

15 cont		<p>RVH/1; given the date of installation we assume that these are similar to the two signs sited on the Parkland (see Application vol 1 evidence items 5 and 16). If so they have been shown to be ineffective, (para 13). The more recent sign is not mentioned in the statement by Mr R V Hoskins which we contend has also been shown to be ineffective, (para 13).</p> <p>The final paragraph has no bearing on this case as the signs have been shown to be ineffective in denying access; also there are no fences. As mentioned above in relation to para13, if Bristol City Council had wished to deny access then it could easily have erected a fence at the Cheyne Road entrance when it was seeking to prevent motorcycles gaining access to Stoke Lodge. But it did not. Furthermore the Landowner has confirmed its acceptance (not permission) of ongoing community access "as of right" in the Minutes of the Neighbourhood Partnership Meeting held on 15<sup>th</sup> September 2010, see paragraph 4 above.</p>
16	<p><b>Legal Submissions</b></p> <p>In Megarry &amp; Wade (6th Edition) at 18-124 there is this statement of the law in relation to forcible user in the context of easements obtained by prescription which is considered to be persuasive in Town and Village Green cases.</p> <p><i>(a) Vi. Forcible user extends not only to user by violence, as where a claimant to a right of way breaks open a locked gate, but also to user which is contentious or allowed only under protest. User is considered to be forcible 'once there is knowledge on the part of the person seeking to establish prescription that his user is being objected to and that the use which he claims has become contentious. Thus if there is a state of 'perpetual warfare' between the parties there can obviously be no user as of right; and if the servient owner chooses to resist not by physical but by legal force, as by making unmistakable protests or taking legal proceedings, the claimant's user will not help a claim by prescription'.</i></p>	<p>The intimation that there is a state of "perpetual warfare" does not reflect the harmonious nature of the way the Education and formal sport users have co-existed alongside the community use for informal sport and general recreation over a period of 64 years, with the community use always deferring to the Education or formal sports use. The Bristol City Council argument is ill-founded and should be ignored.</p> <p>Conversely we contend that:</p> <ol style="list-style-type: none"> <li>1. No "physical force" has ever been necessary to gain access</li> <li>2. The signs have been shown to be ineffective in that local residents are either unaware of them or consider them as having no application</li> <li>3. Many entrances have no sign (in fact, it is possible to walk the whole length of Stoke Lodge without seeing a sign)</li> <li>4. No "unmistakable protest" on behalf of the owner is known to exist</li> <li>5. Local residents use of Stoke Lodge is not challenged and no "legal action" has been taken on behalf of the owner</li> <li>6. No "state of perpetual warfare" exists</li> <li>7. Lack of evidence at Stoke Lodge to support the objection</li> <li>8. For contra evidence that supports the Application see:       <ol style="list-style-type: none"> <li>a. Additional statements of use, see appendix at section 8 of this folder</li> <li>b. Witness statements, Application vol 2 (31 off)</li> <li>c. Witness statements, Application vol 3 (23 off)</li> <li>d. Extracts from Letters, Application vol 1 section 21 (over 80 off)</li> <li>e. Survey of community use, Application vol 1 section19</li> <li>f. Petition, Application vol 1 section 22.</li> <li>g. Minutes of N P meeting, Application vol 1 section 14.</li> </ol> </li> </ol>