

IN THE MATTER OF THE APPLICATION TO REGISTER

STOKE LODGE PARKLAND, BRISTOL, BS9 1BN

AS A TOWN OR VILLAGE GREEN.

**FURTHER SUBMISSION BY THE APPLICANT DATED – 14<sup>th</sup> June 2015**

PURSUANT TO THE DIRECTIONS OF THE INSPECTOR (dated 6<sup>th</sup> March 2015)

BASED ON THE SUPREME COURT JUDGEMENT

IN THE *NEWHAVEN* CASE – (dated 25<sup>th</sup> February 2015).

**TOGETHER WITH**

**THE APPLICANTS RESPONSE TO THE**

**COTHAM ACADEMY LETTER - (dated 4th March 2015).**

#### 1a. INTRODUCTION AND SUMMARY

We submit that the Judgement in the *Newhaven* case has no relevance to our Town or Village Green (TVG) Application and in particular there is no incompatibility with Statutory Purpose should Stoke Lodge Parkland be registered as a TVG for the reasons set out below.

#### 1.1 BACKGROUND

- 22<sup>nd</sup> May 2013: Inspector issued his Report and Recommendation that Stoke Lodge Parkland should be registered as a TVG.
- 26<sup>th</sup> March 2014: Inspector issued Further Directions confirming deferral of further consideration until the Supreme Court Judgement in the *Newhaven* case is issued. Inspector would then issue Further Directions.
- 25<sup>th</sup> Feb 2015: Supreme Court issued Judgement in the case of *R (Newhaven Port and Properties Limited) v East Sussex County Council and another [2015] UKSC 7*. (Copy attached as Appendix 1)

- 6<sup>th</sup> March 2015: Inspector issued Further Directions requesting further submissions from the Objectors based on the *Newhaven* Judgement; and subsequent further submissions from the Applicant.

## 1.2. THE BASIS OF THE *NEWHAVEN* APPEAL

The *Newhaven* Appeal was concerned with three issues. See clause [24] of the Judgement:

- i. Can bathing on the foreshore be “as of right”?
- ii. Is public use of the Beach at Newhaven, as part of the Harbour, “as of right” or “with permission” and hence “by right” in light of the Byelaws?
- iii. Would registration of Land within the Harbour be incompatible with some other statutory function to which the land was to be put?

## 1.3. APPLICATION TO THIS CASE

The *Newhaven* Appeal was allowed by The Supreme Court based on the particular circumstances at Newhaven Port, a working Harbour. However the particular circumstances at Stoke Lodge Parkland are very different and we submit that: -

- i. There is no foreshore (or equivalent) at Stoke Lodge Parkland and hence this issue is not relevant to the Application at Stoke Lodge Parkland and should be ignored; albeit that it was found that “*members of the public, and therefore inhabitants of the locality, used the Beach for bathing “as of right” and not “by right”*”. See clause [51] from the Judgement.
- ii. The Supreme Court found in its Judgement that the Byelaws at Newhaven Harbour did contain an implied licence and use by the public was “with permission” and hence “by right” and not “as of right”. See clause [73] of the Judgement.

However, there are no Byelaws at Stoke Lodge Parkland and it is agreed by all parties that use by the public is “without permission” and hence the findings in the

*Newhaven* case under this heading are not relevant to the Application at Stoke Lodge Parkland and should be ignored.

- iii. Within the *Newhaven* Judgement there was reference to the revised Judgement in the *R (Barkas) v North Yorkshire Council* [2014] UKSC 31 handed down by the Supreme Court on 21<sup>st</sup> May 2014.

Within our Inspector's Further Directions dated 6<sup>th</sup> March 2015, there was also reference to the same revised Judgement (*Barkas*) and its possible relevance to the Application at Stoke Lodge Parkland.

We contend that the revised judgement re *Barkas* clarifies the position that where land is held for the purpose of "free open public recreation", then public use is "with permission" and hence "by right" and not "as of right".

However, the Land at Stoke Lodge Parkland is not held for the purpose of "free open public recreation" (not disputed by the objectors) and hence this Judgement re *Barkas* is not relevant to the Application at Stoke Lodge Parkland and should be ignored.

- iv. The Supreme Court found in its *Newhaven* Judgement, at clause [94], that "*There is an incompatibility between the 2006 Act and statutory regime which confers harbour powers on the NPP to operate a working harbour.....*". However, the particular circumstances that support this Judgement are quite specific. See clauses [94, 95, 96, & 97] from the Judgement for a full explanation.
- v. In summary we submit that the Judgement in the *Newhaven* case is based on the need for their site to continue to function as a working harbour, as their primary purpose, as established and enshrined in The *Newhaven Harbour and Ouse Lower Navigation Act 1863* and the *Newhaven Harbour Improvement Act 1878* (see Judgement clauses [2-14]).

These require them to maintain and preserve on an ongoing basis (from that date) the existing Built and Natural Infrastructure (including dredging of the sea bed and the foreshore, and maintenance and preservation of the existing quays and

breakwaters etc); all critical for the operation of the harbour i.e. to retain the existing status quo and comply with their statutory purpose to facilitate the safe passage of ships in and out of the harbour.

There is no such Act governing the provision of pitches at Stoke Lodge Parkland.

- vi. **Even if** the provision of Playing Fields at Stoke Lodge is a Statutory Purpose - **and we contend that it is not** – it is certainly **not** in the way that Newhaven Port has a Statutory Purpose as a working harbour (i.e. **totally** dependent on the sea, the estuary, the river and the built infrastructure to enable safe passage and docking of shipping to facilitate every aspect of their *raison d'être*). **It is evident** that both Bristol City Council as the Education Authority and Cotham School (latterly as a self governing Academy assuming the role of the Education Authority) discharged that duty during the whole qualifying period with Stoke Lodge as it currently is. **This** was whilst sharing the Parkland with the Community engaged in lawful sports and pastimes, “as of right”, for a period of over 20 years; all as found by the Inspector in his Report and Recommendation dated 22.05.15 hence confirming that no incompatibility exists.
  
- vii. Critically, no vital infrastructure that requires maintenance and preservation exists at Stoke Lodge on the Land included within the TVG Application. Furthermore none is required to comply with the provision of Playing Fields. The existing Pavilion, which we have repeatedly agreed is not fit for purpose and requires refurbishment, is not included within the TVG Application Land and Cotham are free to carry out this work irrespective of the outcome of the TVG Application. This freedom to act applies equally to the maintenance workshop and garage although this structure appears to be in reasonable condition currently. The TVG Application relates only to the grassed areas shown in the plan included within the Application dated 4<sup>th</sup> March 2011 and further clarified in our letter dated 11<sup>th</sup> March 2013 and hence all fencing/walls whether owned by BCC or adjacent property owners are excluded from the Application. There is also a plot of land alongside Shirehampton road that has been excluded from the TVG (See Application dated 04.03.11, volume 1 of 3, tab 4, plan two, together with the letter of clarification to the Registration Authority dated 11.03.13). The House and grounds are also excluded

from the TVG Application and are also excluded from the 125 year Lease enjoyed by Cotham Academy.

Notably, 12 pitches exist at Stoke Lodge Parkland and the available land at Stoke Lodge Parkland is finite and no further pitches could be accommodated there. Furthermore, Cotham have never used more than three pitches throughout the whole qualifying period. (See the Inspectors Report and Recommendation dated 22.05.13 page 4, clause 14). Additionally, Cotham has its own Sports Hall at its main site and uses a range of other playing field and pitch providers. If Cotham require more than 12 pitches they must look elsewhere for the additional facilities.

viii. Any grounds maintenance can continue unimpeded, as it has for the past 68 years, as detailed in the 125 year Lease entered into by Cotham Academy setting out all their responsibilities and obligations; as it is done at *Redcar*, where grounds maintenance continues unimpeded whilst being registered as a TVG.

ix. The Supreme Court did not consider any future development plans from Newhaven Ports and Properties (NPP). See Clause [96]: -

*“In this case, which concerns a working harbour. It is not necessary for the parties to lead evidence as to NPP’s plans for the future of the Harbour in order to ascertain whether there is an incompatibility.....”*

In support of the above, clause [101] confirms that; -

*“The ownership of land by a public body, such as a local authority, which has statutory powers that it can apply in future to develop land is not of itself sufficient to create a statutory incompatibility.”*

We contend therefore that the Judgement is based on the existing circumstances at Newhaven and cannot be used to justify an unrelated objection based on future development plans (imagined or real).

x. We consider it pertinent to point out again that: -

- a. Stoke Lodge Parkland is approximately 3 miles from Cotham Academy School buildings. Use of Stoke Lodge Parkland has evolved successfully and harmoniously on a shared basis for over 68 years, which means that enclosure, and Community exclusion, is not necessary, unlike for the fields in the Cotham main site where adjacent school buildings might need protection.
- b. Cotham Academy use was minimal during the qualifying period (see Inspector's report and recommendation dated 22.05.15).
- c. Cotham Academy has sports provision at the school site including a new multi use Sports Hall.
- d. Cotham Academy uses a range of other sports playing fields providers.
- e. The amount of space to provide pitches at Stoke Lodge is finite and no further pitches can be accommodated. However, the number of pitches available is far more than the number required to meet the needs of Cotham Academy. (See the Inspectors Report and Recommendation dated 22.05.13 page 4, clause 14.)
- f. Throughout the qualifying period (and before, since 1946/7) the Community have used Stoke Lodge Parkland engaging in lawful sports and pastimes, as of right, on a shared basis with the Formal Sports users, co-existing harmoniously, with no impediment to the schools or sports clubs. The survey of Community use conducted over 6 days in August 2010 (see our Application dated 4<sup>th</sup> March 2011, evidence tab 19 – Appendix 15) highlights 373 Community interviews of sub set of users in the period of the survey, which gives a projected annual usage of between 22,000 and 38,000. Because the survey was conducted outside term time then school use during this period was obviously zero.

#### **1.4. ADDITIONAL PRECEDENTS CONFIRMED IN THE *NEWHAVEN* JUDGEMENT**

Importantly, and with particular relevance to Stoke Lodge Parkland, and in support of the above arguments, the Judgement also sets out clear precedents and examples of

where Statutory incompatibility cannot be used as a “catch all” to deny legitimate Town or Village Green Applications. See clauses [98, 99, 100 & 101] confirming that the examples presented as evidence, at the *Newhaven* Appeal, by the respondents can be “*distinguished*” (differentiated) from the circumstances at Newhaven Harbour. Namely: -

- a. *New Windsor Corporation v Mellor* [1975]. “.....*In recent times it had been used as a sports ground and more recently it was used as to (sic) half as a car park and half as a school playground. No question of statutory incompatibility arose*”. (Emphasis added).
- b. *Trap Grounds*. “.....*there was no suggestion that it had acquired and held the land for specific statutory purposes that might give rise to statutory incompatibility.*” (Emphasis added).
- c. *Lewis v Redcar*. “.....*Again there was no question of any statutory incompatibility.*” (Emphasis added).

We therefore submit that Stoke Lodge falls into this category of “*distinguished*” (differentiated) sites registered as Town or Village Green(s) particularly as per *Redcar* above.

## 1.5. INSPECTOR

Mr Petchey asks at the end of his Further Directions dated 6<sup>th</sup> March 2015 about whether there is any objection to him continuing to sit as an Inspector to consider the possible impact of the *Newhaven* Judgement and the Other Matters previously defined by the Inspector in his Further Directions dated 26<sup>th</sup> March 2014.

We agree with the comments made by Cotham in their submission dated 28<sup>th</sup> April 2015.

However, we disagree strongly with the assertions used by Bristol City Council in their submission dated 28<sup>th</sup> April 2015 on this matter.

Clearly the Objectors do not agree on this matter and our view should carry as much weight as the Objectors combined.

Mr Petchey is a recognised expert in this area of the Law and has a distinguished reputation for detail and thoroughness and applying the Law appropriately without fear or favour. To suggest that he may act outside his professional creed and ethics we find highly regrettable.

But more importantly the *Newhaven* Judgement is very complicated and technically specific. As one of the team of Barristers involved he is better acquainted with the legal issues than most to interpret the Judgement in relation to Stoke Lodge Parkland.

Additionally, the Objectors have already required the Registration Authority to accumulate a substantial bill in Inspector costs, paid for by the Council Tax payers of Bristol.

Bristol City Council, as an Objector, has also accumulated a very substantial legal debt for in-house lawyers and external lawyers paid for by the Council Tax payers of Bristol, based on their repeated objections to date. It would be quite irresponsible, especially in a period of austerity, to appoint a new Inspector to spend yet more unnecessary time and cost familiarising themselves with this lengthy case and all its correspondence. Once again all the costs would be paid for by the Council Tax payers of Bristol with no justifiable reason.

We therefore consider that, in view of the current Inspector's specialist knowledge and in the interest of common sense and cost, there should be no change in the Inspector at such an advanced stage in the proceedings.

## 1.6. SUMMARY

- i. We contend that the Judgement in the *Newhaven* case is not relevant to the different circumstances at Stoke Lodge Parkland, and the Land included within the TVG Application, and should be ignored in this case. Registration of Stoke Lodge Parkland as a TVG in accordance with the 2006 Commons Act', based on shared



use by the Community “as of right” is not incompatible with continuing to provide the existing playing fields for Formal Sport at Stoke Lodge. As evidenced above.

- ii. Importantly, the Inspector has already recommended registration of Stoke Lodge Parkland as a TVG based on evidenced significant and extensive ongoing Community use on the Land for in excess of 20 years (since 1947) engaged in lawful sports and pastimes, as of right. Throughout this period the Community has co-existed harmoniously with the Formal Sports users, have never impeded that use and wish that situation to continue, as per the *Redcar* case.
- iii. We consider that it is the best interest of all parties that Mr Petchey be retained as the Inspector for the reasons set above.
- iv. **Further to our Introduction and summary above we set out in the table below our detailed response to the letter from Cotham Academy dated 4<sup>th</sup> March 2015.**

#### **1.7. ADDENDUM**

We submit that there will be additional constraints on the objector’s aspiration to excavate, level, or otherwise alter the sub-structure and boundaries deriving from the geological and topological nature of the site, which we have discussed later in this document.

	Cotham Academy letter dated 04.03.15	Applicant's response dated - 4 <sup>th</sup> June 2015
2	<p>Dear Mr Petchey</p> <p><b>Village Green Application, Cotham School Playing Fields, Stoke Lodge, Bristol</b></p>	<p>We contend that this letter from Cotham Academy contains assertions and vague references to legal matters all of which we submit are wrong, irrelevant or unsubstantiated and should be dismissed. We set out below in our detailed response our reasons for making this contention.</p> <p>We have set out above in section 1a why we consider that the <i>Newhaven</i> case has no relevance to the circumstances at Stoke Lodge Parkland and should play no part in deciding the outcome of the Town or Village Green (TVG) Application at Stoke Lodge Parkland; save only where the Judgement confirms that no statutory conflict exists with regard to the cases submitted by the respondents at clauses <b>[98-101]</b>.</p> <p>In support of our arguments contained below we refer to our Application and all our previous responses to objections raised, including those issued on: -</p> <ul style="list-style-type: none"> <li>i. Application dated 04.03.11 (3 volumes)</li> <li>ii. Responses (4 off) dated 30.01.2</li> <li>iii. Responses (2 off) dated 31.03.12</li> <li>iv. Response (1 off) dated 05.10.12</li> <li>v. Response (1 off) dated 31.01.13</li> <li>vi. Legal Statement dated 31.01.13 (included as part of v above)</li> <li>vii. Response (1 off) dated 10.03.13</li> <li>viii. Response (1 off) dated 31.07.13</li> <li>ix. Response (1 off) dated 26.08.13</li> <li>x. Responses (4 off) dated 16.12.13</li> </ul>

		<p>xi. Responses (3 off) dated 14.06.15</p> <p>For ease of reference electronic copies of all our documents are also available on our web site: - <a href="http://www.stokelodgetvg.co.uk">www.stokelodgetvg.co.uk</a></p>
3	<p>We are aware that you have been awaiting the outcome of the <i>Newhaven Port Authority v East Sussex County Council</i> and another Respondent, as you are no doubt aware this was published this week. This appears to be a victory for common sense and we believe sets the precedent for you to refuse the application for a Village Green at Stoke Lodge Playing Fields. In the meantime, I am writing to update you on the situation Cotham School finds itself in with regard to the sports facilities at the school.</p>	<p>The Judgement in the <i>Newhaven</i> case <b>[2015] UKSC 7</b> handed down by the Supreme Court on 25<sup>th</sup> February 2015 was not “a <i>victory for common sense</i>”, it was a very carefully considered legal verdict setting down clear reasons why public use was “by right” not “as of right” because the Byelaws at Newhaven Port and working Harbour contained an implied licence and therefore use was “with permission”. Additionally it also set out why “Statutory incompatibility” is relevant at Newhaven Port as a working Harbour. See clauses <b>[94 – 97]</b>.</p> <p>But more importantly with relevance to Stoke Lodge it also sets clear precedents and examples of where Statutory incompatibility cannot be used as a “catch all” to deny legitimate TVG Applications. For ease of reference the full Supreme Court Judgement relating to the <i>Newhaven</i> Appeal is attached as Appendix 1. See clauses <b>[98 – 101]</b>.</p> <p>We contend that this Judgement, whilst allowing the Appeal based on the specific “Statutory purposes” at the Newhaven Port and Working Harbour, has clearly found that <u>no</u> statutory incompatibility exists with the examples listed in the Judgement, as supplied by the respondents in the <i>Newhaven</i> case, including School playing fields and <i>Redcar</i>. See clauses <b>[94 – 101]</b> from the Judgement.</p>

		<p>We contend that nothing in this section of the Cotham Academy letter provides any grounds to change the Inspector's Report and Recommendation that Stoke Lodge Parkland should be registered as a TVG.</p>
4	<p>As you are aware we are a 1500 place comprehensive school located on the edge of Bristol City Centre serving a complex local community. On the face of it our school is located in an affluent area but this masks the complex catchment area we have. This extends to some of the most deprived parts of Bristol; evidence of this is in the fact that we have 30% of students who attract the pupil premium funds. We now have more than 50% of BME students and more than 30 languages are spoken by our students. We became a cooperative academy in 2012 and as an Ofsted rated 'outstanding' school we have continued to strive to fully meet the educational needs of our students. In 2010/11 we were very fortunate to have a significant Building Schools for the Future modernisation on the main school site. At this time we also made a commitment to increase our pupil numbers by 135.</p>	<p>The ethnic mix and social complexity of the catchment area of students at Cotham Academy is completely irrelevant to the TVG Application and should be ignored.</p> <p>All children should be considered equally. This includes the school age children that reside in this Community who have no access to local alternative open green space, and use Stoke Lodge Parkland 52 weeks a year, not just in term time.</p> <p>Please refer to our Survey of Use carried out during August 2010, included in our Application dated 4<sup>th</sup> March 2011 (Volume 1 of 3, evidence tab 19), which includes a spread sheet of the 373 interviews conducted over a 6 day period together with a summary sheet setting out our breakdown of usage by the community with a projected total of between 22,000 and 38,000 pa subdivided to show; - i. distance travelled (86% live in Stoke Bishop, Westbury on Trym and Sea Mills), ii. mode of travel (85% walk) etc.</p> <p>Furthermore please see Appendix 2. This is an extract from the Bristol City Council - Neighbourhood Partnership Statistical Profile 2014 for NP3 (Henleaze, Stoke Bishop and Westbury on Trym), which confirms that the population for Stoke Bishop and Westbury on Trym in 2013 was 20,000, and Sea Mills would add to that number, and as part of that number 3,400 are under 15 (more if we</p>

		<p>add Sea Mills). i.e. more than twice the projected pupil numbers at Cotham Academy.</p> <p>We contend that future, projected, increases in school numbers are not relevant to the qualifying criteria set down in the Commons Act 2006 and should therefore be dismissed as irrelevant.</p> <p>Conversely, we contend that we have demonstrated in our Application dated 4<sup>th</sup> March 2011 that the Community has engaged in lawful sports and pastimes on the Land, as of right, for a period of over 20 years (i.e. 68 years), whilst co-existing harmoniously on a shared basis with the Formal Sports users from Cotham Academy and the Sports Clubs that use the Land, as per the <i>Redcar</i> case.</p>
5	<p>We have recently commissioned an appraisal of our school land and buildings to assess the site capacity to meet the full curriculum that we are required to provide for our students. This includes a full assessment of our sports, playing fields and student social space. We assessed both our dense urban site and the land at Stoke Lodge. We found that to meet the standards of space and facilities for a school of our size we require all of the land at Stoke Lodge to be dedicated playing fields laid out to meet the BB98 and Sport England's standard for education playing fields.</p>	<p>We find this statement utterly bewildering given that this assessment by Cotham Academy purports to require an increase in sporting facilities; this is despite the facts that: -</p> <ol style="list-style-type: none"> <li>i. Cotham, and their predecessors, have managed without complaint and without incident with the current facilities at Stoke Lodge for 68 years and more importantly for the 20 years prior to the TVG Application.</li> <li>ii. Cotham's use of Stoke Lodge has been minimal, as described in the Inspector's Report and Recommendation to register Stoke Lodge as a Town or Village Green dated 22 May 2013 clause 14.</li> </ol>

		<ul style="list-style-type: none"><li>iii. The 125 year Lease which Cotham Academy enjoys at Stoke Lodge does not cover the whole of the Parkland and there is not sufficient Land to provide additional pitches within the Land contained within the Lease.</li><li>iv. For clarity, the Land outside the Lease comprises, a Grade 2 Listed Building and associated grounds and additionally a highly prized Woodland of specimen trees all protected by Tree Preservation Orders (TPOs).</li><li>v. If Cotham are claiming that they require access to all the current pitches then that position is accepted and welcomed by the Community, as repeatedly stated by the Applicant throughout the whole Application process.</li><li>vi. As evidenced by the Cotham Academy web site it is clear that Field Sport is not a priority for this school.</li><li>vii. We will comment further on this topic in our response to section 7.</li><li>viii. We submit that the reference to BB98 is yet another red herring by this objector because: -<ul style="list-style-type: none"><li>a. BB98 (Building Bulletin 98 – updated April 2014) is a non statutory planning document to assist in planning new schools.</li><li>b. The Land at Stoke Lodge Parkland included in the Lease</li></ul></li></ul>
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		<p>that Cotham Academy, signed in August 2011 (i.e. after the TVG Application) is finite in terms of area and cannot be increased at this location.</p> <p>c. The Land included in the Lease and included within the TVG Application is marked out to include 8 pitches.</p> <p>d. Registration as a TVG will not change the number of pitches at Stoke Lodge Parkland; or the athletics provisions throughout the summer term.</p> <p>e. Cotham's use is well defined in the Inspector's Report and Recommendation dated 22.05.13 (page 4) and is fully catered for at Stoke Lodge Parkland currently.</p> <p>f. We contend that this matter is irrelevant; also there is no statutory incompatibility and therefore should be ignored.</p>
6	<p>At no time has there been any mention of the Sport England's expectations with regard to the school playing fields. Could you also please confirm that you have consulted Sport England as the Government watchdog on the maintenance and provision of school playing fields? It is our understanding that they are likely to object to the loss of school playing fields.</p>	<p>Once again we cannot see the relevance of this statement. The number of pitches will not change as a result of registration as a TVG. Any future proposed development cannot be used as a legitimate reason to object to registration as a TVG in accordance with the provisions of the Commons Act 2006, together with clauses <b>[96 and 101]</b> from the <i>Newhaven</i> Judgement.</p> <p>Conversely we contend that we have demonstrated in our previous submissions that the Community has engaged in lawful sports and pastimes on the Land, as of right, for a period of over 20 years, whilst co-existing harmoniously on a shared basis with the Formal</p>

		Sports users from Cotham Academy and the Sports Clubs that use the Land, as per the <i>Redcar</i> case.
7	You will be aware that in November 2014 the Department for Education’s Education Funding Agency (EFA) brought out ‘New Advice on the Protection of School Playing Fields and Other Public Land’; this advice was targeted at local authorities and others who have land for education vested in their control. This advice makes it clear that existing school playing fields cannot be used for any other purpose and that they must be protected for education use as is their clear objective.	<p>We contend that the statement opposite is fallacious and misleading. The document referred to (Copy attached as Appendix 3) sets out the Policy and Procedures that Schools must demonstrate when applying for permission to <u>sell</u> Playing Fields. Page 3 of the Document states: -</p> <p><b>“About this departmental advice</b> <i>This is departmental advice from the Department for Education. This advice is <u>non-statutory</u>.....”</i> (Emphasis added by Applicant).</p> <p><b>“Main Points</b> <i>This advice describes the main circumstances in which local authorities, governing bodies, foundation bodies and trustees need to seek the consent of the Secretary of State for Education to dispose, or change the use, of land used by schools, including playing field land.</i> <i>It also describes how the Secretary of State will assess applications for consent to dispose, or change the use, of such land.”</i></p> <p>However, and importantly, at page 15 of the above document, “Appendix A: area guidelines – information on recommended playing field area for schools (m<sup>2</sup>)” it states that the Recommended minimum playing fields site area for existing secondary schools is “9,000 m<sup>2</sup> .”</p>



		<p>Contained within our previous response to Simon Hinks (Bristol University) dated 16<sup>th</sup> December 2013 at page 12 of 15 (Copy attached for ease of reference at Appendix 4) we provided an “Analysis of the percentage of ‘Land’ marked out as pitches at Stoke Lodge Parkland”.</p> <p>It shows that the; - <b>“Total area of Pitches marked out”</b> (excluding the grassed areas in between the pitches) as 44,920 sq yds or 37,559 m<sup>2</sup>.</p> <p>Therefore, Stoke Lodge Parkland provides in excess of four times the minimum area of pitches listed in the Department for Education paper referred to by the Objector and hence it is difficult to understand their assertion that they need additional pitches in section 5 above.</p> <p>Furthermore, the total area of Land contained within this Application is 113,100 sq yds or 94,562 m<sup>2</sup> i.e. 10 times the minimum set out in the document referenced by this objector.</p>
8	<p>Since the village green application there have been some tensions on Stoke Lodge Playing fields. We feel that the community has been actively encouraging the intensification of the illegal use of the playing fields for dog walking and this has caused Cotham to temporarily review and amend our sports provision. We have had incidents of dogs chasing students, of people being abusive to students, and to staff, with the consequent problem that the site has become fouled, dirty and unhygienic. On the basis of a risk</p>	<p>We reject absolutely these scurrilous and unfounded accusations and assertions. Specifically: -</p> <ul style="list-style-type: none"><li>i. We contend that there are no unhealthy <i>“tensions on Stoke Lodge Playing Fields”</i>.</li><li>ii. Community use of Stoke Lodge Parkland has remained unchanged since the Application date (4<sup>th</sup> March 2011) and for</li></ul>

assessment we have had to reduce the school's use of Stoke Lodge Playing field. This is a short term adjustment to our curriculum provision and not one that properly meets the education needs of our students. Once the village green issue is resolved we propose to improve the playing fields.

the 64 year period prior to that date; and we contend that we have demonstrated that the Community has engaged in lawful sports and pastimes on the Land, as of right, for a period of over 20 years, whilst co-existing harmoniously on a shared basis with the Formal Sports users from Cotham Academy and the Sports Clubs that use the Land, as per the *Redcar* case.

iii. We are unclear why Cotham Academy are claiming; - “...*the illegal use of the playing fields for dog walking and this has caused Cotham to temporarily review and amend our sports provision...*”, because we contend that: -

a. Use by the Community for dog walking is not illegal, indeed precedent has shown that Dog Walking is accredited as “lawful sports and pastimes” We refer to *R v Oxfordshire County Council and Oxfordshire Diocesan Board of Finance ex parte Sunningwell Parish Council [1999] 3All ER 385 (HL)*.

b. We contend that the TVG Application will be judged on the activity of all interested parties during the 20 year period prior to the date of the Application (04.03.11). Furthermore, we refer to the next paragraph (iv) which we suggest may present another more likely reason for the change in use of Stoke Lodge Parkland by Cotham Academy i.e. “*cost saving*”.

iv. The first time that a concern relating to “*dogs chasing students*” was made public was at the Stoke Bishop

Neighbourhood Partnership Open Forum on 29<sup>th</sup> January 2014 when the Headmaster and the Deputy Chairman of Governors for Cotham Academy attended to give a short presentation.

The Neighbourhood Partnership Open Forum is also attended by the Police Beat Manager and the PCSO for Stoke Bishop. The Police take these matters very seriously and attended Cotham Academy the next day but the school refused to discuss the matter and refused the offer of help to investigate the accusation.

Interestingly, and significantly, the matter of “*dogs chasing students*” has never been reported in the minutes of Governors’ meetings or in the School newsletters. We have copies if they are required.

However, in the minutes of the Cotham Academy Governors’ meeting dated 12<sup>th</sup> February 2014 following the Stoke Bishop Neighbourhood Partnership Open Forum dated 29<sup>th</sup> January 2014 there is a statement from the Headmaster on page 3, Section 4, headed as “*Headmasters Report*”, in the penultimate paragraph it states: -

*“MW [Malcolm Willis] spoke of his and SF’s [Sandra Fryer’s] recent meeting with the Stoke Lodge Town and Village Green group regarding the pitch and school shares use of. He Came away feeling he didn’t want to be involved with this uncompromising group and sharing that green space any further, and is currently looking at other suitable*

*options, including a different area called Golden Hill, which is looking for people to work with and could save the school money.*” (emphasis added by the Applicant)

At a private meeting on 10<sup>th</sup> January 2014, requested by Cotham Academy between Cotham Academy and members of Save Stoke Lodge Parkland and Stoke Lodge Preservation Working Group, including the Applicant, the Headmaster raised the issue of “*dogs chasing students*”. When he was questioned if such alleged incidents were reported in the school accident book he confirmed that they were not.

We can therefore find no evidence to support this accusation. Nor any incidence of “*dogs chasing students*” during the 20 years prior to the Application Date and contend that this unsubstantiated accusation cannot be used to try to frustrate the TVG Application at Stoke Lodge Parkland.

- v. The accusation “*of people being abusive to students, and to staff,*” is unsubstantiated and frankly difficult to believe given the history to date recorded in the “Statements” submitted on behalf of the Applicant. For evidence see our Application dated 4<sup>th</sup> March 2011 volumes 2 & 3 of 3 (54 statements) together with evidence tabs 21 (86 statements), 22 672 signatures), and 23 (156 attendees) in Volume 1 of 3, together with section 8 in our response dated 30<sup>th</sup> January 2012 (81 statements). We contend that the survey of use contained in our Application dated 4<sup>th</sup> March 2010 is also pertinent to show the extent of

		<p>Community use i.e. 373 interviews over a 6 day period giving a projected annual use of between 20,000 and 38,000.</p> <p>vi. The accusation that: - <i>“the consequent problem that the site has become fouled, dirty and unhygienic.”</i> is not supported by evidence and is strenuously denied. The Inspector has visited the site and we maintain that its condition has not deteriorated since his visit.</p> <p>Additionally the Community have provided two combined dog waste and rubbish bins and arranged for their emptying several times a week via Neighbourhood Partnership funding. These facilities were welcomed by one of the Sunday team’s coaches and many of the Community users to aid in making an excellent example of cleanliness even better.</p> <p>vii. We contend that precedent (<i>Sunningwell and Redcar</i>) has established that Dog Walking is accredited as “lawful sports and pastimes”. Furthermore these precedents also show that Dog Walking is accredited as “lawful sports and pastimes” in conjunction with <i>“Community use based on informal organised games including football, cricket, children’s games, picnics and community events”</i>.</p> <p>We further submit that If these precedents apply to shared Community use, there is no reason why they should not apply to Shared Formal Sports use.</p> <p>We also submit that this situation of shared use between</p>
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Formal Sports users and the Community is not unusual and is conducted as a norm across the whole City on the major Green Spaces i.e. the Downs, Blaise Castle and Ashton Court and all other accessible green space where Formal Sport is played.

viii. Re lines 5 – 7 of the submission opposite: -

*“On the basis of a risk assessment we have had to reduce the school’s use of Stoke Lodge Playing Field. This is a short term adjustment to our curriculum provision and not one that meets the education needs of our students”*

We are very surprised at this open admission that Cotham Academy are failing to meet *“the education needs of our students”*.

We refer to paragraph iv above which is pertinent to the wish of the Headmaster to continue to use (or not) Stoke Lodge Parkland on the basis of cost.

We also recognise that Cotham Academy have the option to terminate their Lease at a time to suit them, if that is their preferred option. (See Cotham Lease attached as Appendix 5).

We contend that we have demonstrated above that shared use of Stoke Lodge Parkland is not incompatible with the Statutory Purpose to provide playing fields.

We contend that the matter of dog faeces, as experienced at Stoke Lodge Parkland, is minimal, not significant, and does not present an unacceptable risk to school children, provided that use is undertaken in accordance with appropriate risk assessment policies and procedures, as adopted by Cotham Academy. (And the world at large).

Cotham Academy has a “Child Protection and Safeguarding Policy”. (See Appendix 6 for a copy this document, taken from the Cotham web site on 26.03.15) This document is an overarching Policy document that makes no mention of Dog Faeces. However, on page 6 it does refer to a separate “Health and Safety policy”. See Appendix 7 for a copy of this document, taken from the Cotham web site on 26.03.15. On page 17 of this policy document under the heading of Playing fields it states: -

*3.20.1 An inspection of playing fields must be included as part of the seasonal three times a year inspection programme. This will be to look for physical defects to the grounds which may increase the likelihood of slips, trips, and falls, as well as checking that fields are free from broken glass and other sharps. A visual inspection of playing fields will also be carried out before organised games and contact sports and all debris removed.*

We submit that the School and its pupils can rely on these policies and procedures, as deemed appropriate by Cotham Academy, being enacted to keep Cotham users safe and

		<p>hence enabling Cotham Academy to discharge their duty of care with regard to Health and Safety.</p> <p>ix. We note the final statement in the Submission opposite; - <i>“Once the Village green issue is resolved we propose to improve the playing fields”</i>. We contend that this confirmation of diligently accepting their maintenance obligations under the Lease should be taken as a matter of course, providing that it is done in accordance with the outcome of the Application.</p> <p>x. We contend that none of the issues raised by Cotham Academy in this section of their objection is relevant to the TVG Application at Stoke Lodge Parkland and should be ignored.</p>
9	<p>We have talked to the City Council as Stoke Lodge playing fields are held within the Council’s education estate, leased to Cotham School on a 125 year lease. The playing fields are identified in the Bristol Local Plan as education playing fields. We are therefore all clear that Stoke Lodge playing fields should be held in perpetuity as education sports facilities for the children of Bristol. This is clearly reinforced by the EFA guidance.</p>	<p>We agree that Stoke Lodge Parkland is held by BCC as playing fields for education use.</p> <p>We agree that Cotham entered into a 125 lease to use Stoke Lodge Playing fields. For the avoidance of doubt, parts of the Parkland are excluded from the Cotham lease but included within the TVG Application.</p> <p>We agree that Stoke Lodge Parkland is identified in the Bristol Local Plan as education playing fields. Indeed it is vital to the success of the TVG Application that Stoke Lodge Parkland <b><u>is not</u></b> held as Public Open Space. See section 1a above.</p> <p>We agree that Stoke Lodge Playing fields should be held in</p>



perpetuity as education sports facilities for the children of Bristol. However, we do not wish to see Stoke Lodge Parkland used exclusively by School(s) and Formal Sports users but that shared Community use is maintained and protected by registration as a TVG.

Throughout our Application, and as a fundamental tenet of our Application, we have welcomed and encouraged the ongoing use of the Playing fields by school(s) (Currently Cotham) and Formal Sports users.

We contend that we have demonstrated in our previous submissions that the Community has engaged in lawful sports and pastimes on the Land, as of right, for a period of over 20 years, whilst co-existing harmoniously on a shared basis with the Formal Sports users from Cotham Academy and the Sports Clubs that use the Land, as per the *Redcar* case. Culminating with the Inspector's recommendation to register Stoke Lodge Parkland as a TVG in his Report and Recommendation dated 22<sup>nd</sup> May 2013.

We also contend that the Supreme Court Judgement for the *Newhaven* case dated 25.02.15 (Copy attached see Appendix 1) whilst allowing the Appeal has clearly differentiated between the specific "Statutory purposes" at the Newhaven Port and working Harbour and in contrast where no statutory incompatibility exists with the School playing fields listed and the *Redcar* case, see clauses [94 – 101].

We contend that reference to the EFA document is irrelevant and

		should be ignored. See section 7 above.
10	<p>It is our view that Stoke Lodge needs to be improved by the provision of fencing, a new pavilion and changing facilities, improved drainage and improved security to stop the uncontrolled pollution of the site and the risk to our pupils by uncontrolled access by dogs and members of the public. We have developed proposals to make the Stoke Lodge Playing Fields fully secure and reduce access to dog walkers who have been polluting the site and creating a health and safety risk to students.</p>	<p><u>Importantly</u> this Objector has finally admitted their true intent and the purpose for their repeated objection to the TVG Application. They wish to develop the site and resurrect the provisions contained within the “<b>Briefing Note</b>” issued by Bristol City Council on 22.04.10 (See our Application dated 4<sup>th</sup> March 2011 tabs 10 -14 together with the covering letter paragraphs 3 &amp; 4) proposing that the Parkland be fenced and the Community excluded which was tested by consultation and withdrawn by the Bristol City Council Cabinet, in perpetuity, due to Community use. For evidence see our Application dated 4<sup>th</sup> March 2010, tab 14, appendix X.</p> <p>Furthermore we refer to clauses <b>[96 and 101]</b> of the <i>Newhaven</i> Judgement which set out why future development plans (real or imagined) cannot be used to deny registration of legitimate Applications, which the Objector would appear to have overlooked.</p> <p>We contend that the other issues raised by Cotham Academy in this section have been fully covered previously in this document and that we have shown why we consider that they are irrelevant to the Town or Village Green Application at Stoke Lodge Parkland and should be ignored.</p> <p>Conversely we contend that we have demonstrated that the Community has engaged in lawful sports and pastimes on the Land, as of right, for a period of over 20 years, whilst co-existing harmoniously on a shared basis with the Formal Sports users from Cotham Academy and the Sports Clubs that use the Land, as per</p>

		<p>the <i>Redcar</i> case.</p> <p>In addition due to the geological and topological nature of the site, levelling for a synthetic surface would create enormous problems of drainage through the bedrock which is very near the surface (as in the Land immediately adjacent), and impact upon the specimen trees that all have TPOs.</p>
11	<p>As a Co-operative Academy, Cotham is committed to working with our local community and to enable the community use of our facilities where appropriate. At Stoke Lodge, we are committed to enabling the other local sports clubs who use our playing fields in the evenings, at weekends and in the holidays to continue to play there. We are also working with the University of Bristol with regard to further shared use. We are exploring ways to improve these facilities to ensure they are top quality sports facilities for the long-term. The threat of the village green registration has put these plans on hold, to the disadvantage of our students and the wider sporting community.</p>	<p>Please refer to our response at section 9 above.</p> <p>We have previously requested that we could be included in the Co-operative Community meetings to explore how we could work together and to include our point of view on shared use in discussions. Our request has been ignored.</p> <p>We welcome Formal Sports use of the Playing fields by the School and the Sports Club. However we seek to preserve Community use, with the protection of TVG registration, engaged in lawful sports and pastimes on the Land, as of right, whilst co-existing harmoniously on a shared basis with the Formal Sports users from Cotham Academy and the Sports Clubs that use the Land, as per the <i>Redcar</i> case.</p> <p>Future development of the “Land” included in a TVG Application cannot be used as a reason to reject registration.</p>
12	<p>We know there are legal precedents which suggest that land should not be designated as a village green and the community given access, where the original purpose of use of the land would</p>	<p>The recent Supreme Court Judgement (25.02.15) on the <i>Newhaven</i> case (Copy attached see Appendix 1) whilst allowing the Appeal has clearly differentiated between the specific</p>

	<p>be compromised. Clearly, the outcome of the Newhaven Port Authority v East Sussex County Council appears to be a victory for common sense and we believe sets the precedent for you to refuse the application for a village Green at Stoke Lodge.</p>	<p>“Statutory purposes” at the Newhaven Port and working Harbour and, in contrast, finding that <u>no</u> statutory incompatibility exists with the examples listed, as supplied by the respondents in the <i>Newhaven</i> case, including School playing fields and <i>Redcar</i>, see clauses <b>[94 – 101]</b>.</p> <p>We submit that the legal precedent relating to “Statutory Purpose” set by the recent Supreme Court Judgement in the case of <i>Newhaven Port and Property Limited (NPP) v East Sussex County Council and another [2015] UKSC 7</i> is not applicable to the circumstances at Stoke Lodge Parkland for the reasons set out above in section 1a and hence is irrelevant and should be ignored.</p> <p>Therefore we submit that the Inspector’s Recommendation to Register the Land as a TVG dated 22.05.13 should be re-confirmed.</p>
13	<p>We ask that you take the same approach and do not support the application for village green designation at Stoke Lodge. This taken along with the EFA advice and Sports England expectations we believe presents a sound and robust case to resist the village green application and enable Cotham School to resume the use of Stoke Lodge playing fields.</p>	<p>We contend that the conclusions drawn by Cotham Academy are flawed and cannot be applied to the Land at Stoke Lodge Parkland for the reasons give above; are irrelevant and should therefore be ignored and the Inspector’s Report and Recommendation to register the Land at Stoke Lodge Parkland as a TVG dated 22.05.13 be re-confirmed.</p> <p>With regard to the EFA advice given in the document referenced by Cotham Academy we contend that such advice has no bearing on the TVG Application at Stoke Lodge Parkland and as such should be dismissed as irrelevant. (See section 7 above).</p>

		With regard to Cotham Academy's self imposed exile from Stoke Lodge Parkland since the start of this academic year we cannot comment. However, the Formal Sports via the Sports Clubs continues and is welcomed by the Community.
14	I would like to take this opportunity to say that in the event of you proposing to hold an inquiry into this matter then the school will wish to make its representations alongside those of others. If you to refuse the application for a village Green at Stoke Lodge we would forego our request for an inquiry.	Based on previous instructions from the Inspector we understand that he will consider the findings from the <i>Newhaven</i> Judgement as matters of Law without the need for an Inquiry.
15	If you need any further information or we can be of further assistance then please do not hesitate to contact us	
16	Yours sincerely	
17	<b>Dr Malcolm Willis</b> <b>Headteacher on behalf of the Governing Body of Cotham School</b>	
18		<b>In CONCLUSION we submit that: -</b>  i. We have demonstrated in Section 1 above that the particular circumstances at Newhaven Port and Working Harbour are fundamentally different to the circumstances at Stoke Lodge Parkland and therefore the Judgement handed down by the Supreme Court on 22 <sup>nd</sup> February 2015 is not relevant to the TVG Application at Stoke Lodge Parkland; except to note that the Judgement also sets out clear precedents and examples of where Statutory incompatibility cannot be used as a "catch all" to deny legitimate TVG Applications. See clauses <b>[98, 99, 100 &amp; 101]</b> confirming that the examples presented as evidence, at the Appeal, by the respondents can be

		<p><i>“distinguished”</i> (differentiated) from the circumstances at Newhaven Port and Working Harbour.</p> <p>ii. With regard to the updated <i>“Barkas”</i> judgement referenced in the Supreme Court Judgement and the Inspector’s Further Direction’s dated 6<sup>th</sup> March 2015, we contend that the revised judgement clarifies the position that where land is held for the purpose of “free open public recreation”, then public use is “with permission” and hence “by right” and not “as of right”.</p> <p>However, the Land at Stoke Lodge Parkland is <b>not</b> held for the purpose of free open public recreation and hence this judgement is not relevant to the Application at Stoke Lodge Parkland and should be ignored.</p> <p>iii. This further objection from Cotham Academy does not raise any relevant grounds to change the Inspector’s Report and Recommendation (dated 22<sup>nd</sup> May 2013) that Stoke Lodge Parkland should be registered as a TVG.</p> <p>iv. Furthermore we contend that at section 10 of this document this objector has exposed their true motivation for objecting to the TVG registration based on their wish to deny Community access.</p> <p>v. We contend that we have demonstrated in our previous submissions that the Community has engaged in lawful sports and pastimes on the Land, as of right, for a period of over 20 years, whilst co-existing harmoniously on a shared</p>
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basis with the Formal Sports users from Cotham Academy and the Sports Clubs that use the Land, as per the *Redcar* case; and has therefore met the qualifying criteria set out in Commons Act 2006 to secure Registration at Stoke Lodge Parkland as a TVG.

- vi. The Inspector has previously considered the issue of Statutory Incompatibility as part of his Report and Recommendation (dated 22<sup>nd</sup> May 2013) at clause 67 on page 19 and we submit that the *Newhaven* Judgement does not present new grounds that would change the Inspector's previous recommendation to register the Land as a Town or Village Green.

**Submitted by: -**

***D Mayer***

**David Mayer**

**On behalf of**

**Save Stoke Lodge Parkland**

14<sup>th</sup> June 2015