	Stoke Lodge Parkland, Bristol, BS9 1BN. Town or Village Green Application number 24	
	Second objection by the first objector, Bristol City Council, To the Registration Authority and the Appointed Inspector following the draft directions issued by the Inspector, and the Registration Authority e-mail dated 21.08.12 Dated 12.09.12	**Response by the Applicant, Save Stoke Lodge Parkland,** To the Second objection by Bristol City Council. For the attention of the Registration Authority and the Appointed Inspector Dated 05.10.12
1	I write to you on behalf of the Director of Children and Young People's Services of Bristol City Council ("the Council") in its capacity as freeholder of the land at Wellington Hill Park ("the Site") in response to the Inspector's draft directions in connection with the above application.	We write in support of the Application for Registration of a Town or Village Green at **Stoke Lodge Parkland, Shirehampton Road, Bristol, BS9 1BN.** (not Wellington Hill Park)
2	The first objector agrees with the Inspector that it is accepted that the Land has been used for lawful sports and pastimes, that the use has been for a period of twenty years or more and has been by the inhabitants of a neighbourhood within a locality.	We welcome the confirmation that the only remaining disputed criterion required to satisfy the Commons Act [2006] for Registration is whether or not Community use is "as of right" or not. We refer to the Inspectors Report issued by Ross Crail, New Square Chambers, Lincoln's Inn on 26th August 2010, re Registration as a Town or Village Green of Land at Ashton Vale Fields, Bristol. [Clause 15] *"It is important to note that a section 15 application can only succeed if (or to the extent that) the land the subject of the application is proved to satisfy the criteria set out in section 15(2), 15(3) or 15(4). Conversely, if those criteria are met, the application must be granted. No regard can be had to considerations of the desirability of the land's being registered as a green on one hand, or of its being developed or put to other uses on the other hand. All such considerations are wholly irrelevant to the statutory question which the registration authority has to decide, namely whether the land (or any part of it is land which satisfies the specified criteria for registrability."* This response by the Applicant to the second objection by the first objector is not a stand-alone document and must be read in conjunction with:- a. The Application volumes 1,2 & 3 including the covering letter. b. The Applicants response to the first objector's (Bristol City Council) first objection. c. The Applicants response to the second objector's (UoB, Coombe Dingle Sports Centre) first objection. d. The Applicants response to the third objector's (Rockleaze Rangers Football

2 cont		Club) first objection e. The Applicants response to the fourth objector's (Cotham School) first objection f. The Applicants response to the second objector's second objection g. The Applicants response to the third objector's second response
3	The first objector submits that the issues in dispute are:-	
4	• The use of the land by local inhabitants is not as of right because 3 signs on the land make their use contentious.	We have argued in our Application and previous responses why we consider the notices to be ineffective; please see below in paragraphs 8 to 19 the details of our arguments and response to issues raised in this particular submission.
5	.....Additionally, the use of the land by local inhabitants is not as of right as it is the council's policy to allow the use of such land by the wider community for recreation in accordance with the Bristol Local Plan Written Statement adopted in December 1997.	We have argued in our Application and previous responses why we consider that this reference to the Bristol Local Plan is being quoted out of context; please see below in paragraph 20 the details of our arguments and response to issues raised in this particular submission.
6	• The use of the land for organised sports has been exclusive to those using it raising question of implied permission	We have argued in our Application and previous responses why "Organised or Formal Sport" by schools and Sports Clubs is different from "informal sport and general recreation by the Community" and why a) "Organised or Formal Sport" is not included as part of our Application for Registration on behalf of the Community, and b) how the Community users have "deferred" out of politeness to the Formal Sports users, with both users co-existing harmoniously over the past 65 years This is the first time that the first objector has raised the issue of "exclusion" as referred to in the R(aoa Mann) v Somerset county Council [2012]. Please see below in paragraphs 21 to 31 the details of our arguments and response to issues raised in this particular submission.
7	• Conflict with statutory function.	We submit that Registration as a Town or Village Green at Stoke Lodge Parkland will not conflict with the Statutory Function(s) of Children and Young Peoples Services, (CYPS). Please see below in paragraphs 32 to 37 the details of our arguments and response to issues raised in this particular submission.
8	**Contentious User and Signs**	
9	In relation to contentious use the first objector refers to the judgement in Taylor v Betterment Properties (Weymouth) Limited [2012] EWCA civ 250 (the Betterment case). Paragraph 41 provides "Assuming that the notice is in terms sufficiently clear to convey to the average reader that any use of the relevant land by members of the public will be treated as a trespass then it will be irrelevant that individual users either misunderstood the notice or did not bother to read it. The inhabitants who encounter the sign have to be treated as reasonable people for these purposes to whom an objective standard of conduct and comprehension is applied".	We are aware that the Inspector has an interest in the Betterment case and has an intimate knowledge of the facts. However, we feel compelled to highlight here a) why we consider that the first objector has cherry-picked certain quotations in an attempt to support their objection and b) they have failed to establish whether the circumstances of the case quoted can be applied to the Application for Stoke Lodge Parkland and hence this objection

9 cont		should be rejected for the reasons given below. To put the two cases into context:- At Stoke Lodge we have a very simple situation. Since Bristol City Council bought the Land in 1946/7 the Community have had "unfettered" access to the whole of the Parkland and have enjoyed shared use (co-existing) with school sports and sports clubs on an ongoing harmonious basis, with the Community users deferring to the Formal Sports users out of politeness. For supporting evidence please refer to:- a. The response to first objector's first objection paragraph 16. Also see our paragraph 11a contained below in this document. b. The statements by Simon Hinks on behalf of the second objector contained in:- i the response to the second objector's first objection at paragraphs 9 & 10 ii the response to the second objector's second objection at paragraph 5 At the Betterment site the situation is far more complicated and fraught:- The land has always been privately owned and bisected with two public footpaths. An Application for registration was made in 1990. The Application was rejected in 1996. A second Application was made in 1997; this second Application was approved in 2001. Later in 2001 the landowner sought a judicial review but this was withdrawn. In 2005 following the purchase of the land by Betterment Properties (Weymouth) Ltd in 2004 the new landowner began a case to get the Registration overturned. After Hearings in 2007 & 2008 the matter was heard in 2010 where the Judge found that it was "just to rectify the register" (remove the registration). This judgement was appealed in 2011/12. The Betterment case is a very complicated and a highly technical legal dispute. But does in part refer to issues of "as of right" and whether or not the land was available for use by the Community continuously for 20 years. There are however stark differences between the two sites. Most notably with regard to restricting access to the public footpaths, damage to fencing and signs, so much so that Mr Justice Morgan in the case ref "**Betterment Properties (Weymouth) Limited v Dorset County Council and Mrs G Taylor [2010] EWHC 3045 (Ch)"** (as presented previously by the first objector at paragraphs 20 in the response to the first objector's first objection) found that :- *"Betterment had been a case where the previous landowner had effectively given*

9 cont		*up in the face of mass trespass and years of damaged signage and fencing. He had not acquiesced but had been unable to take effective measures to prevent local residents from coming on to the land for the purpose of informal recreation."* See previous response by the Applicant, also at paragraph 20 of the response to the first objector's first objection, detailing why the Applicant considers that the situation described at the Betterment site above does not "fit" with the conditions we find at Stoke Lodge Parkland and is therefore not relevant to this Application. Furthermore the first objector presented at paragraph 21 of the response to the first objector's first objection the following:- *"The test was (at 121 of the judgement) whether the circumstances were such as to indicate to the persons using the land, or to a reasonable person knowing the relevant circumstances, that the owner of the land actually objected and continued to object and would back his objection either by physical obstruction or by legal action. For these purposes, a user was contentious when the landowner is doing everything, consistent with his means and proportionately to the user, to contest and endeavour to interrupt the user."* See previous response by the Applicant, also at paragraph 21 of the response to the first objector's first objection, detailing why the Applicant considers that the situation described at the Betterment site above does not "fit" with the conditions we find at Stoke Lodge Parkland and is therefore not relevant to this Application. To summarise the above we submit therefore that there are stark differences between "the Betterment Case" and the Stoke Lodge Application including, "wording of signs", "force", "harmonious shared use prior to Registration" "confirmed deferment" and "a complicated legal history". We therefore contend that "The Betterment Case" is not a fair comparison, unlike "The Redcar Case" which we submit remains the most relevant comparison and precedent. Please refer to the evidence and precedents presented by the Applicant in the response to the first objector's first objection at paragraph 13. With regard to the specific objection raised in this paragraph by the first objector based on Paragraph 41 of the ***Judgement in Taylor v Betterment Properties (Weymouth) Limited [2012] EWCA civ 250 (the Betterment case):*** it is necessary to consider the whole paragraph, not just the extract offered by the first objector, together with the previous paragraphs numbers 27 – 40, particularly paragraph 40. (and how they apply to the situation at Stoke Lodge Parkland.) Extract from paragraph 40:-

9 cont		*"It seems to me a user ceases to be user "as of right" if the circumstances are such as to indicate to the dominant owner, or to a reasonable man with the dominant owner's knowledge of the circumstances, that the servient owner actually objects and continues to object and will back his objection either by physical obstruction or by legal action. A user is contentious when a servient owner is doing everything consistent with his means and proportionately to the user, to contest and to endeavour to interrupt the user"* (Emphasis added by Applicant) Which we submit is not the case at Stoke Lodge Parkland where: a. The landowner has done nothing to satisfy this criterion b. The landowner is not an impoverished owner and there were grounds staff on site regularly who could have taken action if it had been deemed necessary c. In contrast Community use continued in large numbers as evidenced by the survey of use contained in the Application at evidence section (tab) 19 For further evidence to support our argument please refer to paragraph 16 of the response to the first objector's first objection. Additionally, we submit that with regard to Stoke Lodge Parkland the "Avon" notices (the original 2 notices) fail the test in paragraph 41 that:- *"Assuming that the notice is in terms sufficiently clear to convey to the average reader that any use of the relevant land by members of the public will be treated as a trespass....."* (Emphasis added by the Applicant) As evidenced in paragraph 13 of the response to the first objector's first objection and in the response to the second objector's second response paragraphs 2 to 18 We submit that the later single Bristol City Council notice has been shown to be of no practical effect by the arguments and evidence listed in paragraph 13 of the response to the first objector's first objection and in the response to the second objector's second response paragraphs 2 to 18 Furthermore, we submit that the last sentence from a complete transcript of paragraph 41 (omitted by the first objector in their letter) contains a further condition:- *"But the last sentence of this dictum suggests a wider test under which the owner who does everything reasonable to contest the user will thereby have made such use user contentious....."* (Emphasis added by Applicant) We submit that the owner has failed to do anything to object to use by the Community or make it apparent that they objected to the use by the Community which was conducted openly for 65 years and therefore they cannot claim to have done "*everything reasonable to contest the user".*

9 cont		For evidence we refer to:- a. Response to the first objector's first objection at paragraph 13 and data referenced therein b. Statements made by Simon Hinks on behalf of the second objector at:- Response to second objector's first objection paragraph 9, *" It has always been the case that use of the playing fields by third parties, including dog walkers, has deferred to the organised use of the site as playing fields by schools and local sports clubs. Any such other use by third parties has never been authorised, or as of right."* Please see also our response to this statement also at paragraph 9. Paragraph 10, *"Bristol City Council has stipulated, by way of signs around the site, that dogs are not allowed on the playing fields and that the owners would be fined if in breach. Unfortunately the notices and the policy has not been enforced....."* Please see also our response to the statement also at paragraph 10. Response to the second objector's second objection Paragraph 5:- *"We agree that the signs have been ignored, changed and moved over a period of time....."* Please see also our response to the statement, particularly with regard to the moved sign.
10	At paragraph 44 it refers to the judgement of Judge Waksman QC who derived the following principles:	We submit that it is important to consider all 5 principles *"At paragraph 44"* in totality. We must also point out that this judgement was raised previously in the first objector's first objection and we answered all the points there in our previous response at Paragraph 24, including pointing out where the principles were in support of our Application.
11a	"(1) The fundamental question is what the notice conveyed to the user. If the user knew or ought to have known that the owner was objecting to and contesting his usage of the land the notice is effective to render it contentious: absence of actual knowledge is therefore no answer if the reasonable user standing in the position of the actual user, and with his information, would have so known.	We repeat our previous response to this principle contained in the response to the first objector's first objection, paragraph 24. 1. *"We have demonstrated that notices on the Parkland did not, in any way, convey to local residents the message that the owner was objecting to or contesting their use of the land. This is supported by the extensive informal use of Stoke Lodge by local residents. In the survey that we conducted 373 uses*

11a cont		*were shown over a period of six consecutive days (excluding any School or Formal Sports use). This was extrapolated to between 22,620 and 37,899 for a whole year's use. See Application vol 1 section 19 (Survey of use August 2010). See also evidence listed in paragraph 16 of this document"* For ease of reference we reproduce below the list of supporting evidence listed in paragraph 16 of our response to the first objector's first response, referred to as "this document" above. *"Conversely we contend that:* 1. *No "physical force" has ever been necessary to gain access* 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* 3. *Many entrances have no sign (in fact, it is possible to walk the whole length of Stoke Lodge without seeing a sign)* 4. *No "unmistakable protest" on behalf of the owner is known to exist* 5. *Local residents use of Stoke Lodge is not challenged and no "legal action" has been taken on behalf of the owner* 6. *No "state of perpetual warfare" exists* 7. *Lack of evidence at Stoke Lodge to support the objection* 8. *For contra evidence that supports the Application see:* a. *Additional statements of use, see appendix at section 8 of this folder* b. *Witness statements, Application vol 2 (31 off)* c. *Witness statements, Application vol 3 (23 off)* d. *Extracts from Letters, Application vol 1 section 21 (over 80 off)* e. *Survey of community use, Application vol 1 section19* f. *Petition, Application vol 1 section 22.* g. *Minutes of N P meeting, Application vol 1 section 14.* h. *Supplementary arguments, Application vol 1 section 5* i. *Letters of support sent directly to the registration authority (to be provided by the registration authority)"* For the avoidance of doubt reference to "this folder" in 8a above shall mean section (tab) 8 of the Applicant's response in the bundle containing the first objector's first objection.
11b		<u>We quote the 2nd principle below:</u> *"(2) Evidence of the actual response to the notice by the actual users is thus relevant to the question of actual knowledge and may also be relevant as to the putative*

11b cont		*knowledge of the reasonable user;"* We repeat our previous response to this principle contained in the response to the first objector's first objection, paragraph 24. 2. *"For evidence of how the community actually responded to the signs see the evidence listed in paragraph 16 of this document"* For the avoidance of doubt reference to *"paragraph 16 of this document" above shall mean paragraph 16 of the Applicant's response to the first objector's first objection, reproduced in paragraph 11a above*
11c		We quote the 3rd principle below: *"(3) The nature and content of the notice, and its effect, must be examined in context;"* We repeat our previous response to this principle contained in the response to the first objector's first objection, paragraph 24. 3. *"We demonstrated in paras 13 and 15 (above) that the signs are ineffective*" For the avoidance of doubt reference to *"paragraphs 13 and 15"* shall mean paragraphs 13 and 15 of the Applicant's response to the first objector's first objection.
11d		We quote the 4th principle below: *"(4) The notice should be read in a common sense and not legalistic way;"* We repeat our previous response to this principle contained in the response to the first objector's first objection, paragraph 24. 4. *"The test of common sense is demonstrated by "how did the community interpret them". See the evidence listed in paragraph 16 of this document, i.e. they considered them ineffective in denying public access"* For the avoidance of doubt reference to *"paragraph 16 of this document"* shall mean paragraph 16 of the Applicant's response to the first objector's first objection. Most notably the "additional statements of use" included at evidence section (Tab) 8 of that

11d cont		folder (or bundle) highlighting why the community considered that the signs do not exclude access, but only excluded the commission of certain nuisance.
11e	(5).....Accordingly, it will not always be necessary for example, to fence off the area concerned or take legal proceedings against those who use it"	We quote the 5th principle – in full below: *"(5) If it is suggested that the owner should have done something more than erect the actual notice, whether in terms of a different notice or some other act, the court should consider whether anything more would be proportionate to the user in question. Accordingly, it will not always be necessary, for example, to fence off the area concerned or take legal proceedings against those who use it. The aim is to let the reasonable user know that the owner objects to and contests his user."* *Accordingly, if a sign does not obviously contest the user in question or is ambiguous a relevant question will always be why the owner did not erect a sign or signs which did. I have not here incorporated the reference by Pumfrey J in Brundell-Bruce's case to 'consistent with his means'. That is simply because, for my part, if what is actually necessary to put the user on notice happens to be beyond the means of an impoverished landowner, for example, it is hard to see why that should absolve him without more. As it happens, in this case, no point on means was taken by the authority in any event so it does not arise on the facts here."* We repeat our previous response to this principle contained in the response to the first objector's first objection, paragraph 24. 5. *"The Landowner has done nothing "more" to object to the free and open community use; and they are not an "impoverished landowner". (This response does not imply that we accept that the notices register an objection in the first place)* *The Landowner* a. *has not updated signs in the face of ongoing Community use* b. *has not replaced one particular sign which fell into total decay* c. *has not challenged locals' use of Stoke Lodge, even when this has coincided with grounds staff working on the land* d. *has not intimated, by sign or by action, that it was permitting access "on licence".* Furthermore, the first objector has chosen not to make reference to principles 6, 7 and 8 which they included in their first objection.

11e cont		We refer to the response to the first objector's first objection at paragraph 23 where the first objector included the following:- *In* ***R(on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and another) v Oxfordshire County Council [2010]*** *also known as the Wameford Meadow [2010] case, HH Judge Waksman QC stated that the following 8 principles should be applied when it came to signage:* (Emphasis added by Applicant) Please see also the Applicant's response to the first objector's first objection regarding principles 6, 7 and 8 at paragraph 25 (2.5 pages) which we consider highly relevant to the Application; in particular point 7 and the precedents referenced in the subsequent two pages.
12	Paragraph48 referring to the test formulated by Morgan J states "if the landowner erects suitably worded signs and they are seen by would be peaceable users of the land then it follows that their user will be contentious and not as of right".	The full transcript of Paragraph 48 is:- *"The test formulated by Morgan J in paragraph 121 of his judgement specifies two alternative approaches to the question of notice. If the landowner erects suitably worded signs and they are seen by would-be peaceable users of the land then it follows that their user will be contentious and not as of right. That is the easy case. The alternative is an objective test based on knowledge being attributed to a reasonable user of the land from what the landowner did in order to make his opposition known. If the steps taken to manifest that opposition are sufficient to bring it to the attention of any reasonable user of the land then it is irrelevant that particular users may not have been aware of it. The steps taken do not have to be fail safe in that regard. But they must be proportionate to the user which the landowner wishes to prevent." (Emphasis added by Applicant)* The Applicant submits that the landowner fails the first test because the signs are not "*suitably worded"*, and fails the second test because they have never taken any action (proportionate or otherwise) *"to make his opposition known".* For evidence please refer to:- a. The response to first objector's first objection paragraphs 13 and 16 b. The response to the second objector's second objection paragraphs 2 to 18 c. The statements by Simon Hinks on behalf of the second objector contained in:- i the response to the second objector's first objection at paragraphs 9 & 10 ii the response to the second objectors second objection at paragraph 5
13	At paragraph 3 of the draft directions the Inspector suggested it would "be relevant to the decision whether or not to register the land to know whether those who used the land were	The full quote from the draft directions is:-

13 cont	aware of the existence of the signs".	*"These issues in large measure raise points of law i.e. as to the true construction of the notices and as to the compatibility of use of land for lawful sports and pastimes with the playing field use by Cotham School and others. This said, it seems to me to be relevant to the decision whether or not to register the land to know whether those who used the land were aware of the existence of the signs (and more generally how they accessed the land;: and to understand the way in which the land was used for organised sport in the relevant twenty year period."* We submit that *"the true construction of the notices"* refers to the wording used and the way it is interpreted. In this respect therefore it seems that the Inspector is interested in a wide range of issues surrounding the signs, not merely the number of witnesses that were aware of them.
14	.....As part of the original application the applicant submitted photographs of the 3 signs around the site (applicants tab 16) and states that these do not deny access but simply warn of the consequences of trespass.	In addition to providing a photographic record of the 3 (only) signs at tab 16 of the Application, we have also provided a detailed explanation, and presented evidence to support our submission as to why we contend that the signs are "ineffective", "do not deny access", " are warning signs only", "have never been enforced", and "have had no practical effect" at:- a. The Application, volume 1 of 3, section 5, (supplementary arguments), clause c) i) b. The response to the first objector's, first objection, paragraphs 13, 15, 20 to 26 c. The response to the second objector's first objection, paragraphs 9, 10 & 17 d. The response to the first objector's second objection (this document) paragraphs 9 to 13 above e. The response to the second objector's second objection, paragraphs 2 to 17, 32, 35, 36 & 39 f. The Application volumes 2 and 3 of 3, witness statements g. The bundle of the responses to the objector's first objection section (tab) 8 – Additional statements
15	.....The applicant also states that there have been no prosecutions for trespass.	This is a statement of fact that we understand is not disputed and is even confirmed by the second objector, and is referenced in the response to the second objector's second response at paragraph 10. This is relevant because it relates to the tests referred to in the judgement in Taylor v Betterment Properties (Weymouth) Limited [2012] EWCA civ 250 (the Betterment case) at Paragraphs 40 and 41, and supports our submission that the Landowner has done nothing to challenge the ongoing use of Stoke Lodge by the Community "as of right" and has never indicated his objection to their ongoing use "As of right" over the past 65 years.

16	.....In their response to the first objectors at paragraph 13 the applicant expands on the reasons why they believe the signs to be ineffective.	Please see paragraph 14 above for a more complete list of where we have presented our arguments.
17	.....In addition, the applicants submitted 54 witness statements (volumes 2 and 3). At question 39 the form asks "Are you aware of any signs or notices restricting access to the Land edged in red on Map "A" by local inhabitants? In answer to this question 27 of the forms (or 50 %) replied yes. The first objector submits that this is clear evidence that the applicant and local inhabitants were aware of the signs.	The Applicant has never denied the existence of the 3 signs, two erected by Avon County Council (between 1974 & 1996) and one much more recently by Bristol City Council. What is important to note is that:- a. the Avon signs do not deny access they merely warn of the risk of prosecution for trespass for various activities b. We submit that the recently erected Bristol City Council sign has previously been discredited as irrelevant and of "no practical effect" because of: i) the admission by the second objector that it has been moved post-Application (to make it appear applicable) ii) confusion as to whether it refers to the Parkland or the Adult Learning Centre and the fact that it is behind a gate, serving the Adult Learning Centre, that is locked at weekends and evenings iii) the access to the Parkland at this point is excluded from the TVG Application. We wish to point out also that the land directly behind the disputed sign is not part of the TVG Application as it has been scheduled for development of a children's playground What is even more important is to recognise that there are many more access points than signs and many users were never even aware of their existence; and for those who were aware of their existence it is important to understand what the users understood the signs to mean, and how the users reacted to the signs and how the owner reacted to the users if the signs were indeed intended to deny access. For our evidence showing access points, how the community reacted to the signs and how the landowner reacted to the users please refer to: a. The response to the first objector's first objection paragraphs 13, 15 and 16 b. The response to the second objector's second objection paragraphs 2 - 18 notably 10 -17
18	.....The first objector therefore submits that in accordance with the judgement in the betterment case their user was contentious and not as of right.	We submit that it is simply inadequate to call for the community use to be found "contentious and not as of right" merely on the basis of knowledge by some of the Community of the existence of signs without consideration of all the other relevant facts discussed throughout the Application, and the responses, and the summary in paragraph 17 above.

19	.....Any Inhabitants that did not see such signs should not be fatal to our case of contentious user.	This reference is taken from paragraph 52 from the Judgement in Taylor v Betterment Properties (Weymouth) Limited [2012] EWCA civ 250 (the Betterment case). For the full meaning of the paragraph it is important to consider the whole text:- *"[52] I agree with the judge that the landowner is not required to do the impossible. His response must be commensurate with the scale of the problem he is faced with. Evidence from some local inhabitants gaining access to the land via the footpaths that they did not see the signs is not therefore fatal to the landowner's case on whether the user was as of right. But it will in most cases be highly relevant evidence as to whether the landowner has done enough to comply with what amounts to the giving of reasonable notice in the particular circumstances of that case. If most peaceable users never see any signs the court has to ask whether that is because none was erected or because any that were erected were too badly positioned to give reasonable notice of the landowner's objection to the continued use of his land"* Additional to the above clarification on number of signs (3) compared with the number of access points (22) we submit that it is also relevant to consider whether the wording of signs is effective and how the users interpreted them and how they were enforced; therefore we submit that this objection should be rejected. For our evidence showing why the signs were ineffective and users did not interpret them as denying access please refer to:- a. The response to first objector's first objection paragraphs 13 and 16 b. The response to the second objector's second objection paragraphs 2 to 18 c. The statements by Simon Hinks on behalf of the second objector contained in:- i the response to the second objector's first objection at paragraphs 9 & 10 ii the response to the second objector's second objection at paragraph 5
20a	There is no requirement for the local authority to take legal proceedings against those who may use the land.....	a. With regard to the issue of legal proceedings: the Applicant agrees that there is no specific requirement for the landowner to take legal proceedings. However, as we have argued above, legal proceedings would have been the most obvious and natural extension of any demonstration of objection to use as contemplated in the judgement in Taylor v Betterment Properties (Weymouth) Limited [2012] EWCA civ 250 (the Betterment case), paragraphs 40 and 41, and would have provided proof that the landowner did *"all that was reasonable*" to object to Community use. Furthermore we submit that the Landowner has never objected or challenged Community use in any way in the 64 years between the purchase of Stoke Lodge by Bristol City Council in 1946/7 and the date of The Application for Registration as a

20a cont		Town or Village Green in March 2011. This is even though grounds maintenance staff work at Stoke Lodge on a frequent basis, i.e. at the same time as the local Community use of Stoke Lodge for Informal sport and recreation. Hence there was ample opportunity to object or challenge Community use for Informal Sport and general recreation which we contend never happened. This is in stark contrast to the approach taken by the same grounds maintenance staff at Coombe Dingle Sports Centre where signs are clear, and observed by the Community, who are challenged if they don't. There are numerous signs across the City by other agencies, such as British Rail, which leave the user in no doubt of the condition of entry.
20b	.....and, as indicated in the objection to the application dated 18 November 2011, the Bristol Local Plan and Written Statement adopted 1997 promotes the idea that facilities within the educational sector may, as a matter of practice and policy be available for public use. A copy of the policy referred to can be found in the Response to Objections Raised compiled by the applicant at tab 9.....	b. With regard to the Bristol Local Plan: we feel compelled to point out here that the first objector is inconsistent in its argument: In paragraphs 8 to 19 above the first objector is arguing that the Applicant fails the "as of right" test because the use was "without secrecy", "without permission" <u>but not "without force".</u> Conversely in this paragraph the first objector is arguing that the Applicant fails the "as of right" test because the use was "without secrecy", "without force" <u>but not "without permission"</u> The first objector under this heading is:- i. seeking to deny the existence of the signs and give the impression that all members of the Community <u>had permission</u> to use the Parkland, and ii. is failing to acknowledge, for the purposes of this objection, the way in which the Bristol Local Plan and Written Statement policy and procedure has been applied universally across the City, including at Stoke Lodge Parkland, whereby Formal Sports groups have booked and paid for the use of pitches and have been granted permission to do so. However at Stoke Lodge the Community have continued to use the Parkland for informal sport and general recreation (Lawful sports and pastimes) without seeking or receiving permission and deferring to the formal sports users, as they have done so harmoniously over the past 65 years.
20c	.....The first objector reiterates the conclusion of the initial objection and asserts that the erection of such signs is specifically to prevent prescription rights arising.	c. With regard to the purpose for the signs: the Applicant submits that the assertion that the purpose of the signs was "*specifically to prevent prescription rights arising.*" is opportunistic given the timing of their installation and the likelihood of any perceived threat at the time. But in any case, if that

20c cont		was their intended purpose we submit that they have failed for the reasons given before in this document and in the Application and the various responses, notably the response to the first objector's first objection at paragraph 16, and the fact that the landowner did not enforce the signs.
21	**Exclusivity and Implied Permission**	
22	In relation to organised sport, the issue is not one of interruption and deference since there is no suggestion that when, for example, the Rockleaze Rangers Football Club (the third objector) is using the site for a football match that members of the public interrupt such use. Common sense would dictate that it is not appropriate to walk a dog through or have a picnic in the middle of an ongoing football match. However, Rockleaze Rangers Football Club has permission to use the site on the occasions on which it does and makes bookings through the University and as such is a licencee.	We submit that this is an example of the courtesy and politeness that the Community users have adopted by deferring to the co-existing Formal Sports users as part of the harmonious shared use of the Parkland over the past 65 years, and is not as a result of an act of exclusion by the land owner. Please refer to the statements by Simon Hinks on behalf of the second objector contained in the response to the second objector's first objection at paragraphs 9 and 10 confirming that:- a. The Community has always deferred to the Formal sports users b. Community use has never been authorised c. The notices and the policy were never enforced and within the second objector's second objection at paragraph 5 confirming that:- d. The signs have been ignored e. The signs have been changed and moved (please see our response to this point for context)
23	.....Various other community bodies referred to in the first objectors bundle at tab 26 also have permission to use the site and bookings are taken to ensure that they do not clash. All these people pay to use the pitches to the exclusion of the general public.	We submit that this is an example of the courtesy and politeness that the Community users have adopted by deferring to the co-existing Formal Sports users as part of the harmonious shared use of the Parkland over the past 65 years, and is not as a result of an act of exclusion by the land owner.
24	.....I attach a copy of an email received from the University and would ask that this is added to the objectors bundle as tab 34.	This document has been included as a pdf image in paragraph 41 of this document, contained below. However, please refer also to the evidence referred to in paragraph 16 of the response to the first objector's first objection to demonstrate the scale of ongoing uninterrupted Community use, i.e. no exclusion.
25	In this respect, the first objector refers to the recent case of R(oao Mann) v Somerset County Council, a a decision of HH judge Owen QC sitting as a Deputy Judge of the High Court which was handed down in Birmingham on 11/05/2012. After considering the judgements in Beresford Judge Owen stated at [71] "From these observations which I take as authoritative guidance on conduct by an owner which may count as an overt act or as a relevant or demonstrable circumstance sufficient in law to allow and inference of permission, it appears that the owner must m make clear the	Before we deal with the specific objection submitted by the first objector in this paragraph, we submit that the Redcar Case remains as the authoritative case on use "as of right" as it is a decision of the Supreme Court. The Applicant makes their response to the specific objections based on the report by 12 College Place. reproduced here:-

25 cont	circumstances relied on allows the inference to be drawn....., implied consent by taking a charge for entry or similar overt act communicated to the public is sufficient without the need for express explanation or notice.....Such conduct need only occur from time to time (I should add, perhaps only once during the period under scrutiny)....., such conduct will be expected to have an impact on the public and show that when the public have access (I should add, to all or part of the land) they do so with leave or permission of the owner.	***"R(oao Mann) v Somerset County Council*** *a. This is a very recent unreported decision of the High Court which concerned the issue of implied licence which can operate to preclude land from being registrable as a TVG.* *b. It is clear from R (Beresford) v Sunderland City Council [2004] 1 AC 889 that permission may be implied from the circumstances surrounding the use of the land as, for instance, where a landowner wishes to use his land periodically for his own purposes to the exclusion of the public. The law distinguishes between, on the one hand, overt conduct which can give rise to an implied licence and, on the other, passive inactivity which will not.* *c. The Mann case dealt with the circumstances in which permission can be inferred from the landowner's conduct. The facts were that local inhabitants were excluded from parts of the land when ticketed beer festivals in aid of charity took place on 3 or 4 occasions along with the occasional holding of a funfair, again on part of the land.* *d. The registration authority accepted the advice of their non-statutory inspector (whose decision was accepted by the court as being correct) and rejected the application to register on (in effect) the footing raised in Beresford where, for instance, at [5] Lord Bingham stated as follows:* *' A landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record, that the inhabitants' use of the land is pursuant to his permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to exclude, and so makes plain that the inhabitants' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use'.* *e. In a long judgement Judge Owen QC, after considering the judgments in*

25 cont		*Beresford, stated as follows at [71]:* *The report then reproduces paragraphs [71], [73], [75], [76], [77],[78], [87]' [88] and [91]. Not reproduced here by the Applicant.* *f. It was accordingly held by Judge Owen QC that the land was not registrable and the applicants challenge to the decision of the registration authority not to enter the land in question on the register failed.* *g. Although it is common for the use of land to be shared by the landowner and local inhabitants (as was the position in R (aoa Lewis) v Redcar and Cleveland Borough Council [2010] 2 AC 70 – this was not a case involving exclusion) the Mann case was the first time the court had to consider a case where local inhabitants were periodically excluded from the land at times when the landowner permitted his land to be used for private purposes. It is a situation which frequently arises in the case of the use of recreation land for organised sports and/ or where, for instance, such land is also used in the summer for circuses and fairs and the like for which payment is made by licensees to the authority.* *h. The position is that if that if the landowner's usage is as a matter of fact and degree substantial, i.e. if his land is used to the exclusion of the general public on a prolonged basis during the year, then it may be argued (as it was in Mann) that the landowner has by his conduct unequivocally demonstrated to the public that their usage of the rest of the land is permissive.* *i. The Mann case is therefore an important decision for local authorities and may in appropriate circumstances be relied on to preclude land from being registrable by virtue of an implied licence in that a periodic exclusion of the public from only part of the land maybe held to relate to the land as a whole. For this reason, the relevant parts of the judgment in the Mann case have (been) covered in some detail as this case is likely to offer a very useful defence to applications to register publicly owned open space in an appropriate case. In all probability, however, an appeal in Mann may be on the cards. For instance, at what point do interruptions in qualifying use in*

25 cont		*relation to part or parts of the application land turn into an implied licence precluding registration of the whole of such land?* ***End of 12 College Place Report.*** *We also refer to the summary of the Beresford case issued by the Open Spaces Society, reproduced here:-* *i. Summary* *'This case considered the meaning of the phrase "as of right". The encouragement of the use of the land by the provision of benches and regular cutting of the grass reinforced, rather than undermined, the impression that local people were using the area "as of right".* *ii. Issues considered* *The local authority, Sunderland City Council, who owned the Land, argued that by mowing the land and erecting seating they had given implied permission for people to use the land. They argued that such implied permission defeated any contention that use was "as of right" because they had given permission. The Lords rejected this argument and confirmed that the land should be registered as a town or village green.* *iii. Commentary* *This is an important decision, particularly where land is owned by a local authority."* ***End of OSS Report.*** The Applicant therefore submits that the **"R(aoa Mann) v Somerset County Council "** case is not relevant to this Application for Stoke Lodge Parkland because:- i. Deferment by the Community users to the Formal Sports co-existent users does not constitute exclusion ii. The actions of the landowner at Stoke Lodge Parkland can only be properly described as *"passive inactivity"*, as referred to in bullet point **b.** of the 12 College Place report above and therefore no implied licence exists iii. The landowner has never sanctioned or approved the use of Stoke Lodge for "*ticketed beer festivals in aid of charity or the occasional funfair"* as referred

25 cont		to in bullet point **c.** of the report above, nor has the landowner sanctioned or approved any similar activity *iv.* The Land has been used on a harmonious shared basis as was the position in "*R(aoa Lewis) v Redcar and Cleveland Borough Council [2010] 2 AC 70"* as referred to in bullet point **g.** of the report above i.e. *"this was not a case involving exclusion."* v. The Land has not been "*used in the summer for circuses and fairs and the like for which payment is made by licensees to the authority."* as referred to in bullet point **g.** of the above report vi. The landowner has never "*excluded the general public on a prolonged basis"* as referred to in bullet point **h.** of the above report. Indeed the landowner has **never** excluded the public from the Parkland vii. Stoke Lodge Parkland does not qualify as *"appropriate circumstances*" as referred to in bullet point **i.** of the above report viii. The basic exclusion case at Stoke Lodge Parkland as presented by the first objector fails because it is predicated on the premise that Community use is with permission, granted by the landowner, which is not the case at Stoke Lodge as evidenced by the content of the objections received from the first, second, third and fourth objectors. ix. Furthermore the first objector claims that this illusory permission has been selectively removed without providing credible evidence to support the argument. For contra evidence please see a. Response to the first objector's first objection at paragraph 13 and 16 and data referenced therein b. Statements made by Simon Hinks on behalf of the second objector at:- • Response to second objector's first objection: paragraph 9, *" It has always been the case that use of the playing fields by third parties, including dog walkers, has deferred to the organised use of the site as playing fields by schools and local sports clubs. Any such other use by third parties has never been authorised, or as of right."* Please see also our response to this statement also at paragraph 9. • Paragraph 10, *"Bristol City Council has stipulated, by way of*

25 cont		*signs around the site, that dogs are not allowed on the playing fields and that the owners would be fined if in breach. Unfortunately the notices and the policy has not been enforced....."* Please see also our response to the statement also at paragraph 10. • Response to the second objector's second objection Paragraph 5:- *"We agree that the signs have been ignored, changed and moved over a period of time....."* Please see also our response to the statement, particularly with regard to the moved sign. Furthermore the Applicant submits that it would be inappropriate to apply the situation in the Mann case described at paragraph [71] to this Application because a) the landlord has never levied *"a charge for entry"* for Community use for Informal Sport and recreation (lawful sports and pastimes) and b) no *"similar or overt act (has been) communicated to the public"* by the Land owner and c) the whole Parkland has never been closed to the Community with access to a fair or beer festival or circus, or similar restricted to those purchasing a ticket. As evidenced at clause 2.41 of the Briefing Note from the first objector referred to in the Application covering letter and contained in the Application bundle as evidence items (tabs) 10 and 12. "*The playing field is currently unfenced and allows unfettered community access."* I.e. entered via numerous access points freely and without permission. For further evidence of "*unfettered*" access please refer to a) the evidence listed in the response to the first objector's first response at paragraph 16 and b) the second objector's second objection paragraphs 2 – 18, in particular 10 -17.
26	He continued	
27	[73] It was common ground that the acts of the owner in question in holding such festivals constituted and act of exclusion albeit the argument concerned the effect of the exclusion which affected part only of the land and not the whole. Nonetheless there was a manifest act of exclusion by the owner. In the absence of clear reason to suppose otherwise an act by the owner relating to part of the land as occurred in this case, may be taken to be referable to the whole of the land.....	Please refer to our response at paragraph 25 of this document, contained above. Additionally, it is not "*common ground"* in this Application that *"holding such festivals constituted and* (sic) *act of exclusion"*
28a	[75] It is difficult to see, viewed objectively, how the local inhabitants could not have appreciated that in continuing to use the land they were doing so with the (implied) permission of the owner. The claimant's arguments seriously undervalue the nature and quality of the owner's acts and fail to recognise the significance of the exercise of the owner's	Please refer to our response at paragraph 25 of this document, contained above. Additionally we do not accept that the findings of the situation in the "Mann case" at

28a cont	right to exclude, albeit expressly over part of the land and on occasions only.....	[75] apply to our Application as evidenced by witness statements contained within the Application and the supplementary witness statements included at evidence section (tab) 8 of the response to the first objector's first response. Furthermore if paragraph [75] of the Mann case were applied to the different circumstances at Stoke Lodge Parkland it would contradict the judgement by the House of Lords in the "*R v Oxfordshire County Council ex parte Sunningwell Parish Council*" case where it was found that it was not necessary for a user to undertake the activity in the belief that they had a right to do so. Only that they did so *"in the same manner as if"* the people who indulged in them had a legal right to do so.
28b		The first objector failed to point out at [91] HH Judge Owen found that:- *".....It is universally recognised that the (mere) erecting of notices offers little or no protection to the owner in respect of his maintaining exclusive right to use his land. The law of England and Wales does not expect or require an owner who wishes to maintain his exclusive right to use his own land to erect and maintain barriers or fencing to prevent others from going onto the land. Equally, the law does expect an owner to resist that which appears to be use of his land by others and the assertion of a right to do so. In those circumstances the owner is expected "to do something".....* The Applicant submits that the landowner at Stoke Lodge Parkland did nothing to demonstrably *"resist that which appears to be use of his land by others and the assertion of a right to do so".* The Landowner has never hosted any "ticketed", "Fairs", "Festivals" or "Circuses" or any other event that "excluded" the public from the Parkland. In stark contrast the Community has continued to use the Parkland at all times over the past 64 years, including during the time that Formal Sport was in progress, but did defer to the Formal Sports Users where pitches were in use (in the same way as the actions of the Community were described in the Redcar case i.e. *"as was the position in R (aoa Lewis) v Redcar and Cleveland Borough Council [2010] 2 AC 70 – <u>this was not a case involving exclusion</u>"* See paragraph 25, bullet point **g** above. (Emphasis added by Applicant.) Additionally, if the landowner considered that Community use was subject to exclusion, and hence prevented a future Town or Village Green Application why did the landowner issue the "briefing note" referred to in the response to the first objector's first objection at paragraph 4.

29	Although it is common for the use of land to be shared by the landowner and local inhabitants (as was the position in R (oao Lewis) v Redcar and Cleveland Borough Council [2010] 2 AC 70 – this was not the case involving exclusion) the Mann case considers the situation where local inhabitants were periodically excluded from the land at times when the landowner permitted his land to be used for private purposes. It is a situation which frequently arises in the case of use of recreation land for organised sports and/or where, for instance, such land is also used in the summer for fairs and the like for which payment is made by licensees to the authority.	Please refer to our response at paragraph 25 of this document, contained above. It should be noted that this quote reproduced here by the first objector is incorrect and incomplete. There is a typo on line 3, the first "the" should read as "a" There are missing words between "case" and "considers" on line 3 The word Circuses has been omitted on line 7 Please refer to paragraph 25 bullet point **g** for a correct version The Applicant submits therefore that the Mann case is not a universal rule and it is dependent on strict conditions of use being met, which we submit is not the case at Stoke Lodge. Importantly we submit that the Redcar Case remains as the authoritative case on use "as of right" as it is a decision of the Supreme Court, and is the most relevant precedent for the situation at Stoke Lodge Parkland.
30	The first objector therefore submits that the use of the playing fields by community groups for the purpose of organised sport for which they are granted a licence (often in return for payment) is sufficient to indicate to a reasonable onlooker that the right to exclude was being exercised and that such right is referable to the whole of the land.	Please refer to our response at paragraph 25 of this document, contained above. The Applicant submits that this was not the findings in the Redcar case or Beresford case and that there was no exclusion in this case, only deferment by one user to the other co-existent user, and therefore this objection should be rejected. Furthermore this unsubstantiated assertion by the first objector is in conflict with the judgement by the House of Lords in the "*R v Oxfordshire County Council ex parte Sunningwell Parish Council*" case where it was found that it was not necessary for a user to undertake the activity in the belief that they had a right to do so. Only that they did so *"in the same manner as if"* the people who indulged in them had a legal right to do so.
31	.....The usage as a matter of fact and degree is substantial since the community groups regularly use the land throughout the year and as such the landowner has by his conduct unequivocally demonstrated to the public that their usage of the land is permissive only.	Please refer to our response at paragraph 25 of this document, contained above. Please refer to the survey of public use referred to in the Application, evidence item (tab) 5 clause a) and contained in the Application bundle at evidence item (tab) 19. The Applicant submits that Community use for informal sport and general recreation when there is no Formal Sport taking place is extensive and highly significant, and hence there is no need to share during these periods. When Formal Sport is taking place the Community users have deferred to the Formal Sports users, as a matter of courtesy, as confirmed by Mr Simon Hinks on behalf of the second objector and we therefore submit that the Community have never been excluded by the landowner. We therefore reject that Community use for Informal

31 cont		Sport and General recreation has ever been permissive and hence this objection should be rejected.
32	**Conflict with Statutory Duty**	Before we deal with the issue of Statutory Duty, and for the avoidance of doubt, we contend that the Community has no Statutory right to use the Land. The Land is not registered as Open Green Space. This was confirmed in the "Area Green Space Plan, see Application volume 1 of 3, section (tab) 5 paragraph c) cause iv) and referenced data, (tab 18). The Community has established use "as of right" by complying with the qualifying criteria set out in the Commons Act (2006). This was confirmed by Clare Campion Smith (the Executive Member for CYPS) on behalf of Bristol City Council Cabinet, together with the other Councillors in attendance at the Neighbourhood Partnership Committee Meeting held on 15th September 2010 and recorded in the minutes at minute number 8. See Application volume 1 section (tab) 5 paragraphs a) and c) and referenced data (tabs 13 and 14). With regard to the Statutory Duty we recognise that CYPS has an obligation to provide "adequate" playing fields to schools within the control of the Local Authority. We refer to the e-mail from the second objector introduced by the first objector at paragraph 24 above and reproduced in full at paragraph 41 below. We welcome the inclusion of this list of users of both Stoke Lodge Parkland and Coombe Dingle Sports Centre made up from Schools and Local Sports Clubs as presented by the second objector. As confirmed by the second objector in the e-mail they are employed by Cotham School as the Management (Booking agent) and Maintenance (cut the grass, mark out the pitches and erect the goal posts) Contractor. It is common ground that the Formal Sports Use by Sports Clubs is made by booking and paying a fee to use a pitch. The list confirms that the only schools involved in Formal Sports Use at Coombe Dingle Sports Centre and Stoke Lodge Parkland are Clifton High School and Cotham School (replacing Fairfield school) Clifton High School is an independent school and therefore not under the control of CYPS. Cotham School was a State School under the control of CYPS at the time of the Application, (as was Fairfield during their period of use). However Cotham School is

32 cont		now a self governing Academy outside the day to day control of CYPS. Given that Cotham School is an Academy and therefore outside the control of the Local Authority on day to day matters we are unclear of the obligation CYPS has to Cotham in the future with regard to the detailed provision of sports facilities beyond providing them with playing fields which they have discharged by the provision of a lease. It is important to note that Cotham School chose to sign the lease for Stoke Lodge Parkland in the full knowledge that a Town or Village Green Application had been made 6 months previously. By definition the Statutory Duty CYPS of relates to State School use only i.e. not including the Sports Clubs or independent schools or University students. The use of Stoke Lodge by Cotham School at the time of the Application was confirmed in the response to fourth objector's first objection paragraph 3, line 3 *".....at the date of the Application [use] was down to approximately 3 hours per week,".* with current regular use by Cotham School recorded as 2 or 3 sessions per week x 1 pitch each, mainly rugby in this term, during term time only, during school hours only, and not at weekends. Stoke Lodge Parkland has 9 pitches available for school use. There are also various all weather pitches available for hire locally, a) notably, within 200yards at Coombe Dingle Sports Centre (the second objector), b) within 1mile at the Portway Rugby Development Centre BS9 2HS (A facility recently sold by Bristol City Council as an ongoing sports centre-surplus to BCC requirements), and c) at one of the plethora of recently completed "Building Schools for the Future" schools across the City, many now run as Academies, notably Oasis Brigstowe Academy at Kingsweston, within 1.7 miles of Stoke Lodge Parkland. There is therefore huge potential for school use to increase within the existing facilities at Stoke Lodge Parkland without the need for the future development of All Weather Pitches and their accompanying fencing and floodlights at Stoke Lodge Parkland. We therefore submit that there is no foreseeable risk of 'Conflict with the Statutory Duty' that CYPS owes to the schools even taking into account the projected increases in school population under Local Authority control. (or decrease if the current rate of Academy applications is maintained). We have repeatedly confirmed that the Community welcomes the use of the Parkland by the School Sports users (and Sports Clubs).

32 cont		The first objector bases their argument on the need to protect future development rights. We submit that this reason is not legitimate grounds to object because:- a. There is no need to provide all weather pitches to meet the obligation that CYPS has to the schools in their control (assuming that Cotham is still within CYPS control b. Alternatively, if Cotham is not within their control then there is no obligation to consider c. Consideration of future development is excluded from the qualifying criteria contained within the Commons Act (2006). See paragraph 2 above d. If the Town or Village Green Application is denied it will not only permit the future development of All Weather Pitches, it will also permit the future development of any other form of development including sale for profit Here we have the true strategic objective of the objections raised by the first objector. "To protect their future development rights", For evidence we refer to the Application covering letter. Furthermore we submit that Bristol City Council has an overriding Statutory Duty to provide adequate green space for the Community which must also be delivered to protect the physical, mental and emotional well being of the residents in the Neighbourhood.
33	In addition, in the recent case of R (Newhaven Port & Properties Ltd) v East Sussex County Council [2012] EWHC 647 the High Court accepted that a beach could be registered as a Village green although on the facts the applicants failed as the statutory purpose for which the beach was held, namely part of operational land of the port of Newhaven would be conflicted if registration as a village green took place.	We have continued to submit that Registration as a Town or Village Green will not change the way in which the Parkland has been used for the past 64 years, indeed it will protect the status quo in perpetuity, including school use and sports clubs. We have submitted at paragraph 32 above, that Registration as a Town or Village Green will not threaten or put at risk the Statutory Duty that CYPS has to the State Schools within its remit. We have argued that Bristol City Council (The overarching authority) has a Statutory duty to provide green space for the community as evidenced by the Green Space Survey of Community use, see Application volume 1 of 3 section (tab) 18. The Applicant submits that comparing Stoke Lodge with a beach that is part of an operational port is not a valid comparison.
34	The application site has been held for educational purposes since approximately 1947 which is not disputed by the applicant. As such the statutory purpose for which the land is held is that of education under the Education Act 1996 (as amended). The Local Authority have an	The Applicant accepts that CYPS has a Statutory Duty to provide "adequate" (we understand the regulation on this point is changing to "adequate") sports facilities for State Schools under its control.

34 cont	obligation under the Education Act 1996 to secure efficient primary and secondary education is available to meet the needs of the population of their area and sufficient schools meet this requirement. Sufficient under the Act means sufficient in number, character and equipment to provide all pupils the opportunity of appropriate education. As part of that education is a requirement for physical education and a specified square meterage of land per number of pupils in a school needs to be available for such physical education The Education (School Premises) Regulations 1999 Schedule 2 (1999/2).	We have argued in paragraph 32 above why Registration of Stoke Lodge Parkland as a Town or Village Green will not conflict with this duty, and pointed out that Bristol City Council also has a Statutory Duty to the residents of the Neighbourhood that would be lost if the parkland were fenced.
35	As the population is expanding, so too are the number of children attending school which in turn means an increase in the area necessary for physical education may be required. One way in which the Act recognises that this may be achieved is by the use of "all weather pitches" (hard porous, synthetic and polymeric surfaces) which has the effect of doubling the space since it is not necessary to replant and lay fallow.	The Applicant understands that there is a projected bulge in school numbers, but that this bulge is not necessarily sustained in future years. We have argued in paragraph 32 above that the Statutory Duty that CYPS has to the State Schools under its control that use Stoke Lodge Parkland can be satisfied without recourse to "all weather pitches" even if school use by these schools was doubled or tripled or quadrupled.
36	.....Should this playing field be registered as a town and village green then this may mean at some point in the future, should an "all weather pitch" become necessary for part of the site, the local authority would be unable to comply with this obligation. The applicant has made it clear that the intention is to retain the fields in their current state and that the addition of what they refer to as "all weather pitches" would not be entertained.	The Applicant submits that the objection contained at this paragraph should be rejected. We submit that "Future development" is not necessary to meet the Statutory duty that CYPS has, (but it might be a welcome income stream to Coombe Dingle Sports Centre.) We further submit that "Future development" is excluded as a justified or relevant consideration when deciding if the Applicant has met the qualifying criteria set out in the Commons Act [2006]. See paragraph 2 of this document contained above.
37	The first objector submits therefore that in the event that this became necessary at some point in the future, any registration as a town or village green would be in conflict with its statutory duty under the Education Acts. Such conflict is foreseeable and therefore, the site is not capable of registration as a town or village green.	The Applicant submits that the objection contained at this paragraph should be rejected. Please see our response at paragraphs 32, 34, 35 and 36 of this document contained above.
38	In view of the current economic climate and austerity measures, the first objector submits that it would be inappropriate and an unnecessary expense to the public purse for a full public inquiry be held at this stage until the points raised on the preliminary issue that the land has been used "by right" have been considered on the papers.	We believe that the Registration Authority was correct to call for a full public inquiry. We believe that the Draft Directions confirms the need for a full public inquiry. We fail to see the need to hear a preliminary issue because there is only one issue left to resolve. If it is decided to treat the remaining criterion of "as of right" as a preliminary issue we submit that it should be undertaken as a full public hearing.
39	.....Therefore, the first objector refrains from making any comment on the draft directions of the inspector in respect of a non statutory hearing and requests that the Registration Authority reconsiders	We make no comment on this refusal by the first objector to comment on the Draft Directions. However we believe that all issues should be decided by a non-statutory

	its position with regard to the holding of a non statutory inquiry and that the matter is referred back to the Inspector for a decision on the papers in the first instance	public hearing.
40	Yours sincerely Rachel Johnson Solicitor For Head of Legal Services	Conclusion on behalf of the Applicant a. We welcome the confirmation from the first objector, at paragraph 2 above, that their only remaining objection relates to the matter of use "as of right" b. With regard to the objections based on the issue of "Contentious User and Signs", paragraphs 8 – 20 above, we submit that we have demonstrated in this document and previous responses, by argument, evidence and reference to where this is relevant to applicable precedents that: i. The 2 Avon CC signs have not been seen by many users ii. The 2 Avon CC signs do not deny access to the Community users iii. The 2 Avon CC signs are warning signs iv. The 2 Avon CC signs have been either ignored or considered irrelevant by the users that have seen and considered them v. The Avon signs have never been enforced or challenged vi. The single BCC sign has had "no practical effect" because before it was moved it appeared, amongst other failings, to be associated with the Adult Learning Centre grounds and car park vii. The Betterment case is not relevant to this Application viii. The Redcar case is the most relevant precedent to apply c. With regard to the objections based on the issues of "Exclusivity and Implied permission" paragraphs 21 – 31 above we submit that that we have demonstrated by argument and evidence that:: i. The landowner has never excluded the Community for Lawful sports and pastimes ii. It is common ground that the Community users deferred to the other co-existent users as a matter of politeness iii. The Mann case is not applicable to the situation and history of use by the Community, for informal sport and general recreation, and by the landowner at Stoke Lodge Parkland iv. The Redcar case is the most applicable precedent and remains the authoritative case on use "as of right" as it is a decision of the Supreme Court d. With regard to the objections based on the issues of "Conflict with Statutory Duty" paragraphs 32 – 36 we submit that we have demonstrated by argument and evidence that:

		i. Registration as a Town or Village Green will not prejudice the Statutory Duty that CYPS has to State School users within its remit ii. All weather pitches are not required currently or in the foreseeable future to enable CYPS to discharge the Statutory Duty it has to State School users within its remit iii. Future development is *"....wholly irrelevant to the statutory question which the registration authority has to decide, .."* iv. Bristol City Council, i.e. the senior agency to CYPS, has a responsibility to provide Green Space for use for use by the general Community. It is common ground that Stoke Lodge Parkland is not registered as Open Green Space by BCC, hence Registration would preserve the current shared use and protect it for future generations e. With regard to the questions raised by the first objector at paragraphs 37 & 38 we confirm that we submit that the Inquiry should be conducted as a full non-statutory hearing f. We therefore request that Stoke Lodge Parkland is recommended for Registration, and the request by the first objector at paragraph 39 be rejected g. We recognise that as part of this response we have made extensive reference to previous responses and the original Application. We therefore attach an electronic copy of all our previous responses and the original Application in the hope this copy will be helpful in referencing data that we rely upon
41	**Tab 34** **See next page for pdf copy referred to at paragraph 24 of this document contained above**	

41 cont	------ Simon.Hinks@bristol.ac.uk 07/09/2012 16:54:29 ------ Dear Rachel Bookings for each season are taken from the following clubs:- Shire Colts Football Club - (Junior football club-boys) Rockleaze Rangers Football club (Junior and Adult Football club-boys) Bristol Ladies Union Football Club (Junior and Adult girls and women) St Brendan's Rugby Club (Junior and Adult Rugby Club-boys/men) Stoke Bishop Cricket Club - (Junior and Adult cricket club) Bristol Indians Cricket Club - (junior and adult cricket club) Curricular & Extra Curricular School sports programme Cotham School - football, rugby, cricket, athletics and rounders Clifton High School - as above University of Bristol Intramural rugby and football women's cricket University Hall teams Other local clubs - if available. The income from the clubs above is approximately £10,000 per annum. The income from school use is linked to use of Coombe Dingle but in the region of £10k (% split) This has been the case since the University agreed the Management and Maintenance Contract with Cotham School. Prior to that Bristol City Council managed and maintained the School Playing Fields on behalf of BCC Education Committee I believe under a SITA contract. All income for use (mainly from Shire Colts for 30 years) was retained by BCC. Fairfield School was the school in situ until Cotham replaced them when the Fairfield School development was completed (not sure of actual dates). I hope this is OK. Regards Simon ---------- Simon Hinks, Director - Sport, Exercise & Health Centre for Sport, Exercise & Health University of Bristol Tyndall Ave Bristol BS8 1TP (0117) 3311102 Simon.Hinks@bristol.ac.uk	Comments added here by the Applicant. For the avoidance of doubt we confirm that: a. Income from Sports clubs referred to here is generated and shared across both Stoke Lodge Parkland and Coombe Dingle Sports Centre b. Income from State Schools (including Cotham as both a traditional State School and an academy) is generated at Coombe Dingle Sports Centre only c. Income from Independent Schools (including Clifton High School) referred to here is generated and shared across both Stoke Lodge Parkland and Coombe Dingle Sports Centre