 access from Wellington Hill, the main entrance to the field, to the fields could not have been over through or around a fence. As regards the use in contravention of notices thus making any such use contentious the Applicant denies that the notices were sufficient to make the use contentious. They deny that any sign as shown in the photographs contained in the objector's evidence has been in place. They call upon the Council to prove that the notices were displayed at all entrances, and when they were put up and removed (since they are not there now). Copy of applicant's further submissions attached to this report as appendix E.

Proposal

12. PROWG Committee on behalf of the Council (as statutory Commons Registration Authority) has a statutory duty under the Commons Act 2006 and the regulations made thereunder to determine objectively whether or not the land in question should be registered as a Town or Village Green within the meaning of the Act.
13. Applying the law as explained in *Taylor v Betterment Properties (Weymouth) Ltd and another* [2012] EWCA Civ 250 (as set out in the legal advice below) to the facts of this case it is clear that the signs put up by Avon Council at all school playing fields including Wellington Hill were sufficient to notify local inhabitants that the use of the land was contentious unless permission was sought. It is clear from the statement of B Hoskins that the signage was still in place until a few years ago. The signage gives clear authority that members of the public were not to trespass on the land and lists examples of the activities which may result in prosecution. It also indicates authorised use may be requested. However, such user is not 'as of right' since it is only permitted to the extent that land is not already in use by the educational or some other permitted user.

14. If it is right that the signage negates the assertion that the land was used as of right then it would be determinative of the application without the need for an inquiry or a further consideration of the other objections to registration. It is recommended therefore that this aspect be dealt with as a preliminary issue.
15. Before arriving at a final determination of the application to register the land known as Wellington Hill Playing fields as a town and village green it is recommended that as the land is owned by the Council an independent inspector be appointed to consider representations on the interpretation and legal effect of the objector's evidence in relation to the signage. The inspector will then report back to the Commons Registration Authority with recommendations. CRA will then bring the matter back to PROWG.

Other Options Considered

16. The other options considered are:
 - 16.1 Refer the application to an independent inspector for a public inquiry on all the issues;
 - 16.2 Reject the application on the papers.
17. The referral for a full inquiry will put the Council to additional unnecessary expense if the signs used by the landowner make it clear to the public that the use of the land was contentious.
18. Rejecting the application on the papers without allowing the applicant an opportunity to first make representations to an independent inspector could be considered to be unfair as the Council owns the land and puts the Council at risk of legal challenge.

Risk Assessment

19. The options leave the Council open to legal challenge. In spite of the fact that legal challenge in cases of this nature is the exception rather than the norm, it must be pointed out to members that there are, nonetheless, legal risks associated with this decision. There could be questions the fairness of the proceedings.
20. These risks are mitigated against by the Council's demonstration of a fair and transparent process in its determination of the application and a decision based on detailed consideration of the evidence.

Public Sector Equality Duties

21. Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:
- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
 - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
 - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
 - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
 - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
 - iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
 - tackle prejudice; and
 - promote understanding.

Legal and Resources Implications

Legal

22. The City Council in its capacity as Commons Registration Authority has responsibility under the Commons Act 2006 to determine whether the land or a part thereof should be registered as a green.

The Law

23. Section 15 of the Commons Act 2006 enables any person to apply to a Commons Registration Authority (CRA) to register land as a town or

village where it can be shown that:

“A significant number of inhabitants of any locality, or any neighbour within the locality, having indulged as of right in law sports and past times on the land for a period of at least 20 years”

24. In addition to the above, the application must meet the test under Section 15(2) of the Act in particular that use of land has continued “as of right” until at least the date of the application.
25. The applicant must establish that the land in question comes entirely within the definition of a town or village green, in Section 15(2) of the Act. The Registration Authority must consider on the balance of probabilities whether or not the applicants have shown that:
a significant number of inhabitants of the locality or neighbourhood indulged in lawful sports and pastimes as of right on the land for a period of at least twenty years; and they continue to do so at the time of the application.
26. In its capacity as Registration Authority the City Council has to consider objectively and impartially all applications to register greens on their merits taking account of any objections and of any other relevant considerations. Wholly irrelevant considerations such as the potential use of the land in the future must be left out.

“As of right”

27. User “as of right” means user without force, secrecy or permission (*nec vi nec clam nec precario*). User as of right is sometimes referred to “as if by right” and must be contrasted with use “by right”.

“Signs”

28. In *Taylor v Betterment Properties (Weymouth) Ltd and another* [2012] EWCA Civ 250 the landowner had done all that is required to make user of his land contentious. The court also found that the landowner was not required to take other steps to rebut any presumption of acquiescence to the user. It was not fatal to the landowner's case that some local inhabitants did not see the signs but it was highly relevant in determining whether the landowner had given reasonable notice. In *Taylor* the court held that where reasonable attempts to advertise the landowner's opposition to the use of their land was met with acts of criminal damage and theft was not fatal to their stance that the use of the land was contentious.

“Appropriation”

29. Local authorities are creatures of statute. They can only lawfully act for the purposes and in the ways that statute permits them to act.

30. Local authorities have been given powers to appropriate, or re-allocate, land from one statutory purpose to another – see section 163 Local Government Act 1933.
31. The current provisions are those found in section 122 Local Government Act 1972, as amended by the Local Government, Planning and Land Act 1980. The Act gives a local authority power to appropriate land that is no longer required for the purpose for which it was held immediately before the appropriation.

Procedure

32. The application has been made under Section 15(2) of the Act 2006. The regulations that govern the procedure are the (Commons Registration of Town or Village Greens) Interim Arrangements (England) Regulations 2007. The Committee has recently approved a written procedure which provides that where the Council is the landowner an independent inspector will automatically be appointed to conduct the inquiry. Appointing an independent inspector to consider the representations before determination on the papers in cases where the Council is the landowner will address any suggestion of bias in the decision-making process.

Legal advice provided by: Anne Nugent, Senior Solicitor, Legal Services.

Financial

33.

(a) Revenue

In the event of any subsequent legal challenge any costs over and above those normally met from existing revenue budgets can be met from the central contingency.

(b) Capital

If the Land is registered as Town and Village Green, this will prevent a development opportunity and therefore a potential loss of a Capital Receipt.

Financial advice (Revenue) from Tony Whitlock, Corporate Finance
Financial advice (Capital) from Jon Clayton, Corporate Finance.

Land

There are no specific policy implications arising from this report.

Personnel

Nil

Appendices

Appendix A – Map of Application Land

Appendix B - Objector's site history and outline of their evidence

Appendix C- Applicant's reply

Appendix D – Objector's Witness statement from Hoskins

Appendix E - Applicant's further response

Local Government (Access to Information) Act 1985

Background Papers:

Application papers/ statement of objections/ response available at the Council House, College Green.

Section 15 Commons Act 2006

Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007

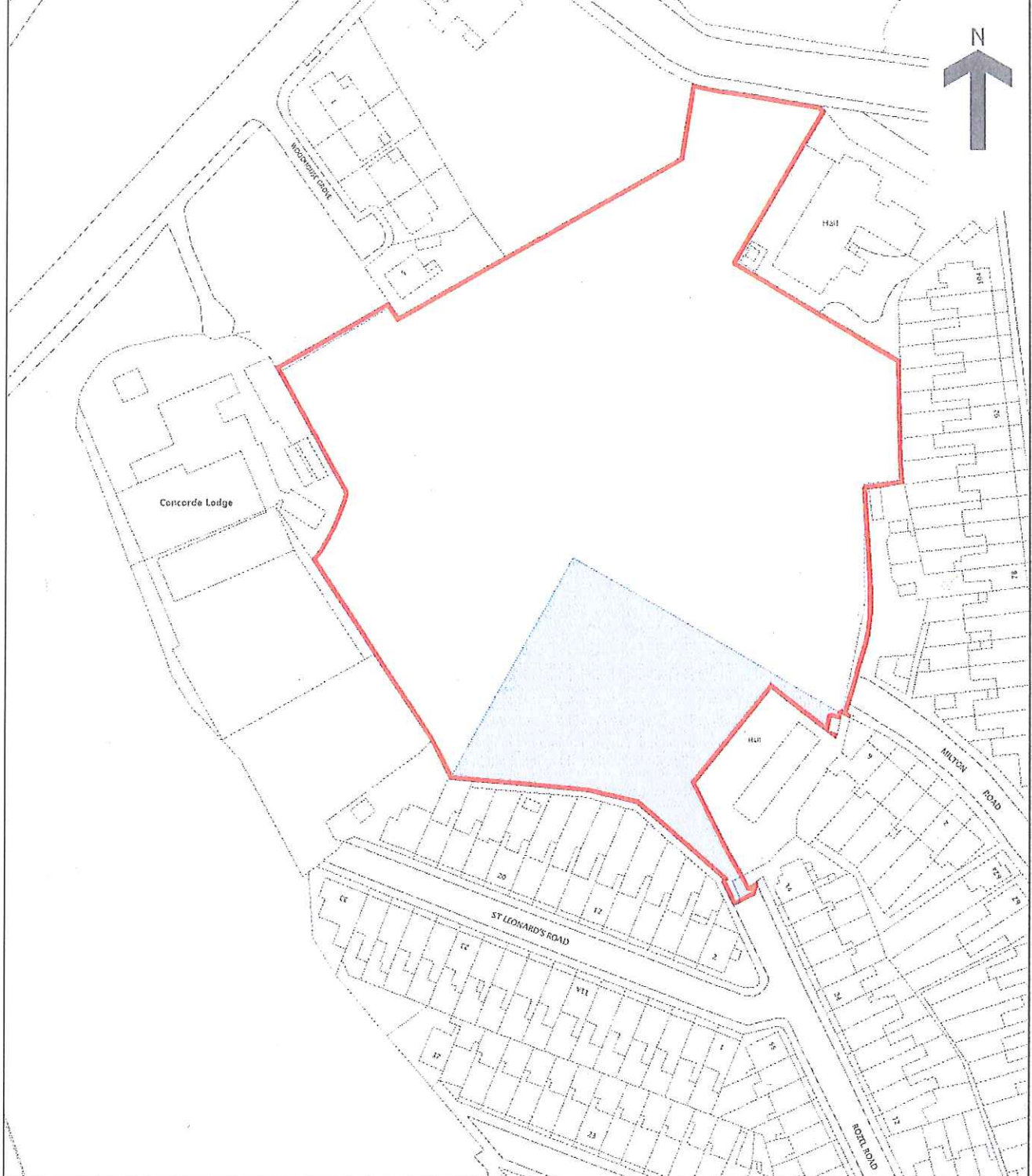
Land Registry Current title plan

<<48>>

Title number **BL108167**
Ordnance Survey map reference **ST5976NW**
Scale **1:1250**
Administrative area **CITY OF BRISTOL**



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This is a print of the view of the title plan obtained from Land Registry showing the state of the title plan on 09 November 2010 at 16:43:50. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 7 - Title Plans.

This title is dealt with by Land Registry, Gloucester Office.

Wellington Hill Playing Field

Site History and Evidence

This land was formerly an area of rough pasture land forming part of the Glebe of Horfield Rectory which adjoins.

Before the Second World War, the land was used for playing fields and grazing. It was requisitioned during the war for use as a military camp. Huts were built on the site.

After the Second World War the land and huts remained under the control of the Ministry of Works.

On 29 October 1946 the Chief Education Officer wrote to the City Estates Surveyor and Valuer as follows:

My Committee have recently considered the use of a piece of land at the rear of Rozel Road and Hazel Road, Horfield, for the site of a school kitchen and also as a site for the erection of a Nursery School. We are now, therefore, faced with three possibilities: (1) that we purchase a portion which is required for the immediate erection of a kitchen, (b) that we purchase in addition, the site required for the Nursery School although it is not anticipated that the nursery will be required in this area for some years, and (c) that we purchase the whole site for the uses detailed in (a) and (b), the remainder to be used as playing field.

I should therefore, be grateful if you would approach the owners of the land and ascertain their feelings in this matter. I think they should be aware of the first two schemes and if they are prepared to sell a portion of the land only, no further action will be necessary with regard to the suggested use of the site for playing fields. If, however, they are not willing to part with a portion of the land I shall be obliged if you will open negotiations for the purchase of the whole site.

I am enclosing a copy of the site plan which has been prepared by the City Architect and shall be glad if you will let me have a report upon your negotiations in due course for submission to my Committee.

(see encl 1)

On 20 February 1947 at a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) it was resolved that approval be given to future acquisition of 0.8 acres of land at Rozel Road, Horfield for the proposed use of Kitchen and 40 Nursery Unit. (see encl 2).

This land at this time was under requisition by Government Department and required approval from the Ministry of Education for Bristol Corporation to acquire the land for education purposes.

On 26th February 1947 the District Valuer wrote to Bristol Corporation.

With reference to your letter of the 18th December, 1946, calling for a report from this office for use in application to the Ministry of Education for approval to and for a grant in respect of the proposed purchase of the land described below, by the Corporation, under powers conferred by the Education Act, 1944, an inspection has been made and the following report is submitted:-

SITUATION: At the head of Rozel Road, a short distance from the shops and bus routes in Gloucester Road and about two-and-a-half miles north from Bristol Bridge, in the City and County of Bristol. Identified as part of parcel number 811 on Ordinance Survey Gloucestershire Sheet LXXI.8 (Revision of 1936) and shown marked pink on the accompanying plan.

DESCRIPTION: A roughly rectangular plot of land, being rough grassland, part of the glebe land of Horfield. There is no road frontage except to the present closed end of the road. Bounded on the south-east by a live hedge contiguous with properties fronting Rozel Road and Milton Road and on the south-west by chestnut pale fencing defining the rear access way to housing fronting St. Leonards Road. The south-eastern and south-western boundaries are undefined. The surface is undulating and falls towards the south. There are five large Nissen huts, two small Nissen huts and one M.G.F.F. hut erected on the site, served by sewer, water and electricity services. A rough rubble road has been made from Rozel Road into the site to serve the huts.

AREA: About .80 acres.

INTEREST TO BE ACQUIRED: Freehold.

OWNERS: Stated to be the Incumbent of Horfield Rectory, the Rev E.A.Smith, the Ecclesiastical Commissioners for England.

OCCUPIERS: Requisitioned by a Government Department. The buildings on the land were erected by that Department.

OUTGOINGS: Stated to be free from Tithe Redemption Annuity, but subject to a Land Tax of 1/4d per annum for the whole parcel of land in the ownership of the Incumbent of Horfield Rectory. The appropriate part of the latter should be redeemed before any building is erected on the land.

RESTRICTIONS, EASEMENTS AND RIGHTS OF WAY: None known or sought to be imposed.

STATUTORY RESTRICTIONS: The adjoining road is unclassified and the Restriction of Ribbon Development Act, 1935, does not apply.

TOWN AND COUNTRY PLANNING: Zoned as residential at a density of twelve houses to the acre.

PUBLIC SERVICES: Electricity, gas, water mains and the public sewer adjoin the site.

MINERALS: The land is just outside the probable boundaries of the lower coal measures and is in a neighbourhood which is largely developed. No information has been provided

as to whether or not the minerals are owned with the surface. The acquisitions, however, to include such minerals as the owner possesses. The mineral valuer has been consulted and is of the opinion that the risk of damage by mining subsidence is one which will reasonably acceptable. A copy of his report is attached.

PROPOSED TERMS AND CONDITIONS: The purchase price of the site to be £475 (four hundred and seventy-five pounds). The Acquiring Authority to have the right to receive any compensation due under Section 2 (1) (b) of the Compensation (Defence) Act, 1939. The Acquiring Authority to pay the vendor's proper legal cost and his surveyors' fees in accordance with Scale 1 (5) of the Professional Charges of the Royal Institution of Chartered Surveyors, viz. £18 4s 0d.

RECOMMENDATION: The Incumbent, on the advice of the Diocesan Surveyor, has agreed to sell his interest in the land to the Corporation, subject to the Consent of the Ecclesiastical Commissioners, on the terms and conditions stated above, which, in my opinion, do not exceed the probable cost of compulsory acquisition. I am prepared to advise the Ministry of Education accordingly.

(see encl 3).

On 15th April 1947 at a meeting of the Council reports were presented by the Education Committee and Finance and Committee setting out the proposal to acquire the land at Rozel Road. On the motion of Alderman Williams it was Resolved:-

That so much of the Report as relates to the acquisition of an area of 0.8 of an acre of land at Rozel Road, Horfield, for the sum of £475 be approved; that subject to the approval of the Minister of Education the provisional agreement be confirmed; that application be made to the Minister of Health for consent to borrow the amount of the purchase price plus legal and other expenses including the cost of raising the necessary monies, and that the City Seal be affixed to all necessary documents.

(see encl 4).

On 20th September 1948 at a meeting of the Primary Education Committee (sub-committee of Education Committee) it was reported that a number of huts at Wellington Hill belonging to the Ministry of Works, had become available. It was resolved:-

That the huts be acquired for educational purposes and that they be used for the time being as an annexe to Horfield National School; that the Buildings and Equipment Committee be asked to carry out the necessary alterations.

(see encl 5).

On 19th October 1948 at a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) it was resolved:-

(a) that the City Architect be asked to prepare a scheme for the adaptation of the huts for submission to this Committee;

(b) that the transfer of the requisition be accepted and the huts purchased at a figure to be

agreed by the City Valuer;

© that the City Valuer be asked to commence negotiations for the acquisition of that portion of the site which ~~does~~ not belong to the Committee. NB a portion of this site ^{does} already belong to this Committee

(see encl 6).

On 21st December 1948 at a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) the Chief Education Officer reported that it was not proposed to proceed with the original scheme for the adaption of huts and that the adaptation be confined to two huts for use as an annexe to the Horfield National School. It was resolved:-

That the adaptation of two of the huts at an estimated cost of £460 be approved.

(see encl 7).

On the 28th January 1949, part of the site (0.8 acre of land) was purchased for £475 from The Reverend Canon E A Smith, Rector of Horfield, by Education Committee. A/R 5226.

(see encl 8).

On the 19th February 1949 the Chief Education Officer wrote to the City Estates Surveyor and Valuer.

I am getting in rather a difficulty regarding the need for the use of huts belonging to the Ministry of Works on a requisition site at Wellington Hill, Horfield. We want to put two or three in order for occupation at Easter to accommodate children who will otherwise be without school places. I have written to you previously on the 17th December and onwards regarding this and the whole matter devolves on the purchase of land because the Ministry of Education are extremely reluctant to take over and continue requisition. I understand the land is the property of the Ecclesiastical Commissioners and you will, of course have commenced some negotiation with them but I am wondering whether there is any means by which we can expedite matters to avoid being placed in serious difficulties. Would you be good enough to have a look at this matter and let me know what you think.

(see encl 9).

On 22nd March 1949 at a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) the City Valuer reported on his negotiations for the purchase of approximately 3 acres of land forming part of the Rectory Glebe at Wellington Hill, Horfield for educational purposes. It was resolved:-

That subject to the approval of the Ministry of Education and the City Council the land be purchased at a cost of £430.

(see encl 10).

On ? 1950 at a meeting of the Council a report was presented by the Education Committee.

At their meeting on the 15th April 1947 the Council approved the acquisition of approximately .0.8 acres of land at Rozel Road as the site of kitchen for the provision of school meals and for a nursery school to serve the neighbourhood. Your Committee have now agreed to acquire the remainder of the land which is approximately 3 acres for the sum of £430, plus surveyors fees and legal expenses which the City Valuer agrees to be fair and reasonable. The District Valuer has issued a confirming report. The land now being purchased will become a playing field for the nearby Horfield National and Ashley Down Primary Schools when the army huts belonging to the Committee now occupying part of the land and used temporarily for a school meals kitchen and school accommodation can be dispersed with. In the meantime a certain portion of the land can be used for playing field purposes. Your Committee recommend that the provisional agreement be confirmed, that approval is sought from the Minister of Health for sanction to borrow the amount of the purchase money plus legal expenses including the cost of raising the necessary loan and that the ?

(see encl 11).

On 21st June 1949 at a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) it was reported that the Minister of Education had approved the purchase price of £750 for the eleven huts on the Wellington Hill site of which £420 would rank as Provision of Meals Expenditure. It was also recommended that Hut No 11 be let on a tenancy to the 141st Bristol Boy Scouts Company at a rental of 7/6 a week. Both recommendations were approved.

(see encl 12).

On 20th September 1949 at a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) the committee approved the treatment of concrete floors in the classroom huts at Wellington Hill at a cost of £30.

(see encl 13).

On 21st March 1950 at a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) it was resolved that approval be given to future acquisition of 2.67 acres of land at Wellington Hill, Horfield for the proposed use of School Playing Field.

(see encl 14).

On 17th April 1950, the rest of the site (2.8 acres of land) was purchased for £430 from The Reverend Canon E A Smith, Rector of Horfield, by Education Committee. A/R 5832(1-8).

(see encl 15).

From 17th April 1950, the huts were used by Education Committee for temporary classrooms and for a school kitchen. It was then intended to use the land for school playing fields once the huts were no longer required.

On 10th August 1950 the City Estates Surveyor and Valuer wrote to the City Treasurer as

follows.

Further to your letter dated 8th August, regarding land purchased from the Church Commissioners, details of these purchases are as under:-

.80 acres for a School Kitchen purchased 28.01.1949.

2.869 acres purchased 17.04.1950 Completion Statement 1488. Purchased for Education Playing Field.

Both these areas are included in 811 O.S Glos. Sheet LXX1. 8 (Revision of 1936).

(see encl 16).

Proposed Appropriation in 1959

In 1958 the College of Advanced Technology was looking in the Horfield area for a suitable site for hostel accommodation and playing field. The preferred option was the Horfield Barracks Playing Field and the City Valuer has entered into negotiations with the War Department with a view to terms being agreed. Other alternative sites being considered were Wellington Hill and Rodbourne Road.

On 1st July 1959 at a meeting of the Further Education Committee (sub-committee of Education Committee) it was resolved:-

That Horfield Barracks Playing Field is the most suitable site for the provision of hostel accommodation for the College of Advanced Technology as it will also provide essential playing field facilities.

(see encl 17).

On 21st July 1959 at a meeting of the Further Education Committee (sub-committee of Education Committee) it was resolved:-

That the Horfield Barracks Playing Field site should be allocated to the Education Committee, subject to

(a) the continued reservation of the frontage land comprising two acres for housing purposes and

(b) the Planning and Public Works Committee being permitted by the Education Committee to appropriate for public open space purposes the alternative site in Wellington Hill comprising approximately four acres, excluding the site reserved for Library purposes.

(see encl 18).

On 22nd July 1959 at a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) the committee approved the acquisition of the Horfield Barracks Playing Field by Education Committee in return for land in Wellington Hill owned by the Committee.

(see encl 19).

On 22nd July 1959 at a meeting of the Planning and Public Works Committee the committee decided:-

That the Horfield Barracks Playing Field site comprising 10.5 acres should be allocated to the Education Committee subject to -

(a) the reservation of the frontage land comprising approximately 2.5 acres for housing purposes, and

(b) the Planning and Public Works Committee being permitted by the Education Committee to appropriate for public open space purposes the alternative site in Wellington Hill comprising approximately 3.6 acres, excluding the site reserved for Library purposes.

(see encl 20).

On 16th September 1959 at a meeting of the Planning and Public Works Committee the committee decided that following a visit to Wellington Hill to inspect the land to be appropriated from Education Committee for public open space that no action be taken to appropriate this land from the Education Committee.

(see encl 21).

On 23rd September 1959 at a meeting of the Planning and Public Works Committee Councillor Draper gave notice of his intention to move at a meeting of the Committee to be held on 7th October 1959.

That the decision contained in Minute No.82. Sub.No.9 of the meeting of the Committee held on 16th September 1959 be rescinded to enable the Committee to give further consideration to the appropriation of land in Wellington Hill for public open space purposes.

(see encl 22).

On 7th October 1959 at a meeting of the Planning and Public Works Committee Councillor Draper moved that

That the decision contained in Minute No.82. Sub.No.9 of the meeting of the Committee held on 16th September 1959 be rescinded.

The motion was seconded by Alderman Mrs Gleeson but on being put to the meeting was declared not carried, six members voting in favour and seven against.

(see encl 23).

On 24th September 1959 the City Estates Surveyor and Valuer wrote to the City Treasurer as follows.

With reference to my letter to you of the 27th May when I recommended that the existing fire insurance cover of £200 should remain, it is noted that these huts are being demolished and I shall be glad if you will arrange to cancel the fire insurance cover in due

course. I note that the Planning and Public Works Committee have agreed not to appropriate this land for public open space purposes and I shall be glad in due course if you will give me instructions concerning the disposal of this area having regard to the request of the Ministry of Works for some land for the construction of prison houses.

(see encl 24).

Use of site from 1959

Between 1959 and 1974 the land was under the control of the Education Committee of Bristol Corporation and was used as school playing fields.

On 1st April 1974, the land was Vested in Avon County Council (Education Committee).

By 2nd August 1978 the playing field was being used by Education Department and local children for recreation. A local resident Mr Hacker of 5 Woodhouse Grove, Horfield asked Avon County Council for a contribution towards the cost of rebuilding his boundary wall which fronts onto the playing fields. He claimed that the wall had become dangerous because children played football against it. The County Council were reluctant to make a contribution as they considered it would mean that Mr Hacker accepted that children should be free to play ball games against the wall.

(see encl 25).

On 17th November 1979 a letter was received by Avon County Council from the Horfield Parochial Council as follows.

This playing field adjoins our Church Hall in Wellington Hill, and a number of windows have been broken recently as a result of ball games, etc. , being played in the field. We should therefore be glad if you could assist us by providing screens for the windows at the side of the Hall. You have already partially done this at the back of the Hall.

On 28th April 1980 D B Cockram (Avon Property Services) wrote to the Director of Education as follows.

I have received a letter via our Building Surveyor, from Horfield Parochial Church Council regarding a number of broken panes of glass in the windows of the Church Hall, as a result of ball games from the adjacent playing field. The playing field is owned by the County Council and is used by the Education Department and local children for recreation. The playing field is used for football matches and one of the goal posts is sited close to the rear boundary fence of the Church Hall.

Having inspected the site I agree with the Building Surveyors comments as follows. Although the Education Department in the past provided guards on the windows directly facing onto the football pitch, I cannot see that the area of the field adjacent to the side of the Hall is likely to be used for organised games and therefore any windows which are broken must be from children/vandals playing on this area of the field. Unfortunately, it appears that the boundary fencing and gate which used to be alongside the public footpath in Wellington Hill has now disappeared which has the affect of opening up the playing field to the general public. If the fence was reinstated, if financially possible, this

would reduce unauthorised access to the playing field and would solve the problem.

(see encl 26).

In 1992 although not attached to any specific school the playing field was being used by Ashley Down Junior School for their games activities as they did not have any playing fields attached to their school.

This information was contained in an internal memo dated 2nd March 1992 from George Glazebrook to Claire Keen relating to a boundary fence that needed repairing.

This site comes under the Community Leisure Committee, but is not actually under the Community Leisure Department. (Whatever difference that makes, because somebody obviously looks after it). The playing field although not attached to any school is used by Ashley Down Junior School for their games activities as they do not have playing fields attached to their school. They do not have exclusive use. J Blackmore says they wouldn't have any funds anyway. It really comes down to Community Leisure paying. I believe, because it appears to be under their jurisdiction.

(see encl 27)

In June 1995 Avon County Council produced a document known as "Local government Reorganisation, Avon Interim Property Transfer List, As at June 1995, For Bristol Unitary Authority". It listed properties that were being transferred from Avon County Council to Bristol Unitary Authority. Wellington Hill Playing Field was in this document under the Operational Property List. It was recorded as being under the control of the Community Resources Committee and with a Use described as Land - Playing Field / Playground.

(see encl 28)

On 1st April 1996, the land was Vested in Bristol City Council (Leisure Services Committee)

Use of the Site - Committee / Department

Our research into the use of the Site has necessitated the confirmation as far as possible, of the relevant committee / department that had responsibility for dealing with this land. In summary, we understand them to be as follow:

From 28th January 1949 - Education Committee (Bristol Corporation)
From 1st April 1974 - Education Committee (Avon County Council)
By 2nd March 1992 - Community Leisure Committee (Avon County Council)
By June 1995 - Community Resources Committee (Avon County Council)
From 1st April 1996 - Leisure Services Committee (Bristol City Council)
From 2000 - Environment Transport and Leisure Department (Bristol City Council)
From 2005 - Culture and Leisure Services Department (Bristol City Council)
From 2008 - Neighbourhoods (Parks Landscape Heritage Estates) Department (Bristol City Council)

References

- (1) - Ex Avon County Council Historic File V31/NW/8/H2 - Reel 99
- (2) - Ex Avon County Council Historic File V31/NW/8/H1 - Reel 162
- (3) - Ex Bristol Corporation Terrier Record Card - G19/3 (Avon Ref V31/NW/4)
- (4) - Ex Bristol Corporation Terrier Record Card - G19/4 (Avon Ref V31/NW/7)

SCHEDULE

1. Letter from the Chief Education Officer to the City Estates Surveyor and Valuer dated 29 October 1946.
2. Extract of Minutes of a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) dated 20 February 1947.
3. Letter from the District Valuer to Bristol Corporation dated 26 February 1947.
4. Extract of Minutes of full Council meeting dated 15 April 1947.
5. Extract of Minutes of a meeting of the Primary Education Committee (sub-committee of Education Committee) dated 20 September 1948.
6. Extract of Minutes of a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) dated 19 October 1948.
7. Extract of Minutes of a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) dated 21 December 1948.
8. Copy of Conveyance Document dated 28 January 1949.
9. Letter from the Chief Education Officer to the City Estates Surveyor and Valuer dated 19 February 1949.
10. Extract of Minutes of a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) dated 22 March 1949.
11. Extract of Minutes of full Council meeting dated ? 1950.
12. Extract of Minutes of a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) dated 21 June 1949.
13. Extract of Minutes of a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) dated 20 September 1949.
14. Extract of Minutes of a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) dated 21 March 1950 and copy of plan dated 13 April 1949.
15. Copy of Conveyance Document dated 17 April 1950.
16. Letter from City Estates Surveyor and Valuer to City Treasurer dated 10 August 1950.
17. Extract of Minutes of a meeting of the Further Education Committee (sub-committee of Education Committee) dated 1 July 1959.
18. Extract of Minutes of a meeting of the Further Education Committee (sub-committee of Education Committee) dated 21 July 1959.
19. Extract of Minutes of a meeting of the Buildings and Equipment Committee (sub-committee of Education Committee) dated 22 July 1959.
20. Extract of Minutes of a meeting of the Planning and Public Works Committee dated 22 July 1959.
21. Extract of Minutes of a meeting of the Planning and Public Works Committee dated 16 September 1959.
22. Extract of Minutes of a meeting of the Planning and Public Works Committee dated 23 September 1959.
23. Extract of Minutes of a meeting of the Planning and Public Works Committee dated 7 October 1959.

24. Letter from City Estates Surveyor and Valuer to City Treasurer dated 24 September 1959.
25. Correspondence relating to a claim for a contribution to rebuild a wall belonging to Mr Hacker. 2 August 1978 to 25 August 1978.
26. Correspondence relating to a request by Horfield Parochial Church Council to provide screens for windows at the side of the hall. 17 November 1979 to 28 April 1980.
27. Correspondence relating to payment for repairs to a boundary fence. 24 February 1992 to 6 April 1992.
28. Extract from document. "Local government Reorganisation, Avon Interim Property Transfer Lists, As at June 1995, For Bristol Unitary Authority."
29. Copy of Title Report dated 16 January 2006.
30. Official copy of register of title. BL108167. Edition date 10.12.2009.
31. Copy of Bristol CC Terrier Record Card relating to .8 acres of land.
32. Copy of Bristol CC Terrier Record Card relating to 2.8 acres of land.
33. Copy of Avon CC Terrier Record Card relating to .8 acres of land.
34. Copy of Avon CC Terrier Record Card relating to 2.8 acres of land.

**In the matter of the application to register the land
known as Wellington Hill Playing Field as New Town or
Village Green.**

Response to the Council's Statement of Objections

Dear Sirs

This letter is lodged on behalf of the Applicants in the above matter and is in response to the letter of objection ("LOB") dated the 27th May 2011 lodged by Mrs D Leamon on behalf of the Director of Central Support Services of Bristol City Council ("the Council").

Introduction

1. 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 is 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.
2. The evidence we have supplied is abundant that the use has been as of right. Please see the hundreds of statements which we submitted with the application. What is the purpose of the proposed hearing – is the Council assuming that these hundreds of people who have submitted written statements will respond under cross-examination that in fact their statements were false? We would therefore ask that the CRA determine not to hear this as a preliminary issue but give directions to enable the matter to be brought to a speedy conclusion when all objections can be considered and a determination made.
3. The Applicants therefore request that the CRA direct as follows:-
 - I. That the issue of whether the use is BR or AOR is not dealt with independently of the other issues but all objections are heard together.
 - II. That the Council be directed to file their other objections in full within 14 days together with further and better details of the objections that have already been lodged.

We make this request because the LOB does not clearly set out the grounds for objection and contains information that is not of relevance to the objections.

We therefore ask that the Council be directed to supply further and better details of the objections in a clear and concise manner that can be responded to appropriately.

Response to the Council's Statement of Objections

14 days is a reasonable time scale as the Council have already indicated the areas on which they reserved the right to lodge further objections and therefore they will have considered these areas and formulated the objections based on them.

- III. The Applicants be given a reasonable time to respond to the objections having regard to their extent and number.
 - IV. Such other directions as will bring the matter to hearing as soon as possible.
4. However, if, which we dispute, the CRA decide to hear evidence as to whether the use is BR and not AOR as a preliminary issue, then we address Bristol City Council's objections, such as they are, as follows.
 5. The history of the site section seeks to establish that the site was to be used for educational purposes and was originally acquired under the Education Act 1944. The details supplied also indicate that though consideration was given to the appropriation of the site for other uses at no time has such an appropriation be made.
 6. It is clear, from the information up to page 11, that responsibility for the site was with a number of Council departments and committees. But throughout the relevant period the field was being used substantially as a playing field and recreation area by a variety of authorised and unauthorised parties.
 7. The conclusion on page 11 of the LOB is merely a request for an initial determination on the issue of whether the field is being used BR or AOR. The Council appear to argue that the use is pursuant to a "statutory authority" and that this is an issue that can be determined based on submitted documentary evidence alone without oral evidence being presented. No conclusion is drawn for the previous 10 pages of historic data which is, therefore, of little or no relevance.
 8. The Council then continue to present their arguments for why the use claimed in the application is not AOR but BR, and thereof outside the requirements of section 15(2) of the Commons Act 2006 ("the CA"). However, the Council present no clear argument as to why the use is BR.
 9. We, the Applicants, therefore seek to establish that the use claimed is AOR and not BR by considering the relevant factors as determined in case law.
 10. For the use to be as AOR is must have been carried out *nec vi, nec clam, nec precario* – without force, without secrecy and without permission – and the state of mind of the user is irrelevant: see *R v Oxfordshire County Council and other, ex parte Sunningwell Parish Council* House of Lords [1999].
 11. The Applicant will seek to address each of these requirements taking into account the information in the LOB.

Response to the Council's Statement of Objections

Without secrecy

12. There is no way that the use of the field as evidenced by the statements lodged in support of the application has been carried out in secret, and there is nothing anywhere in the LOB to support such a claim. Neither the statements in support of the application, nor the LOB, support an objection that the use was carried out in secret. There is, therefore, no issue on this point: the use cannot be other than AOR because of secret use. If the Council claim that there has been secrecy then they must submit evidence so that we can respond to it.
13. Our assertion on this point is supported by the Council themselves. The LOB refers to use of the field by people not specifically given permission, thereby indicating that that use by others could not have been in secret. The Applicants' statements lodged with the application contain hundreds of instances of non-secretive use.

Without force

14. For the use claimed by the application to be AOR it must have been carried out **without** the use of force. The Council appear to be arguing that the use has been **with** force and therefore cannot be AOR. They state, at page 15 paragraph 2:

Access to the land other than to permitted organised activities during this period appears to be by force due to the evidence of the broken fence

15. In support of it's contention we assume they rely on the information contained in the LOB at:
- page 10, paragraph 7;
 - page 14, paragraph 2 and the last sentence thereof;
 - page 15, paragraph 1;
 - page 20, paragraphs 1 and 2;
16. At these points reference is made to the field being fenced and that, where it abuts Wellington Hill, the fence "disappeared" and needed to be repaired.
17. From their own evidence (see letter referred to at page 16, last paragraph) by the 28th April 1980 the fence along side the public footpath on Wellington Hill had been removed and indication was given that its replacement would resolve a problem. In the statements supplied however it can be seen that the fence never was replaced and therefore since 1980 the field has been unfenced along its boundary with Wellington Hill. Therefore, all those who wished to gain access to the field since 1980 have been able to do so without the use of force. They have not even needed to open an unlocked gate or climb a stile. Any use since 1980 has, therefore, been without force and continuous for over 30 years.
18. Further there are public footpaths crossing the field and there are entrances at 3 other points around the field. None of these have been obstructed by so much as an unlocked gate and are, therefore, public footpaths crossing the site. The

Response to the Council's Statement of Objections

Council would have been obstructing such rights if they had gated the entrances so as to prevent access.

19. The statements lodged in support of the application evidence the lack of force in exercising the uses claimed.
20. The use has not been by force nor has it been contentious and therefore is not prevented from being AOR.

Without Permission

21. This appears to be the Council's main argument. They appear to say that the use is not AOR because permission has been given. That permission appears to have occurred because:

- The field was acquired under the Education Act and its permitted and intended use was for educational purposes, which is what they claim it has been used for.
- The Bristol Local Plan Written Statement adopted in 1997.

22. If the Education Act is considered to have the effect of granting permission then the extent of that permission needs to be considered. We argue that any permission that the Act may be considered to have granted would be within the scope of the Act and its purposes – namely, education.
23. The LOB states at page 13 that the land was “used as school playing fields from around 1959”. At page 14 it states that it was used by “Ashley down Junior and Infants school for their sports days”.
24. There is no doubt that the field was used by education establishments for educational purposes under the cover of the Education Act. Permission may have been formally or impliedly given for that. However, the question is whether the use described in this Application expressly or impliedly falls within that permission, otherwise it is without permission.
25. The statements lodged in support of the Application show that none of the parties claiming to have used the field are formal education establishments such as schools. Most are private individuals outside of the education system. The use for walking dogs is not within the scope of education and not exercised by permission granted by the Education Act.
26. Therefore, the Applicants further argue that if (which is not admitted) the Education Act is considered to have granted permission for the use of the field, that permission could only be for education purposes expressly authorised by the school or the Director of Education. The uses evidenced by the statements lodged in support of the Application are not uses for education purposes, and were not expressly authorised and, therefore, are not uses for which permission has been

Response to the Council's Statement of Objections

granted under the Education Act. Permission has not therefore been given under the Education Act for the uses described in this application.

27. The LOB also states on page 15:

Permissive rights are also contained in the Bristol Local Plan Written Statement adopted in 1997

28. No details are given of these Permissive Rights and no detail is given that they have been published in any way on the site. If the CRA is minded to find for the Council on this point, then the Council must be directed to file full details of the permissive right they say was granted, and the Applicants be given opportunity to respond.

29. The question then arises as to whether the mowing of the field and the erection of the goal posts may constitute an implied licence but the courts have rejected such arguments. We refer to the Beresford case.

30. Therefore, the use evidenced in support of this application has been without permission and as such has been use AOR.

The Merton Case

31. The Council seek to rely upon the recent case of *BDW Trading Ltd (t/a Barrett Homes) v Spooner representing the Merton Green Action Group & Merlin Homes Ltd* ("the Merton Case").

32. They state at page 21:-

Here land had been appropriated by the local authority for planning purposes then sold to Barrett- planning was granted and work duly commenced.

33. This case has no relevance to the present application because its facts are completely different from the facts of this application. The current application can be distinguished from the Merton case because there has been no:-

- Appropriation;
- Sale;
- grant of planning permission, or;
- start of work.

34. The Merton case has no relevance to the present application.

35. We set out below paragraphs 7 and 8 of the Judgement given in the Merton case:

Response to the Council's Statement of Objections

7 *By Section 233 of the Town and Country Planning Act 1990 ("TCPA1990"), where any land has been acquired or appropriated by the Local Authority for planning purposes and is for the time being held by them for the purposes for which it was so acquired or appropriated, the authority may dispose of the land (in such manner and subject to such conditions as appear to them to be expedient) in order to secure the best use of that land or to secure the erection, construction or carrying out on it of any buildings or works appearing to them to be needed for the proper planning of the area. It is not in dispute between the parties that the land in this case was disposed of under Section 233.*

8 *Section 241(1) TCPA 1990 provides that*

"Notwithstanding anything in any enactment relating to land which is or forms part of a common [which includes.... any town or village green], open space [which includes any land used for the purposes of public recreation] or fuel or field garden allotment or in any enactment by which the land is specially regulated, such land which has been acquired by a Local Authority under this Part or under Chapter V of Part 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 or compulsorily under any other enactment, or which has been appropriated by a Local Authority for planning purposes –

a) if it has been acquired by a Minister, may be used in any manner by him or on his behalf for any purpose for which he acquired the land; and

b) in any case, may be used by any person in any manner in accordance with planning permission.

36. For section 241 to apply the land must have been acquired by one of 4 means:

1. under that part of the Act or
2. under Chapter V of Part 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 or
3. compulsorily under any other enactment, or
4. appropriated by a Local Authority for planning purposes

37. The Council argue that the purchase under the Educations Act falls within one of the above 4 categories, but this is false.

38. The land cannot have been acquired under the provisions of an Act that post dates the original acquisition unless there has been a subsequent appropriation – and the Council state there has been no such appropriation.

39. It was not acquired under Chapter V of Part 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

40. It was not compulsorily purchased.

Response to the Council's Statement of Objections

41. Finally, the Council's own LOB states that the land has not been appropriated.
42. Therefore, section 241 cannot apply.
43. Even if section 241 did apply, this would still not be sufficient for the Council's case, for the following reasons.
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 in 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 educational 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 about educational use to be used as a mechanism to enable the Council to sell the land for profit.
48. At page 95 of the Council's own document, they state that one option would be for the development of the site for housing and indicate further that if the whole of the site were developed then 72 dwellings could be built on it. This statement also reveals the hollowness of the Council's claim that it "*remains the case to develop the land for educational purposes*". Can the Council please inform us specifically how housing constitutes educational use?
49. The Council argue at paragraph 5, page 22, that section 241(b) is triggered when planning permission is implemented. As the Applicants have already pointed out this section cannot apply because the Council have not acquired the land in one of the four ways which brings section 241 into operation. The only possible way that could apply would be if the Council were to appropriate the field for planning purposes in the future. They have clearly stated that their intention is to develop the land for educational use and therefore no appropriation is needed as that is the basis on which it is currently held under the Education Act. If the field therefore is to be used as stated then no appropriation is needed and therefore section 241 cannot apply.

Response to the Council's Statement of Objections

50. If, however, the Council intend to change the authority under which they hold the land then an appropriation will be needed, in which case section 241 might come into play.
51. The Council are, therefore, seeking to object to the registration of the land as village green because they want to go through the process that took place in the Merton case in order then to defeat an application for registration. However, the application for the registration as village green has been made. Therefore, the Merton case facts do not apply. And it would be an abuse of procedure to reject this application simply in order to enable the Council to manufacture a situation in which the Merton can be made to apply.

Conclusion

52. The Council's case is not only without merit, it is in our submission disreputable. They seek to disguise their financial motives under general claims about "educational purposes". They seek to increase expense for the CRA, the Council itself, and the public purse, simply in order to create expense for the Applicants as a way to win tactically rather than on the merits.
53. We ask you to reject their request that a separate hearing be conducted hearing on the issue of whether the use of the playing field has been "by right" or "as of right". As we have shown, there is no merit to the Council's argument on this point and, in any event, a separate hearing on it would save no expense.
54. We respectfully ask you to refuse their request, and to direct:
1. that the issue of whether the use is BR or AOR is not dealt with independently of the other issues but that all objections are heard together, and;
 2. that the Council file their other objections in full within 14 days together with further and better details of the objections that have already been lodged.

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**IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT WELLINGTON HILL PLAYING
FIELD AS A NEW TOWN OR VILLAGE GREEN UNDER S15(2) OF THE COMMONS ACT 2006**

Boby Gavin

APPLICANT

-AND-

BRISTOL CITY COUNCIL

**REGISTRATION
AUTHORITY/OBJECTOR**

STATEMENT OF R.V. HOSKINS

I, Bob Hoskins of Bristol City Council, The Council House, College Green, Bristol, BS99 7PH will say as follows;

- 1.2 I am employed by Bristol City Council as a Landscape Manager in the Parks Team in the Council's Neighbourhoods Directorate. I make this statement in connection with the objection made to the application to register by Bristol City Council in its capacity as freeholder of the application site.
- 1.3 I am an Area Landscape Manager and I supervise contracts in relation to grounds maintenance on all education sites within the City Council and as such advise the Council on all ground maintenance issues. I joined the Council in 1965 – 1972 and subsequently rejoined in 1981 to the present time. In 1965, I worked for Bristol Corporation as an apprentice groundsman until 1970. I was subsequently employed as Groundsman at Lawrence Weston Playing Fields until 1972. I then worked in private practice as a Landscape Operative for a Landscape Consultancy Company and returned to Avon Country Council in January 1981 as a District Supervisor for school grounds in the northern area of Bristol. In 1996 Avon County Council became Bristol City Council.
- 1.4 In my evidence I shall set out the details of my knowledge of the use of Wellington Hill Playing Fields.
- 1.5 My first involvement with Wellington Hill would be in approximately 1966 where I was engaged in the marking of soccer pitches for the use of local clubs and schools for organised games. The schools that used this ground were Horfield C of E School, Ashley Down Infants.

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- 1.6 There were also many authorized ad-hoc events such as donkey derby's and fetes. The Scouts and Manor Farm Boys Club used this field.
- 1.7 To my knowledge at this time there was chain linked fencing to the boundary of Wellington Hill. My recollection is that this fencing was removed in the late 1980's. The fencing was removed due to constant vandalism. At this time, Avon County Council put up signage, which I produce as exhibit RVH/1. These signs were put up on all Avon County Council education sites. The sign made it clear not to trespass on this playing field and that authorized use should be made to the Director of Education. The pitches were let to be used by the wider community.
- 1.8 To my knowledge the signs were in the vicinity of Wellington Hill Road and Rozzel around two years ago as the land transferred from Children and Young Persons Services (CYPS) to Leisure Services on 26 June 2007. I am aware of this because I prepared the documentation to the variation of contract, which I produce as Exhibit RVH/2. This document outlines the elements of operations carried out on site. Due to the transfer this works would then carried out by Parks and Heritage Estates. At the time of the transfer time there was a single senior soccer pitch marked out on the field and an ongoing maintenance regime.

RV Hoskins.....



Date: 31.8.11.....

MEMBERS OF THE PUBLIC ARE WARNED NOT TO TRESPASS ON THIS PLAYING FIELD

In particular the exercising of dogs or horses, flying model aircraft, parking vehicles or the use of motorcycles and the carrying on of any other activity which causes or permits nuisance or disturbance to the annoyance of persons lawfully using the playing field will render the offender liable to prosecution for an offence under Section 40 of the Local Government (Miscellaneous Provisions) Act 1982.

Requests for authorised use should be made to the Director of Education.

2.5.12
[Signature]
5.3.11

COUNTY OF AVON

MEMBERS OF THE PUBLIC ARE WARNED NOT TO TRESPASS ON THIS PLAYING FIELD

In particular the exercising of dogs or horses, flying model aircraft, parking vehicles or the use of motorcycles and the carrying on of any other activity which causes or permits nuisance or disturbance to the annoyance of persons lawfully using the playing field will render the offender liable to prosecution for an offence under Section 40 of the Local Government (Miscellaneous Provisions) Act 1982.
Requests for authorised use should be made to the Director of Recreation.

L.S. 11/12

Rotherham

5-11

WATCH THE MOVIE
CLOSE CHANGE

COUNTY OF AYO

MEMBERS OF THE PUBLIC
NOT TO TRESPASS ON THIS PLAYING
... of dogs or horses, flying
... of motorcycles

MEMBERS OF THE
NOT TO TRESPASS ON THIS FIELD

In particular the exercising of dogs or horses, flying model aircraft, parking vehicles or the use of motorcycles and the use of any other activity which causes or permits a disturbance to the annoyance of persons lawfully using the playing field will render the offender liable to prosecution for an offence under Section 40 of the Local Government (Miscellaneous Provisions) Act 1982.

For authorised use should be made to the Director

23/1/2
P. B. B.

Rad/2
Ratale
5-9-11

GO TO THE
WATCH THE MOVIE
LOOSE CHANGE

COUNTY OF ALCON

MEMBERS OF THE PUBLIC ARE WARNED NOT TO TRESPASS ON THIS PLAYING FIELD

In particular the exercising of dogs or horses, flying model
aircraft, parking vehicles or the use of motorcycles and the
carrying on of any other activity which causes or permits
annoyance or disturbance to the annoyance of persons lawfully
using the playing field will render the offender liable to
prosecution for an offence under Section 40 of the Local
Government (Miscellaneous Provisions) Act 1982.
Requests for authorised use should be made to the Director
of Recreation.

9.11.12
WATCH THE NOISE
YOUR CHANGE

COUNTY OF ALON



Location Statistics - Bill of Quantity

Revised
3.9.01

Location: WELLINGTON HILL PF

Date Last Revised:

Latest Variation:

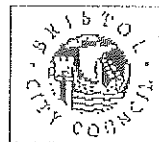
Category	Feature	Quantity	Units	Annual Rate	Total Sum	Updated Total	Variation No.
GRASSED AREAS							
GRASSED AREA		14531	SQUARE METRE	£0.0848	£345.02	£345.02	
HEDGE CUTTING-INFORMAL							
HEDGE INFORMAL		432	SQUARE METRE	£0.2164	£93.48	£93.48	
LEAF CLEARANCE							
LEAVES (Z1219)		1	ENTIRE SITE	£328.4053	£328.41	£328.41	
LITTER CLEARANCE							
LITTER (Y1215)		1	ENTIRE SITE	£157.3591	£157.36	£157.36	
SPORTS PITCHES							
SOCCER PITCH-SENIOR		1	UNITS	£172.4058	£172.41	£172.41	
SOCCER PITCH-SENIOR - (HUSBANDRY 3)		1	UNITS	£61.0479	£61.05	£61.05	

An adjustment of -72 % has been made to the Grassed Area Feature Total Sum

Current Update %: 0.00%

WELLINGTON HILL PF

Grand Total Annual Charge Updated: £1,157.73 Monthly Charge: £96.48



DELETED FROM FILE 05

C. Z. 10000

POLES MINOR

Fax No. _____

26-6.07

✓

Temporary

Deleted from Carnatic Center Site

[illegible]

New Stat Total

Date _____

Date _____

Date _____

12/09/07

67/06/07

10/2/16

**In the matter of the application to register the land
known as Wellington Hill Playing Field as New Town or
Village Green.**

**Response to the Council's Reply to the Applicant's Observations
October 2011**

The Council's submission is that the use of the Wellington Hill Playing Fields has not been by right (BR) but has been as of right (AOR) because use of the Playing Fields has been either:

- (a) With the Council's permission, or
- (b) by force, as evidenced by broken fencing and the ignoring of notices which have made the use contentious.

We will deal with these issues as follow:-

- 1. The giving of permission.
- 2. The use by force by breaking fences.
- 3. The use in contravention of notices which made any such use contentious.

1. The giving of permission.

The Council has produced evidence that it gave permission for certain uses of the Playing Fields. However, the vast majority of the support statements submitted with the application make it clear that the users have never sought permission to use the Playing Fields, and that the many activities for which they have used the field fall outside the purposes contemplated under the Education Act. Such other uses have not, therefore, been with permission and are not thereby precluded from being use by right.

2. The use by force in the breaking of fences.

The Council's own evidence confirms that there has not been a fence where the Playing Fields about Wellington Hill since 1980. Therefore, use of the Playing Fields since 1980, accessed from Wellington Hill, the main entrance to the field, cannot have been over through or around a fence. Such use cannot, therefore, be argued to be by force.

Similarly, when the Council agreed in 2008 to allow part of the Playing Fields to be temporarily enclosed by a developer an Concorde Lodge, they stipulated that the entrance from Kellaway Avenue should be maintained by an alleyway crossing the main site access. If entrance via Kellaway Avenue had been entrance by force, then there would have been no need to preserve that entry point during the development phase at Concorde Lodge.

3. The use has been by force because the use of signs has made the use contentious.

The main point of the case law quoted by the Council is whether, in the light of the principles set out in the Oxford & Buckinghamshire case, the notices that the Council refer to were sufficient to make any use of the Playing Fields contentious.

We comment on the notices as follows:-

Response to the Council's Reply to the Applicant's Observations

The notices that the Council claim have at some time been in place (which we do not admit) state:

"Members of the public are warned not to trespass on this playing field"

The wording is not: "The use of this playing field without permission will be considered trespass". Nor does the notice make it clear what use would constitute a trespass.

Those entering the field and seeing the notice would immediately see that it was a playing field, unfenced and, therefore, open to public use without that use constituting a trespass. It is a warning not to trespass without clearly prohibiting what can be done.

A member of the public would most likely take such wording as a public safety warning rather than a warning against use of the Playing Fields by the public, warning against danger to the public.

The notice goes on to list specific activities which "*causes or permits nuisance or disturbance to the annoyance of persons lawfully using the playing field...*" Those uses are not prohibited per se, but only when they cause or permit nuisance or disturbance to the annoyance of persons lawfully using the playing field. The notice states that the consequence of such unauthorised use is also a liability to prosecution. It does not clearly state that the listed used are in themselves prohibited.

The implication is precisely that ordinary members of the public should be allowed to use and enjoy the Playing Fields without nuisance, disturbance or annoyance.

In addition, there is no statement that use of the Playing Field by ordinary members of the public constitutes anything other than lawful use. And an ordinary member of the public would reasonably conclude that he or she can walk, picnic, play games, read, or sunbathe, as the evidence shows they have done for at least 20 years.

The notice goes on to state that "Requests for authorised use should be made to the Director of Education". It makes no statement as to unauthorised use and that it might be considered trespass. A reasonable member of the public would conclude, as they have done, that use of the Playing Field which is not authorised is still lawful. The implication is that if you want a formal right to use the football pitch, e.g. to secure a timed slot to use the marked out soccer pitch, then a formal authorisation would be best so as to ensure availability. However, use of the space for a "kick about" required no formal authorisation.

We put the Council to proof as to what efforts, if any have been taken to enforce the construction of these notices which they now claim. Has anyone been prosecuted or warned not to use of the Playing Field? If so, has such warning or legal action been based on anything other than interference with the lawful enjoyment of the Playing Field by ordinary members of the public?

In the Cleveland case the notices on the golf course read:

Cleveland Golf Course. Warning. It is dangerous to trespass on the golf course."

Sullivan J held that they were ambiguous and therefore ineffective. This was also true of the signs in the Oxford & Buckinghamshire case.

Response to the Council's Reply to the Applicant's Observations

For signs to be effective they have to indicate clearly that entry is with permission that can be withdrawn. A sign simply saying "Private Land Keep out" is ineffective because if a trespasser is able to enter peaceably and openly there is no contention and he can acquire the relevant rights. However, if a notice indicates that "The public may enter on foot for recreation but this permission may be withdrawn ant any time" then the owner is in a stronger position because his position is clearly and unambiguously stated.

The notices in this case are ambiguous at best, and do not state or imply that the use of the field is by permission that can be withdrawn. As such they are not sufficient to make the use as evidenced in the application contentious and, therefore, by force.

The evidence submitted with the application shows that for over 20 years there have been uses that have been without permission and without force and, therefore, exercised by right as of right.

We put the council to proof as to where and when these signs were in place around the Playing Fields. Mr. Perkins of 104 Church Road Horfield, one of the properties nearest to the entrance on to Wellington Hill will state that he cannot recall having seen any such notices at the Wellington Hill entrance since moving into the property in Nov 1982. This is the largest entrance onto the Playing Fields and if the notices are to be effective they must be clearly displayed in all points of entry. However, no such notices have been displayed at the largest of the entrances, and no one entering and using the Playing Fields from Wellington Hill will have seen any notices.

We don't admit that any sign as shown in the photographs contained in the Councils reply has been in place. We, therefore, call upon the Council to prove that the notices were displayed at all entrances, and when they were put up and removed (since they are not there now).

For all these reasons, therefore, we submit that the Council's reply goes to confirm that use of the Playing Fields by the public has been by right and not as of right.