

	Revised pleadings & further objections by Bristol City Council on behalf of all the objectors to the Town or Village Green Application at Stoke Lodge Parkland issued on 21st December 2012	Response by Save Stoke Lodge Parkland Issued on 31st January 2013
1	Stoke Lodge Park Land TVG Application	This response should be read in conjunction with the Application and its covering letter and the various subsequent responses by the Applicant
2	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 Stoke Lodge Park ("the Site") in responds to the Inspector's Directions dated 27 November 2012.	We write on behalf of the applicant to present our response to the revised pleadings and to further objections submitted by Bristol City Council on 21 st December 2012 and to respond to the Inspector's Directions.
3	The Inspector has indicated at paragraph 11 that a sensible way forward would be for the parties to submit such further submissions on the law as to whether the use was as of right as they think fit, an accompanied site inspection be carried out, a report be prepared with a recommendation to the City Council as registration authority, and an opportunity is given to the parties to make representation on the report and recommendation before the matter is determined by the registration authority. I confirm on behalf of the first objector and the 3 other objectors that the proposed course is acceptable.	<p>We confirm that we too are prepared to accept the proposals set out in paragraph 11 of the Inspector's Directions.</p> <p>As part of this bundle of documents (3 off) dated 31st January 2013 we attach separately our "Legal Statement" and our response to the Mudford Road Report introduced by the objector at paragraph 14 below, and attached to their letter dated 21st December 2012.</p>
4	To this end, the Inspector has specifically requested that the Council should indicate its view on the matter of the orientation of the third sign and also that, should the matter be further considered by written representations that the submissions put forward by the council be clarified (as per paragraph 13).	No comment required.
5	While there is no dispute regarding the existence of the signs and the fact that a number of people saw the signs, the Council do not wish to incur expenses involved in a non-statutory enquiry. While the Council remains of the view that its previous submissions in respect of the signs hold good, it is not felt that this issue on its own would be determinative of the issue in relation to the question as to whether the land will be capable of registration as a town or village green. Therefore, to this end the submissions with regard to the signs at the site are withdrawn. The question of orientation of the third sign will therefore no longer be in issue.	<p>We concur with the objector that <i>'there is no dispute regarding the existence of the signs and the fact that a number of people saw the signs'</i>. Indeed we included photographs within our Application at evidence tab 16. We have always argued on the basis of the lack of effectiveness of the signs, i.e. <i>'no practical effect'</i> [Redcar first instance] and we welcome the objector's decision to withdraw the issue of signs from their objection.</p> <p>However, It is interesting to note that the Landowner, Bristol City Council, on behalf of all the objectors has finally recognised the incongruous position they have created for themselves by running the difficult, if not impossible, concurrent arguments that Community use was both "with force" and "with permission" at the same time.</p>

<p>5 cont</p>		<p>Clearly the objectors have now abandoned the “with force” argument in favour of the “with permission” argument and whilst we consider both arguments flawed on all counts we must point out the obvious dichotomy for the objectors because throughout this process to date their claim that Community use was “with force” has been the major component of their objection; clearly demonstrating that the objectors considered, and argued, that Community use was “without permission” as evidenced by the large amount of correspondence on the subject.</p> <p>Given that we are now only considering matters of law related to whether or not the Community use for informal sports and general pastimes was without permission we refer to our response to the first objector dated 30th January 2012 Tab 3 at paragraph 26 (repeated in their second objection, see our response dated 5th October at paragraph 20c) where the objector states that:-</p> <p>Conclusion</p> <p>The council contend that the erection of the signs was specifically to prevent any prescription rights arising. The signage gives clear authority that members of the public were not to trespass on the land and in lists examples of the activities which may result in prosecution. It also indicates authorised use may be requested. The fact that no prosecutions have taken place would accord with this since, as mentioned, it is the council's policy to allow the public access when the fields are not in use by either the educational user or some other specifically permitted user eg a football club. However, such user is not ‘as of right’ since it is only permitted to the extent that land is not already in use by the educational or some other permitted user.</p> <p>The Council considers that the user knew or ought to have known that the owner was objecting to and contesting his use of the land. The Notice can be read in a common sense way and it is the Council's view that the notice is effective to render it contentious. This was a policy decision across all educational site including remote playing fields within Bristol. The Council's action is reasonable and proportionate to its funding.</p> <p>We would therefore ask the Registration Authority to consider the matters set out in this letter and its enclosures and dismiss the application.</p>
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5 cont		We contend that this is compelling evidence that Bristol City Council and Avon County Council fully intended (but failed) to restrict access. It follows therefore that they cannot now claim that they gave permission.
6	However, all the remaining submissions put forward in the letter dated 12 th September 2012 are repeated and remain as follows:	Noted
7	<ul style="list-style-type: none"> 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 1997 	<p>We have already responded to this assertion by the objectors, initially in our response dated 30th January 2012 to Bristol City Council, paragraph 15 and secondly in our response dated 5th October 2012 to Bristol City Council, paragraph 20b. Please refer to comments made there, and a copy of 'Chapter 10' of the 'Local Plan' contained within our response dated 30th January 2012 at Tab 9.</p> <p>We continue to maintain that this objection fails because of any one of a number of reasons including:-</p> <ul style="list-style-type: none"> a) The provisions of the Local Plan at Stoke Lodge Parkland relate only to Formal Sports users that book and pay to use the sports facilities, which is why it is excluded from our Application b) Bristol Local Plan, Chapter 10, clause 10.4.2 (iii) reinforces this as a policy decision (enclosed in response dated 30th January 2012 at tab 9) <ul style="list-style-type: none"> <i>'(iii) In the case of school playing fields, they should also be protected and opened up to wider community use. Local management of schools is encouraging schools to maximise income from shared use. There is a possibility that pupil numbers will increase again in the future, and also a further need for playing fields may arise due to changes in the National Curriculum.'</i> i.e. linking use with permission with payment of a fee c) The provisions of the Local Plan do not relate to spontaneous, unauthorised and informal sports use 'as of right' by the community in the same way as the community users at Redcar, which remains as the authoritative case on use 'as of right' as it is a decision of the Supreme Court d) Community use at Stoke Lodge Parkland has been on a shared, co-existent, spontaneous, and harmonious basis in the same way as the community users at Redcar

<p>7 cont</p>		<p>e) Please refer to our response dated 30th January 2012 Evidence Tab 9 for a copy of the Local Plan, see page 208 paragraphs 10.4.6. and 10.4.7. Reproduced below:-</p> <p><i>‘10.4.6. More recently “The Six Acre Standard” publication provides guidance for minimum standards regarding all types of outdoor playing space. The Strategy recommends the adoption of a minimum standard for outdoor playing space of 2.43 hectares (six acres) per 1,000 population. Within this standard it is advised that between 1.65 – 1.85 hectares (4.0 – 4.5 acres) should be available for formal recreational space, for youth and adult use.</i></p> <p><i>10.4.7. Included within this category the following facilities should be taken into consideration:-</i></p> <ul style="list-style-type: none"> <i>(i) Facilities such as pitches (e.g. Football, Cricket, Hockey, Rugby), greens (e.g. Bowls), courts (e.g. Tennis), athletics tracks and miscellaneous sites, such as croquet lawns and training areas owned by Local Authorities, whether at County, District or Parish level.</i> <i>(ii) Facilities described in (i) within the educational sector and which, as a matter of practice and policy, are available for public use.</i> <i>(iii) Facilities described in (i) which are within the voluntary, private, industrial and commercial sectors and serve the leisure needs for outdoor recreation of their members, or the public.’</i> <p>Please refer to our response dated 30th January 2012 Tab 3 (response to BCC) paragraph 15 sub paragraph 3. Here the objector correctly reproduces the wording of paragraph 10.4.7. ii. from the Local Plan to support its (erroneous) objection but fails to refer to 10.4.6.</p> <p>Please refer to our response dated 5th October 2012 paragraph 20b. Here the objector has misquoted paragraph 10.4.7. (ii) as <i>‘facilities within the educational sector may as a matter of practice and policy be available for public use’</i> which we contend changes the meaning of the intended wording. They also fail to mention 10.4.6.</p> <p>We contend that the objector has consistently misrepresented the intended meaning of paragraphs 10.4.6. and 10.4.7.</p>
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<p>7 cont</p>		<p>i. 10.4.6. sets out the national 'Six Acre Standards' ii. 10.4.7 sets out how BCC might (or might not) satisfy the standards. Importantly 10.4.7 is headed as <i>'Included within this category the following facilities should be taken into consideration:-'i.e. linking 10.4.7 to 10.4.6.</i></p> <p>The significant issue is the meaning of the word '<i>which</i>' in paragraph 10.4.7. (ii). which we contend is being used in the Local Plan to mean:- <i>'Facilities described in (i) within the educational sector and "<u>where they</u>", as a matter of practice and policy, are available for public use.'</i> i.e. maintaining the link back to 10.4.6. This common understanding of meaning is confirmed by the wording of 10.4.7. (iii).</p> <p>Furthermore, we have discovered that the exact wording contained in the Bristol Local Plan at 10.4.7 is being used by other Local Councils elsewhere across the Country. For evidence please refer to our Appendix 1 attached to this document at page 21 of 21 reproducing an extract of the Rother District Council Local Plan (at their appendix 3.)</p> <p>We therefore contend that the wording has been lifted verbatim from the National Playing Fields Association Standards and therefore cannot be claimed as describing the conditions on educational land administered by Bristol City Council</p> <p>Hence we contend that paragraph 10.4.7. ii. cannot be used to confirm that <u>all</u> education sector pitches are available for public use as a matter of '<i>practice and policy</i>' at all times but is restricted to users that book and pay to use the pitches. Hence we maintain our contention that only pitches booked and paid for are made available for public use with permission, i.e. the Formal Sports users, as per paragraph 10.4.2. (iii) of the Local Plan as discussed above.</p> <p>For the avoidance of doubt Community use for informal legal sports and pastimes is conducted on a shared and harmonious co-existent basis, is not restricted to pitches but extends to all areas of the Parkland, is not booked and paid for and hence is 'without permission'</p>
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<p>7 cont</p>		<p>f) Please refer to paragraph 5 of this document where we have argued that the actions of BCC (confirmed by the objector in their “conclusion”) declared their true intent (which failed) with regard to Informal “Public Use” to undertake legal sports and pastimes, to:-</p> <ul style="list-style-type: none"> i. restrict public access and <i>‘prevent any prescription rights arising’, and</i> ii. <i>‘The Notice can be read in a common sense way and it is the Council’s view that the notice is effective to render it contentious. <u>This was a policy decision across all educational site(s) including remote playing fields within Bristol.....</u>’</i> (emphasis added by the Applicant) <p>It is therefore inconsistent for the objector to claim that the Community use for informal legal sports and pastimes had permission and further contradicts the assertion by the objector that the Local Plan can be used to shown that all sectors of the Public irrespective of their intended use and irrespective of whether that use was Booked and Paid for was with permission.</p> <p>g) Please refer to the Bristol City Council Area Green Space Plan published in 2010 (refer to Application evidence item Tab 18)</p> <p>Please note comment on page 4 of the Green Space Plan – <i>‘What isn’t included in an Area Green Space Plan? – The Area Green Space Plan will not consider green spaces that are not freely accessible to the public, including allotments, city farms, school grounds or sites of Nature Conservation in private ownership.....’</i></p> <p>Since Stoke Lodge Parkland is not included as Green Space on any of the maps on pages 26 - 30 (incl) it is clear therefore that Stoke Lodge Parkland is <i>‘not freely accessible to the public’</i> (in terms of permission—clearly the Public have <i>‘unfettered access’</i> in terms of physical constraints)</p> <p>Please note the comments on page 26 of the Green Space Plan relating to Stoke Lodge <i>‘There may be an opportunity to provide a new play area at Stoke Lodge but at present this land is predominantly used as school playing fields for Cotham Grammar School and is not publically accessible’</i> (in terms of permission – clearly the Public have <i>‘unfettered access’</i> in terms of physical constraints)</p>
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7 cont		<p>h) Please refer to the Application, evidence item 10, for full copy (23 pages) of the Briefing Note to Bristol City Council Informal Cabinet dated 22nd April 2010. For ease of reference please refer to the Application, evidence item 12, which comprises a single sheet of A4 containing a selection of clauses taken from the Briefing Note. This extract was created by the Applicant to highlight the true intent of the 'Briefing Note' to the Community at the Consultation meeting held at the Neighbourhood Partnership Open Forum on 25th August 2010.</p> <p>The extract demonstrates, amongst other things, that:-</p> <ol style="list-style-type: none"> I. 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 II. <i>'Landowners now need to proactively take steps to keep people (off) their land to prevent future registration'</i> III. <i>'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.'</i> IV. <i>'The playing field (Stoke Lodge Parkland) currently unfenced and allows unfettered community access'</i> V. <i>'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 <u>purpose</u> of the fence was to restrict public access</i>
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<p>7 cont</p>		<p>VI. The funding arrangements described at 2.42 proved to be nothing more than wishful thinking with the funds having been spent elsewhere and the claim that a £600k grant from Sport England had been awarded was a complete fabrication with no application having been made.</p> <p>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.</p> <p>Neither of these two necessary actions has been enacted</p> <p>The 'Briefing Note' went to Public Consultation at the Neighbourhood Partnership Open Forum on 25th 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 the Community view.</p> <p>i) Please refer to the Application at Evidence item Tab 14 enclosing 'section 8' an extract from the minutes of the Neighbourhood Partnership & Committee Meeting dated 15th 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 30th January 2012 at Tab 7.</p> <p>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</p>
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7 cont		<p>Partnership Area (in our case Henleaze, Westbury on Trym and Stoke Bishop) are debated and where Local Councillors are empowered to take decisions on local matters.</p> <p>The minutes make it clear that:-</p> <ul style="list-style-type: none"> i. 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 ii. The Cabinet Executive Member for CYPS stated that <i>'It was envisaged that Stoke Lodge could be seen as a 'flagship' for shared use/access for other sites in the City'</i> iii. That there was unanimous agreement, including the Cabinet Executive Member for CYPS and the quorum of Local Councillors that the following resolution be passed:- <i>'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. '</i> <p>This evidence is relevant and significant because it demonstrates that there was a categorical undertaking by Bristol City Council at Cabinet level, confirmed by the Cabinet Executive Member for CYPS at this meeting to the Community and the letter to Annie Hudson the Strategic Director for CYPS that:-</p> <ul style="list-style-type: none"> i. Community access to Stoke Lodge Parkland should not and would) not be restricted by the erection of a fence ii. Community use would continue to be on a shared basis, with
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7 cont		<p>Stoke Lodge Parkland seen as a <i>'flagship' for shared use</i>, thus 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</p> <p>iii. Community use would continue <i>'with open access for all <u>as of right</u></i>, 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</p> <p>iv. The letter to Annie Hudson confirms that the Cabinet decision was instructed for implementation</p> <p>j) We contend that Community use for Informal legal sports and pastimes at Stoke Lodge Parkland has been exercised <i>'in the same manner as if'</i> the people who indulged in them had a legal right to do so [R v Oxfordshire County Council ex parte Sunningwell Parish Council]</p> <p>k) We also 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.</p>
8	<ul style="list-style-type: none"> The use of the land for organised sports has been exclusive to those so using it raising the question of implied permission 	<p>a) The Community, i.e. the local inhabitants of the locality described in the Application, has never been excluded from the Parkland for informal sports and pastimes, indeed the Parkland has never been closed for any reason, neither has the Community been given permission, implied or otherwise.</p> <p>b) Community use for informal sports and pastimes has been significant, undertaken every day of the year, please see:-</p> <ul style="list-style-type: none"> i. Application vol 1 of 3, Evidence item Tab 19 – Survey of use ii. Application vols 2&3 of 3 Witness statements iii. Response dated 30th January 2012, Evidence item Tab 8 – additional witness statements iv. The attendance by the Community at the Open Forum meeting

8 cont		<p>on 25th August 2010 by in excess of 250 residents</p> <p>This significant Community use was highlighted by the large numbers of families enjoying the exceptional snow fall on Friday 18th January this year whilst this response was being prepared</p> <p>c) In stark contrast, use by Cotham School at the time of the Application was minimal with recorded use as less than 3 hours per week for one or two pitches only and Formal Sports use was also low, typically accounting for:-</p> <ul style="list-style-type: none"> i. Saturday am between September and April - 4 junior pitches ii. Saturday pm between September and April – nil except in exceptional circumstances iii. Sunday between September and April – 2 of the 4 large pitches used for one game each iv. Wednesday pm between October and April - University overspill from Coombe Dingle Sports Centre, variable between 1 & 2 pitches for one game v. Occasional cricket matches during the summer months <p>d) Community use has been conducted on a free and open, shared and harmonious basis with all parties co-existing in the same way as the parties in the Redcar case, with the Community avoiding the pitches in use where games are in play as an act of politeness, <u>i.e. not exclusion</u> and have continued to use the remainder of the Parkland at all times and have on occasions taken advantage of the opportunity to watch the games in play.</p> <p>e) For the avoidance of doubt we reconfirm that our use of the wording “Formal Sport” and “Informal Sport” is to differentiate between use of pitches that are booked and paid for by Sports clubs and the use of the whole Parkland without any prearrangement or fee by the Community i.e. without permission for informal sport and general recreation.</p> <p>f) Bristol City Council have already confirmed that during the qualifying period (and before) that the land at Stoke Lodge Parkland has been</p>
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8 cont		<p>held for education use as school playing fields and hence has never been held as open green space for public recreation which would have granted implied permission. Please refer to Applicants response dated 30th January to Bristol City Council, paragraphs 4 – 12 for details of evidence submitted by the objector</p> <p>g) Please see also Application covering letter paragraph 2 and evidence item tab 18, appendix XIV (Area Green Space Plan).</p> <p>Please note comment on page 4 – <i>‘What isn’t included in an Area Green Space Plan? – The Area Green Space Plan will not consider green spaces that are not freely accessible to the public, including allotments, city farms, school grounds or sites of Nature Conservation in private ownership.....’</i></p> <p>This is important because on all the maps of different types of Green Space within Stoke Bishop (pages 26-30 incl) Stoke Lodge Parkland is not included as Green Space and hence is <i>‘not freely accessible to the public’</i> (in terms of permission – clearly the public have <i>‘unfettered access’</i> in terms of physical constraints)</p> <p>Please note the comments on page 26 relating to Stoke Lodge <i>‘There may be an opportunity to provide a new play area at Stoke Lodge but at present this land is predominantly used as school playing fields for Cotham Grammar School and is not publically accessible’</i> (in terms of permission – clearly the public have <i>‘unfettered access’</i> in terms of physical constraints)</p> <p>and note that Stoke Lodge is not identified on the plan on page 26 as having any Children’s and Young people’s space</p> <p>Please note on the plan on page 27 that Stoke Lodge is identified as having no Formal Green Space</p> <p>Please note on the plan on page 28 that Stoke Lodge is identified as having no Informal Green Space</p> <p>Please note on the plan on page 29 that Stoke Lodge is identified as having no Natural Green Space of its own</p> <p>h) Please refer to the argument on behalf of the Applicant contained within paragraph 7 of this document at bullet point i) relating to the minutes of the Neighbourhood Partnership and Committee Meeting</p>
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8 cont		<p>held on 15th September 2010, together with the letter to Annie Hudson Strategic Director for CYPS confirming that Bristol City Council at Cabinet level accepted that Community use at Stoke Lodge Parkland for informal Sports and Pastimes was on a shared basis and hence not subject to exclusion. For ease of reference we reproduce the summary below:-</p> <p>This evidence is relevant and significant because it demonstrates that there was a categorical undertaking by Bristol City Council at Cabinet level, confirmed by the Cabinet Executive Member for CYPS at this meeting to the Community and the letter to Annie Hudson the Strategic Director for CYPS, that:-</p> <ul style="list-style-type: none"> i. Community access to Stoke Lodge Parkland should not and would not be restricted by the erection of a fence ii. Community use would continue to be on a shared basis, with Stoke Lodge Parkland seen as a <i>'flagship' for shared use'</i> 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 iii. Community use would continue <i>'with open access for all <u>as of right</u>'</i>, 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 iv. The letter to Annie Hudson confirms that the Cabinet decision was instructed for implementation <p>We contend that Stoke Lodge Parkland has never been held or classified by Bristol City Council as open green space for public recreation, which would result in implied permission being granted automatically. For evidence please refer to our response dated 30th January 2012, Tab 3, paragraphs 4 – 12.</p> <p>We contend that when pitches are booked and paid for by the Formal Sports users the permission granted is limited to the Formal Sports users.</p>
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8 cont		<p>Furthermore the Formal Sports use is conducted on at shared basis with the Community as per the Redcar case which remains as the authoritative case on use 'as of right' as it is a decision of the Supreme Court.</p> <p>We contend that this argument (above) applies equally to Cotham School use, either as a traditional Local Authority school as they were at the time of the Application or as an Academy as they are now. However it is relevant to recognise that use by Cotham is minimal. Please refer to our Response dated 30th January 2012, Tab 4, paragraph 3, '<i>We recognise value and welcome the sporting use undertaken by Cotham School as part of the status quo of shared use with the community. We should also point out that school only use the Parkland on weekdays, on 30 weeks per year and at the date of the Application was down to approximately 3 hours per week, whereas the Community use it 7 days a week 52 weeks a year and have done so for the last 64 years....</i>'.</p> <p>We contend that 'Shared' use by the Community for informal and legal sports and pastimes at Stoke Lodge Parkland has been accepted and confirmed by Bristol City Council, see g) above, hence there is no question of exclusion.</p> <p>The Community has never been excluded from the Parkland. Indeed it is difficult to see how this could ever have been arranged given the number of ungated access points around the perimeter of the site. Furthermore Community use has been informal and unauthorised (without permission) on a shared harmonious co-existent basis as per the Redcar case.</p> <p>We therefore contend that there has been no exclusion and no implied permission for Community use for informal legal sports and pastimes.</p>
9	<ul style="list-style-type: none"> Conflict with statutory function 	<p>We contend that the objector has not made the case to support this assertion, whereas we have demonstrated that maintaining the status quo by registering Stoke Lodge Parkland as a Town or Village Green will not introduce any '<i>conflict with statutory function.</i>'</p> <p>We have already responded to this assertion by the objectors, in our response dated 5th October 2012 to Bristol City Council, paragraphs 32 -37 inc. Please refer to comments made there, which we summarise below:-</p> <p>a) Bristol City Council has a Statutory duty to provide 'adequate' playing fields to schools users under Local Authority control</p>


<p>9 cont</p>		<ul style="list-style-type: none"> b) At the time of the Application this was limited to Cotham Grammar School at Stoke Lodge Parkland c) In September 2011 (post TVG Application) Cotham Grammar School became an Academy opting out of Local Authority control for all management, admin, and logistical issues and became self governing d) On 31st August 2011 Bristol City Council granted Cotham Academy (in anticipation of their new status) an irrevocable (by BCC) 125year lease at Stoke Lodge Parkland e) We contend that Bristol City Council have discharged their Statutory Duty by issuing the Lease to Cotham f) Furthermore, school use by Cotham at Stoke Lodge Parkland is minimal g) Stoke Lodge has 9 or 10 pitches depending on the pitch layout used h) Hence Stoke Lodge Parkland is more than capable of accommodating the sporting use by Cotham based on current use, recorded as 3hrs per week (utilising a total of 3 pitches for 1 hour each) at the time of the Application, or any reasonable projected increase i) Furthermore, we consider it relevant to note that there is only one remaining secondary school in North West Bristol that has not opted out of Local Authority control and become an Academy or a Free School i.e. Henbury school which was recently completely rebuilt as part of the Building Schools for the Future programme including sports facilities. We understand from their web site that they too are considering becoming an Academy. We contend therefore that there are no other secondary schools within reasonable travelling distance that could possibly require BCC to provide sports facilities at Stoke Lodge Parkland. j) We welcome and enjoy the 'Shared' sporting use by Cotham and the Formal Sports users with Community use for informal sports and pastimes, as per the Redcar case k) If Cotham prefer to play on 'all weather pitches' there are numerous local alternatives available to them, please see our response dated 5th
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9 cont		<p>October 2012 paragraph 32 page 24 of 29</p> <ul style="list-style-type: none"> l) We consider this objection by Bristol City Council to be a subterfuge to conceal their real intent to seek to preserve their 'development rights' on the site as described in the 'Briefing Note' discussed in previous response documents and in this response at paragraph 7 bullet point h) m) Additionally we contend that Bristol City Council has an overriding obligation to protect green space for future generations and this Application is the best way to achieve that n) In support of l) above it is commonly held that access to green space provides a significant benefit to all users, of all ages and ability, in terms of social, emotional and physical well being, recovery and growth. Furthermore, Stoke Lodge Parkland is the only safe green space in the environs o) In support of l) and m) above and as will become self evident to the Inspector following the proposed site visit, Stoke Lodge Parkland is an exceptional green space with many specimen trees that combine to create a space of outstanding natural beauty and environmental impact that additionally provides a very valuable natural habitat. However the infrastructure is very fragile and is restricted by the physical constraints imposed by the underlying rock strata which is very close to the surface and would severely limit the possibility to change the topography without having dire effects on the existing water table and natural drainage, so vital for the sustainability of the flora and trees.
10	<p>We note that the Inspector has indicated that the point on the Newhaven Case would not be addressed since that case is being considered by the Court of Appeal in the New Year but would ask that the Inspector only consider the submissions with regard to conflict with a statutory function in the event that the Inspector is not able to determine the matter on the issues regarding implied permission.</p>	<p>We note the Inspectors decision not to use the Newhaven case as a precedent in his recommendation. We maintain the arguments presented in our response dated 5th October 2012 paragraph 33 setting out why we consider that the specific conditions at Newhaven are not representative of the situation at Stole Lodge Parkland and hence are not relevant to this Application.</p> <p>We reject the argument that the Community was granted 'implied permission' to undertake informal, lawful sports and pastimes on a shared, harmonious and co-existent basis for the reasons given in previous responses and in this response at paragraphs 5, 7, 8, 12, 13 and 14.</p> <p>Alternatively we contend that Community use at Stoke Lodge Parkland on a</p>

		<p>shared basis is 'without permission' for the same reasons used in the Redcar case, (which remains the authoritative case) supported by our arguments given in previous responses and in this response at paragraphs 5, 7, 8, 12, 13 and 14.</p> <p>We contend that the objector has not made the case to support this assertion of '<i>conflict with statutory function</i>'. However, we have demonstrated that maintaining the status quo by registering Stoke Lodge Parkland as a Town or Village Green will not introduce any '<i>conflict with statutory function</i>'. Please refer to our previous response dated 5th October 2012 paragraphs 32 to 37 and to our arguments contained in this response at paragraph 9.</p>
11	<u>Exclusivity and Implied Permission</u>	
12	<p>The Applicant, in its response to Bristol City Council Objection (30 January 2012) indicates "we agree that Coombe Dingle Sports Centre (CDSC) has been employed as a grounds maintenance sub contractor.....They also manage the pitch booking system". At paragraph 15 the applicant states, "we acknowledge that the formal sports use booked by Coombe Dingle is clearly with permission and hence forms no part of our application". The Commons Act 2006 makes no distinction between formal or informal lawful sports and pastimes and the applicant acknowledges that they are aware that permission was formally granted to various clubs using the site.</p>	<p>The precedent for Formal and informal users sharing and co-existing harmoniously is clearly established by the Redcar case.</p> <p>We contend that the situation at Stoke Lodge Parkland clearly mirrors the situation at Redcar where Community use for informal legal sports and pastimes has been on a shared and harmonious basis with all parties co-existing in the same way as the parties in the Redcar case, with the Community avoiding the pitches in use as an act of politeness, and on occasion taking advantage of the opportunity to watch the games in play. For the avoidance of doubt we reconfirm that our use of the wording 'Formal Sport' and 'Informal Sport' is to differentiate between use of pitches that are booked and paid for by Sports clubs and the use of the whole Parkland without any prearrangement or fee by the general Community for legal sports and pastimes</p> <p>We agree that Formal Sports use that is booked and paid for is 'with permission'.</p> <p>However, we contend that informal, lawful sports and pastimes undertaken on a spontaneous basis, i.e. not booked and paid for, and conducted on a shared and harmonious co-existent basis as per the situation at Stoke Lodge Parkland is 'without permission'.</p> <p>Community use for informal sports and pastimes has continued to be significant throughout the qualifying period, undertaken every day of the year, please see:-</p> <p>i. Application vol 1 of 3, Evidence item Tab 19 – Survey of use</p>

12 cont		<ul style="list-style-type: none"> ii. Application vols 2&3 of 3 Witness statements iii. Response dated 30th January 2012, Evidence item Tab 8 – additional witness statements iv. The attendance by the Community at the Open Forum meeting on 25th August 2010 by in excess of 250 residents <p>This significant Community use was highlighted by the large numbers of families enjoying the exceptional snow fall on Friday 18th January this year whilst this response was being prepared.</p> <p>In stark contrast, use by Cotham School at the time of the Application was minimal with recorded use as less than 3 hours per week for one or two pitches only and Formal Sports user was low, typically accounting for:-</p> <ul style="list-style-type: none"> i. Saturday am between September and April - 4 junior pitches ii. Saturday pm between September and April – nil except in exceptional circumstances iii. Sunday between September and April – 2 of the 4 large pitches used for one game each iv. Wednesday pm between October and April - University overspill from Coombe Dingle Sports Centre, variable between 1 & 2 pitches for one game v. Occasional cricket matches during the summer months
13	<p>In the Applicant's response to the objection by Cotham School (30 January 2012) the applicant suggests that the informal users defer to the sports clubs and that the sports club use is limited to term times only. There is no requirement for any exclusive use to be more than periodic and it is submitted that the usage on this site is regular and exclusive to the licensee for the period booked. This is a manifest act of exclusion by the owner.</p>	<p>We maintain that Community use for informal lawful sports and pastimes has been conducted on a 'Shared' basis as described in the Redcar case, and that this status has been recognised and confirmed by The Executive Cabinet Member for CYPS on behalf of the Bristol City Council Cabinet at the Neighbourhood Partnership and Committee Meeting held on 15th September 2010. Please refer to paragraph 7 of this document for full details of this meeting and other evidence and arguments setting out our case.</p> <p>Furthermore we contend that Community use was also both co-existent and harmonious with Community users giving way to Formal and School sports</p>

		<p>users as acts of politeness and courtesy as per the community users in the Redcar case which remains the authoritative case on use 'as of right' as it was a decision of the Supreme Court..</p> <p>We therefore contend that there has never been '<i>a manifest act of exclusion by the owner</i>'.</p> <p>However we do reconfirm that use by the School is minimal and use by Formal Sports users is low, compared with significant Community use all as detailed in paragraphs 8 bullet points b) & c) of this document.</p>
14	<p>In addition to the case of <i>R(oao Mann) v Somerset County Council</i> referred to in our previous submission, the first objector further wishes to rely on the recent Inspector's Report in an application to Register Land Known as land at Mudford Road Playing Field Yeovil (copy attached for ease of reference) dated 13 November 2012. Paragraphs 105 to 110 deal with the issue of implied licence. While in that particular case the matter was decided on a statutory basis, the Inspector indicated "but for the existence of a statutory right to carry out informal recreation on the land, I would have concluded that the public carried out such acts by the implied license of the council."</p>	<p>We have already responded to the <u>Mann v SCC</u> case in our response dated 5th October 2012, paragraphs 25 – 31 inc, setting out why we consider that it is not relevant to the Application at Stoke Lodge Parkland. Please refer to our comments contained there.</p> <p>It is significant to note that in the Mann case the land was 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 the Circus.</p> <p>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 <u>Redcar case</u> is the authoritative case regarding '<i>as of right</i>' use.</p> <p>With regard to the <u>Mudford Road v SCC</u> case we have responded within a separate document that forms part of this overall bundle of documents, utilising the Inspector's Report as a template for our comments, setting out why we consider the circumstances in the Mudford case are significantly different to those found at Stoke Lodge Parkland and hence not relevant to our Application.</p> <p>Please refer to that document for our comprehensive response but, in summary, we contend that the 'implied license' and hence 'permission' referred to within the Mudford report was decided on the basis that the land was held by SCC for 'public recreation', which is not the case at Stoke Lodge Parkland, where the land is held for education use as school playing fields.</p> <p>We also contend that Inspectors' reports are not binding and decisions on other cases need to be made on the merits of an individual case and that the <u>Redcar case</u> remains the authoritative case regarding '<i>as of right</i>' use.</p>

15	<p>It is submitted that the site is not capable of registration as a town or village green on the basis of the above mentioned and previous submissions.</p>	<p>We contend that we have demonstrated that there are no legitimate objections to the Application and request that the Application to register Stoke Lodge Parkland as a Town or Village Green be recommended by the Inspector to the Registration Authority.</p> <p>Furthermore it is then passed to the Public Rights of Way and Greens Committee with a recommendation for the Land at Stoke Lodge Parkland to be registered as a Town or Village Green.</p>
16	<p>Yours faithfully</p>  <p>Rachel Johnson Solicitor <u>For Head of Legal Services</u></p>	<p>Please see next page for Appendix 1 referred to in paragraph 7 bullet point e)</p>

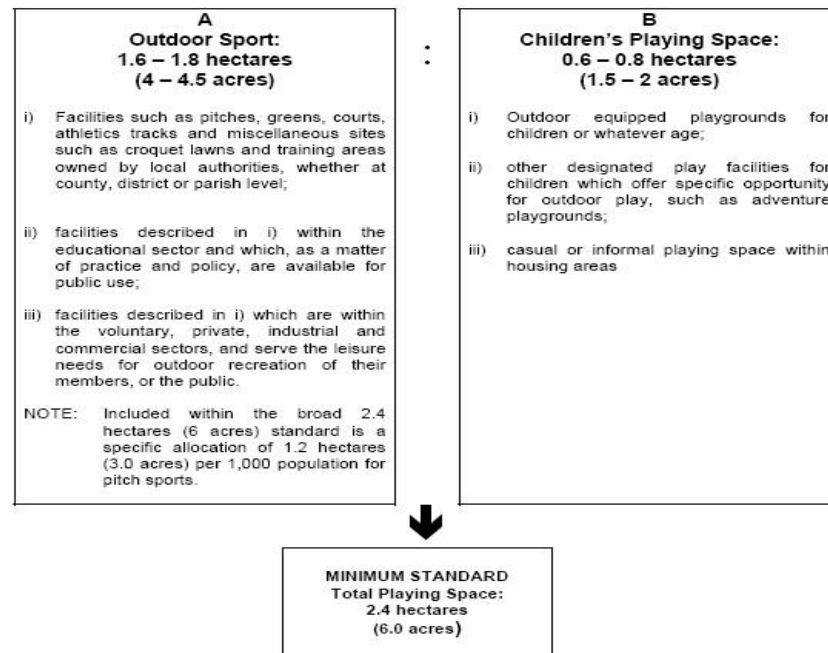
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3. National Playing Fields Association The Six Acre Standard Minimum Standards for Outdoor Playing Space

The National Playing Fields Association's (NPFA) recommendations for outdoor playing space, i.e., for sport, recreation and children's play, are a global statement of the amount of land required per 1,000 population, and should be regarded as a minimum standard.

The NPFA recommends a minimum standard for outdoor playing space of 2.4 hectares per 1,000 population. Although the metric system is used as the main system of measurement throughout this publication, the title The Six Acre Standard has been retained because that name is widely associated with the NPFA standard.

Depending on the population profile of the locality concerned, the total standard should be met by an aggregation of space within the ranges following:



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