	Stoke Lodge Parkland, Shirehampton Road, Bristol, BS9 1BN – Town or Village Green Application	
	Comments by Bristol City Council on 25.07 13 to the Inspector's Report and Recommendation dated 22.05.13	**Response to BCC comments by Save Stoke Lodge Parkland Issued on 26th August 2013**
1	**Introduction** 1. This submission on behalf of Bristol City Council ('the Council') comments upon and makes further submissions in respect of the Report of Mr. Philip Petchey dated 22nd. May 2013 on Mr. Mayer's application to register Stoke Lodge Playing Field as a Town or Village Green under section 15 Commons Act 2006. In summary it submits:	We consider that this submission on behalf of the objectors adds nothing new to the debate and merely restates previous issues that have been considered and rejected as non determinative and/or have been previously been withdrawn by the objectors.
2	(1) That public usage has not been 'as of right' if it has been by way of implied license; and it is a matter of fact for the Registration Authority to decide whether this was so;	We accept that the Registration Authority must produce its own report to the Public Rights of Way and Greens Committee. However, we consider that the Independent Inspector has properly set out in his report and recommendation the reasons why Community use was 'as of right 'and the Parkland should be registered.
3	(2) That public usage has not been 'as of right' because the effect of the signage erected on the perimeter of the Site has been to render the public usage contentious for at least part of the	We submit that the signage was ineffective and did not give rise to contention. See evidence contained in our:- a. Our Application dated 4th March 2011 b. The Applicant's response dated 30th January 2012

	relevant period of 20 years relied upon;	c. The Applicant's responses (2 off) dated 31st March 2012 d. The Applicant's response dated 5th October 2012 e. The Applicant's letter dated 17th September 2012 f. The Applicant's letter dated 8th December 2012 g. The Applicant's response dated 31st January 2013 h. The Applicants letter dated 11th March 2013 This evidence has already been considered by the Inspector and he has confirmed that Public use for lawful sports and pastimes was 'as of right' and hence was not contentious.
4	(3) If there is doubt as to whether the application may fail by reason of challenges to or discrepancies in the evidence, then the Registration Authority should direct the holding of an inquiry at which the evidence can be considered.	Discrepancies in the evidence are not an issue. The final issues for determination were agreed to be limited to 'matters of law'. The Inspector has explained why he agreed with the objector that an Inquiry was not required and we submit that those reasons are still valid.
5	(4) That usage of the land for lawful sports and pastimes so as to create a Town or Village Green under the Commons Act 2006 is inconsistent with the statutory basis on which the Council holds the land; that that is a bar to the registration of the land; and (if otherwise minded to allow the	This suggestion by the objector is tantamount to saying that "we don't like the answer; so we want to delay in the hope that a future unrelated decision might or might not be helpful". This approach is unsustainable and if applied throughout the justice system would bring the whole process to grinding halt. Furthermore whilst the land is owned by Bristol City Council the

	application) the Registration Authority should defer the same until the petition to the Supreme Court understood to be pending in R v. East Sussex County Council (oao Newhaven Port & Properties Limited) [2013] EWCA Civ 276 has been determined.	land has been leased to Cotham School on a 125 year lease. Cotham school is an academy and is hence self governing and not under the control or statutory duty of the Local Authority.
6	**Corrections** 2. There appear to be two minor corrections to be made to the Report. Footnote 11 appears to be incomplete. It appears that the word 'may' has been omitted from para. 56, line 11.	The Inspector must be the one to comment on this
7	**Implied License** 3. The law relating to implied licenses and TVG applications is straightforward. The Registration Authority may however fall into error if it seeks to argue from the result of past cases to the proper result of the present application. Applications are always fact-specific, and it is not possible to reason from the result in one case to the outcome of the present. Set against the acknowledged facts of the present application, it should be plain that the usage	We assert that past case law is important when considering individual cases. We do not agree that use of the land was permissive and have presented evidence to support our counter argument. See evidence listed in paragraph 3 above. It is clear from Sunningwell that ongoing use is not always permissive and indeed use is required to be non-permissive to qualify for 'as of right'. To accept the objector's point that ongoing use must by definition

	of the land was permissive by any reasonable user who had stopped to think about it.	be permissive would prevent any TVG Application from succeeding. The facts of this case are clear: Bristol City Council did not give permission, tried unsuccessfully to deny access by the use of ineffective signs and classified the land as non-public land in its own public documentation. For evidence please see our response dated 31st January 2013, Tab 2, paragraphs 5 & 7.
8	The Law 4. The Law on the topic may not be contentious; the Council puts it forward in the following propositions:	
9	(1) Usage that is permissive is not usage that is 'as of right' (Sunningwell)[1]	Agreed
10	(2) A permission need not be granted expressly, but may be implied from the overt acts of the landowner (Beresford)[2]	The Landowner made it clear by its use of (ineffective) signs, (i.e. the opposite of overt acts) its declared strategic policy to try and prevent free public access (for evidence please see our response dated 31st January 2013, Tab 2, paragraph 5). Additionally classification in public documents made it clear that land was not for public use (for evidence please see our response dated 31st January 2013, Tab 2, paragraph 7) and hence use by the

[1] [2000] 1 AC 335 – referred to in para. 31 of Mr. Petchey's report.
[2] [2004] 1 AC 898 – referred to in para. 48 of Mr. Petchey's report.

		Community was not permissive.
11	(3) For such a permission to be implied, its effect must be to make it clear that usage is by way of permission (Beresford per Lord Bingham at [5]). Statements that the meaning must be 'plain' or 'unequivocal' simply reflect this requirement.	See 10 above
12	(4) It is a matter of fact whether, when and in what terms a permission has been so communicated.	The Community acted as if it had a right so to do as per Sunningwell. I quote from the Open Spaces Society guide to 'Getting Greens Registered' paragraph number 22 *'The activities on the land that form the basis for the claim must be exercised in the same manner as if the people who indulged in them had a legal right to do so'.*
13	(5) It is a matter of law whether the communication so made amounts to a permission.	See 12 above Additionally I quote from the Open Spaces Society guide to 'Getting Greens Registered' para graph number 22 '.....*The phrase does not mean that the use of the land must have been by virtue of some pre-existing legal right: on the contrary, the phrase requires the opposite, namely that the users must technically have been trespassing throughout the qualifying period, even though they may not have realised that they were doing so'*

14	(6) The meaning that is communicated is one that is to be understood objectively. There is no point in asking particular users whether they did or did not understand their usage to be permissive; it is for the Registration Authority to consider the facts and come to a conclusion.	See 10, 11 & 12 above and evidence contained in the 54 witness statements contained in the Application and the 81 witness statements contained in the Applicant's response dated 30th January 2012.
15	The Cases 5. Mr. Petchey considers three cases in his analysis of the nature of any implied permission: Beresford[3], Lewis[4] and Mann[5]. In Beresford their Lordships concluded that the mowing of the land and the putting out of benches for spectators did not give rise to an implied permission *on the facts*. As Mr. Petchey acknowledges[6], the usage of the land in that case was different from this.	As the objectors state the Independent Inspector has properly considered these cases and found that the free public use by the Community for lawful sports and pastimes is 'as of right' and was without permission.
16	6. Mr. Petchey reasons that the usage of the land that the evidence displays to the registration authority is	We submit that Community use for lawful sports and pastimes has co-existed with formal sports use on a shared and harmonious

[3] [2004] 1 AC 889
[4] [2011] 2 AC 70
[5] [2012] EWHC B14.
[6] Report, para, 64.

	similar to the usage of the subject land (part of a golf course) in Lewis[7]. In that case the Court considered that the activities of the public in permitting golfers (who were licensees of the landowner) to take precedence over their activities, was not in law a deference to the landowner's rights. Indeed there was no such concept of 'deference' as had been asserted by the landowner by way of a defence to a claim to use 'as of right'[8]. For present purposes the important point is that questions of license were never argued in Lewis. It is simply not authority for the purposes of the present application. Indeed, it may mis-lead if referred to. That is because it concerned the perception of the *landowner* – did he reasonably consider, or should he have reasonably considered, that the usage being made of his land amounted to the assertion by the public of a right over the land? Questions of permission by contrast depend on the perception of	basis for the past 64 years as per the Redcar case, which remains as the authoritative case on use 'as of right' as it is a decision of the Supreme Court, and is the most relevant precedent for the situation at Stoke Lodge Parkland This view was upheld by the Independent Inspector.

[7] [2011] 2 AC 70; see para. 66 of the Report.
[8] It is right to note that this conclusion had also been reached by the Court of Appeal – see the judgment of Dyson LJ (as he then was) at [2009] 1 WLR 1461 at [41]. The difference between the Court of Appeal and the Supreme Court appears to have turned on their differing views as to whether the effect of their factual deference was such as to indicate to a reasonable landowner that no right was being asserted. (see Lord Hope at [27]; Lord Rodger at [95] and Lord Kerr at [113]).

	the reasonable user.	
17	7. This aspect of the law was considered in Mann, where the Court had to consider the effect of temporary intermittent prohibition of public access over the land imposed by the landowner[9]. The Applicant sought judicial review of the decision not to register the land as a Town or Village Green, on the footing that (amongst other reasons) the Authority had incorrectly applied the test for an implied license. Notably, he submitted that the case was on all fours with Lewis, and that therefore it should not be viewed as a valid implied license case[10]. The learned judge rejected this analysis[11].	The Mann case is fundamentally different from the circumstances at Stoke Lodge (Furthermore this argument by the objector goes against their point at paragraph 7 where they argue that all cases should be judged on their particular circumstances) We have set out why we consider that the Mann case is not relevant to our Application in our submission dated 5th October 2012 at paragraphs 25 – 31 and in our response dated 31st January 2013 paragraph 14. The Inspector has commented on this case in his report and concluded that the circumstances at Stoke Lodge Parkland are different and therefore the Mann case is not relevant to this Application.
18	The Facts 8. It is a matter of fact for the Registration Authority to consider the nature of the activities being carried on at the land by the landowner and those entitled to possession of the land from time to time. The material facts are the following:	We contend that it is a matter of LAW that the Registration Authority and the appointed independent Inspector must consider the merits of any Town or Village Green Application in relation to the qualifying criteria set out in the Commons Act 2006 and all other matters are not relevant.

[9] The restrictions were the erection of a beer tent, and the holding of a fair.
[10] See the judgment of HHJ Robert Owen QC at [30].
[11] At [80] to [85]

19	(1) As Mr. Petchey has set out in a foot note[12], the application site is laid out in its entirety with pitches for organised sports; the pitches are referred to at para. 14 of the Report.	We submit that the objector is taking the word 'entirety' out of context and trying to apply a totally unrealistic and misleading premise. We agree that pitches are spread out across the entirety of the open grassed areas. But there remain large areas of open space between the pitches and around the perimeter, also the wooded area has no pitches at all. Furthermore the Football and Rugby pitches are only marked out during the Football season and are not used by Cotham during school holidays or at weekends.
20	(2) The land is equipped with a pavilion with changing rooms and facilities incidental to the use of the pitches[13]	It is generally accepted that the Pavilion is not 'Fit for Purpose' and is not used as changing facilities.
21	(3) The land has been held by the Council and used for educational purposes for many years[14].	It is not disputed that the Land is owned by Bristol City Council and held by them for educational sports use. It should be noted however that the grassed area used for pitches has been leased to Cotham School on a 125 year lease. Cotham School is an academy and is hence self governing and is outside Local Authority control.

[12] Footnote 7
[13] See the plan at Objector's objection encl. [1]
[14] See Report paras. 17 *et seq.*

		The wooded area (mostly subject to TPOs and with no pitches) is not part of the land leased to Cotham. However, the whole of the Parkland is used by the Community for lawful sports and pastimes 52 weeks per year. The Town or Village Green Application will not alter the status quo of co-existent use on a shared and harmonious basis as currently experienced for the past 64 years but will protect ongoing Community for future generations.
22	(4) In 2010 Cotham School entered into an agreement with the University of Bristol to regulate their respective entitlements to use the land for educational purposes, although that formalised the basis of usage for preceding years[15].	The University of Bristol involvement is in the form of a grounds maintenance team and booking agent based at Coombe Dingle Sports Centre; they have been sub-contracted by Cotham School to cut the grass, mark out the pitches, erect the goal posts and provide a booking service for Formal Sports users that book and pay to use the pitches. The University of Bristol do not have any ownership rights or governance rights at Stoke Lodge Parkland. Any future development aspirations that Cotham or the University may have are not relevant to this Application.

[15] Report para. 21.

23	(5) It appears that there is a dispute between the Applicant and the Objectors[16] as to the extent of the usage being carried out by the Council and its licensees over the relevant period. The Council does not accept the suggestion that the land is used by the School 'to a comparatively limited extent'[17]. The Council contends that the land is (and was during the relevant statutory 20 period) regularly used for team sporting purposes by public institutions (Cotham School and the University of Bristol) and by local institutions (in the nature of clubs) that were permitted to use the land by the Council as its licensees.	There is no dispute. The facts at the time of the Application are clear. This assertion by the objector is designed to mislead and to muddy the waters in order to divert the Inspector away from the most important of core matters: that whatever the level of use was at the time of the Application, the formal sports users together with the local Community, whilst engaged in lawful sports and pastimes over the past 64 years, have co-existed harmoniously on a shared basis as per the Redcar case which remains as the authoritative case on use 'as of right' as it is a decision of the Supreme Court, and is the most relevant precedent for the situation at Stoke Lodge Parkland. However we maintain that our statement of use by Cotham at the time of the Application is true.
24	9. There is annexed to this submission marked BCC.1 a schedule of usage produced by Mr. Hinks of University of Bristol showing the usage of the land for sporting purposes by the Council's licensees.	We contend that the schedule provided by Mr Hincks is not relevant to this Application because:- a. It fails to recognise the core issue that Formal Sports use by Cotham and the Sports Clubs together with local Community use, whilst engaged in lawful sports and pastimes over the

[16] Certainly, the Council and Cotham School.
[17] Report, footnote 7.

		past 64 years, have co-existed harmoniously on a shared basis as per the Redcar case. i.e. there is not a problem with the status quo. b. The schedule indicates a level of current use not use at the time of the Application c. We contend that the schedule is more a statement of potential use not a record of actual use Whilst we contend that the purpose or content of the schedule is not relevant and is a diversionary tactic we set out below our view of actual use at the time of the Application and now. <u>Cotham School</u> Local observation shows that at the time of the Application Cotham School used the playing fields for 3 or 4 hours per week, usually on one pitch only or very occasionally two pitches for one session. Simon Hinks's schedule suggests that this has increased to use of the rugby pitch on four mornings per week and use of three football pitches on Tuesday pm. If this were true it would still represent a very low usage rate. Hence our statement contained in the Application is true. We refer to the schedule issued by Cotham School as part of their response dated 22nd July 2013 which contradicts Mr Hinks's schedule and suggests use is an average of 20 games per month

		or 5 per week. Surely they cannot both be correct? <u>Rockleaze Rangers</u> Rockleaze Rangers uses Stoke Lodge for its 'Junior' teams. Use is centred on some of the junior pitches between 10.00am and 2.00pm on Saturdays. Simon Hinks's schedule suggests that they currently use all the mini pitches and all the "Training" areas on Saturday morning. Local monitoring suggests that they may book them all but they don't use all of them and is limited to the football season. <u>Shirehampton Colts</u> Shirehampton Colts is a local league football club that plays games 'at home' and 'away'. The 'home' games are played at various local amenities including Stoke Lodge. All games are played on Sunday and use generally extends to 50% of the full size pitches. Simon Hinks's schedule suggests use of all the full size football pitches for two games on Sunday and use of the mini pitches. The grass pitches cannot be played on twice in one day in British winters. Indeed local observation confirms that it is very rare for two games to be played on one pitch on the same day and not all the pitches are used on the same day. <u>University of Bristol student sports clubs</u>

		UoB students sometimes play their inter/uni games at Stoke Lodge if they cannot get on to Coombe Dingle Sports Centre pitches. This use occasionally extends up to two or three pitches. Simon Hinks's schedule suggests that UoB students use all 5 full size football pitches and the Rugby Pitch every Wednesday afternoon, which is not supported by local observation. <u>Other</u> Use of the ruby pitch on both Sunday morning and afternoon is not recognised by the Applicant Simon Hinks's schedule suggests (although we consider that actual use, certainly at the time of the Application, is significantly less):- <u>Winter use</u> Football pitch 1 is used 3 times a week (twice on Sunday?) Football pitch 2 is used 3 times a week (twice on Sunday?) Football pitch 3 is used 4 times a week (twice on Sunday?) Football pitch 4 is used 4 times a week (twice on Sunday?) Football pitch 5 is used 4 times a week (twice on Sunday?) Rugby pitch 1 is used 7 times a week (twice on Wednesday and Sunday? Surely this level of use would not be sustainable on a grass pitch especially on a rainy week in November or February?) Mini Football pitch 1 is used 2 times a week Mini Football pitch 2 is used 2 times a week Mini Football pitch 3 is used 2 times a week Mini Football pitch 4 is used 2 times a week

		Mini Football pitch 5 is used 2 times a week Training area 1 is used once a week Training area 2 is used once a week Training area 3 is used once a week Training area 4 is used once a week <u>Summer use</u> Cotham use in the summer is severely curtailed by examinations and rarely extends into June or July and never into August. Please refer to the survey of use conducted in August 2010 contained in the Application at tab 19. In summary, despite our different opinions on use at the time of the Application, we draw three distinct conclusions:- I. Formal sport is appreciated and welcomed by the Community and the Town or Village Green Application will not prevent continuation of Formal Sport at the current level II. Formal Sport is intermittent and at no time uses the whole of the Parkland always leaving ample space for all to share III. Formal Sports users and Community use for lawful sports and pastimes have co-existed on a harmonious and shared basis very successfully over the past 64 years
25	10. It is evident that: (1) During the relevant period there has been	Once again the objector attempts to give the false impression that Formal sports use occupies every square inch of the Parkland.

	significant team use of the pitches that comprise the entirety of the land;	Nothing could be further from the truth; this would have been apparent to the Inspector during his Site Inspection in February 2013.
26	(2) The team use is inconsistent with concurrent use of that part of the land by the public, not only because of the nature of the activity but also because of the inappropriateness of the public sharing such space with children;	Formal Sports use is intermittent and occurs in different places at different times. Formal Sports users together with local Community use for lawful sports and pastimes have co-existed at Stoke Lodge on a harmonious shared basis for the past 64 years.
27	(3) The public were excluded from the pitches whilst they were in use. This goes beyond any question of deference or politeness. It would be apparent to any member of the public that had he sought to use the pitches during those games he would have been thrown off. None did.	The public have never been excluded from the Parkland by reason of closed access or the fact that Formal sport used up all the available space. The Formal Sports users and the local community have co-existed harmoniously on a shared basis for 64 years as per the Redcar case which remains as the authoritative case on use 'as of right' as it is a decision of the Supreme Court, and is the most relevant precedent for the situation at Stoke Lodge Parkland. The question of anyone being '*thrown off'* is pure conjecture on the part of the objector and not relevant to this Application.
28	(4) The games were organised. Their locations varied depending on the precise location of the pitch that was laid out for the game being played. That	The location of the pitches is well understood; the rhythm of Formal Sports use is also well understood. Furthermore use 'as of right' does not require reference to the

	location was chosen by the landowner or organised user without reference to the public.	public.
29	(5) It would in these circumstances have been apparent to any members of the public that the landowner (and its licensees) were entitled to exclude them from such part of the land as they wanted when they wanted to do so. Given that the public, when it did use the land was using the land for informal recreation that was not inconsistent with the usage made of the land by the Council and its licensees, it would have been clear to the public that its usage of the land was by virtue of an implied license.	The simple fact of the matter is that the Landowner has never excluded the Community from the Parkland. It is also false to assert that '*it would have been clear to the public that its usage of the land was by virtue of an implied license.'* and this assertion is rejected. See evidence contained in the 54 witness statements contained in the Application and the 81 witness statements contained in the Applicant's response dated 30th January 2012. We reject this unsubstantiated and false assertion that '*it would have been clear to the public that its usage of the land was by virtue of an implied license'*. Please refer to paragraph 12 and 13 above.
30	11. There is academic support for this approach in the views of the editors of Gadsden on Commons & Greens (2nd. ed.) at para. 14-20. The Council would however not support the contention put forward at footnote 60. The claim to a Town or Village Green would in these circumstances be a claim to use the whole of the land, or none at all. A claim to use the	We are confident that the Inspector would have considered this issue.

	margins is entirely artificial if the land is regarded as a single piece of land; as (in the present case) Stoke Lodge is.	
31	**Signage** 12. The Council's recent stance was that it did not wish to put forward the effect of signage as preventing use from being 'as of right'[18]. However:	The Council withdrew categorically and unequivocally its grounds for including the signs as part of its ongoing objection as part of its submission dated 21.12.12. Please refer to our response dated 31.01.13 paragraph 5 and view the objector's statement and the response from the Applicant.
32	(1) Mr. Petchey rightly considered the matter anyway, as once the matter had been raised the existence of use 'as of right' had to be proven; and	As the objector correctly states the Inspector did consider the issue of signs and concluded that it was '*not determinative'*. See Inspector report para 6.
33	(2) That letter whilst withdrawing the point, also said that 'the Council remains of the view that its previous submissions hold good'. If that were so, then the issue would indeed have been determinative of the application.	The <u>actual</u> statement from the objector at 21.012.12 was (with emphasis added by the Applicant) :- '*While there is no dispute regarding the existence of the signs and the fact that a number of people saw the signs<u>, the Council do not wish to incur the expenses involved in a non-statutory enquiry.</u> While the Council remains of the view that its previous submissions in respect of the signs*

[18] Letter 21st. December 2012.

		*holds good, it is **not** felt that this issue on its own would be determinative of the issue in relation to the question as to whether the land will be capable of registration as a town or village green. Therefore, to this end the submissions with regard to the signs at the site are withdrawn. The question of orientation of the third sign will therefore no longer be an issue'* We are therefore at a loss to understand how the objector can raise this issue again and we ask the Inspector to confirm that this issue should remain withdrawn.
34	(3) Therefore the matter remains a live issue for the Registration Authority.	The Registration Authority should consider the Application on the same basis as the Independent Inspector. This blatant intimidation by the objector seeking to influence the Registration Authority to disregard the considered opinion of the Independent expert Inspector is tantamount to abuse of power and deserves to be investigated by the Local Government regulator/ombudsman.
35	13. The Council has very recently been supplied with further information from Bob Hoskins that the signs presently on the site were not the only relevant signs relating to access to the land. There were a further two signs at two other entrances into the site. One of these was attached to a tree at an entrance to the	a. Where is the evidence to support this very late statement? b. If these signs did exist, what was the date of their erection and when were they removed? c. If these signs were in the same form as the '*Avon signs'* why are they not available for inspection? d. Contrast this very sketchy and unsubstantiated statement

	site in respect of which Bob Hoskins has informed us that he had a conversation with a local resident complaining about this sign. These signs were in the same form as those previously exhibited to the Notice of Objection as erected by Avon County Council. Mr Hoskins is not presently available to give a further statement but it is anticipated that this will be supplied to the Registration Authority within the next 7 days.	with the wealth of evidence presented by the Applicant in the 54 witness statements contained in the Application and the 81 witness statements contained in the Applicant's response dated 30th January 2012 none of which make reference to these alleged signs in the qualifying period, or before e. Even if these additional signs were proven to exist and the time period was relevant this unsubstantiated statement changes nothing as they clearly had no effect f. Furthermore if the wording was the same as the Avon signs we contend that the sign is ineffective because the wording does not deny access and is a warning sign
36	14. The effect of the signage (whether that shown previously in the photographs[19], or together with that referred to above) makes it clear to those users of the land that there usage without permission was contentious, and hence not 'as of right'. It may have been the case that some users would have gained access to and egress from the property by a route that avoided those signs. But sufficient users would	This issue has been considered by the Inspector and he has found that use by the Community for Lawful Sports and Pastimes is 'as of right'. Additionally we contend that the objector cannot argue that Public Community use for Lawful Sports and Pastimes is <u>with permission</u> from paragraph 7 onwards and then argue that Public Community use for Lawful Sports and Pastimes is <u>without permission</u> here.

[19] See Applicant's original objection, encls. 29, 30 & 31

	have seen the signs for the public as a whole to be aware that there user of the land, if without permission, was contentious.	
37	15. The surrounding circumstances do not prevent the signs from having this effect. Whatever the position before they were erected, when they were erected they made it plain to the public that they were not to enter the land except with permission. Indeed, the notice went so far as to indicate that the classic town or village green behaviour, the exercising of dogs (or horses) on the land was not only forbidden, it was potentially criminal. The notice stated that requests for authority to do those acts had to be made to the Director of Education. That is not acquiescence in the carrying on of sports and pastimes, but the opposite.	The Community did not seek permission to use the land for lawful sports and pastimes as they considered that they had a right to use the land as they had done so for the past 64 years (Sunningwell) co-existing with the Formal Sports users on a shared and harmonious basis (Redcar). For clarity it has been confirmed that exercising dogs qualifies as Lawful Sports and Pastimes.
38	16. The notice erected subsequently[20] is in even more unequivocal terms. It plainly applies to Stoke Park; the reference to 'these grounds' can only sensibly apply to Stoke Park itself.	If the Objector is actually referring to Stoke Park then they are referring to the wrong Parkland. See our response dated 10th March 2013 tab 4 - 'Legal Statement' paragraph 4 – 'The Land' where we pointed out this error previously. It really is most concerning if the Objector is mixing up these two Parklands given

[20] Original Objection, encl. 31

		that Stoke Park at BS16 is a Public Park and the circumstances there are very different to the Land that is the subject of our Application at BS9! However if there is confusion on the part of the objector it would help to explain some of their incorrect assertions.
39	17. Although it may be the case that a number of members of the public would not have gained access via that sign's location[21], that does not determine its effect. It is submitted that the sign would be sufficiently known if it came to the notice of a significant number of inhabitants, such as to make it known that the landowner was not acquiescing in the use made of the land (the basis of the law of prescription being acquiescence - see Sunningwell per Lord Hoffmann at 354G). The notices would indicate to the public that their usage was not being acquiesced in.	If they are referring to the new sign adjacent to the Adult learning centre then we still have the issue of why the sign was rotated by Coombe Dingle Sports Centre staff. Additionally and more importantly, how many Community users saw the sign or understood its purpose given that the Gate to the Adult Learning centre is locked out of office hours and at weekends and were those numbers significant or determinative? The Inspector has considered these issues and has found that Community use is 'as of right'.
40	18. It is a matter of debate as to when usage starts to be 'as of right' if a notice is ignored. It plainly cannot be	Community use has been continuous for 64 years well beyond the 20 year qualifying period.

[21] See Report para. 69

	'as of right' then next day, for as a matter of fact it is still contentious. Where the initial notice has been reinforced by a further notice in unequivocal terms, as was the case by the erection of the notice in c.1995, then again the landowner indicates that he does not acquiesce in the public's use of the land, and their use is contentious.	The Avon signs, which we contend were ineffective, were merely warning signs and were never enforced by any overt act. They were erected in 1985/6, as confirmed by Mr Hoskins, and therefore were at least 25 years old at the time of the Application and were being ignored well before the qualifying period. Even if it is found that the new sign adjacent to the Adult Learning Centre is relevant to the land and is effective we still have the issue of the numbers who saw that sign and whether that number is significant. We therefore contend that this argument is not relevant.
41	**Newhaven** 19. It is understood that an application for permission to appeal the decision for the Court of Appeal in Newhaven[22], relating to the availability of section 15 where land is held on what appear to be inconsistent statutory powers, has been made to the Supreme Court[23]. If that is so[24], then any further decision on the application should be deferred until that decision	As stated previously in paragraph 5:- This suggestion by the objector is tantamount to saying that "we don't like the answer; so we want to delay in the hope that a future unrelated decision might or might not be helpful". This approach is unsustainable and if applied throughout the justice system would bring the whole process to grinding halt. Furthermore whilst the land is owned by Bristol City Council the

[22] [2013] EWCA Civ 276
[23] Report, para. 67
[24] As Mr. Petchey will know, the Court of Appeal has recently considered a linked appeal relying on a human rights challenge to part of the legislation [2013] EWCA Civ. 673. It may be that the appeal from the original decision in Newhaven is awaiting that further decision, but this is speculation on my part.

	has been resolved.	land has been leased to Cotham School on a 125 year lease. Cotham school is an academy and is hence self governing and not under the control or statutory duty of the Local Authority.
42	**Further Decision** 20. Any decision on this application will be that of the Registration Authority, acting by its duly authorised committee. The Authority has retained the services of an experienced inspector, which is appropriate given that the application of the relevant legal principles in this area of law are not straightforward. However, the disputes concerned with this application are really factual ones, that any sensible person can answer for themselves.	The Registration Authority have appointed an expert Independent Inspector to provide a recommendation on this Town or Village Green Application as per standing orders within Bristol City Council. The Inspector has provided his report and recommendation which supports the Application for Registration. The Inspector has requested comments from the parties and these should be directed to him. It is quite wrong for the objector to claim that *'the disputes concerned with this application are really factual ones that any sensible person can answer for themselves.'* These are complex matters of Law that require specialist independent expertise with extensive legal precedence to consider. The Inspector will then respond to the Registration Authority with his comments. The Registration Authority will then produce its report. As a matter of policy Bristol City Council have deemed it necessary

		to use the services of an independent Inspector to make a recommendation where they are also the Landowner to prevent a conflict of interest. It is quite wrong therefore for the Objector to make this veiled assertion encouraging the Registration Authority to make its own decision.
43	9. The first is whether a reasonable member of the public, being observant, would have understood that he was being permitted to be on the land, and that the landowners could if and when they wanted to, have required him to leave? The answer to that, the Council suggests, is – of course.	The matter is not as simple as the objector sets out here. The law on this matter is complex as evidenced by our previous response dated 31st January 2013,Tab 2, paragraph 7. The Inspector has considered this point and has found that Community use was 'as of right'
44	10. The second is (if the answer to the first question is 'no') whether it should have been apparent to reasonable members of the public at any time during the relevant period of twenty years from March 1991, that their usage was contentious. The effect of the signage is, suggests the Council, that it was.	See paragraph 43 above I doubt if anyone in the Community has ever considered if their use was contentious let alone understood the implication. They used it as if they had right so to do (Sunningwell) co-existing with the Formal Sport users on a shared and harmonious manner (Redcar).
45	11. If the answer to either of these two questions is 'yes', then it follows that the Application must fail.	The Inspector has considered the full range of relevant matters of Law and legal precedent and has found that Community use is 'as

		of right'.
46	12. Part of the land subject of the application plainly cannot have been available for use, that is the changing rooms/Pavilion and store identified and shaded grey on the plan annexed to this submission as BCC.2 [25]	The machinery store and the changing rooms/pavilion are clearly excluded from our Application see our letter dated 10th March 2013 see copy attached. For the record the plan annexed to the objector/s response is not an accurate representation of the Application as it fails to omit the land along Shirehampton road between the Adult Learning Centre and the row of detached houses.
47	**An Oral Inquiry** 13. The existence of a license by implication, and the knowledge of a sign forbidding access, are both highly disputed matters of fact. If it is the case that the Registration Authority would otherwise consider allowing the application in whole or in part, it should not do so if it is possible that the hearing of such evidence from those who can give it, and their cross-examination, might have an effect on its decision. In that case it should direct the holding of an oral inquiry.	Given the facts and background to the Application and the consensus on the issues that would require oral evidence we see no merit in holding a non-statutory oral inquiry since the outstanding issues were agreed to be matters of law, and those matters have not changed. We reject the highly charged and emotional language used by the objector to try and mislead the Inspector by raising peripheral things that are not determinative and that have already been considered in the report and recommendation by the Inspector dated 22.05.13.

[25] Referred to in para. 75 of Mr. Petchey's report

48	Leslie Blohm QC St. John's Chambers, 101 Victoria St. Bristol, BS1 6PU 25th. July 2013	David Mayer On behalf of Save Stoke Lodge Parkland 26th August 2013