

**Stoke Lodge Parkland – Town or Village Green Application**  
**Legal Statement on behalf of the Applicant, 31<sup>st</sup> January 2013**

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1. Introduction and objectives

The purpose of the Town or Village Green Application at Stoke Lodge is to ensure that the current status quo of co-existent use by School users, Formal sports users, and Community users is protected for future generations.

2. The Law

This Application is made in accordance with the Commons Act 2006 section 15 (2).

This applies where:-

A significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and they continue to do so at the time of the application.

3. Discretion

It is commonly held that in an application where all of the above qualifying criteria are met, then the application cannot be refused.

It is accepted that the wording of the qualifying criteria is precise and each phrase is stand alone and has particular legal meaning.

4. The Land

The Land is Located at Bristol, BS9 1BN and is fully described in the Application.

For the avoidance of doubt Stoke Lodge Parkland BS9 1BN and Stoke Park BS16 1AU referred to in the Local Plan at Chapter 10, paragraph 10.4.20 are not the same place. Stoke Park BS16 1AU is described on the Bristol City web site as one of the most prominent open spaces in the city due to its position alongside the M32 and association with the well known sights of The Dower House, the fishing lake and the Purdown BT Tower.

It is common ground that the whole of the Stoke Lodge Estate including the House and grounds and Parkland are owned by Bristol City Council.

It is common ground that the Parkland, the subject of the Application, is held by Bristol City Council, Education Dept (CYPS) as School Playing Fields.

5. Bristol City Council – Briefing Note dated 22<sup>nd</sup> April 2010

The Application at Evidence item Tab 10 encloses a copy of the 'Briefing Note' to Bristol City Council Informal Cabinet dated 22<sup>nd</sup> April 2010.

The Application at Evidence item Tab 12 encloses a selection of clauses taken from the above 'Briefing Note' that confirm that, amongst other relevant issues:-

- a. Recent decisions (at that time) relating to 'The Commons Act 2006 in particular the Redcar decision render an Application at Stoke Lodge more likely to succeed
- b. *' Landowners now need to proactively take steps to keep people (off) their land to prevent future registration'*
- c. *' If the City Council wishes to retain opportunities for future development on school playing fields, options to avoid registration will need to be secured by placing a time restriction on the open access arrangement to ensure that the open access is only permitted for a period of less than twenty years in total. There would be a need to pass or publish a formal resolution to the effect that the open access would represent the granting of a revocable permission within this time frame.*
- d. *'The playing field ( Stoke Lodge Parkland) currently unfenced and allows unfettered community access'*
- e. *' The Stoke Lodge Playing Fields project proposes a major refurbishment of the field including the development of community facilities to the edge of the pitch, changing room improvements and pitch improvements. The scheme includes fencing to the perimeter of the site'. The purpose of the fence was to restrict public access*
- f. The funding arrangements described at 2.42 proved to be nothing more than wishful thinking and the claim that a £600k grant from Sport England had been awarded was a complete fabrication with no application having been made.

This evidence is relevant and significant because it demonstrates that Bristol City Council recognised in 2010 that an Application for Town or Village Green at Stoke Lodge Parkland was capable of succeeding and that they needed to take action to restrict access (for two years), or grant revocable permission for a period of twenty years, if they were to prevent an Application from succeeding.

Neither of these two necessary actions has been enacted

The 'Briefing Note' went to Public Consultation at the Neighbourhood Partnership Open Forum on 25<sup>th</sup> August 2010 where it was debated by the Community and the proposals unanimously rejected. Please refer to Application, Evidence item Tab 13, BCC minutes confirming Community view.

6. Bristol City Council – Cabinet decision confirmed on 15<sup>th</sup> September 2010

The Application at Evidence item Tab 14 encloses 'section 8' an extract from the minutes of the Neighbourhood Partnership & Committee Meeting dated 15<sup>th</sup> September 2010, together with a copy of the letter to Annie Hudson, Strategic Director for Children's Services, referred to in the minutes, and a copy of the public statement issued by David Mayer referred to in the minutes. A full copy of the Minutes (not just section 8) is included in our response dated 30<sup>th</sup> January 2012 at Tab 7.

For clarity the Neighbourhood Partnership is local democracy in action and is part of the Bristol City Council structure and administration. The Neighbourhood Partnership and Committee Meeting are where the output from the separate wards Open Forums in a Neighbourhood Partnership Area (in our case Henleaze, Westbury on Trym and Stoke Bishop) are debated and where Local Councillors take decisions on local matters.

The minutes make it clear that:-

- a. the output from the Stoke Bishop Open Forum had been discussed at cabinet, i.e. the most senior of all Bristol City Council statutory bodies and they had decided that the proposed fence to restrict public access would not be erected
- b. the Cabinet Executive Member for CYPS stated that  
*'It was envisaged that Stoke Lodge could be seen as a 'flagship' for shared use/access for other sites in the City'*
- c. there was unanimous agreement, including the Cabinet Executive Member for CYPS and the quorum of Local Councillors that the following resolution be passed:-  
*'That the strength of feeling expressed at the Stoke Bishop neighbourhood forum be noted and that its views had been relayed to the Director of CYPS. It was further noted that the Executive Member had given an assurance that the proposal to fence Stoke Lodge had categorically been dropped and that the parkland would remain with open access for all as of right. '*

This evidence is relevant and significant because it demonstrates that there was a categorical undertaking by Bristol City Council at Cabinet level, confirmed to the Community by the Cabinet Executive Member for CYPS at this meeting and contained within the letter to Annie Hudson the Strategic Director for CYPS, that:-

- a. Community access to Stoke Lodge Parkland should not and would not be restricted by the erection of a fence
- b. Community use would continue to be on a shared basis, with Stoke Lodge Parkland seen as a *'flagship' for shared use'*. Confirming that BCC at Cabinet level accepted that harmonious co-existence had been established over time (64 years) with no exclusivity to any user i.e. as per Redcar
- c. Community use would continue *'with open access for all as of right*. acknowledging that Bristol City Council recognised that the Community had established use 'as of right'; see also contents of Briefing Note discussed at bullet point (h) above
- d. The letter to Annie Hudson confirms that the Cabinet decision was instructed for implementation

7. Town or Village Green Application dated 4<sup>th</sup> March 2011

The Application has been confirmed as 'duly made' utilising the recognised form, provides the required documentation and is supplemented with arguments, evidence and 54 witness statements to support the Application.

8. Applicant's response dated 30<sup>th</sup> January 2012 to initial objections (4 off)

Following the submission of objections from i) Bristol City Council, ii) University of Bristol, Coombe Dingle Sports Centre, iii) Rockleaze Rangers Football Club, and iv) Cotham School, received during November and December 2011, we issued our first response dated 30<sup>th</sup> January 2012, containing our contra arguments to the points raised by the objectors.

9. Applicant's response dated 31<sup>st</sup> March 2012 to 2<sup>nd</sup> round of objections (2off)

Following the submission of the second objections from i) University of Bristol, Coombe Dingle Sports Centre, and ii) Rockleaze Rangers Football Club, received in March 2012, we issued our second response dated 31<sup>st</sup> March 2012, containing our contra arguments to the points raised by the objectors.

10. Applicant's response dated 5<sup>th</sup> October 2012 to 3<sup>rd</sup> round of objections (1off)

Following the submission of the second objection from Bristol City Council on 12<sup>th</sup> September 2012 we issued our third response on 5<sup>th</sup> October 2012, containing our contra arguments to the points raised by the objectors.

11. Inspector's draft directions dated August 2010

Following the decision by the Registration Authority to appoint Philip Petchey as an independent inspector to hold a non statutory public inquiry into whether the land should be registered and to report back to it with recommendations we received the Inspectors Draft Directions from the Registration Authority by e-mail on 21<sup>st</sup> August 2012

In the Draft Directions the inspector sets out the background, lists the qualifying criteria that are accepted as made and highlights the ongoing disputed issues. He sets out the future process and request further submissions

12. Applicant's letter dated 17<sup>th</sup> September 2010 in response to the draft directions

The Applicant responded to the Draft Directions on 17<sup>th</sup> September with questions of clarity regarding the hearing process; these issues have been overtaken by subsequent events.

13. Inspector's Directions dated 27<sup>th</sup> November 2012

The Inspector's Directions dated 27<sup>th</sup> November 2012 were received from the Registration Authority by e-mail on 6<sup>th</sup> December 2012'. The Inspector lists the remaining disputed issues and sets out his revised proposals to determine his recommendations, based on papers only, his proposed process and the submissions still required.

14. Applicants letter dated 8<sup>th</sup> December 2012 in response to the Inspector's Directions

The Applicant responded on the 8<sup>th</sup> December 2012 to the Inspector's Directions and the covering e-mail with questions of timing of responses and the need for a date to be confirmed for the objectors to respond to the question raised by the Inspector in his Directions at bullet point 13; these issues have been overtaken by events.

The Applicant also raised concerns to ensure that all the correspondence submitted to the Registration Authority had been copied and passed to the Inspector and that no administration errors had occurred. This was not a problem when the Hearing was proposed because the Registration Authority was scheduled to provide paginated bundles of all correspondence; hence we could have checked for completeness. Now that the

matter is to be decided on 'papers only' we are concerned to ensure that the inspector has all the papers. This issue remains unanswered. We hope that the electronic copies of all our correspondence that we have issued on DVDs alongside the hard copy may have gone some way to solving this question.

15. Objector's letter dated 21<sup>st</sup> December 2012

In this letter from Bristol City Council, they

- a. Agree with the proposals contained in the Inspector's Direction's at paragraph 11; notably accepting that the Inspector should formulate his recommendations based on papers only
- b. Revised its pleadings to withdraw their objection based on signs  
(We contend that this was an attempt to withdraw the evidence that the objector had introduced which showed that access by the local inhabitants for informal sports and pastimes was 'without permission')
- c. Noted why the inspector will not be using the Newhaven case as a precedent
- d. Reconfirmed that their objection is now based solely on
  - i. Implied permission based on Bristol City Council Local Plan
  - ii. Implied permission based on exclusive use by the Formal Sports users
  - iii. Conflict with statutory function
- e. Provided further arguments in support of d. Above
- f. Requested that the TVG Application at Stoke Lodge Parkland be rejected

16. Applicant's response dated 31<sup>st</sup> January 2013

Following receipt of:-

- a. the Registration Authority e-mail dated 21<sup>st</sup> December 2012 enclosing the Bristol City Council letter dated 21<sup>st</sup> December 2012 and setting out the dates of the required responses
- b. the Registration Authority e-mail dated 6<sup>th</sup> December enclosing Inspector's Directions dated 27<sup>th</sup> November 2012
- c. The Registration Authority e-mail dated 21<sup>st</sup> August 2012 enclosing the Inspector's Draft Directions

The Applicant responded on 31<sup>st</sup> January with a bundle containing three documents

- a. The first is a response to the Bristol City Council letter dated 21<sup>st</sup> December 2012, containing our contra arguments to the points raised by the objectors
- b. The second is a response to the Mudford Road Playing Field Report, introduced by and appended to the Bristol City Council letter dated 21<sup>st</sup> December 2012, setting out why we consider that this case is not relevant to the circumstances at Stoke Lodge Parkland
- c. The third is the Legal Statement on behalf of the Applicant setting out the basis of our Application as requested initially in the Draft Directions

17. Uncontroversial / accepted TVG qualifying criteria

It is common ground that the Applicant has made the case for the qualifying criteria listed below which are not disputed:-

- a. 'significant number of inhabitants'
- b. 'of any locality, or of any neighbourhood within a locality'
- c. 'have indulged as of right' (in part only)
  - i. 'without force'
  - ii. 'without secrecy'
- d. 'in lawful sports and pastimes'
- e. 'on the land'
- f. 'for a period of at least 20 years'
- g. 'and continue to do so at the date of the application'

18. Remaining disputed TVG qualifying criterion as argued by the objectors, but not accepted by the Applicant

That the Community use is not 'as of right' (in part) because use was not 'without permission' due to:-

- a. Implied permission based on Bristol City Council Local Plan
- b. Implied permission based on exclusive use by the Formal Sports and School users
- c. Conflict with statutory function

19. Contra arguments by the Applicant in support of Community use 'without permission' and demonstrating why registration as a Town or Village Green presents no risk to Statutory Function, plus evidence are contained within:-

- a. Relevant arguments and evidence contained within our Application and its covering letter dated 4<sup>th</sup> March 2011
- b. Relevant arguments contained within our response dated 30<sup>th</sup> January 2012
- c. Relevant arguments contained within our response dated 31<sup>st</sup> March 2012
- d. Relevant arguments contained within our response dated 5<sup>th</sup> October 2012
- e. Relevant arguments contained within our response dated 31<sup>th</sup> January 2013

The arguments are not repeated here in full as they are too voluminous, but are contained within the documentation listed above and summarised below

### **Skeleton arguments**

- a) The bulk of the qualifying criteria required to ensure that an Application is successful is accepted as made
- b) The remaining issues in dispute (as argued by the objector) are limited to alleged:-
  - i. Implied permission based on Bristol City Council Local Plan
  - ii. Implied permission based on exclusive use by the Formal Sports and School users
  - iii. There is a risk of conflict with Statutory Function

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- c) We contend that the strategic intent of the signs was to restrict access, hence confirming that use of the Parkland was 'without permission'
- d) The Land has never been held by the Landowner for 'public use', being held instead for education use as school playing fields, hence no automatic right of public access 'by right'. Conversely, Community use 'as of right' has been established and confirmed by the Briefing Note to Cabinet and by the Executive Cabinet Member for CYPS (Education) based on use over 64 years for lawful sports and pastimes
- e) The Local Plan relates only to Formal Sport that is Booked and Paid for and does not relate to spontaneous, informal, lawful sports and pastimes conducted by the Community on a shared, harmonious and co-existent basis with other users i.e. as per Redcar. We contend that this is the situation at Stoke Lodge Parkland
- f) The Local Plan at 10.4.7 does not bestow or confirm public use for all, at all times, at all education facilities and for any informal (not booked and paid for) lawful sports and pastimes
- g) The Parkland has never been closed and hence the Community has never been excluded from the Parkland
- h) Formal sport on individual pitches is not an act of 'exclusion' because use of the Parkland by the Community is on a 'shared' co-existent basis as per the Redcar case
- i) Statutory function at Stoke Lodge Parkland is limited to schools under Local Authority control only i.e. does not relate to Formal Sports users that book and pay to use the pitches
- j) Post our Application, Cotham school has applied for and become an Academy and is therefore self governing. BCC have discharged their Statutory Function by granting Cotham Academy a 125 year lease
- k) Use by Cotham remains minimal and can be easily accommodated within Stoke Lodge Parkland in its current form retaining the status quo, hence no risk to Statutory Function by Registration of the land
- l) The objector has not made a case to support their assertion that registration as a Town or Village Green would pose a risk to their Statutory Function
- m) The Briefing Note to Cabinet dated 22<sup>nd</sup> April 2010 confirms the true strategic intent behind their objection, that:-
  - i. A TVG application at Stoke Lodge Parkland is more likely to succeed following the Redcar case
  - ii. If Bristol City Council wishes to retain their development rights they need to take specific actions to prevent a TVG application succeeding. None of the recommended actions to prevent Registration has been taken

- n) Following on from the public consultation meeting on 25<sup>th</sup> August 2010 where the Briefing Note and its recommended actions were rejected by the Local Inhabitants and a subsequent meeting of the BCC Cabinet; the minutes of the Neighbourhood Partnership and Committee meeting dated 15<sup>th</sup> September 2010, together with the letter to Annie Hudson, confirm that:-
- i. Bristol City Council Cabinet accepted that the Parkland should not and would not be fenced (hence rejecting one of the proposals in the Briefing note required to prevent '*unfettered access*')
  - ii. Bristol City Council Cabinet accepted that Community use over the preceding 64 years had established an ongoing right of use on a '*Shared*' basis ('without permission' as confirmed by one of the other recommendations contained in the Briefing note to the Cabinet, the strategic intent of the 'signs' and the contents of the 'Open Green Spaces Plan').
  - iii. Community use would continue on a shared basis '*as of right*' this commitment to 'as of right' is contained in the final resolution, accepted by the vote of Councillors including Clare Champion Smith who voted in favour of the resolution reproduced below:-

***'RESOLVED - That the strength of feeling expressed at the Stoke Bishop neighbourhood forum be noted and that its views had been relayed to the Director of CYPS. It was further noted that the Executive Member had given an assurance that the proposal to fence Stoke Lodge had categorically been dropped and that the parkland would remain with open access for all as of right. '***

Clare Champion Smith as The Executive Cabinet Member for CYPS has a shared and collective responsibility for all decisions of the Cabinet and as such had an extensive knowledge of all the Town and Village Green Applications submitted to BCC (certainly more than 24 and we believe approaching 30). She is also a highly intelligent and a professionally qualified person.

It is a matter of fact that the issue of '*as of right*' figures highly in the majority of the objections to 'Registration' submitted by BCC and hence she has a working knowledge of the definition of '*as of right*' and would have understood that 'as of right' was good for the Applicant and bad for the objector; a fact confirmed to me by the conversations that I have had with her over the past 30 months.

Clare Champion Smith is also the author of the letter to Annie Hudson confirming the Cabinet decision

- o) Annie Hudson is the Strategic Director of CYPS, i.e. the full time officer in charge of CYPS
- p) We contend that we have demonstrated that all qualifying criteria have been satisfied

q) We therefore request that the Application is recommended for Registration

## 20. Legal precedents

- a. The Redcar case is relevant because it is the authoritative case on use '*as of right*'
- b. The Sunningwell case is relevant because it clarifies the issue of '*honest belief*'
- c. The Beresford case is relevant because the land was held by a local authority but was not held for public recreation. It was found that there was no implied permission and the TVG was granted
- d. The Trap grounds case is relevant because the TVG application was granted and hence all the qualifying criteria were made and hence there was no exclusive use by any party contrary to the assertion in the Mudford Report at paragraph 108
- e. The Barkas case should be discounted because the decision to reject the TVG application and the subsequent appeal was based on the fact that that land was held for 'public use'.  
In stark contrast the land at Stoke Lodge Parkland is not held for public use and use by the local inhabitants for informal sports and pastimes is conducted on a 'shared' basis as per the Redcar case and hence is not on an exclusive basis by any user. We reconfirm that we contend that the Redcar case is the authoritative case regarding '*as of right*' use.
- f. The Mudford Report should be discounted because the land there was held for 'public use'.  
In stark contrast the land at Stoke Lodge Parkland is not held for public use and use by the local inhabitants for informal sports and pastimes is conducted on a 'shared' basis as per the Redcar case and hence is not on an exclusive basis by any user. We reconfirm that we contend that the Redcar case is the authoritative case regarding '*as of right*' use.
- g. The Man case should be discounted because the land is privately owned by the pub/brewery at the edge of the land and the recommendation to refuse the application was based on the unique circumstances there relating to the use of the land and public access to the land as a whole, which is not disputed was denied by the landowner to hold the Beer Festival and to hold a Circus.  
In stark contrast the land at Stoke Lodge Parkland has never been closed and use by the local inhabitants for informal sports and pastimes is conducted on a 'shared' basis as per the Redcar case and hence is not on an exclusive basis by any user. We reconfirm that we contend that the Redcar case is the authoritative case regarding '*as of right*' use.

## 21. Summary and Conclusion

The Applicant submits that we have demonstrated by argument and evidence contained in all the documentation listed in this Legal Statement that all the required Town or Village

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Green qualifying criteria have been made and that all the objections presented have been shown to be invalid in this particular case and set of circumstances.

We therefore request that the Inspector recommends that the Application be granted and that Stoke Lodge Parkland be registered as a Town or Village Green.