IN RE: AN APPLICATION TO REGISTER LAND KNOWN AS LAND AT MUDFORD ROAD PLAYING FIELD, YEOVIL, SOMERSET AS A NEW TOWN OR VILLAGE GREEN UNDER THE COMMONS ACT 2006

REPORT TO SOMERSET COUNTY COUNCIL

Leslie Blohm Q.C.

St. John's Chambers,

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Bristol,

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Response by Save Stoke Lodge Parkland

To the report to Somerset County Council

relating to Mudford Road Playing Field

Issued by Bristol City Council on 21st December 2010

as part of their objection to the registration of

Stoke Lodge Parkland as a Town or Village Green

31st January 2013

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We are concerned to understand why the objectors have introduced this report as evidence to support their case at this stage of the proceedings.

A cursory examination of the facts of the Mudford Road Report would identify a significant and crucial difference relating to ongoing Community use for informal legal sports and pastimes on a shared and harmonious and co-existent basis.

In the case of Mudford Road this use is 'by right' because the land is held by Somerset County Council as open green space for public use and hence is with permission.

We submit that at Stoke Lodge Parkland use by the Community, as described above, is 'without permission' because the land is held by Bristol City Council Education Dept (CYPS) as School Playing Fields, and is not registered or classified as Open Green Space and hence informal public use is 'without permission'. NB use 'without secrecy' and 'without force' have already been accepted.

For details of evidence to support this assertion please see our Legal Statement, issued 31st January 2013 and our Response to Bristol City Council dated 31st January 2013.

We accept that Community use for formal sport at Stoke Lodge Parkland, i.e. booked and paid for, as described in the Local Plan, is with permission, and these activities do not form part of our Application. As stated previously we welcome the continuation of this use.

With regard to the issue of Neighbourhood, this has already been accepted within the Application for Stoke Lodge Parkland.

We have annotated the report with our comments and based on these comments and the arguments above request that this Report to Somerset County Council is set aside and disregarded.

	Introduction	
1	I have been instructed to advise Somerset County Council ('the Authority') as to the merits of an application to register land adjoining Mudford Road, Yeovil, as a Town or Village Green ('TVG') pursuant to the provisions of the Commons Act 2006.	We submit that this paragraph has no relevance to our Application.
	The Application	
2	An application received by the Authority on 13th. May 2008 seeking the registration by the Authority of the land as a TVG, pursuant to section 15(2) of the Commons Act 2006 jointly by Alexandra Court and Robert Tucker. Section 15(2) states: "This subsection applies where: (a) A signficant 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 (b) They continue to do so at the time of the application." The land which is the subject matter of the application was described as 'Yeovil Recreation Centre (also known as Yeovil Rec, Mudford Road Playing Fields)' at Mudford Road Yeovil. The extent of the land that was initially subject to the application is shown on 'Map A' annexed to the Statutory Declaration sworn by Mr. Tucker in support of the application. The land itself falls wholly within a triangle of	We submit that this paragraph has no relevance to our Application. We concur with the clarification of the qualifying criteria.

	public roads, namely Combe Street Lane to the North, Marsh Lane to the West and Mudford Road to the East, and at various points directly borders on to those roads. The land the subject of the application is not the entirety of the Yeovil Recreation Ground. It excludes the athletics ground and areas shown hatched red on that plan – an existing children's play area, and a private dwelling and grounds[1].	We submit that this paragraph has no relevance to our Application. However we shall return to the issue of the status of the land included within the application at Mudford Road.
3	At the hearing of this Inquiry Mr. Maile, on behalf of the Applicants indicated that he sought the registration of only part of the land subject to the original application. The application had erroneously included a fenced off electrical sub-station and an enclosed sewage pumping station and various other small areas, which I understand also to be excluded from the application[2]. I have annexed a copy of Map A amended to show the extent of the land now subject to this application, to this report, marked Ex.1[3]. The consequence of those amendments is that 'the Land' in fact now comprises three discrete areas. There is a larger playing field to the North; a smaller plot to the East backing on to houses at Mudford Road, and a smaller area to the South extending to Mudford Road. The application now omits the electricity sub-station, the pumping station, the crazy golf course, tennis courts, surfaced car park, community hall/cafe and the enclosed pitch and putt course.	We submit that this paragraph has no relevance to our Application.
	[1] See Mr. Tucker's letter of 27th. May 2008 [2] See Mr. Tucker's letter of 21st. June 2010 to the Authority, enclosing an amended Map A [3] The amended map is at Applicants' bundle 3, section 3, p. 191.	

4	The basis of the application is the use of the land, for a period in excess of 20 years prior to the date of the application, by a significant number of local inhabitants. The statement in support noted that the land was formerly farmland, but was laid out as community playing fields in 1930. It describes the land as being situated in a residential part of Yeovil, and as being used continuously for recreation, both formal and informal of various sorts, since then.	We submit that this paragraph is highly relevant as it describes a significant difference between the two applications and confirms that the use of the land described in the Mudford Road application has been as "*community playing fields*" during the whole of the qualifying period. In stark contrast the land described in our Application at Stoke Lodge Parkland is not registered or classified as open green space, i.e. not designated for public use; for details of evidence to substantiate this assertion please see our Legal Statement issued on 31st January 2013.
5	The application form required the applicants to identify the neighbourhood or locality from which the inhabitants who used the land came. The applicants chose to do this on the application by way of identifying the relevant area on a map; and the map showed the locality as being three electoral wards in Yeovil: Yeovil West, Yeovil Without and Yeovil Centre. In their application form they said that they made reference to more than one locality by reference to the comments of Lord Hoffman in Oxfordshire County Council v. Oxford City Council [2006] 2 AC 674 (the 'Trap Grounds' case, as I shall refer to it). In his letter of 27th. May 2008 Mr. Turner commented that 'the neighbourhood is the area surrounding the Yeovil Rec which forms part of the below 3 No. Yeovil Electoral Wards'. On 4th. June 2008[4] Mr. Turner defined the neighbourhood by way of a list of roads[5].	We submit that this paragraph has no relevance to our Application. Indeed the objectors to our Application have confirmed that we have satisfied this criterion.
	[4] [85] [5] Stone Lane, Mudford Road, Chilton Grove, Glenthorne Avenue, Higher Kingstone, Ilchester Road, Pickett Lane, Marsh Lane, Coniston Gardens, Winston Drive, Alistair Close, Combe Street Lane, Combe Park, Combe Gardens, Combe Close.	

	Advertisement	
6	The application was advertised by the Authority on 16th. June 2008. That advertisement satisfied the statutory requirements for the publication of the application.	We submit that this paragraph has no relevance to our Application.
	Objections	
7	The land is presently owned by South Somerset District Council ('the Council'), and they served a very lengthy document dated 5th.October 2008[6] objecting to the registration of land. They have since amended that notice of objection. The Objection as served asserted: (1) There was not sufficient usage of the land for lawful sports and pastimes to justify registration; (2) The usage would not have been sufficient to bring the claimed right to the attention of the landowner; (3) The user was not 'as of right' but permissive; (4) The land was held by the Council for the purpose of public recreation, and therefore held subject to a trust under section 10 Open Spaces Act 1906 in favour of the public. Recreational usage on the land was therefore not 'as of right' because it was 'by right'. (5) As local authority open space, it was impliedly exempt from the operation of the Commons Act 2006.	We submit that this paragraph has no relevance to our Application. However, in stark contrast:- (1) Evidence of 'significant' use of the land (at Stoke Lodge Parkland) has been accepted by the objectors (2) Evidence of use of the land (at Stoke Lodge Parkland) 'without secrecy' and 'without force' has been accepted by the objectors (3) We contend that our ongoing use of the land for informal sports and pastimes on a shared, harmonious and co-existent basis at Stoke Lodge Parkland was not with permission because permission had never been sought or granted and the land is held by Bristol City Council as School Playing Fields and is not registered or classified as Green Open Space designated for public use. We accept that Community use for formal sport at Stoke Lodge Parkland, i.e. booked and paid for, as described in the Local Plan, is with permission, and these activities do not form part of our Application. As stated previously we welcome the continuation of this use by Schools and Sports Clubs. (4) The land associated with our Application at Stoke Lodge Parkland is not Open Public Land held for *'public recreation'* (5) The land associated with our Application at Stoke Lodge Parkland is not *'local authority open space'*

	[6] Settled by Mr. Webster of Counsel, 46 pages.	
	(6) The locality relied on in the application is not a locality for the purposes of section 15 Commons Act 2006. (7) Neither the area marked on Map B attached to the application, nor Mr. Tucker's list of streets amounted to a 'neighbourhood' within the meaning of section 15 Commons Act 2006. (8) The objection also asserted that certain parts of the land were formerly used as putting green/crazy golf areas and as a paddling pool, and were enclosed. Those areas, submits the Council, cannot have been used 'as of right' for the requisite twenty year period. (9) The intermittent but regular usage of the land by the Council and its licensees for sporting activities always took precedence over such informal recreational usage as there may have been by local inhabitants. Therefore such local usage was not 'as of right' because it deferred to the landowner's usage. Mr. Webster on behalf of the Authority accepts that this argument in this form is not tenable in the light of the decision of the Supreme Court in R v. Redcar & Cleveland BC ex p. Lewis [2010] 2 AC 70 ('Redcar').	(6) Evidence of *'locality'* within our Application at Stoke Lodge Parkland has been accepted by the objectors (7) Evidence of *'Neighbourhood'* within our Application at Stoke Lodge Parkland has been accepted by the objectors (8) Evidence of *'use for the requisite twenty year period'* within our Application at Stoke Lodge Parkland has been accepted by the objectors (9) We contend that the circumstances at Stoke Lodge Parkland mirror the circumstances at Redcar and hence the precedent can be applied
	Inquiry directed by the Authority	
8	The Authority is the body charged by statute with determining the validity of the application for registration. It decided to refer the papers to specialist counsel, Ms.	We submit that this paragraph has no relevance to our Application.

	Ross Crail, for her advice. Ms. Crail advised in writing on 26th. June 2009[7]. Her conclusion was that the voluminous evidence adduced by the Council did not definitively establish any of the defences to the claim that they had asserted, and that the matter should be further considered by the Authority at an inquiry. It has appointed me as an independent inspector to advise on the proper determination of the application. I stress this point here. It is not for me to make the final determination as to whether this application should succeed, or not. I have been appointed only to advise the Authority as to what, in my opinion, they should do. It will be for the Authority, considering my advice, and giving it such weight as they think appropriate, to come to a final conclusion.	We submit that this paragraph has no relevance to our Application.
9/10		Paragraph numbers not used in final report
	The Inquiry	
11	The Applicants were represented at the enquiry by Mr. Chris Maile, a lay representative with substantial experience of such non-statutory inquiries. The Council was represented by Mr. William Webster of counsel. Both gentlemen have assisted me greatly with the range of their research, moderation in argument and economy in submissions. I am grateful to them both. I suggested at the outset of the Inquiry that, if any members of the public wished to speak in support of or in opposition to the application, they should liaise with the legal representatives most closely allied to their viewpoint; and this appears to have been the procedure that members of the public have adopted. Given the sophisticated nature of the legal	We submit that this paragraph has no relevance to our Application.
	[7] [196]	

	issues that have arisen, this has made the conduct of the Inquiry much more straightforward than it otherwise might have been.	We submit that this paragraph has no relevance to our Application.
12	The Inquiry was held between the 10th. & 13th. July 2012 at Yeovil Labour Institute, Central Road, Yeovil. I heard oral evidence from sixteen witnesses in support of the application, and five against. At the conclusion of the Inquiry I held an accompanied view of the land. I then heard closing submissions from the representatives, and received written submissions.	We submit that this paragraph has no relevance to our Application.
13	The purpose of the Inquiry has been to consider whether the matters set out in section 15(2) of the Commons Act 2006 have been satisfied as regards this application. The background to the application (as it must be said, as is almost universally the case) lies in the intention of the Council to re-develop the land, for sporting purposes. That intention has provoked a sharp and strong division of views, and those views were apparent in the course of the Inquiry. However, as I made plain at the Inquiry it would be wrong for the Authority to have regard to the general benefit, or otherwise, of registering this land as a TVG, or alternatively of developing the land for sporting purposes, in deciding on the decision that it should take. So on coming to this advice I have disregarded those matters, and as I have indicated above my advice to the Authority is that it must disregard any such matters in coming to its decision.	We submit that this paragraph has no relevance to our Application. However we note the confirmation that future development potential cannot be considered when deciding any Town or Village Green Application.

14	At the Inquiry Mr. Maile indicated that he wished to argue that the neighbourhood relied upon could be best defined by reference to the triangle formed by the roads Ilchester Road, Mudford Road (the boundary being the centre of the road in each case) and Combe Street Lane (enclosing the housing on both sides)[8]. Mr. Webster was happy to proceed on this basis, and this reflects the neighbourhood that the Applicants have put forward. I make this point. Although Mr. Maile has sought to define his neighbourhood by a line on a map, it is recognised[9] that a neighbourhood may have an imprecise boundary. Therefore this map represents his best assessment as to the location of a neighbourhood, and not more than that.	We submit that this paragraph has no relevance to our Application.
	The Land	
15	Yeovil Rec lies in the North of Yeovil. It is bounded to the North by Combe Street Lane. The larger field (to the North of the present running track, and path Y32/9) bounded to the West by the back gardens of houses on the East side of Marsh Lane, and to the East by the wire fence that abuts the pitch and putt course, the hall and cafe and the associated car park. This area is substantially marked out with sports pitches. The two smaller areas are two grassed areas South of the car park and to the East of the Running Track. The application land covers approximately 9.1 hectares, or 22 acres. The land is accessible from the three access points of the footpath, from the car park and directly from Mudford Road.	We submit that this paragraph has no relevance to our Application.
	[8] See also the plan at [A1/16] [9] See per Lord Hoffmann in Trap Grounds at [27]	

	There are public footpaths through the land, being a North-South footpath running from Combe Street Lane to the tennis courts, numbered Y31/15 and Y32/8; and an East-West path from Marsh Lane to Y32/8 numbered Y32/9.	We submit that this paragraph has no relevance to our Application.
16	During the relevant period the by-laws have been posted on the inside of the top section of a stable door to a hut at the entry point of the municipal Pitch and Putt course. There are, on or by the land, various warning or prohibitory signs. The public are told, by sign, that the area is under CCTV supervision by the Council; another sign states that motorised vehicles and golf buggies are not allowed within the grounds. Signs state that dog owners are required to keep their dogs under control 'especially during matches', with a possible fine of £1,000 if transgressed.	We submit that this paragraph has no relevance to our Application.
	Evidence of ownership and appropriation	
17	The ownership of the land is, in this application, particularly pertinent to the issue that arises as to whether use was 'by right' and not 'as of right'. It is the Council's argument that the statutory basis on which the land is held has given local inhabitants the right to use the land for the purposes of recreation. It is therefore important, as a first step, to establish the basis on which the land is vested in the Council, both initially and subsequently, during the relevant twenty year period. There is no dispute but that the Council is the owner of the land, being the statutory successor to the local bodies that initially acquired the constituent parts of it.	We consider this paragraph highly significant as it points the way to demonstrating the significant and crucial difference between the land at Mudford Road and the land at Stoke Lodge Parkland, i.e. The land at Mudford Road is open green space designated for public recreation The land at Stoke Lodge Parkland is held by Bristol City Council as Schools Playing Fields and is not designated or classified as open green space and general public use is therefore 'without permission'.

18	In an ideal world there should exist documents setting out the statutory basis on which local authorities acquire such land, and on which such land is held throughout the period of vesting. However it is not unheard of for the record to be incomplete. This may arise because adequate documentation was not produced at the relevant time; because documentation has been lost or mislaid; or because of administrative difficulties arising with changes in the statutory basis on which land is held, on the alteration of local government structures. In such circumstances the Authority must do the best it can with the material it has.	We submit that this paragraph has no relevance to our Application.
19	At Ex.2 I have annexed a copy of Map A, sub-divided to show the land coloured by reference to the different instruments by which it was acquired. The documentation that is relevant to the acquisition and holding of each of those parcels of land is as follows.	We submit that this paragraph has no relevance to our Application.
20a	Hatched Red – this was acquired on 9th. March 1929. The relevant conveyance cannot be found. The terrier states that the land was acquired under the Public Health Act 1875. On 22nd. July 1930 the Council executed a declaration of trust which recited the acquisition of this land, and that the conveyance did not state the purpose for which the land was acquired. It stated that the acquisition had been funded by a loan sanctioned by the Minister[10] in order that the land might be	We submit that this paragraph has no relevance to our Application.
	[10] As would have been required under the then existing statutory framework	

	acquired 'for the purpose of cricket, football and other games and recreations', and that the Council had accepted funding from charities on the assurance that the land would be used as 'public recreation and playing fields'. The Council then declared that it held the land 'under and by virtue of the Public Health Acts 1875 to 1925'. In 1956, when the Council promulgated by-laws in respect of the land, it concluded that the land was held under the Public Health Act 1925. Bye-laws were passed by the Council in 1977 which (at least as to part of the Rec) asserted that they were made under the Public Health Act 1875.	We submit that this paragraph has no relevance to our Application. We note the reference to '*public recreation and playing fields'*
20b	In 1986 the Amenities Committee of the Council appropriated part of the land so conveyed to the purposes of section 19 Local Government (Miscellaneous Provisions) Act 1976 with a view to granting a lease of it. It noted that 'the land is at present held under Public Health Act 1875 as public trust land'. This would imply that the land was not previously held under the provisions of section 19, or its predecessor legislation.	We submit that this paragraph has no relevance to our Application.
21	On the evidence that I have seen I conclude that the land hatched red was acquired pursuant to the provisions of section 164 Public Health Act 1875 and not section 69 Public Health Act 1925, (which is the statutory predecessor of section 19 Local Government (Miscellaneous Provisions) Act 1976, via section 4 of the Physical Training and Recreation Act 1937). I come to this view because:	We submit that this paragraph has no relevance to our Application.

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	(1) It is plain from the 1930 declaration of trust that the land was acquired to be used as a sports ground. Section 69 of the 1925 Act is more obvious holding basis for such a purpose than section 164 of the 1875 Act, but each is possible. (2) Land held under section 164 may be used for formal sports, and charged for accordingly – see section 76(1) Public Health Acts Amendment Act 1907. However the process under which such use takes place is temporary, and ought to be disclosed to local inhabitants by the affixing of a notice in some conspicuous position. There is no evidence of this having taken place, but at this substantial remove of time, this lack of evidence is of itself cogent material that this procedure was not adopted. (3) The by-law making powers that have been exercised appear to have been exercised inconsistently over time, asserting that on the one hand (in 1956) that land was held under the 1925 Act, and later (in 1977) under the 1875 Act. There is no evidence of the analysis that was done or the documents that were available when they were considered on either occasion. (4) The terrier is a formal document that is the first stop for any person wishing to see the basis on which land is held by the Council or its predecessor. It is maintained under statutory obligations. I am of the view that it is the best evidence available as to the basis on which the land was acquired.	We submit that this paragraph has no relevance to our Application.

22	Land hatched blue and coloured blue – This was conveyed by way of gift to the Council on 9th. December 1946 as an extension to the Mudford Road Playing Fields. The statutory powers referred to in the recital were section 154 Public Health Act 1875 and the Physical Training and Recreation Act 1937. The Borough covenanted that the land would not be used 'for any purpose other than that of a public open space or recreation ground and not to erect any buildings thereon except such buildings as may be required in connection with the use of that land for such purpose.' The reference to section 154 relates to the power to make or improve a new street. Given that the Council considered that the conveyance would enable the Council to secure a 12' right of way, it is likely that this is not a slip for section 164 but a deliberate reference. In consequence the land would otherwise be held under section 4 Physical Training and Recreation Act 1937, and hence now under section 19 Local Government (Miscellaneous Provisions) Act 1976.	We submit that this paragraph has no relevance to our Application. We note the reference that '*the land would not be used for any purpose other than that of a public open space or recreation ground'.*
23	Land hatched yellow – This was conveyed to the Council on 9th. June 1954. The conveyance does not recite the basis of acquisition. The terrier states that the land was acquired pursuant to the Local Government Act 1933 and the Physical Training Act 1937 as an extension to the playing fields. It follows that the land was acquired under section 4 of the 1937 Act, and would now be held under section 19 of the 1976 Act.	We submit that this paragraph has no relevance to our Application.

24	Land hatched purple – This land was conveyed to the Council on 31st. July 1959. The conveyance does not state the purpose for which the purchase was made. The acquisition had been authorised by the Finance Committee 'for a public open space as an extension of the Mudford Road Playing Field', although a small part (that is not pertinent to the application) was acquired for highways purposes. The inference is that the land was held under section 4 of the 1937 Act.	We submit that this paragraph has no relevance to our Application. We note the reference to *'for a public open space as an extension of the Mudford Road Playing Fields'*
25	Land hatched green – this, originally forming Lower Stone Farm, was conveyed to the Council on 26th. February 1963. The conveyance is silent as to the purpose of acquisition. The minutes of the Special Subjects Committee of the Council held on 12th. November 1962 states that the land was acquired by the Borough as an extension to the Mudford Road playing Fields, and its acquisition followed a report from the Recreational Committee that noted the lack of football pitches currently available, and the demand for further pitches at times of peak usage. The land was also to serve as a 'green wedge' extending public open space into the built up areas of Yeovil. I note also that the terrier refers to the acquiring power as section 4 of the 1937 Act. In my view that is likely to have been the statutory power that was so exercised.	We submit that this paragraph has no relevance to our Application. We note the reference to '*The land was also to serve as a green wedge extending public open space into the built up areas of Yovil'*

26	Land hatched mauve – This was conveyed to the Council on 28th. January 1972. The conveyance was silent as to the statutory purpose of acquisition. A minute of the Finance Committee held on 5th. November 1971 stated that the intention was to acquire the land if possible for the purpose of making improvements to the drainage of and access to the groundsman's house. As such it was a use capable of falling within section 4 Physical Training and Recreation Act 1937, as is noted on the terrier.	We submit that this paragraph has no relevance to our Application.
	Bylaws	
27	The Council asserts that the existence of byelaws affecting Yeovil Rec necessarily imply that the land was held pursuant to section 10 Open Spaces Act 1906. I deal with that legal contention below. Here I set out the documentary evidence pertinent to the byelaws.	We submit that this paragraph has no relevance to our Application.
28a	In 1956 the Council made byelaws in respect of open spaces within their jurisdiction, which purported to regulate behaviour on such land. Amongst the open space so regulated was the Land, being part of Mudford Road Playing Fields, as it was then described. These bye-laws appear to have been made on the basis that the land hatched red on Ex.2 was held under section 69 Public Health Act 1925, and the balance under section 4 Physical Training and Recreation Act 1937. They were amended in 1973.	We submit that this paragraph has no relevance to our Application.

28b	The current byelaws to much the same effect were made in 1977. They were expressed to be made under statutory powers contained in the Open Spaces Act 1906 as to some land (identified in Part I of the Schedule annexed to the byelaws) and under statutory powers contained in the Public Health Act 1875 (Part II *ibid.*). These byelaws were stated to apply to Yeovil Recreation Centre. According to the Council, and this seems to me to be correct, this description replaced 'Mudfield Road Playing Fields' in 1972. According to the Schedule, part of the Centre fell with Part 1, governed by the 1906 Act, whilst part fell within the 1875 by-law making powers. The by-laws do not describe which part goes with which power, or indeed whether in this case two parts make a whole.	We submit that this paragraph has no relevance to our Application.
	Oral Evidence – Applicants	
29	Mr. Robert Tucker is one of the applicants. He has lived on Marsh Lane since 1984 with his family, and his house backs on to the Rec. He has lived in Yeovil for longer than that, and has used the Rec for informal recreation for 55 years. When he bought his house the estate agent told him the Rec 'would never be built on'. He and his family gained access through a gate in the rear of their garden. He did not pay a fee to use the gate. His son and daughter and their families also walk and play on the land. He also produced a DVD showing what was described as	We submit that this paragraph has no relevance to our Application.

	typical family usage (the Dawson family) on the land, and which showed a family enjoying informal and uncontrolled recreation on the land.	We submit that this paragraph has no relevance to our Application.
30	Mr. Tucker acknowledged that the part of the land was from time to time used for formal sports on marked-out pitches with the consent of the local authority. The location of pitches and the quantity of use varied over the years. It was mainly used in the winter months, and the marked out area would have taken up less than 20% of the area of the land the subject of the application. Not all of the pitches were used at any one time; those at the Northern end of the land were often waterlogged. The pitches were used on Saturdays and Sunday mornings, and intermittently during the week by schools. In 2009 he thought they had been used for 64 days out of 365. Public use defers to the organised sporting activity, and indeed to maintenance of the grassland. Otherwise, throughout the day dog walkers meet around the Rec.	We submit that this paragraph has no relevance to our Application.
31	Mr. Tucker told me that he understood that when the then Yeovil Borough Council acquired the land in 1929 the purchase was funded by the Carnegie Trust, which required the Council to sign a declaration that the land would be used in perpetuity as a public recreation and playing field. A similar covenant was given by the Council in 1946 on a further acquisition of part of the Rec.	We submit that this paragraph has no relevance to our Application. We note the reference to '*the purchase was funded by the Carnegie Trust which required the Council to sign a declaration that the land would be used in perpetuity as a public recreation and playing field'*

32	The applicants were unable to find a name for the claimed neighbourhood. There were no council estates within the claimed neighbourhood, and this was a point that marked out the character of the neighbourhood..	We submit that this paragraph has no relevance to our Application.
33	Cross-examined, Mr. Tucker told me that Mrs. Dawson lives on Combe Street Lane. Going on to the Rec is an everyday occurrence, and the reason why there are relatively few photographs of it is that that is not the sort of thing that one photographs. He accepted that the area has no name. If you wanted to buy a house in the Triangle (forming the neighbourhood), you would have to name the street. There are no shops within it nor is there a pub. The sub-post office has closed. There is a neighbourhood watch scheme there – in fact there are 2 or 3 areas covered. There is no church there. The local primary school is outside the triangle. This is a neighbourhood because it comprises private domestic housing. There is no public/private mix. He accepted that the housing has been built over different periods. He could not say what the population of the Triangle was. Until he had gone through the process of considering the area as a neighbourhood, no-one had ever thought of the area within the triangle of roads as a neighbourhood.	We submit that this paragraph has no relevance to our Application.
34	Shown aerial photographs of pitches on the land, he agreed that they showed more than 20% of the use. He was aware of the land being used for a circus in the 1980s. He could not say whether the previous owner of his property had been	We submit that this paragraph has no relevance to our Application. We note the reference to' *He was aware of the land being used for a circus in the 1980's'*

	granted a license by the Council to access the Rec.	We submit that this paragraph has no relevance to our Application.
35	Although his own children had left home in about 2000 and 2003, they did not stop using the land. Subsequently his grandchildren came over to play there. He had had a dog for 12 years, and enjoyed walking round the land for relaxation prior to that. He would go on to the land at least once a week, weather permitting; more in the summer. He did not keep to any particular route or track. Mr. Tucker also produced a supplemental piece of analysis concerning the usage of sports pitches after the Inquiry had closed, and I refer to this evidence below.	We submit that this paragraph has no relevance to our Application.
36	Ms. Andrea Gane has lived in Combe Street Lane since 1990, and also lived on Mudford Road between 1973 and 1986. She and her family go on to the land for informal recreation – running, cycling, dog walking – at least twice a day. She has played informal games of tennis there, on the grass next to the hard courts. The dog can run anywhere. Over the period of her usage, the type of usage has probably increased, with people more doing their own thing. There are more dogs than there have been before, more people of an evening using the land for free activities for land kites, and more remote controlled toys and aircraft.	We submit that this paragraph has no relevance to our Application.
37	In Ms. Gane's view, a neighbourhood is the area in close proximity to her family. It must also have a focal point, and the point of reference here is the Rec. The	We submit that this paragraph has no relevance to our Application.

	major roads are boundaries. There are recreation areas to West – Johnson Park and to East – Milford Recreation Ground.	We submit that this paragraph has no relevance to our Application.
38	Cross-examined, Ms. Gane accepted that she does not walk through the pitches when there are games being played. There is no beaten or worn route, and there is no worn track along the Western perimeter of the application land, but it may depend on the time of year. She has seen a worn area there, when there has been a particularly dry spell. She did not agree that most people use the made up track on the Eastern perimeter.	We submit that this paragraph has no relevance to our Application.
39	Mr. John Farr MBE has lived on Marsh Lane since 1973, and lived elsewhere in Yeovil for a number of years before. He walks on the land for recreation several times a week, as does his family. He has seen children playing, rounders, dog walking, team games, community celebrations, fetes, football, cricket, picnicking, kite flying, recreational walking, cycling, Frisbee playing , and badminton.	We submit that this paragraph has no relevance to our Application.
40	One could expand the claimed neighbourhood further if one wished, but to him the claimed neighbourhood was fine and satisfactory. A number of people visit the Rec every day, from wider than the stipulated neighbourhood, especially the dog walkers. You know the people from the neighbourhood who go there. He does not have a gate in his back garden. He can see who is on the Rec from his bedroom	We submit that this paragraph has no relevance to our Application.

	window. He gains access from the footpath from Marsh Lane. He would walk from there to Combe St. gate, then to Marsh Lane and home. This would take him 20 minutes.	We submit that this paragraph has no relevance to our Application.
41	Under cross-examination Mr. Farr told me that there are all sorts of people there, and quite large numbers. They were doing all sorts of things. When he had children his family went over there quite a lot. He spent more time over the Rec in 1988 than he does now.	We submit that this paragraph has no relevance to our Application.
42	Ms. Sue Peaty has lived on Chilton Grove since 1948. She has used the Rec for informal recreation as a child and more latterly. There was a sponsored walk in about 2007, and Guide and Brownie events earlier. She did not ask anyone's permission for the Unit events. When she held a Divisional event she would clear it with the groundsman first. An 'It's a Knockout' type competition required a course to be set out. The sponsored walk was not done with anyone's permission; a friend arranged it at the Rec because it was a convenient place. She saw dog training agility classes held there, but could not say whether it had permission or not. She has a dog that she lets run off of the lead. She has seen people young and old using the Rec for football, tennis. cricket, cycling, rounders, walking and kite flying, as well as more recently the Queen's Silver Jubilee and the Queen Mother's 100th. birthday. She has seen remote controlled cars on the Rec in the past, but probably	We submit that this paragraph has no relevance to our Application.

	not now. She knows people in the neighbourhood. It is concise and neat and a workable zone. There are dog walkers on the land early in the morning, as there are later in the day. Most mornings she would meet up with 2 or 3 people; and others join them. She would see half a dozen people who live in the neighbourhood. All of the Rec is used for informal recreation. When the pitches are being used she respects the matches, puts the dog on a lead and walks around the pitch.	We submit that this paragraph has no relevance to our Application.
43	Ms. Ann Gill has lived on Combe Street Lane since 1990, living elsewhere in Yeovil since 1984. Her children have cycled and flown kites there. She and friends would have a picnic and play rounders there on her birthday, and she walks and observes wildlife there. She uses the land once a fortnight to go into town, and a couple or three times a week just to wander around. She practices 'beach casting' there. Her neighbourhood lies between Mudford Road and Marsh Lane. Occasionally she sees people who live in the Triangle there; but sometimes you just see strangers.	We submit that this paragraph has no relevance to our Application.
44	Miss Fiona Gane has lived in Combe Street Lane since 1996, and is presently 15 years old. She learned to cycle at the top end of the Rec, and as she became more independent she would do a circuit round the Rec, with her twin brother. They did not stick to the footpaths but normally went through the middle on the	We submit that this paragraph has no relevance to our Application.

	bikes. As she got older she would take her dog out and do a circuit around the Rec. She walks her dog with her mother or her friends. She walks home from school and meets her friends there. She sees a lot of people she knows at the Rec. Boys play football there (not organised games). There is a variety of ages of people there – young children who play; people of my age who may play football; and elderly people who enjoy the walk and sitting around. Miss Gane played tennis with her mother on the grass by the tennis courts. In the evenings when the weather was good she played badminton with her father there. If the weather was not so good, and in the winter months, they walked their dog, and were out there most days.	We submit that this paragraph has no relevance to our Application.
45	Mr. John Bottle lives with his wife in Stone Lane, and has done so since 1970. Since then they have used the Rec for family games, walking and enjoying the land. Their teenage sons and more latterly grandchildren did and do exactly the same. Mr. Bottle was a keen runner and in 1978 used to run around the Rec for practice. He has noticed others doing the same. More than half of his visits would be wandering around the Rec – but on other occasions he would stick to the paths. Children use the Rec for informal recreation at the moment. In 2010 the land was covered with snow. Children were playing snowballing and making snowmen. The children were responsible and well behaved if boisterous.	We submit that this paragraph has no relevance to our Application.

46	Mr. Bottle's view of his neighbourhood is that it is an area of concentration of people that he knows or that he is acquainted with. He is acquainted with the people at Combe Street Lane. If he wanted to direct someone to his house, he would say 'Hundredstone' (which is a location at the junction of Combe Street Lane, Mudford Road and Stone Lane). If he wanted to identify the area to an estate agent he would describe it as 'Mudford Rec'.	We submit that this paragraph has no relevance to our Application.
47	Mr. Martin Berkley has lived with his family at Marsh Lane since 1998. Prior to that date he lived elsewhere in Yeovil. They have used the Rec for walks, cycling and informal games throughout that period. They walk their dogs there, and walk all over the land. To Mr. Berkley, 'neighbourhood' means 'the area in close proximity' and the area where he knows the people. He recognises the people and the faces living around Marsh Lane. He knows a lot of people who use the Rec by name, or knows what dog they own. His house backs on to the Rec, but he does not have a gate in his back garden. People do not keep to the edges. He told me that he can tell that is the case when it snows, and their footprints are clear.	We submit that this paragraph has no relevance to our Application.
48	Cross examined, Mr. Berkley told me that from 1998 onwards he or his family owned a dog for most of the time. At other times he would simply jog or cycle on the land he visits daily. The usage of the land by organised teams does not restrict him. He has been known to cut the corner of a pitch. People don't encroach out of	We submit that this paragraph has no relevance to our Application.

	politeness. There is a huge number of users of the field, from early in the morning (jogger and dog walkers) to late at night	We submit that this paragraph has no relevance to our Application.
49	Mr. Christopher Day lives at Mudford Rd. From 1988 he used the land with his neighbours for physical fitness jogging etc., and even played pub cricket there. He played football there with his children, although the amount of football he played has decreased because the cost has gone too high. He doubted that there were ever 22 teams on the pitches. The most at any one time was 3 or possibly 4 games of football. He has played football with his neighbours. His children when they visit, and their children always play on the land – they always go on to the Rec. They visit five times a year.	We submit that this paragraph has no relevance to our Application.
50	The Post Office he thought was the centre of the neighbourhood, and he ran the local sub-post office. His customers included Mr. Bottle, Mrs. Gay, and Mrs. Cornelius. He closed in 1999 and the Post Office moved to Glenthorne Ave. That was (in his view) still the focus of the neighbourhood.	We submit that this paragraph has no relevance to our Application.
51	Cross examined Mr. Day told me that his Post Office was at Hundredstone. There are three usable football pitches. Some of the others are really for pub football. The small pitches only have been there in the last 18 months. The most used during the weekend will be 3. He had not seen three pitches in use at any	We submit that this paragraph has no relevance to our Application.

	one time for a very long time. He thought he was there enough to give a pretty fair assessment. He was on the Rec twice a day, training for Marathon and fell running.	We submit that this paragraph has no relevance to our Application.
52	Ms. Sharon Roulstone has lived at Coniston Gardens since 2003, and her brother and family live on Combe Street Lane. Her son who is 12 practices his rugby skills there, and cycles and enjoys the land with his friends. It is frequently used by dog walkers. When the weather is good it is popular with families. There had recently been a 'Music in the Park' event where the community had gathered to enjoy the performances on the Park. It was a council run and organised event.	We submit that this paragraph has no relevance to our Application.
53	There is a close knit little community in her road, which is a cul de sac. All of the residents use the rec. There are a number of retired people in the cul de sac who use the land. Ms. Roulstone gains access via Marsh Lane, and uses the land daily.	We submit that this paragraph has no relevance to our Application.
54	Mrs. Evelyn Bagg has lived in Combe Park, Yeovil since 1978, and previously lived in other parts of the Town. She and her family have used the Rec for informal recreation since moving to Yeovil. They play football, rounders, play cricket and ride bikes and scooters on the land. For many years she would take the 5th. Yeovil Boys Brigade operating in the Westfield Area on to the Rec for games. No permission was sought. This took place between 1974 and 1990. The people living in the neighbourhood used the Rec quite regularly. She sees people from the cul	We submit that this paragraph has no relevance to our Application.

	de sac using the Rec with dogs and bikes. She goes over regularly but does not keep to the paths – she said that that would be boring. Her cul de sac is her neighbourhood, together with Alastair Drive. The place Mrs. Bagg understands to be her 'neighbourhood' is the place she walks around.	We submit that this paragraph has no relevance to our Application.
55	Mr. Peter Gane has lived in Combe Street Lane since 1974, backing on to the pitch and putt course. He walks his dog on the land and walks the land several times a day. He has children and they were brought up to play on the Rec. He also mentioned the Queen Mother's birthday celebrations ,VE day celebrations and the Diamond Jubilee.	We submit that this paragraph has no relevance to our Application.
56	The Rec is the hub of the neighbourhood. The bulk of the people who use the land are from within the Triangle. Were he to direct people to his home, his landmark is the Recreation ground. There is nothing else.	We submit that this paragraph has no relevance to our Application.
57	Mr. Witold Budzynski has lived in Yeovil for nearly 60 years, and for the last 29 on Mudford Road. During that period he and his family have played there as they wished. If there were organised games on the Rec they would move elsewhere or stand and watch. When the boys were playing in the various leagues he would stand and spectate. The main pitches were at the bottom part of the field. There were some at the top but until the drainage issues were addressed they were	We submit that this paragraph has no relevance to our Application.

	boggy. Quite often there would be a match on a Saturday afternoon. He thought that at one time there was a match held for juniors in the morning. There were a number of Sunday afternoon matches. There may have been one or two major tournaments, and the pitches were in use, but it was rare.	We submit that this paragraph has no relevance to our Application.
58	The land is in almost universal use by those living close by, and also by people living further afield. The (limited) number of people who are giving oral evidence reflects their ability to attend the inquiry as well as their inclination.	We submit that this paragraph has no relevance to our Application.
59	Mr. Ashley Strelling has lived at Marsh Lane since 2005. During that period, he, his family and his extended family have used the land for informal recreation. He produced some interesting photographs of his family playing on the land. The football games on the land.do not affect the usage – they are for a limited time during the weekend. At any one time the greatest number of games he has seen is four. The neighbourhood is the Triangle area. It derives its meaning from the Rec, the road and the housing. To the west of Ilchester Rd is social housing.	We submit that this paragraph has no relevance to our Application.
60	Mr. Simon Rogers was in 1988 living in West Coker where he lived for 13 years. In 2001 he moved to West Chinnock. He and his family would tend to walk around the outside of the Rec to start with, and then when they met other people they would wander accordingly. The claimed neighbourhood was of a different character to the land outside.	We submit that this paragraph has no relevance to our Application.

61	Chris Bowsher has lived at Marsh Lane since 2000, and lived elsewhere in Yeovil beforehand. He had used the Rec for informal recreation for the past 35 years. Many children played there. There were impromptu games of cricket, football, rounders and other sports. People had picnics on sunny days. If it snowed in the winter a lot of children would come out to play. The land has traditionally been used by the neighbourhood as a community area. Mr. Bowsher walks over all the parts of the Rec.	We submit that this paragraph has no relevance to our Application.
62	As far as the claimed neighbourhood is concerned, the area has natural boundaries made up of busy roads. He would not say there is anything vastly different with the areas to the East or West of it. Looking at the other recreational areas nearby, Johnson Park tends to be run by a club. During his childhood it was gated. The Rec was more available. In recent years Mr. Bowsher thought that the public play space there has been opened up but he did not frequent it.	We submit that this paragraph has no relevance to our Application.
63	During 2000-2008, weather permitting he and his family would go to the Rec a few times a week. He would play with his children. It was a route to and from school, but they would also play there.	We submit that this paragraph has no relevance to our Application.

64	Vivien Cornelius lives at Chiltern Grove, and used the land perhaps six times a year; the use of the grassy area was very occasional.	We submit that this paragraph has no relevance to our Application.
65	Mrs. Jane Strelling has lived at Marsh Lane since 2005 with her husband and children. She (and her family) had used the Rec for recreation since 1976. They played football and rounders there and cycled. Mrs Strelling is a teaching assistant and takes young children to play at the Rec. They go over annually at least; taking a year group across. The school will quite often take a smaller group to play games; permission is not sought. The school is Milford County Junior and Infants. One frequently sees children playing there. There are numerous dog walkers there.	We submit that this paragraph has no relevance to our Application.
66	Mrs. Strelling's neighbourhood would she thought be Combe Street. But it would not be Stiby Road – she thought it was rougher, with poorer housing on that side. Further down beyond the Triangle one is in Town; to the North is agricultural. Across Mudford Road is another neighbourhood. Combe St. Lane is desirable housing. There are convenience shops, a chip shop, and a post office off of Glenthorne Avenue. There are small shops at the junction of Stiby Road and Coronation Avenue, and a Co-op. That is not an area Mrs. Strelling tends to go to.	We submit that this paragraph has no relevance to our Application.

	Oral Evidence – Objector	
67	I heard from Mr. Jake Hannis who is a Senior Sport and Healthy Lifestyle officer with South Somerset District Council. His evidence set out the Council's intention to carry out certain works of development on the Rec. However, the Council's intention for the future use of the land is not pertinent to the issues on which I have to advise the Authority. Mr. Hannis did also produce documentation relating to the use of the pitches for the last five years of the twenty year period. The football season runs from September to the end of April. In the 2008/9 season there were 454 games played. Mr.Hannis also produced documentation relating to the use of the Rec by ISS. The arrangement was that during this period ISS were the 'maintenance provider' for Yeovil Rec. They do not retain the receipts that are paid for the use of the Rec by the licensees who book pitches or other facilities. They were instead paid a management fee that was set out in the service level agreement.	We submit that this paragraph has no relevance to our Application. We note the confirmation that *'However, the Council's intention for the future use of the land is not pertinent to the issues on which I have to advise the Authority'.* We also note the comment that *'they* (the maintenance provider) *do not retain the receipts that are paid for use of the Rec by the licensees who book pitches or other facilities. They were instead paid a management fee that was set out in the service level agreement.'* In contrast at Stoke Lodge Parkland the Maintenance provider retains the receipts in lieu of a management fee, hence providing them with the motivation to increase the number of bookings for Formal sport.
68	The Council made available for cross-examination various witnesses dealing with the main technical and historical matters, but Mr. Maile understandably decided that he did not wish to cross-examine them. They therefore gave their evidence by submitting their various statements.	We submit that this paragraph has no relevance to our Application.
69	Mr. Ian Clarke is a solicitor employed by the Council. He had charge of obtaining the relevant documentation setting out the basis on which the Council or its	We submit that this paragraph has no relevance to our Application.

	predecessor in title acquired the various parcels of land that made up the Application land. He verified the documentation that was fully set out in the Council's Notice of Objection. Mr. Clarke also produced the Bye-laws made by the Council in 1977. Those bye-laws (which were expressed to apply, *inter alia*, to the Rec) were stated to be made pursuant to statutory powers contained under the Open Spaces Act 1906 and the Public Health Act 1875.	We submit that this paragraph has no relevance to our Application.
70	Mr. David Shears is a Rights of Way officer with the Council. He too had perused the Council's documentation relating to the acquisition of the land. Mr. Shears also gave evidence that the land was managed and controlled by the Council and ISS Waterers Limited. The byelaws were only displayed on the top half of the stable type door of the pitch and putt hut.	We submit that this paragraph has no relevance to our Application.
71	Mrs. Lynda Pincombe is a Senior Leisure Facilities Officer employed by the Council. Her evidence confirms the recent historic use of the land. The pitches are regularly used for competitive football and rugby, being hired out to teams. They are also used for school use during winter and summer, and holiday activities and courses. There are currently 22 teams that regularly hire pitches for weekend matches. Yeovil College, and primary and secondary schools also hire out the pitches. As one might expect, the Council operates a system whereby users book their pitch and pay a fee for the use. The maintenance of the grounds is contracted out to ISS.	We submit that this paragraph has no relevance to our Application. We note the comment, '*As one might expect, the Council operates a system whereby users book their pitch and pay a fee for the use.'* I.e. the same system used at Stoke Lodge for Formal sport.

72	Ms. Rachel Holmes is a Facilities Management Officer of the Council. She is responsible for the day to day running of the recreation centre as a whole. Ms. Holmes states that the land has been used for circuses, a police community event, and a number of 'Party in the Park' events run by Yeovil Town Council. On one occasion Ms. Holmes and Mrs. Pincombe enforced the bye-laws against a group of people who were 'kite boarding'.	We submit that this paragraph has no relevance to our Application.
	Documentary Evidence	
73	The documentary evidence that has been produced to the Inquiry falls into two types. The first is contemporaneous documentation such as Minutes of record, correspondence, plans and photographs. Much of that has been referred to in the course of my summary of the evidence above. For example, the Council has supplied copies of licenses granted by it to residents permitting them to form gates in the fences of their gardens backing on to the Rec. But this particular documentation says no more than that. The second type of documentary evidence is evidence of recollection from people who did not attend, or who were unable to attend, the Inquiry. I have been supplied with a large number of statements and questionnaires from persons who wished to give evidence in support of the Application, the majority of which were supplied together with the application. I take their evidence into account in considering my advice in this matter. I bear in	We submit that this paragraph has no relevance to our Application. We note the comment that, *'the Council has supplied copies of licenses granted by it to residents permitting them to form gates in the fences of their gardens backing on to the Rec.'* We contend that this process of providing licenses (permission) has not been replicated at Stoke Lodge Parkland.

	mind that those witnesses have not been cross-examined on their evidence, but I note that this is not an application, as some are, where any great challenge has been made to the general tenor of the Applicant's evidence. So as I say I have read and taken that evidence into account. It does support the application in that it records usage of the Rec by local inhabitants for informal recreation over various differing periods. It does not (in my view) in any real sense support the case that the area in the Triangle is a neighbourhood.	We submit that this paragraph has no relevance to our Application.
74	After the conclusion of the Inquiry I was supplied with a further witness statement from Mr. Tucker on behalf of the Applicants, dealing with the dispute insofar as it related to the proportion of the Application Land that was taken up by sports pitches; and the period of their usage. Mr. Tucker who is a qualified surveyor measured the Application Land at 92,312.55 square metres. The three football pitches measured a total of 19,314.39 square metres, approximately 20% of the whole. All of the marked pitches comprise 31% of the whole. Mr. Tucker also produced extracts from his diary for 2009 which showed intermittent weekend use of some (not all) of the pitches.	We submit that this paragraph has no relevance to our Application.
	Final Submissions – Mr Webster for the Objector	
75	Mr. Webster made the following submissions:	We submit that this paragraph has no relevance to our Application.

	(1)The evidence did not demonstrate usage by a significant number of inhabitants. Only 47 households gave evidence supporting the application; only 16 witnesses who gave oral evidence came from within the claimed neighbourhood, comprising 13 households. Not all of those witnesses could give evidence for the full twenty year period. (2) Much of the use relied upon is either of footpath type use, or ancillary to formal licensed sports use. In neither case would it support registration. (3) The usage must be properly spread throughout the claimed neighbourhood. The comments of Vos J. in Paddico (267) Ltd. v. Kirklees Metropolitan Council and others [2011] EWHC 1606 (ch) at para. 106 should be read as considering this issue on the facts, and not as rejecting it as a legal requirement. (4)A neighbourhood must be capable of meaningful description. The area chosen in this case is too disparate, and is lacking any of the features of a neighbourhood that one might expect. The evidence of witnesses was little more than an acceptance that the claimed neighbourhood reflected what they perceived to be their neighbourhood. That was both limited evidence, and self-serving. In any event that area did not correlate with the witnesses' evidence as to where 'their' neighbourhood was. (5) By intermittently exclusively licensing the sports pitches for use, the Council excluded the public from the land for that period; and therefore indicated by implication that the public had permission to be on the land at other times. Mr.	We submit that this paragraph has no relevance to our Application. (1) In stark contrast the 'neighbourhood and locality' contained within the Application at Stoke Lodge Parkland has been accepted as made by the objectors (2) See (1) above (3) see (1) above (4) see (1) above (5) At Stoke Lodge Parkland Formal sport booked and paid for on pitches has never 'excluded' the Community from the pitches or the Parkland as a whole. The Community co-exists with other users on a shared basis as confirmed by Bristol City Council Cabinet, avoiding pitches in use as an act of courtesy and politeness i.e. in a harmonious way in the same way as community use at Redcar

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	Webster relied on Beresford and R v. Somerset Council Council oao Mann (2012) *unrep*. Licenses can also be implied by the grant of rights to put gates into the gardens of some properties bordering the Rec; the regulation and maintenance of the Application Land; and the grant of by-laws controlling the use of the Land. (6) The land has been acquired pursuant to the powers contained in section 164 Public Health Act 1875 (the land hatched red) and section 19 Local Government (Miscellaneous Provisions) Act 1976 (the balance). On the passing of the 1977 by-laws this land was impliedly appropriated pursuant to the provisions contained in section 122 Local Government Act 1972 to the purposes of section 10 Open Spaces Act 1906. (7) Contrary to the Applicant's case, the land had not been appropriated for a commercial use. The Council were entitled to have the land managed by a commercial body whilst retaining it for its statutory purpose. Profit was not inconsistent with public service. (8) Land which is held by a local authority pursuant to (1) Section 10 Open Spaces Act 1906 or (2) section 164 Public Health Act 1875 or (3) Section 19 Local Government Act 1976 is held for the purposes of public recreation. Therefore public recreation on it cannot be 'as of right' as that phrase is used in section 15 Commons Act 2006 – see Beresford; and Hall v. Beckenham Corporation [1949] 1 KB 716.	(6) The land at Stoke Lodge Parkland is not held for public use (7) Not relevant - specific to the unique circumstances at Mudford Road (8) We concur with this clarification. However, the land at Stoke Lodge Parkland is held for education use as school playing fields and is not held for *'public recreation'*

	Final Submissions – Mr Malle for the Applicants	
76	Mr. Maile submitted: (1) That on the evidence informal recreational usage had not been limited to the natural or formed pathways or perimeter of the land. The application land as a whole had been used for recreational purposes. (2) There was usage by a significant number of inhabitants of the claimed neighbourhood. He referred me to the comments of Sullivan J. in McAlpine at para. 72. It was misleading to analyse such 'significance' purely by reference to the fraction of inhabitants who gave oral evidence of such usage. (3) If it was asserted that the usage had to demonstrate a fair 'spread' of users throughout the neighbourhood, the evidence here did so. It was understandable that those who used the land and were most concerned about its development should live closest to it. (4) The claimed neighbourhood is a neighbourhood in fact. It had some facilities one would associate with a neighbourhood such as a doctor's surgery and a scout pack based in the community hall. The claimed neighbourhood was a residential area, significantly owner occupied and built as such with private detached or semi-detached dwellings. This was to be contrasted with the more urban and local authority tenanted areas to the East and West. The three roads that formed the boundaries were significant roads. There was a sense of community of those living inside the neighbourhood. I was referred to the first instance judgement of HHJ Behrens in Leeds Group plc v. Leeds City	We submit that this paragraph has no relevance to our Application.

	Council [2010] EWHC 810 Ch at paras. 99 – 104 in support of the proposition that a neighbourhood need not be a physical or legal division, but depends on the views of the inhabitants – if they consider it a neighbourhood, then it is a neighbourhood. (5) The usage was not by license. There is no evidence as to what right the Council was conferring when it granted occupiers the right to put gates in their gardens that backed on to the Rec; it was probably to enable them to carry out maintenance. It is not appropriate for a license to be inferred generally from the fact that the Council licensed some use specifically for formal recreation..R v Somerset County Council oao Mann (2012) *unrep.* was decided on its own facts. (6) The periodic licensed usage of the pitches by the Council for formal sports did not prevent informal usage from being as of right. There was no deference to the formal sport, and even if there were , that would not prevent the public's right accruing – Redcar. (7) Mr. Maile submitted that the Council's submission that use 'by right' could not be use 'as of right' was flawed. He referred me to the article by Austen-Baker and Mayfield in [2012] Conveyancer and Property Lawyer 55 to the effect that the 'by right' defence was unjustified by authority or principle.	We submit that this paragraph has no relevance to our Application. We note the comments at point (6) and contend that this is also applicable at Stoke Lodge Parkland

	(8) Further, if the defence does exist as a matter of principle, it does not extend to land held under section 19 Local Government (Miscellaneous Provisions) Act 1976 or its statutory predecessors. (9) In any event, the Council have for many years run the land on a commercial basis, charging for use. It has done so through the Yeovil Sports Ground Partnership. Those who paid a fee for the use may have been licensees. But those who did not pay a fee were not licensees, nor were they exercising their right to be on the land. He submitted that the land was not being used as a public open space, but as a 'commercial entity'. The land was held for commercial basis, not for a public purpose. (10) The bye-laws that had been imposed were not visible to the public. Further, they were consistent with the existence of a TVG as Bye-laws may be imposed on land that has the status of a village green – see sections 1 and 15 Commons Act 1899.	We submit that this paragraph has no relevance to our Application.
	Burden of Standard Proof	
76b	The burden lies on the Applicants to establish each element of the test set out in section 15(2) Commons Act 2006; that is, that the land has (subject to specific exceptions) been used for twenty years ending with the date of the application, as of right, for lawful sports and pastimes, by a significant number of the inhabitants of a locality or a neighbourhood within a locality – see R v. Suffolk County Council ex p. Steed (1996) 75 P & CR 102 at 111 per Pill L.J. Although Pill L.J. stated that	We recognise that the contents of this paragraph apply to all Town or Village Green Applications. However, each case must be judged on its own merits.

	each element must be 'properly and strictly proved', this requires simply that they must be proved on the balance of probabilities, by evidence. The evidence that can establish these facts need not be direct oral evidence; it can be proved by way of documentation, and also by inference from that evidence (see R v. Staffordshire County Council ex. p. Alfred McAlpine Homes Ltd. [2002] 2 PLR 1). However it does require evidence; it cannot be derived from mere benevolence or goodwill towards the aims of the Applicant.	
	Findings of Fact	
77	I deal first with the credibility of the oral witnesses that I heard. In my view none of the witnesses that I heard from were anything other than honest witnesses. Indeed Mr. Webster quite properly and sensibly did not seek to suggest otherwise. I have no doubt that all witnesses were doing their best to recall matters of fact. I do however bear three points in mind. First, this is a case where local feelings are strong. It is possible that recollections may unwittingly favour one particular outcome rather than another. Secondly, the dispute in this case turns on what, to most people, are rather arcane and unusual concepts. For example, even the most skilled of lawyers can have difficulty in defining what is usage 'as of right' and what is usage 'by right'. To ask witnesses to give evidence against the backdrop of such concepts can risk either confusing or over simplifying matters. Thirdly, many witnesses were asked when giving evidence what they considered their neighbourhood to be. They often stated what they considered to be the extent	We submit that this paragraph has no relevance to our Application.

	of 'their neighbourhood'. The difficulty here is the 'neighbourhood' may be an ambiguous word. It may refer to 'in the vicinity'; or it may refer to a recognisable and identifiable community, or body of people. So care has to be taken when considering the way in which witnesses expressed themselves. In these circumstances documentary evidence from the time in question may be particularly helpful in assessing oral evidence.	We submit that this paragraph has no relevance to our Application.
78	I therefore turn to my factual conclusions in the Inquiry.	We submit that this paragraph has no relevance to our Application.
	20 years user for lawful sports and pastimes	
79	The Rec is a larger area of land that was acquired by the Council in the inter-war and immediate post-war years as open space for the recreational use of the inhabitants of Yeovil. As far as I am aware it has always been maintained as a typical recreation ground with pitches and sports facilities appropriate to its period. It is, so far as I am aware, not locked up from time to time; it remains open to the public. It is situated within an urban and residential area, being bounded to the North only by a busy road and then by open fields. In the circumstances I would be astonished if there had not been continuous informal recreation on that land by local inhabitants, on the basis that the inhabitants would not interfere with any formal usage of the sports pitches that was going on at any one time. This is a large area of land and there is plenty of space for everyone. There is no evidence of anyone being restricted or turned away in their informal recreational use of the	We submit that this paragraph has no relevance to our Application. We note the comment, '*open to the public'* in reference to Mudford Road Rec. In stark contrast with the situation at Stoke Lodge Parkland which has never been held for public recreation.

	land. That is consistent with the evidence that I have heard of informal usage by people for walking, dog walking, cycling and playing informal games. Such informal recreation is capable of being a 'lawful sport and pastime' within section 15 of the Commons Act 2006 – see Sunningwell.	
80	The Objector has suggested that much of the use should be disregarded as being essentially highway type use, and not TVG recreational type use. Although there is evidence that the footpaths in particular are used as highways, in particular by school children, there is also evidence that those children would play on the land in particular en route from school. Even disregarding the entirety of that use, I am of the view that there has been substantial informal recreation taking place on the land for the relevant period of twenty years and beyond.	We submit that this paragraph has no relevance to our Application.
	By a significant number of the inhabitants	
81	A 'significant number of the inhabitants' of an area in this context means sufficient usage to indicate to the landowner that what is being asserted is a general right, not a succession of trespasses. It must be such number as would indicate to a reasonable landowner that the right in question was being claimed by the inhabitants of that locality – see R. v. Staffordshire County Council; ex. p Alfred McAlpine Ltd. [2002] EWHC 76 at para. 77 per Sullivan J.[11].	We submit that this paragraph has no relevance to our Application.
	[11] Now Sullivan LJ.	

82	The objector has adopted a statistical approach to the evidence adduced by the Applicants, to demonstrate that the percentage of inhabitants within the neighbourhood who have enjoyed lawful sports and pastimes as of right over the land is such a small proportion that it cannot and should not be properly described as 'significant'. I agree with Mr. Maile's submissions that this is too narrow a view of the evidence, for a number of reasons. First, the evidence of those who support the application (both by giving oral evidence, and in giving witness statements or letters) deals not only with their own usage, but also usage by others. Secondly, as Sullivan J. indicated in McAlpine, the Authority should reach its conclusion not simply on the direct oral evidence, but also on the inferences it can properly draw from circumstantial evidence. As I have noted above, the Rec is a large open recreation ground within an urban area. I would have been very surprised had a large, and undoubtedly significant number of inhabitants not been using this facility for recreation from time to time. I saw people doing just that when I went for my site visit, as they have no doubt done for many years. These people had not arrived by car, but walked their dogs around the land.	We submit that this paragraph has no relevance to our Application.
	'Spread'	
83	Mr. Webster had a more refined criticism of the evidence, when he suggested that the evidence of usage had to show that the right was being claimed by the inhabitants in general. This was the so-called 'spread' argument. It was considered by Vos. J in Paddico v. Kirklees BC [2011] LGR 727 at [106] by way really of a	We submit that this paragraph has no relevance to our Application.

	passing comment. I agree with Mr. Webster that the learned Judge's comment does not reject the 'spread' argument as a matter of principle. In my view the spread argument is no more than an explanation of the meaning of the phrase 'significant number of inhabitants' in drawing a connection between the usage and the claimed neighbourhood or locality. In McAlpine the Court was simply considering significance by reference to the 'how many' question; it seems to me that the Authority also needs to consider the issue of 'where from'. If the issue is simply whether the landowner should objectively be aware that a legal right is being asserted against him, then there need be no correlation between the number of users, and the size of the neighbourhood. But the reference to 'a significant number of inhabitants' would suggest that there should be. In my view the wording of the Act and its purpose indicates that the pattern of usage should suggest to the landowner that the usage is being asserted by the inhabitants of the particular neighbourhood as a whole. I do not think this is a very onerous requirement, and in my view it is satisfied here. Mr. Webster points to the 'clusters' of witnesses who support the application and to the areas from which no witnesses come. Notwithstanding that analysis in my view the surrounding circumstances demonstrate an overwhelming likelihood that many of those who use the Rec informally will come from within the Triangle, as well as outside it. In my view this requirement is satisfied.	We submit that this paragraph has no relevance to our Application.
	Of the neighbourhood within a locality	

84	Considering first the locality within which the neighbourhood lies, it is agreed between the applicant and objector that either the two electoral wards within which the claimed neighbourhood falls, or the Town of Yeovil, are suitable localities for this purpose. I am of the view that the Town is an appropriate locality for this purpose, and advise the Authority accordingly. The more contentious issue is as to the neighbourhood.	We submit that this paragraph has no relevance to our Application.
85	'Neighbourhood' is an ambiguous term. It may mean 'the vicinity' of a place or a person – see e.g. Stride v. Martin (1897) 77 LT 600. But it may also refer to an area that is recognisable as having a degree of coherence such that people would recognise it as being separate or different from the areas immediately surrounding it. It is in this sense that 'neighbourhood' is used in the Commons Act 2006. In Paddico *supra* Vos. J. summarised the requirement by saying that the area must be understood as meaning a cohesive area, which is capable of meaningful description in some way (at [97]). But beyond that it has no particular requirement, and whether the claimed neighbourhood is made out as such is a question of fact.	We submit that this paragraph has no relevance to our Application.
86	It must I think be substantially a matter of impression whether a claimed area is a neighbourhood or not. My impression, and my considered view having heard the evidence, is that the 'Triangle' is not a neighbourhood. Whilst it is correct that it is situated within three busy roads, it did not seem to me that the character of the	We submit that this paragraph has no relevance to our Application.

	residential area differed substantially or significantly from that in particular to the East of Mudford Road. The residential properties appear to have been constructed in the inter-war period, with a significant amount of infill construction. Yeovil College occupies most of the Triangle to the South of the Rec. It has a relatively modern medical centre off of Marsh Lane, but nothing in the way of community facilities save for the Rec itself. If there was ever a Post Office in the Triangle (and the evidence was that it was at Hundred Stone which appears to be outside the neighbourhood) it has not been there for some years. The closest shops appear to be a large convenience store and parade of shops on Stiby Road/Coronation Avenue, and a small parade of shops with a post office on Glenthorne Avenue. There is no licensed premises, and the closest churches are at Coronation Avenue and Milford Road. Whilst it is possible to have a neighbourhood without the sort of facilities that create a self-contained small community, the absence of those features would indicate that one would need to see some other factor indicating cohesiveness. I had the impression that if there were neighbourhoods in the vicinity of the Rec, they would have been smaller than the neighbourhood claimed. The Rec divides the claimed neighbourhood into three or possibly four. However the difficulty with analysing the area in that way may be that the requirements as to 'significant number' may not be made out. That is something of a speculation on my part – the applicants are local people and can be relied upon to put their best case forward.	We submit that this paragraph has no relevance to our Application.

87	It was also significant that until the witnesses were asked to cast their mind to it, few considered that the Triangle might be a neighbourhood. Many considered that their neighbourhood was simply the area in their own particular vicinity. Some had not thought about it.	We submit that this paragraph has no relevance to our Application.
88	Lastly, this neighbourhood had no name. That is not a necessary requirement, but if there is historical cohesiveness in respect of an area, one might expect it to have acquired some form of collective description. Although other areas of Yeovil do have descriptive names (although not uniformly used) the claimed neighbourhood does not, and appears never to have done so. The best that could be done with it is that it was said that it would be called 'The Rec'. In one sense that is obvious – that is where it is. But that does not necessarily make the area a neighbourhood.	We submit that this paragraph has no relevance to our Application.
89	I have borne in mind that when Parliament amended the Commons Registration Act 1965 to permit registrations to take place by reference to 'a neighbourhood within a locality' it intended to make it easier to register TVG's, and did so by allowing them to be registered by reference to a concept that was not precise either as to definition, or as to boundary (see Trap Grounds per Lord Hoffmann at [27]). However, notwithstanding this, my conclusion for the reasons I have set out	We submit that this paragraph has no relevance to our Application.

	above is that the claimed area is not a 'neighbourhood' within the meaning of section 15 Commons Act 2006.	We submit that this paragraph has no relevance to our Application.
	'As of right'	
90	This is the main area of dispute. Usage is traditionally regarded as 'as of right' if it is without force, secrecy or stealth. It has been commented that it is really use that is 'as if of right' – with the appearance of being entitled to carry out the usage. Relatively recently, and particularly in the context of TVGs, Courts and Registration Authorities have considered that there is a further requirement to add to that definition, that the usage must not be 'by right'. To put it another way, the whole doctrine of usage 'as of right' exists to create a legal right or status where none existed before. It explains why people did what they would otherwise have no right to do. It follows that if the public already had a right to carry out their 'lawful sports and pastimes', then that usage would not be 'as of right'.	We agree with this clarification but contend that it is not relevant to our Application at Stoke Lodge Parkland because there is no existing legal right of access at Stoke Lodge Parkland for public use for lawful sports and pastimes (neither are they booked and paid for).
91	I advise the Authority to reject Mr. Maile's argument that the 'by right' defence to an as of right claim does not exist. There is now binding authority at Court of Appeal level that the defence is a good one – see Barkas v. North Yorkshire County Council [2012] EWCA Civ. 1373.	We submit that this paragraph has no relevance to our Application at Stoke Lodge Parkland because in the Barkas case their TVG application failed because public access was found to be 'by right' based on the fact that the land was held for the purpose of 'public use'. We contend that the circumstances at Stoke Lodge Parkland are different based on the fact that the land has not been held by the Landowner for the purpose of 'public use'.
	Implied Appropriation	

92	In order to decide whether the public had a right to carry out their informal recreation on the land, the next issue is to consider the basis on which the land was held. I have advised above that the land was acquired in part pursuant to section 164 Public Health Act 1875, and in part as to section 69 Public Health Act 1925 or section 4 Physical Training and Recreation Act 1937, and subsequently section 19 Local Government (Miscellaneous Provisions) Act 1976. I consider first Mr. Maile's argument that the land has been subsequently appropriated for commercial purposes because it is being operated under a profit-making scheme with a commercial body. I reject that contention. In my view the statutory basis on which the land is held remains the same. The status of the commercial partner that the Council has contracted with to perform the statutory function is that it does so on behalf of the Council as landowner. The function that is being performed remains the statutory function of holding land for public open space purposes.	We submit that this paragraph has no relevance to our Application since the land at Stoke Lodge Parkland was not held for 'public use' and the circumstances described are unique to Mudford Road and not binding on Stoke Lodge Parkland.
93	Turning next to the Objector's submissions, when the 1977 By-laws were passed they were passed on the footing that the Rec was held under section 164 Public Health Act 1875 and section 10 Open Spaces Act 1906. As they could only have been passed on that basis if the Council intended that the land be held on that footing, then there must have been an implicit appropriation to that purpose.	We submit that this paragraph has no relevance to our Application since there are no By-laws at Stoke Lodge Parkland relating to 'public use'.
94	I do not think this analysis is correct, for a number of reasons:	We submit that this paragraph has no relevance to our Application.

	(1) The Objector appears right to assert that a local authority may exercise its power of appropriation by implication – see Oxy-Electric v. Zainuddin (1990) (*unrep.*) per T. Cullen QC. The appropriation must arise from a decision of the local authority which necessarily indicates an intention to hold the land for a purpose other than the purpose for which it was acquired. (2) However it is a question of fact whether such intention arises or not. Given that appropriation would ordinarily be made by a formal decision or resolution, it may be one needs to be reasonably certain that an appropriation was in fact intended by the local authority. (3) It is highly unlikely that the local authority would have wished to hold land that it was in fact holding and using under section 19 of the 1976 Act as land being held under section 10 Open Spaces Act 1906. The powers of management of land held under section 10 are both general and do not extend to the sort of construction and charging powers that are found in section 19 of the 1976 Act. In my view the likelihood is that the By-laws were drafted in error and (insofar as it referred to the Rec) by reference to the 1906 and/or the 1875 rather than the 1976 Act. (4) The validity of by-laws is not affected by the reference to the basis of their enacting power. Of course if the authority did not have power to make the bye-law unless the correct legislation was set forth, matters might be different.	We submit that this paragraph has no relevance to our Application because it relates to paragraph 93 above which we contend is itself not relevant because there are no By-laws at Stoke Lodge Parkland. This matter is unique to Mudford Road and not binding on Stoke Lodge Parkland.

95	Insofar as land was held by the council pursuant to section 164 Public Health Act 1925, both Beresford and Barkas are strong authority that informal recreation over that land cannot be 'as of right' within Section 15 Commons Act 2006, and the Authority should reject the Application in respect of that land for that reason. That however leaves the issue as to the balance of the application land as to whether the public had a right to carry out their informal recreation where land was held under the provisions of section 19(1) of the 1976 Act.	We submit that the land held at Stoke Lodge Parkland was not held for 'public use'. In Beresford the land was not held for public use, it was found that there was no implied permission and the TVG application was granted and the land was registered i.e. similar circumstances of public use as at Stoke Lodge Parkland. We contend that this case supports our Application. In Barkas the land was held for 'public use', public access was found to be 'by right' and the TVG application was rejected, i.e. different circumstances to the situation at Stoke Lodge Parkland.
96	In order to prevent user being as of right in this way, the Council has to show that it held the land for such a statutory purpose that its use by local inhabitants, in the manner in which they used it, would not have been a trespass – or to put it another way, that the public had a right, albeit not necessarily a permanent right, to use it in the way they did, when they did.	We submit that this paragraph has no relevance to our Application because at Stoke Lodge Parkland public use is not 'by right' since the land is not held for the purpose of 'public use'.
97	Mr. Webster has relied on three Opinions by leading counsel, delivered to Registration Authorities after non-statutory inquiries, in support of his contention. The status of these opinions is as follows. They are advices from experts in this area of practice, one of my own. They (and the decisions that followed them) are not binding or authoritative or persuasive, but they are informative.	We submit that this paragraph has no relevance to our Application. We agree with the statement that these opinions are not binding since they are entirely unique in respect of the particular application and the instructions that were given in seeking an opinion.

98	My advice was given to Cardiff City Council in 2010 in connection with an application to register land at Rumney Recreation Ground, Cardiff, as a TVG. I advised that Authority to decline to register the land on the footing (amongst others) that where a local authority held land either under section 4 Physical Training and Recreation Act 1937 or section 19 Local Government (Miscellaneous Provisions) Act 1976, then local inhabitants had a right to use the land for recreation unless and to the extent that the local authority restricted that right. Mr. Maile asked me to advise the Authority that I should not hear the application, as I had pre-judged one of the potential legal issues in it. Whilst I can understand why Mr. Maile would be disappointed to learn that I had come to an adverse decision on an identical matter of law in an earlier application, it seems to me that he has misunderstood the concepts of prejudice and bias as they affect administrative or quasi-judicial decisions. Decision-makers (and I state, I am not the decision-maker here, simply an advisor) are often required to reach decisions on legal issues on which they have previously expressed opinions. They are not bound by their earlier views (although for judges the doctrine of precedent may mean that they have to give their own earlier decisions 'weight') and they certainly are not prohibited from hearing the same issue again. In the same way, legal advisors performing an advisory function in a quasi-judicial context (where the decision is not theirs but their employer's) may properly advise or express views on the same point in other cases. Their obligation is to consider the points put forward on both sides, and to	We submit that this paragraph has no relevance to our Application because the circumstances are different at Stoke Lodge Parkland based on the fact that the land has <u>not</u> been held for 'public use'. Also this advice is not binding on Stoke Lodge Parkland.

	come to a proper decision. If that means changing their mind, perhaps when presented with better and different argument, then so be it. I do not think any right-thinking member of the public would consider that the advisor could not properly hear the arguments and then advise properly. My view therefore, as I expressed at the outset, was that I should continue with the Inquiry. As a footnote, I would add that such is the relatively compact size of the specialist bar in this field that many inspectors have had to deal with this or related issues. The practical difficulties in finding inspectors who have not expressed a prior opinion one way or the other on any prospective legal point in the case in what is a developing and complex area of law might be considerable.	
99	Turning to the other advices, in his advice to Hampshire County Council ('The Triangle, Gosport') in 2010 Mr. Vivian Chapman QC considered usage under section 19 of the 1976 Act not to be 'by right', although he considered that it was not 'trespassatory'. His analysis was there was no public statutory right to use the land so held for informal recreation. He concluded that holding land under the Act did not prevent usage from being 'as of right'. Mr. Chapman is an extremely experienced and well-regarded practitioner in this area, and inspector.	We submit that this paragraph has no relevance to our Application and must be considered alongside paragraph 100 below.
100	Unusually, Hampshire County Council did not simply adopt Mr. Chapman's opinion on this very technical point. It sought a further opinion from Miss Morag	We submit that this paragraph has no relevance to our Application because the circumstances at Mudford Road and Stoke Lodge Parkland are different based on the fact that the land at Stoke Lodge Parkland has not been held for '*recreational facilities'* for the public

	Ellis QC, which was delivered in February 2011. Miss Ellis advised that the rights of local inhabitants should be viewed as against the obligations of the local authority as an administrative body. Where the local authority held land with a power to provide recreational facilities upon it, then even if the power is not (possibly expressly) exercised the existence of the power prevents usage from being 'as of right'.	
101	As Miss Ellis QC rightly states, the effect of section 19 is a legal area where there is no binding authority. In Barkas Sullivan LJ commented that 'the underlying difficulty may well be the need to apply private law concepts in a public law context. The former focuses upon rights, the latter upon duties.' (at [42]). That suggestion tends to indicate that Sullivan LJ had some sympathy with the approach of Miss Ellis – that it was broadly 'unrealistic' to regard a local as a trespasser where the landowning local authority held land for a public open space purpose.	We submit that this paragraph has no relevance to our Application because the circumstances at Mudford Road and Stoke Lodge Parkland are different based on the fact that the land at Stoke Lodge Parkland has not been held for 'public use'. In Barkas the land was held for public use, public access was found to be 'by right' and the TVG application was rejected, i.e. different circumstances to the situation at Stoke Lodge Parkland.
102	In my view local inhabitants have at all material times during the twenty year period had the right to go on to the Rec for the purposes of informal recreation, because and insofar as they have not been prevented from so doing by the local authority. I have set out in the advice sent to Cardiff City Council in the Rumney Recreation Ground application my analysis of this provision in some detail. Having	We submit that this paragraph has no relevance to our Application because the land at Stoke Lodge Parkland is not held for 'public use' and the circumstances described in the report are unique to Mudford Road. Furthermore the case cannot be made, in respect of Stoke Lodge Parkland, that failure by the Landlord to prevent Community use for informal lawful sports and pastimes implies permission and hence making the use 'by right'.

	reconsidered it in the light of Mr. Chapman's and Miss Ellis's opinions, I remain of the view that that analysis is correct.	
103	To put it shortly, where a local authority acquires land under section 19, in my view on the true meaning of that section the public have an immediate right to use the land for public recreation, subject to the local authority's power to regulate that access, which it may if appropriate immediately exercise so as to restrict access pursuant to the terms of the statute. That is all the more so where the local authority has plainly exercised its powers under section 19 by construction of tennis courts, hockey pitches and grass games pitches on part of the land and by maintaining the rest. The authority does not simply exercise its statutory power in respect of those persons it chooses to charge or specifically and expressly to license for the specific use of particular pitches at a particular time and for a defined period. It also exercises that power by allowing the public to use the land generally, in the broad sense of making the land available, keeping it open and maintained, and not preventing them from having recourse to it. I see no reason why that does not amount to '[the provision of] such recreational facilities as it thinks fit' within section 19(1). It seems to me that this analysis is buttressed by the comments of Sullivan LJ in Barkas at [37]: "Once the local authority has exercised its power, then it would be wholly unreal to conclude that the land had not been 'appropriated for the	We submit that this paragraph has no relevance to our Application, because the land at Stoke Lodge Parkland is not held by the Landlord under section 19 and is not held for 'public use'. The reference to the Barkas case does support the opinions expressed in the Mudford report because the circumstances of the Barkas case were also where the land was held for 'public use'

	purpose of public recreation' in the sense in which Lord Walker referred to 'appropriation' in paragraph 87 of his opinion in Beresford." Once the council has exercised its power under section 19, then at that stage if not before it holds the land for the purpose of public open space. It is obliged to hold it for that purpose, and the public has a correlative and equivalent right to use the land for that purpose.	
104	More broadly, where land is held under section 19 the local authority holds it for the purpose of public open space. It may be a specific type of public open space, but it plainly falls within that category. In these circumstances it probably does not matter whether one analyses the public's position as having a 'right' to go on to the land; or else as not committing a wrong if one does go on to the land. In either case, the carrying out of informal recreation by the local inhabitants would not be 'as of right', and the claim must therefore fail.	We concur with this statement but submit that it is not relevant to our Application at Stoke Lodge Parkland because the land there is not held as *'Public Open Space'.*
	Implied Licence	
105	The Objector relies on Beresford and in particular the analysis in R v. Somerset County Council oao Mann [2012] (unrep.) in support of its contention that usage by local inhabitants was by implied license. The argument is that where the landowner uses designated parts of the land exclusively (in this case, by licensing the games pitches) then the inference that would have to be drawn by members of the public, had they thought about it, was that they were only able to come on to the	We submit that this paragraph has no relevance to our Application as it considers the merits of the objectors case in relation to the unique circumstances at Mudford Road; which we contend is significantly different to the circumstances at Stoke Lodge Parkland where the land is not held for 'public use'. In Beresford the land was not held for 'public use', it was found that there was no implied permission and the TVG application was granted and the land was registered i.e. similar circumstances of public use as at Stoke Lodge Parkland. We contend that this case supports our Application.

	remainder of the land at other times because they were being permitted to do so by the landowner.	With regard to Mann please refer to our previous response document dated 5th October 2012, paragraphs 25 – 31 & 40 where we have argued why this case is not relevant to the Town or Village Green Application on Stoke Lodge Parkland, and refer the Inspector to the Redcar case which remains as the authoritative case on use 'as of right' as it is a decision of the Supreme Court. The Sunningwell case made it clear that for an application to succeed users did not have to have believed that they had permission to use the land, only that they did use the land '*in the same manner as if*' the people who indulged in them had a legal right to do so for lawful sports and pastimes.
106	I bear in mind also that the Objector relies on the general control of the land by its staff; the activities it has run on the land for the community; the licenses given to neighbouring landowners to install gates leading on to the Rec, and the existence of the bye-laws. On the latter point I find that the bye-laws would have been apparent to few and read by fewer. The Objector cannot reasonably assert that the local inhabitants would have been aware that bye-laws had been promulgated, or what they were. The installation of gates is also not pertinent. I agree with Mr. Maile that there is no evidence as to whether such license extended to entry on to the Rec for recreation, as opposed to simply giving permission to alter a party or council-owned feature.	We submit that this paragraph has no relevance to our Application as it considers the merits of the objectors case in relation to the unique circumstances at Mudford Road; which we contend is significantly different to the circumstances at Stoke Lodge Parkland where the land is not held for public use. Furthermore at Stoke Lodge Parkland:- a) there are no gates to the vast majority of access points b) there are no By-laws on display c) It is common ground that Formal sport is subject to booking and payment of a fee and hence is with permission and is excluded from the TVG Application d) In stark contrast, Community use throughout the qualifying period has been spontaneous, is not subject to booking and payment of a fee and is conducted on a shared co-existent and harmonious basis with the Formal sports and School users. For evidence see Application and previous responses to objectors e) Community use for informal legal sports and pastimes is not

		limited to the pitches but extends to the whole of the Parkland
107	It is a question of fact whether persons who use land should understand that they are doing so by way of a license conferred by a landowner. Simply because the Inspector in Mann considered that a license was made out, it does not follow that the decision in this case should be the same. It is necessary that the user of the land must understand unequivocally that he is being granted permission to be there. Anything less than that would be insufficient. Their Lordships in Beresford suggest that it must be 'clear', by the overt conduct of the landowner, that a license has been granted (see the speech of Lord Bingham at para. 5).	We consider the clarification contained within this paragraph highly relevant to our TVG Application, in particular:- a) '*Simply because the inspector in* Mann considered *that a license was made out, it does not follow that the decision in this case should be the same'* (or at Stoke Lodge Parkland) We have set out in our previous response dated 5th October 2012 paragraphs 25 - 31 & 40 why we consider that the Mann case is not applicable to our Application *b) 'It is necessary that the user of the land must understand unequivocally that he is being granted permission to be there. Anything less than that would be insufficient. Their Lordships in Beresford suggest that it must be 'clear', by the overt conduct of the landowner, that a license has been granted (see the speech of Lord Bingham at para 5)'* We contend that at Stoke Lodge Parkland the Landowner never made it '*clear by the overt conduct of the landowner, that a license has been granted'* for use by the Community for informal legal sports and pastimes In stark contrast the only overt action undertaken by the Landowner at Stoke Lodge Parkland was to install signs; which the Landowner confirms, 'was specifically to prevent any prescription rights arising' and *'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'* (please refer to Response dated 31st January 2013, paragraph page 2 of 18) c) On 15th September 2010 Clare Campion-Smith the Executive Cabinet member for CYPS (Education) confirmed to the Community at the Neighbourhood Partnership and Committee Meeting that the Cabinet had accepted that Community use of

		Stoke Lodge Parkland for lawful sports and pastimes was accepted by the Cabinet on a 'Shared' basis and that 'the parkland would remain with open access for all as of right'. Please refer to our Response dated 31st January 2013, para i)
108	The mere fact that the landowner licenses third parties to use the land will not of itself lead to the implication that any other use by other persons must also be implicitly licensed. A landowner is entitled to use land that is subject to TVG rights as long as he uses it fairly and does not unduly interfere with the right of the locals, according to Lord Hoffmann in Trap Grounds, para. [51]. Where the land has been laid out to sports pitches, its use albeit intermittent is, as to the physical extent of the pitches in use, exclusive.	We consider the clarification contained within this paragraph highly relevant to our TVG Application, in particular:- a) *'The mere fact that the landowner licences third parties to use the land will not of itself lead to the implication that any other use by other persons must also be implicitly licensed.'* We are confused by the reference to Trap Grounds and the implied conclusion which we cannot reconcile with paragraph [51] of the judgement; please see extract attached pages 66-68 of this document. Importantly, in the Trap Grounds case the TVG application was granted and hence all the qualifying criteria were made and hence there was no exclusive use by any party.
109	There is a dispute between the Applicants and the Objectors as to the extent to which the pitches have been used by the express license of the Council. I advise the Authority that the most reliable source of such information as to such usage in more recent years is the documentation produced by Mr. Jake Hannis. The perception of local residents would have been that the Council was licensing usage of the majority of the pitches during the weekend between September and April, with pitches also being used by schools, colleges and clubs from time to time during the week. The Council has maintained the pitches throughout that period, as well as varied their location and has (from time to time) carried out works of improvement on the land held by it, by constructing the enclosed hard tennis courts; the enclosed pitch and putt course, the all-weather pitch and athletic track,	We submit that this paragraph has no relevance to our Application at Stoke Lodge Parkland because it is specific to the unique circumstances in the Mudford Road case where the land is held for the purpose of public recreation. For the avoidance of doubt we do contend that:- a) School use at Stoke Lodge Parkland is minimal b) Formal sports use at Stoke Lodge Parkland is low c) Community use for informal lawful sports and pastimes throughout the whole of the Parkland is significant

	and the cafe and community hall. It is unrealistic to consider simply what the Council has done to land that is the subject of the Application, and not to consider how it has managed the Rec as a whole. Local inhabitants view it as a single piece of land. The degree of control exercised by the Council over the Rec as a whole, including the application land was such that 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.	
110	However, I advise the authority that on the basis that the local inhabitants had a statutory right to be on the Rec, they were not licensees. The two rights are inconsistent with one another. As Sullivan LJ said of the local authority in Barkas (at [43]) 'Unlike a private landowner it may not lawfully close a recreation ground or prevent members of the public from using it for recreation, *on a whim*' (my emphasis). The contrast is with a landowner who may (subject to contractual restrictions) bring a license to an end as he pleases. Of course, the authority can exercise its powers in a proper manner to regulate or prevent use of the land, but that is a very different thing to terminating a permissive license. In Beresford Lord Walker said that a statutory right might be 'akin to a statutory license'. Although there are similarities, they are not the same thing in law. The point was put thus by Langton J. in The Neptun [1938] P.21 at 32, in a very different context:	We submit that this paragraph has no relevance to our Application because the advice is based on the circumstances at Munford Road where the land is held for public use. Furthermore the examples cited are not relevant to the circumstances at Stoke Lodge Parkland

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	"[The relationship between a harbour authority and a dues-paying vessel] cannot be stated exactly as being a relation of invitor and invitee since it is difficult to imagine the Board extending to the public an invitation to use the highway which *ex concessis* is already their legal right." If the position was that the local inhabitants did not already have a right to be on the land, I would have advised the Authority to reject the application on the basis that the circumstances were such that, viewed as a whole, the local inhabitants had they considered it would have realised that they were being permitted or licensed to use the land for their daily recreation. However, because they did have such a right, my advice is that they had no such license, because they had no need of one.	We contend that no such right exists at Stoke Lodge Parkland because the land is <u>not</u> held for 'public use' We contend that the <u>Sunningwell</u> case made it clear that for an application to succeed users did not have to have believed that they had permission to use the land, only that they did use the land for lawful sports and pastimes '*in the same manner as if*' they had a legal right to do so.
	Conclusion and recommendations	
111	<u>Conclusion</u> (1) I find that the area relied on by the Applicant as a neighbourhood is not a neighbourhood within the meaning of that word where it is used in section 15 Commons Act 2006. (2) The claimed neighbourhood falls within the locality of the Town of Yeovil. (3) I advise that there has been at least twenty years use of the application land by the inhabitants of the claimed neighbourhood immediately prior to the date of the application (13th. May 2008).	We submit that this paragraph has no relevance to our Application because the conclusions in the report are specific to the unique circumstances at Mudford Road. Furthermore the conclusions in the report are not binding on the TVG Application at Stoke Lodge Parkland.

	(4) The use that has been made of the land by the inhabitants over that period has been by way of lawful sports and pastimes. (5) The number of inhabitants who have used the land for lawful sports and pastimes during that period have been a significant number such that would satisfy the requirements of section 15 Commons Act 2006. (6) The land has as to its entirety been held by South Somerset District Council during the relevant period as to part pursuant to section 164 Public Health Act 1875, and as to the remainder pursuant to the provisions of section 19 Local Government (Miscellaneous Provisions) Act 1976. (7) I do not find that any land held by the Council has been (subsequent to acquisition) impliedly appropriated to the purposes contained in section 164 Public Health Act 1875 or to section 10 Open Spaces Act 1906. (8) The effect of this is that informal recreational use of the land by local inhabitants has been 'by right' and not 'as of right' as required by section 15 Commons Act 2006. (9) The use of the land by local residents for informal recreation has not been by way of implicit license, either by reason of the existence of by-laws (as they were not sufficiently brought to the attention of the users) or by reason of the general licensing, availability and maintenance of the land for use for public recreation.	
	Recommendation	

112	I therefore advise the Authority that the Applicant has not succeeded in establishing the matters required for the registration of the land as a Town and Village green pursuant to section 15 Commons Act 2006, and the application should be rejected.	We submit that this paragraph has no relevance to our Application.
113	. The reasons why the Authority should refuse to register the land as a Town and Village Green are: (1) The usage of the land for lawful sports and pastimes was not by a body of inhabitants who occupied a neighbourhood within the meaning of section 15 Commons Act 2006; (2) The usage of the land for lawful sports and pastimes was not usage 'as of right' but usage 'by right' in that the land was held by South Somerset District Council for the purposes of section 164 Public Health Act 1875 and section 19 Local Government (Miscellaneous Provisions) Act 1976	We submit that this paragraph has no relevance to our Application because it is specific to the unique circumstances at Mudford Road, and significantly the land at Mudford Road is held for public use whereas the land at Stoke Lodge Parkland is <u>not</u> held for 'public use'.
	<u>Leslie Blohm QC</u> St. John's Chambers, 101 Victoria St. Bristol, BS1 6PU 13th. November 2012	
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115		

HOUSE OF LORDS

SESSION 2005–06
[2006] UKHL 25

on appeal from[2005] EWCA Civ 175

OPINIONS

OF THE LORDS OF APPEAL

FOR JUDGMENT IN THE CAUSE

Oxfordshire County Council (Respondents) *v.* Oxford City Council (Appellants) and another (Respondent) (2005)
Oxfordshire County Council (Respondents) *v.* Oxford City Council (Respondents) and another (Appellant) (2005)
Oxfordshire County Council (Appellants) *v.* Oxford City Council and another (Respondents) (2005) (Conjoined Appeals)

Appellate Committee

Lord Hoffmann
Lord Scott of Foscote
Lord Rodger of Earlsferry
Lord Walker of Gestingthorpe
Baroness Hale of Richmond

Counsel
For Oxford City Council
Charles George QC
Philip Petchey
(Instructed by Oxford City Council)
For Catherine Mary Robinson
Douglas Edwards
Jeremy Pike
(Instructed by Public Law Solicitors)
For Oxfordshire County Council
George Laurence QC
Ross Crail
(Instructed by Oxfordshire County Council)

Intervener
Jonathan Karas and James Maurici (Instructed by Department for Environment, Food and Rural Affairs)

Hearing dates:
27, 28, 29, 30 March and 3 April 2006

ON
WEDNESDAY 24 MAY 2006
(This version contains editorial amendments made since the previous version)

legislation about rights over village greens. Nor does Hansard throw much further light on the question. There are several references to registration being a "first stage" and to a later measure "for the better management and improvement of common land" (2nd reading debate, 6 February 1965, col 90) but no indication of what might be done about village greens.

49. So one has to look at the provisions about greens in the 1965 Act like those of any other legislation, assuming that Parliament legislated for some practical purpose and was not sending Commons Commissioners round the country on a useless exercise. If the Act conferred no rights, then the registration would have been useless, except perhaps to geographers, because anyone asserting rights of recreation would still have to prove them in court. There would have been no point in the conclusive presumption in section 10. Another possibility is that registration conferred such rights as had been proved to support the registration but no more. So, for example, if land had been registered on the strength of a custom to have a bonfire on Guy Fawkes Day, registration would confer the right to have a bonfire but no other rights. But this too would make the registration virtually useless. Although the Act provides for the registration of rights of common, it makes no provision for the registration of rights of recreation. One cannot tell from the register whether the village green was registered on the basis of an annual bonfire, a weekly cricket match or daily football and rounders. So the establishment of an actual right to use a village green would require the inhabitants to go behind the registration and prove whatever had once satisfied the Commons Commissioner that the land should be registered.

50. In my view, the rational construction of section 10 is that land registered as a town or village green can be used generally for sports and pastimes. It seems to me that Parliament must have thought that if the land had to be kept available for one form of recreation, it would not matter a great deal to the owner whether it was used for others as well. This would be in accordance with the common law, under which proof of a custom to play one kind of game gave rise to a right to use the land for other games: see the *Sunningwell* case [2000] 1 AC 335, 357A-C.

51. This does not mean that the owner is altogether excluded from the land. He still has the right to use it in any way which does not interfere with the recreational rights of the inhabitants. There has to be give and take on both sides. *Fitch v Fitch* (1798) 2 Esp 543 was a sequel to *Fitch v Rawling* 2 H Bl 393, in which the custom of playing

cricket on land at Steeple Bumpstead had been established. The evidence was that the defendants had trampled the grass which the owner had mowed, thrown the hay about and mixed some of it with gravel. Heath J said:

> "The inhabitants have a right to take their amusement in a lawful way. It is supposed, because they have such a right, the plaintiff should not allow the grass to grow: there is no foundation in law for such a position. The rights of both parties are distinct, and may exist together. If the inhabitants come in an unlawful way, or not fairly, to exercise the right they claim of amusing themselves, or to use it in an improper way, they are not justified under the custom pleaded."

52. The judge asked the jury to decide "whether the defendant had entered the close in the fair exercise of a right, or in an improper way" and the jury found for the plaintiff.

53. Mr George QC, who appeared for the city council, submitted that there was a general presumption against interference with property rights without clear words. (He also relied upon the Human Rights Act 1998, to which I shall return later). But the primary purpose of the 1965 Act, as applied to town and village greens, was not to create new rights which override those of the owner. It was to create a register of town and village greens which would include all land over which statutory or customary rights of recreation existed or probably existed. That would protect both the interests of the local inhabitants (so that public open spaces were not lost with the fading of memory) and also the interests of owners and buyers of land, who could clear their titles and rely upon the register, without being surprised by claims of public right of which they had been unaware. For this purpose, it was in my view a necessary implication that land conclusively presumed to be a village green should be subject to the rights which the statute treated as creating a village green, namely the right to indulge in sports and pastimes. This was the opinion of Pill LJ in *R v Suffolk County Council, Ex p Steed* 75 P & CR 102, 114-115, Dyson J in *R v Norfolk County Council, Ex p Perry* 74 P & CR 1, 7 and Lightman J in this case. I agree.