

APPLICATION BY MR DAVID MAYER TO REGISTER LAND KNOWN AS STOKE  
LODGE PLAYING FIELD, SHIREHAMPTON ROAD, BRISTOL, AS A NEW TOWN OR  
VILLAGE GREEN

**FURTHER DIRECTIONS**

**Appeal in the Newhaven case**

1. Bristol City Council as landowner have asked that any further decision on this matter be deferred pending any decision of the Supreme Court in the appeals in the *Newhaven* case. The position has moved on since the City Council made that representation in that, at the end of December, the Supreme Court gave permission for an appeal in the *Newhaven* case and, in particular, on the statutory incompatibility point (i.e. the point which Bristol City Council argue is relevant to the present case). In my Further Directions dated 11 September 2013 I indicated that it might be appropriate to defer the matter pending the Supreme Court's consideration of this issue, and this remains my view. In my Report dated 22 May 2013 and Further Directions dated 11 September 2013 I did indeed express some doubt as to how (on the assumption that statutory incompatibility was a valid objection to registration), an argument on statutory compatibility might be formulated; but of course how it might be formulated is capable of being affected by what the Supreme Court say (if it upholds the argument that statutory incompatibility is capable of being an objection to registration).
2. However having said that it might be appropriate to defer the matter depending on the Supreme Court's consideration of the issue does not mean necessarily that it is appropriate to do so. Although there may be an application for expedition in the *Newhaven* case, it may well not be heard for many months yet – possibly not until next year. It is not intrinsically desirable for the present case to be held up for so long.
3. As regards the Applicant, the position is that he and local people currently enjoy free access to the application site. Accordingly from his point of view, it seems to me that there is no particular need for urgency – even though I do recognise that, as a generality, he would wish that the matter to be resolved as soon as possible. Bristol City Council's position is clear, and I would imagine that the other objectors would be of the same mind as the City Council. However I cannot be certain of this and their line might be that they would prefer the matter to be further considered expeditiously (without of course being able to pray in aid the statutory incompatibility argument).
4. What I shall do accordingly is to indicate that I am minded to defer further consideration of this matter subject to any submissions to the contrary received by the Registration Authority within 15 days of the date of these further directions, namely **4 pm on Friday 14 February 2014**.

### Other matters

5. Bristol City Council and Cotham School now wish there to be an oral hearing in this matter. It seems that there continue to be matters of factual dispute as to the extent of the use for organised sport and also as to the erection of a notice in the grounds of the adult learning centre. Further Cotham School have also suggested that the land has not been used by local people for lawful sports and pastimes – although it may well be that the point that is being made is that there has been **insufficient** use by local people in the context of use of the land by the School and others for organised sport. I think that if the Registration Authority is to be fully informed about these matters and for me properly to advise them as to my conclusions as to the matters in dispute, it is necessary for there to be an oral hearing.
6. It seems to me that before the matter does proceed to an oral hearing it will be appropriate for there to be a pre-inquiry meeting to ensure that, as far as may be, the hearing is focused on the issues in dispute.
7. First of all, the pre-inquiry meeting would sort out representation. Obviously it would assist the smooth and efficient running of an inquiry if the objectors could make common cause and agree single representation – but they are entitled to be separately represented and indeed there may differences between them in the view that they take of the facts and of the law. What the position was would be explained to me at the pre-inquiry meeting.
8. Similarly what the position was a regards signs could be made clear by each party so that it could be considered how these matters were to be addressed in evidence.
9. Three particular matters occur, although there may be other aspects.
10. First of all, the sign in the grounds of the adult learning centre is one sign in respect of a large site. I expect there will be submissions as to how the posting of a sign there affects (if it affects) the legal effect of pre-existing signs erected by Avon County Council referred to in my Report. However putting that issue to one side for the moment, it appears to me to be relevant to have some idea as to the number of people who would have accessed the site via a route which went past the sign. I don't know how either the applicant or the objectors would want to address this – if the parties could agree on an approach that would be helpful, but if they could not that would be something to consider at the pre-inquiry meeting.
11. The second matter that occurs to me is that I know very little about the circumstances in which the sign in the grounds of the early learning centre was erected. It seems that this was not a matter which was Mr Hoskins's responsibility.
12. It may be of course that there is no-one who can speak to the circumstances in which the sign was erected but potentially there will be. If not it will be helpful to know the efforts that have been made to find out the circumstances in which it was erected. I am obviously interested in **when** the sign was put up; but also in **why** it was put up. It seems to me likely that there were a number of signs at the early learning centre that were put up at the same time – if so someone must have directed their mind to the need for this particular notice. On the other

hand if it was put up as an individual notice then it would be apparent that it was put up for a specific purpose.

13. The third matter, linked to the second, is as to how the implied permission argument “meshes” with reliance on the notices generally and particularly the sign in the grounds of the early learning centre. If this was intended to apply to the application site, it would appear that at the time that it was put up, the Council did not wish local people to use the application site. It may or may not be the case that the sign was effective to make use contentious, but even if it were not it would seem that, if intended to refer to the application site, it must have brought any implied licence to an end. I hope that it is helpful to flag this matter now and at a pre-inquiry meeting I can hear submissions both as to whether this preliminary view as to how the notice would work is accepted and as to how it is proposed that it is dealt with in evidence.
14. Also at the pre-inquiry meeting I would consider how the matter of the use of the pitches over the relevant 20 years is to be addressed. I get the impression that this matter is not as controversial as it may at first appear and I would be looking to see what scope (if any) there was for agreement.
15. The pre-inquiry meeting would also identify whether there were any other factual matters in dispute as to which evidence should be led.
16. There may be other matters which the parties would wish to raise at a pre-inquiry meeting.
17. Otherwise I would expect to give the standard directions for a village green inquiry.

### **Conclusion**

18. I would propose deferring my further consideration of this matter until after the Supreme Court has given its decision in the *Newhaven* case; but I will only make a final decision about this after considering any further submissions that I receive within 15 days of these further directions. Thereafter (ie after the deferral has come to an end or after a decision not to defer) I would ask the Registration Authority to make arrangements for a pre-inquiry meeting at a date convenient (as far as possible) for all the parties.

PHILIP PETCHEY  
30 January 2014