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

REPORT

Preliminary

1. I am asked to advise Bristol City Council, in its capacity as the statutory body charged with maintaining the register of village greens, to advise whether land known as Stoke Lodge Playing Field, in the City of Bristol should be registered as a town or village green. I am a barrister in private practice with expertise in the law of town and village greens. In this capacity I have often advised registration authorities and have acted as an Inspector, holding a public inquiry before reporting and making a recommendation to the registration authority. I have also advised and acted for applicants who have sought to register land as a town or village green; and for objectors, who have argued that land should not be registered as a town or village green.

Introduction

2. On 7 March 2011 David Mayer on behalf of Save Stoke Lodge Parkland made an application to register land at Stoke Lodge Playing Field/Parkland, Shirehampton, Bristol ("the application site") as a town or village green. Objections to the application were received from Bristol City Council in its capacity as landowner (the First Objector), the University of Bristol (the Second Objector), Rockleaze Rangers Football Club (the Third Objector) and Cotham School (the Fourth Objector). Mr Mayer responded to those objections and subsequently there further exchanges of representations[1]. In its capacity as the body charged with maintaining the register of town and village greens, Bristol City Council initially considered that it would be necessary for there to be a non-statutory public inquiry and, on this basis, invited me to hold such an inquiry[2]. In August 2012 I issued draft directions for such an inquiry. However I did observe in those directions that the factual matters in dispute appeared to be limited. This prompted the City Council in its capacity as landowner to suggest that it might not be necessary for there to be a public inquiry or, at least, a full public inquiry and accordingly I explored whether this might indeed be possible.

3. The position is now that the City Council as landowner expressly accepts that the land has been used for lawful sports and pastimes, that that use has been for a period of twenty years or more and that it has been by the inhabitants of a neighbourhood

---

1 A list of all the representations in this matter is at the **Annex** to this Report.

2 Such inquiries are referred to as "non-statutory" because there is no express power in the town and village green legislation providing for them to be held. However such inquiries have long been considered as appropriate in appropriate cases where registration of land as a town or village green is in dispute: see *R v Suffolk County Council, ex parte Steed* (1995) 70 P & CR 487at p500 (per Carnwath J (as he then was)) and *R (Whitmey) v Commons Commissioners* [2005] QB 282 (CA) (per Arden LJ at paragraphs 26. 28 - 30).

within a locality; and I understand that the other objectors do so also. More particularly, in its initial objection the City Council as landowner took the point that use was contentious, and not *as of right*, in the light of signs that had been erected at entrances to the site.

4. In a letter dated 21 December 2012, the City Council altered its position. It observed

> *While there is no dispute regarding the existence of signs and the fact that a number of people saw the signs, the Council does not wish to incur expenses involved in a non-statutory enquiry. While the Council remains of the view that its previous submissions in respect of signs hold good, it is not felt that this issue on its own would be determinative of the issue in relation to the question as to whether the land will be capable of registration as a town or village green. Therefore to this end the submissions with regard to the signs at the site are withdrawn. The question of the orientation of the third sign will therefore no longer be in issue*[3].

5. The position of the other objectors is the same.

6. I do not think it is the position that once there has been reference to the signs, it is open to me as an independent person advising the City Council as registration authority to ignore the existence of the signs. An application to register a town or village green is not private litigation between the applicant and the registration authority and whether land is properly registered or not registered is a matter of public interest. Once the matter of signs has been raised: "the cat is out of the bag", so to speak. Nonetheless what I certainly can do is to note the fact that the objectors have not sought to pursue in oral evidence any matter relating to the signs. On this basis I can indicate now that I agree with the City Council's conclusion set out in the quotation from the letter dated 21 December 2012, namely that the signs are not determinative of the application. I address the matter of signs in more detail at paragraph 68 - 72 below.

7. On the basis that a public inquiry is not required to consider the questions of whether the land has been used for lawful sports and pastimes, whether that that use has been for a period of twenty years or more and whether it has been by the inhabitants of a neighbourhood within a locality (because those matters are not in dispute); and that it is not required to consider any issue relating to the signs (because the objectors are not wanting to take any point in respect of the signs), it seemed to me that there was no need for there to be a public inquiry. I have accordingly produced this Report[4] on the basis of written evidence which has been produced to me and which is not contentious (although its interpretation is contentious) and in the light of submissions made to me by the parties.

8. On February 2012, I had the benefit of a site inspection accompanied by the representatives of the parties.

---

3 The way that one sign faced was a factual matter (having implications for the interpretation of that sign) which had been in issue until this point.

4 In seems appropriate in the circumstances to describe my advice as a Report, although I have taken the view that it is not appropriate to describe myself as an Inspector, there not having been a public inquiry.

The facts

9. The site is a large grassed area of about 20 acres in Stoke Bishop. It "wraps around" what is essentially a Victorian house which is now used as an adult education centre[5]. On the north side its boundary is to a public footpath beyond which are the back gardens of houses. On the west sides and part of the south side its boundary is to the back gardens of houses. Its boundary for much of its south side is with a public highway known as Shirehampton Road, it being separated from the public highway by a wall; similarly the east side is so separated from Parry's Lane, which is the continuation of Shirehampton Road.

10. The above needs to be read subject to fact that part of its southern boundary is formed by the enclosed grounds of the Victorian house; and that the south western part of the site has been excluded from the application in order to facilitate provision of new changing rooms and play equipment on it.

11. There is an entrance via a gap in the wall at the end of a public highway called West Dene. It is possible to enter the site from the public footpath on the north western boundary; there was a fence but it has fallen down in many places. There is an entrance from the end of Cheyne Road; and an entrance from a path in the north east corner. It is possible to enter the application site via the grounds of the adult learning centre.

12. There are signs at the West Dene entrance and at the entrance at the north western boundary which read as follows:

MEMBERS OT THE PUBLIC ARE WARNED
NOT TO TRESPASS ON THIS PLAYING FIELD
In particular the exercising of dogs or horses, flying model aircraft parking vehicles or the use of motorcycles and the carrying on of any other activity which causes or permits nuisance or disturbance to the annoyance of persons lawfully using the playing field will render the offender liable to prosecution for an offence under section 40 of the Local Government (Miscellaneous Provisions) Act 1982.
Requests for authorised use should be made to the Director of Education
COUNTY OF AVON

13. There is a sign within the grounds of the adult learning centre which reads as follows:

[Bristol City logo]
Private grounds
These grounds are private property and there is no right of public access. Legal action will be taken against any trespassers.

---

5 The house is listed, Grade II.

Any request for the use of these grounds should be made in writing to the Divisional Director
of Property and Local Taxation.
The exercising of dogs on these grounds is forbidden.

14. The application site forms the playing fields of Cotham School (which is 3 miles distant from the site[6]). 12 sports pitches are laid out on the land as follows:

- 5 full sized football pitches
- 2 junior pitches (60m x 40m)
- 4 mini-pitches (50m x 30m)
- 1 full sized rugby pitch.
- Additionally, in summer an athletics track and a cricket wicket is set out, and lined areas provided for javelin and discs. There are 2 long jump areas.
- Cotham School, on average, use three pitches for five hours a week. In addition there is after school use for school matches of, on average, one pitch for one hour per week.

Community use is as follows:

- **Shire Colts FC**- four pitches on Sunday am and four on Sunday pm during the football season
- **Rocklease Rangers FC** – three to four junior pitches on Saturday am and one full size pitch on Sunday am during the football season
- **Bristol University** – four football and one rugby pitch on Wednesday afternoon between 1 pm – 4pm or 5pm
- **[A club whose name I cannot read]** – Sunday morning use of the rugby pitch during the winter season as required
- **Coombe Dingle Crusaders juniors** – two junior football pitches on Saturdays during the football season
- **GWR Shunters Cricket Club** – approximately nine home matches during the summer. Several hours a week in the summer (weekends and evenings)
- **Various corporate cricket bookings during the summer.**[7]

---

6 I imagine that the fact that the site is distant from the school is one of the reasons why it is not used very much by the school; and I also imagine that they must have at least some other facilities available to them. But I have not been told this.

7 This list is based on material supplied by Mr Mayer but emanating from the City Council. There is some suggestion that the land may be more used now by community groups; and, in any event, this list does not speak to the detail of the use over 20 years. I do not think that the precise extent of the use is

15. Before the Second World War it seems that the Misses Butlin - Annie, Mary and Emily - lived in Stoke Lodge, a large house with extensive grounds in Stoke Bishop. It seems that a field in the north east corner of the grounds was used by Stoke Bishop Cricket Club, and the suggestion is that the sisters used to watch the cricket from an attractive summer house which still stands, a little to the north of the main house. Annie died in 1940 and Mary in 1946. In 1946, Emily sold 5 ½ acres of the grounds to Bristol City Council for temporary housing and in 1947 sold the remaining 22 acres (including the house) to the City Council for educational purposes.

16. As regards the 5 ½ acres, almost immediately after its acquisition the Education Committee took the view that it would be better used for educational purposes and, subject to one matter (which I shall come to in a moment) it was appropriated for educational purposes. This was agreed on the basis of a "trade off" between the Housing and Education Committees, whereby the Education Committee abandoned certain other "issues" which it had with the Housing Committee at that time. However as regards 1 ¼ acres, it was envisaged that this would be appropriated for a Health Centre. This never happened at that time, and the Health Centre was never built. In 1963, for some reason which is not clear, the Housing Committee "woke up" to the fact that it still controlled the 1 ¼ acres[8]. At this point it was envisaged that the land would become part of the future Fairfield Grammar School. Accordingly it was now proposed that it should be appropriated for educational purposes. However, again for reasons that are not clear, this appropriation never happened[9].

17. I do not have set out in any detail in the papers before me what the 27 ½ acres were used for by the City Council after 1947. As far as I can see they were used as school playing fields, first for Fairfield School (until 2000) and then for Cotham School; and no doubt the pitches were hired out to local sports clubs, as they still are today.

18. This would have fallen to be considered in 1974, when the City Council in its then form ceased to exist. Until April 1974, Bristol was a unitary authority (a County Borough). In April 1974, the City became a district council with a new county authority, Avon County Council, also exercising functions within the former County Borough area. Among the functions of the new County was education. As one would expect, the legal provisions that gave effect to these new arrangements provided for land used for education to be vested in the new County. Accordingly the 26 ¼ acres vested in the new County. There was however a dispute about the 1 ¼ acres. The District evidently claimed that it was not education land but housing land. This dispute was resolved in 1980, and the City Council agreed to this land vesting in the County Council with effect from 1 October 1980. It is nowhere set out, but it is apparent that this was on the basis that the land was indeed properly considered as

---

determinative of the application; what is important is that I should have an accurate "feel" for the use. The essentially point is that the application site is essentially laid out as to its entirety with pitches for organised sports. It is used by the school to a comparatively limited extent; and quite heavily used at the weekends by local clubs, with not insignificant weekday evening use by those clubs.

8 The area of the relevant land was then put at 1.19 acres; I am not quite sure how the discrepancy between that figure and the figure being referred to in 1947 arose, but it is evidently the same land.

9 Perhaps because the proposal to build Fairfield Grammar School was abandoned.

education land and not housing land.

19. In 1995 planning permission was granted for development in the area – I imagine that it was development which either led to the loss of open space or gave rise to a requirement for additional recreational facilities. By the end of 2010, there was a sum of a little over £100,000 available for the provision of play facilities on the application site.

20. Avon County Council ceased to exist in 1996 and Bristol City Council – once again constituted as a unitary authority - "took over" as education authority, holding the land for the purposes of education.

21. On 1 September 2010, Cotham School entered a transfer of control agreement with the University of Bristol. I am instructed that this agreement puts on a formal footing arrangements which had obtained informally for a number of years before this time.[10] The way the agreement works is that the School pays the University £17,613 (plus VAT) to maintain the sports pitches. The School then has priority use of the playing fields. Subject to the School's priority use, the University can also use the fields for sporting purposes and can also let out the pitches to third parties for sporting purposes, keeping any fees so generated.

22. Towards the end of 2010, the City Council published an Ideas and Options Paper for the Henleaze, Westbury-on-Trym and Stoke Bishop Area Green Space Plan which was intended to pave the way for a final version of that Plan to be adopted by early 2011. It sought to identify green spaces *for which there is legitimate public access*; conversely it said that *[t]he Area Green Space Plan will not consider green spaces that are not freely accessible to the public, including ... school grounds* ... It did not identify the application site. More specifically, as regards the application site it said:

> *There may be an opportunity to provide a new play area at Stoke Lodge but at present this land is predominantly used as school playing fields for Cotham Grammar School and is not publicly accessible.*

23. For completeness (it occurred after the end of the relevant 20 year period), I record that on 31 August 2011, the City Council granted Cotham School a lease of the playing fields for a term of 125 years. I think that was in the context of consequential arrangements following Cotham School becoming an Academy.

24. In the Local Plan, as far as I am aware there are no site specific policies relating to the playing fields. Policy L1 of the Plan states that development resulting in the unacceptable loss of playing fields and recreational open space will not be permitted save in three identified exceptional circumstances. The rubric to the plan states:

> *In particular the City Council is concerned about the protection of existing playing fields, and formal playing facilities. However, it should also be recognised that such facilities often also provide valuable amenity space which is enjoyed by local residents, in providing setting to, and relief from*

---

[10] The agreement was for one year, although I understand that the arrangements continue to the present time. However for the purposes of my Report I need only note that the agreement was in force for the latter months of the relevant 20 years (which ended in March 2011).

> *the built environment. Bearing this in mind, when such facilities cease to be required for their original purpose, it does not automatically mean that they should be developed for other uses, as they may be able to meet the growing need for open space in the wider community in providing open space for more informal leisure pastimes*[11]

25. I think that it will also be helpful to detail the circumstances which led to the present application.

26. At the end of 2009, a project was put together by the City Council in respect of the application site:

> *The Stoke Lodge Playing Fields project proposes a major refurbishment of the field including the development of community facilities to the edge of the pitch, changing room improvements and pitch improvements. The scheme includes fencing to the perimeter of the site. It will be funded from a section 77 consent*[12] *for an investment of £1M (from the proposed disposal of a portion of land at the former Romney Infant/Junior Schools that has DCSF approval. Additionally, a £600k Sport England Grant has been awarded for the scheme.*

27. This project was consulted on and a meeting of the Henleaze, Stoke Bishop and Westbury on Trym Joint Forum was held on 25 August 2010. 172 people signed the roll but it is suggested that more than 250 people attended. A vote was taken at the end of the meeting on the fencing of the playing fields; the meeting was unanimously against, with one abstention. On 15 September 2010, the matter was further considered by the Henleaze, Stoke Bishop and Westbury on Trym Neighbourhood Partnership and Committee Meeting. This is a meeting attended by local councillors, 12 elected neighbourhood representatives, council officers and members of the public; I imagine that only the Councillors and elected representatives have a vote. The meeting resolved

> *THAT the strength of feeling expressed at the Stoke Bishop Neighbourhood Forum be noted and that its views had been relayed to the Director of CYPS. It was further noted that the Executive Member had given an assurance that the proposal to fence Stoke Lodge had categorically been dropped and that the parkland would remain with open access for all as of right.*

The application

28. The application was validated by the City Council in its capacity as registration authority on 7 March 2011. The application was supported by a large number of Appendices which evidenced the background facts to the matter as set out above[13]. It

---

11 Mr Meyer points out that

12 I.e consent under section 77 (5) of the School Standards and Framework Act 1998.

13 For some of the background facts I rely on material supplied by the Objectors.

was also supported by 54 witness statements. Each maker of a statement set out in some detail the use that he and those known to him had made of land, as well as annexing a completed questionnaire speaking to his use. Additionally some 27 e mailed letters were submitted in support of the application, speaking in detail to the use of the land by local people. A survey was carried out between 16 – 21 August 2010, which identified 373 separate users in that period. One would expect an area of open space like the application site, if available, to be used by local people for lawful sports and pastimes and, of course, it is not in dispute that it was so used. The witness statements thus speak, as one would expect, to a range of recreational uses including football, cricket, rounders, kite flying, walking and dog walking and games[14]. They also speak of community events: a Fun Day, a tour by a tree expert, community picnics, a South Dene v West Dene cricket match, parties organised by Woodland Grove residents. The land has been used by Scouts and also by Brownies.

The law

29. Section 15 of the Commons Act 2006 provides:

> *(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2) ... applies.*
>
> *(2) This subsection applies where–*
>
> *(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged* ***as of right*** *in lawful sports and pastimes on the land for a period of at least 20 years; and*
>
> *(b) they continue to do so at the time of the application (emphasis supplied).*

30. The relevant 20 year period is March 1991 to March 2011. The arguments in the present case have focused on the question whether use by local people has been *as of right.*

R (Lewis) v Redcar and Cleveland Borough Council[15]

31. After the landmark decision of *R v Oxfordshire County Council, ex parte Sunningwell Parish Council*[16], registration authorities received an increasing number of

---

14 Fruit picking – very often referred to in cases like this – seems to have taken place. I have some doubt whether it is a sport or pastime.

15 [2008] EWHC 1813 (Admin) (High Court); [2009] 1 WLR 1461 (CA); [2011] 2 AC 70 (SC).

applications for the registration of new town or village greens. One of the issues that registration authorities had to address is the extent to which, if any, two uses could co-exist on the same piece of land – i.e. use by the landowner and use for lawful sports and pastimes by local people. The argument was advanced by landowners that in circumstances where there were two such uses, potentially that by local people *deferred* to that by the landowner. The idea was that if local people gave the landowner's use priority – evidenced by the fact that they never interrupted it – it was not appropriate to refer to the use by local people as being *as of right*. The view was also expressed that, in these circumstances, a reasonable landowner could not be expected to object to the use by local people – because it did not conflict with his own use. This was relevant because in Sunningwell, Lord Hoffmann had considered what was involved in the requirement that use be as of right. He endorsed the negative definition that such use was *nec vi not clam nec precario* – not by force, not by stealth nor the licence of the owner – and said that *[the] unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right*[17]. Although circumstances where local people deferred to the landowner's use – or at any rate did not interrupt it – were not circumstances where the use was not *nec vi nec clam nec precario* it was argued that the concept ought to be extended so that land would not be registrable in circumstances where it was not reasonable to expect the owner to resist the exercise of the right.

32. It will be seen that the **rationale** for the argument that use which deferred to the landowner's use is not use which is as of right is a good one; the problem that it faces is that, if correct, it is an **additional** test to the time-honoured *nec vi nec clam nec precario* test.

33. *R (Laing Homes Limited) v Buckinghamshire County Council*[18] the argument concerned whether use for lawful sports and pastimes was compatible with taking an annual hay crop from the land. Among other reasons for quashing the registration authority's decision to register the land, Sullivan J (as he then was) held that local people had deferred to the landowner' use[19].

34. *R (Lewis) v Redcar and Cleveland Borough Council (No 2)*[20] concerned a golf course which had been used by local people for lawful sports and pastimes. The matter was considered by an independent Inspector who advised the registration authority that because local people had deferred to the golfers, the land was not registrable. The registration authority's decision on this basis was upheld by Sullivan J (as he then was) and by the Court of Appeal. The headnote (summary) of the decision of the Court of Appeal reads as follows:

---

16 [2000] 1 AC 335 (HL).

17 See his speech at p350H to p351A.

18 [2004] 1 P & CR 573.

19 See paragraph 85 of his judgment.

20 [2008] EWHC 1813 (Admin) (High Court); [2009] 1 WLR 1461 (CA); [2011] 2 AC 70 (SC).

> ... *user, to be as of right, had not merely to be* nec vi, nec clam, nec precario, *but* ***also*** *to be such as to lead a reasonable landowner to conclude that a right to use the land was being asserted by the local inhabitants ...* (emphasis supplied).

35. The Supreme Court reversed this decision and held that the land was appropriately registered as a town or village green. The case is generally taken to have rejected the proposition that deference by local people can properly be a basis for refusing to register land as a town or village green. I do not dissent from this broad conclusion but the reasoning of the justices is not identical or entirely easy to follow. Since it represents an extended consideration of the issue of "dual use" at the highest level I think that it is appropriate to consider it in some detail.

36. First, the headnote records

> ... *although the English theory of prescription was concerned with how matters would have appeared to the landowner, the tripartite test of nec vi, nec clam, nec precario was sufficient to establish whether local inhabitants use of land for lawful sports and pastimes was "as of right" for the purposes of section 15, and it was unnecessary to superimpose a further test as to whether it would appear to a reasonable landowner that they were asserting a right so to use the land or deferring to his rights ...*

37. This reflects the speeches of Lord Walker of Gestingthorpe JSC[21], Lord Hope of Craighead DPSC[22], Lord Brown of Eaton-under-Heywood JSC[23] and Lord Kerr of Tonaghmore JSC[24]; and see also paragraph 87 of the speech of Lord Rodger of Earlsferry.

38. In his speech, Lord Walker did "nod" towards the deference argument. Relying on Canadian case on the law of easements (*Henderson v Volk*[25]) he said that "body language" may be relevant in a case concerning private rights: so that it would be apparent that use of a way during inclement weather or in an emergency to catch a bus was not the assertion of a right (cf such behaviour with that of local people deferring to the golfers). However in Lord Walker's view public rights were different:

> *But I do not think that* [the obvious good sense represented by cases such as *Henderson v Volk*] *has any application to a situation, such as the court now faces, in which open land owned by a local authority is regularly used, for various different forms of recreation, by a large number of local residents.*

39. In his speech, as it seems to me, Lord Hope did identify a further question, namely

---

21 See paragraph 20.

22 See paragraph 69.

23 See paragraph 107.

24 See paragraph 116.

25 (1982) 35 OR (2d) 379.

> *... whether the user by the public*[26] *was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right.*[27]

40. What he then goes on to say is that if the use by the public is compatible with use by landowner, then use by the public is to be taken as the assertion of a public right. The circumstance that he identified where the use could not be taken as the assertion of a right was a situation where *the two uses cannot sensibly coexist at all*[28].

41. Lord Rodger said:

> *93 In this case the local inhabitants' use of the disputed land for recreation was peaceable, open and not based on any licence from the council or the golf club. So, prima facie, the inhabitants did everything that was necessary to bring home to the council, if they were reasonably alert, that the inhabitants were using the land for recreation "as of right".*
>
> *94 But the council argue that, since there were competing interests, the inhabitants' use of the land was peaceable only because they "overwhelmingly" deferred to the golfers' simultaneous use of the same land. Had they not done so, it would have become contentious. But, because they routinely deferred to the golfers, the inhabitants did not do "sufficient to bring home to the reasonable owner of the application site that they were asserting a right to use it": Dyson LJ [2009] 1 WLR 1461 , para 49. In other words, the reasonable owner of the disputed land would have inferred from the behaviour of the inhabitants that they were not asserting a right over the land-and so would have seen no need to take any steps to prevent such a right accruing.*
>
> *95 On closer examination, the starting point for this argument must be that the owner of the land is entitled to infer from the inhabitants' behaviour in deferring to the golfers that they are aware of the legal position. But that starting point is inherently implausible. To adapt what Lord Sands said in connexion with a public right of way in Rhins District Committee of Wigtownshire County Council v Cuninghame 1917 2 SLT 169 , 172, people walk their dogs or play with their children on the disputed land because they have been accustomed to see others doing so without objection. The great majority know nothing about the legal character of their right to do so and never address their minds to the matter. Moreover, to draw an inference based on the premise that the inhabitants are aware of the legal position is hard to reconcile with the decision in R v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 AC 335 , 355–356, that the subjective views of the inhabitants as to their right to indulge in sports and pastimes on the land are irrelevant. It would therefore have been far from reasonable for the council to infer that the inhabitants' behaviour*

---

26 Strictly speaking use by local people (ie inhabitants of a locality or neighbourhood within a locality).

27 See paragraph 75 of his speech.

28 See paragraph 76.

> *towards the golfers was based on some understanding of the legal position. It would have been equally unreasonable for the council to go further and conclude that the inhabitants were deferring to the golfers because of a conscious decision on their part to respect what they perceived to be the superior rights of the owners of the land.*
>
> *96 Such a conclusion might, just conceivably, have been plausible and legitimate if there had been no other explanation for the inhabitants' behaviour. But that is far from so. The local inhabitants may well have deferred to the golfers because they enjoyed watching the occasional skilful shot or were amused by the more frequent duff shots, or simply because they were polite and did not wish to disturb the golfers who—experience shows—almost invariably take their game very seriously indeed. A reasonable landowner would realise that any of these motives was a more plausible explanation for the inhabitants' deference to the golfers than some supposed unwillingness to go against a legal right which they acknowledged to be superior. In my view the inspector misdirected himself on this aspect of the case.*

42. It will be seen that Lord Rodger was inherently not unsympathetic to the landowner's arguments. However he made the points that:

- It was implausible that local people were aware of the legal position: the great majority know nothing about the legal character of their right to do so and never address their minds to the matter
- In *R v Oxfordshire County Council, ex parte Sunningwell Parish Council.* it was held that the subjective views of the inhabitants as to their right to indulge in sports and pastimes was irrelevant
- The conclusion on the part of the landowner that local people were deferring to superior rights of the landowner was not reasonable in circumstances where it was not the only explanation.

43. For Lord Brown the crucial question was

> *What are the respective rights of the landowner ... and the local inhabitants ... over land once it is registered as a town or village green?*[29]

44. This was because he would have held that something more was required than that the use should be as of right if the effect of registration had been to subordinate the landowner's use to the local's use.[30] But this was not his view: he considered that the two uses could co-exist.

---

29 See paragraph 98 of his speech.

30 See paragraph 101.

45. Lord Kerr of Tonaghmore was evidently concerned that deference was ambiguous. He said:

> *113 The use of the word "deferring" in the context of the inhabitants' use of lands is potentially misleading. In common parlance "deferring to an owner's use of his lands" can easily be understood to mean no more than the ordinary courteous and civilised acknowledgement of the entitlement of the owner to make use of the lands. Such civility does not necessarily import an acceptance of any lack of entitlement on the part of the users to continue to indulge their recreations with a view to the acquisition of a right under section 15 . But if deference takes the form of acceptance that the users are not embarked on a process of accumulating the necessary number of years of use of the lands or if it evinces an intention not to embark on such a process, this must surely have significance in relation to the question whether the inhabitants have indulged in the activities "as of right".*

46. He then did two things. First he discounted any examination of the actual belief of local people[31]; second, he approached the matter on the basis that

> *it is now clear that, where it is feasible, co-operative, mutually respecting uses will endure after the registration of the green. Where the lands have been used by both the inhabitants and the owner over the pre-registration period, the breadth of the historical user will be, if not exactly equivalent to, at least approximate to that which will accrue after registration*[32].

47. On this basis he accepted that it was only necessary to apply the tripartite test of *nec vi nec clam nec precario* to the use by local people.

R (Mann) v Somerset County Council[33]

48. This case concerned a privately owned field. On 3 or 4 days during the 20 years, the landowner erected a marquee on the field and held a beer festival within it. It charged for admission for the festival. Subject to the potential legal consequences of these particular facts, the other requirements for registration were met[34]. The registration authority declined to register the land on the basis that this demonstrated that use by local people outside the time of the beer festival was permissive and accordingly not

---

31 See paragraph 114 of his speech.

32 See paragraph 115 of his speech.

33 Unreported: [2012] EWHC B 14 (Admin).

34 There was a point about locality which was argued in the High Court but which was determined in favour of the applicant for registration. I consider it further at paragraph 71 below.

as of right. In doing so it relied upon what Lord Bingham had said in *R (Beresford) v Sunderland City Council*[35]:

> *A landowner may so conduct himself as to make clear, even in the absence of any express statement, notice or record, that the inhabitants' use of the land is pursuant to his permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to exclude, and so makes plain that the inhabitants' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use*[36].

49. HHJ Robert Owen QC, sitting as a Deputy Judge of the High Court, upheld this decision. He said:

> *Mr Chapman* [for the applicant for registration] *submitted that the clearest example of a qualifying overt act sufficient to show permission is that of, say, the Inns of Court and (he exclusion of the public on Ascension Day. In that example, the public use is tolerated following prior exclusion but it is accepted by all concerned that the public's user following closure is not as of right. The question arises as to whether the exclusion by the owner in the present case is different in kind to the exclusion by the Inn of Court in Mr Chapman's example and thus incapable of amounting to an implied permission. I do not consider that there is any difference in principle or kind between the exclusion exercised in the present case and in Mr Chapman's example. Both acts are exercised by the owner without regard to the position of the local inhabitants and both demonstrate to all comers that the right of exclusion by the owner is being exercised. Both allow the inference that the public's user is by permission*[37].

50. It seems to me that the principle that a landowner can make use of land permissive on the basis of a single day's exclusion is a clear one. As I see it, the difficult question that arose in this case is the fact that the marquee was not co-extensive with the land; it is not possible indeed to tell from the report what proportion of the area of the field it occupied. The registration authority proceeded on the basis that it was possible to take from the exclusion from part the inference that subsequent use of the whole was permissive. On this HH Judge Owen said:

> *In the absence of a clear reason to suppose otherwise, an act by the owner relating to* ***part*** *of the land, as occurred in this case, may be taken as referable to the* ***whole*** *of the land*[38] (emphasis supplied).

---

35 [2004] 1 AC 889.

36 See paragraph 5 of his speech.

37 See paragraph 87 of his judgment

38 See paragraph 73 of his judgment.

51. It may be that on the facts of *Mann*, such an inference was reasonable. It does not seem to me that it flows from *Mann* that it can always be inferred that exclusion of the public from part is the subsequent grant of permission in respect of the whole.

52. Against this background, I turn to consider the facts of the present case.

Application of the law to the facts of the present case

53. As set out above, it is not disputed that the application site has been used for lawful sports and pastimes, that that use has been for a period of twenty years or more and that it has been by the inhabitants of a neighbourhood within a locality. Accordingly the main objection is on the basis that use has not been *as of right.*

Application of *R (Lewis) v Redcar and Cleveland Borough Council*

54. It is not argued that the use relied upon is not use by the inhabitants of a **significant number** of the inhabitants of a locality or neighbourhood within a locality; nor do I think that it could be.[39] In these circumstances, it seems to me that in the light of the decision of the Supreme Court in *R (Lewis) v Redcar*, it cannot be suggested that that significant use was not *as of right* because it deferred to the use of the schools and the schools licensees; or was not qualifying use because it did not suggest to the landowner that a right to use the land was not being asserted[40].

Whether use permitted by the Local Plan

55. It is argued by Bristol City Council that:

> *The use of the land by local inhabitants is not* as of right *as it is the Council's policy to allow the use of such land by the wider community for recreation in accordance with the Bristol Local Plan Written Statement adopted in 1997.*

---

39 I consider briefly below the question of whether use is by the inhabitants of a locality or neighbourhood within a locality. On one view the question of significant number is directed not at the extent of the use by the inhabitants of a locality or neighbourhood as such but their significance vis a vis the extent of use by non-inhabitants. However on this basis the use would still have to be by a legally significant number of people. It evidently was.

40 Note that an argument in *R (Mann) v Somerset County Council* on behalf of the landowner that the quality of use in that case fell to be examined by reference to criteria going beyond *nec vi nec clam precario* – despite the decision in *R (Lewis) v Redcar and Cleveland Borough Council* was rejected by the judge.

56. If in some Council document – and it seems to me that it would not necessarily be a matter of significance that it was a document issued by the Planning Department of the Council – there was a clear statement that local people were permitted to use a particular piece of land, I think that this might in principle render use by local people of that land not *as of right*; although there might well be argument about whether that permission had been sufficiently communicated[41] . In the present case I do not see such a clear statement in the Local Plan. As I read the Local Plan it does envisage existing use by local people of *existing playing fields and formal playing facilities.* Rather it seems to me that it envisages that they are amenities despite the fact that they are not used by local people; and that, when they cease to be used for "private" recreational use, they be usefully be turned into public open space for *more informal leisure pastimes.* However this may be, I do not see any clear permission to local people to use the land in these words or any other words of the Local Plan; and it is hard to see how this could have been intended in circumstances where the more specific *Ideas and Options Paper for the Henleaze, Westbury-on-Trym and Stoke Bishop Area Green Space Plan* makes it clear that it does not consider that the application site is publicly accessible.

Implied permission

57. Next the City Council argues that the use by local people is permissive and not as of right, that permission being properly inferred from the exclusion from the land of local people by the use by the schools, University and sports clubs of the pitches. In support of this submission it relies on *R (Mann) v Somerset County Council.* It has also referred me to a Report to Somerset County Council by Leslie Blohm QC, sitting as a village green inspector, in respect of an application to register Mudford Road Playing Field, Yeovil as a town or village green.

58. Although the existence or non-existence of a permission is ultimately a matter of law, it seems to me that what Lord Bingham was talking about in *R (Beresford) v Sunderland City Council* was essentially a matter of fact: it is as though instead of saying *I give you a revocable permission* the revocable permission is inferred from my actions in excluding you on one day in the year. There is a world of difference – as a matter of fact – between closing off the accesses to a playing field (either by locking the gates or physically obstructing them or by organising Council agents to turn people away) and facilitating the use of the pitches on the land so that, during use, they are not available for use by local people. In the second case, local people are not excluded from the whole of the playing field; and those playing on the pitches are not on the face of it making any implied statement to local people about whether they may or may not use that pitch after they have ceased to use it. I do not think that exclusion of local people in the latter circumstance is something from which a clear permission can be implied. If what is done is equivocal, it is not sufficient[42]. In the

---

41 In *R (Newhaven Port and Properties Limited) v East Sussex County Council* it was accepted that bye-laws might constitute an implied permission to use land; but they had no effect on the quality of use by local people because they were not communicated.

42 See paragraph 7 of Lord Bingham's speech.

present case, I do not think that it is possible properly to imply a permission from the facts.

59. I think that the Mudford Road case is distinguishable, although as will appear, I do have some doubts about it. In that case the position as summarised by Mr Blohm was:

> *The perception of local residents would have been that the Council was licensing usage of the majority of the pitches during the weekend between September and April, with pitches also being used by schools, colleges and clubs from time to time during the week. The Council has maintained the pitches throughout that period, as well as varied their location and has (from time to time) carried out works of improvement on the land held by it, by constructing the enclosed hard tennis courts; the enclosed pitch and putt course, the all-weather pitch and athletic track, and the cafe and community hall. It is unrealistic to consider simply what the Council has done to the land the subject of the application, and not to consider how it has managed the Rec as a whole. Local inhabitants view it as a single piece of land. The degree of control exercised by the Council over the Rec as a whole, including the application land was such that but for the existence of a statutory right to carry out informal recreation on the land, I would have concluded that the public carried out such acts by the implied licence of the Council*[43].

60. The first point to make is that Mr Blohm held that use was not in fact permissive; there was a statutory entitlement in local people to use the land (so that, in the jargon, use was *by right* and not *as of right*).

61. Second, the matter was complicated by the fact that it was not the whole Rec that was the subject of the application. Excluded from it was the electricity sub-station, the pumping station, the crazy golf course, tennis courts, surfaced car park, community hall/cafe and the enclosed pitch and putt course.

62. I think that the electricity sub-station and the pumping station probably were not part of the the land which local people viewed as part of the Rec; and I doubt if the Council exercised control over them. So these do not bear upon Mr Blohm's reasoning. But one can see that if

- the Rec is properly viewed as a whole; and
- use of the excluded areas is not as of right

it may be that the position of the excluded areas does speak to the use of the whole.

63. However (without having heard the witnesses or seen the land) I do not find Mr Blohm's reasoning on this aspect of the matter altogether convincing, particularly since he does accept that:

---

43 See paragraph 109 of his Report.

> *It is necessary that the user of the land must understand unequivocally that he is being granted permission to be there. Anything less than that would be insufficient.*[44]

64. I would gloss this by adding that it must be clear that a revocable permission is being given[45]; and also add that the further one gets from Lord Bingham's clear example, the nearer one gets to the facts of *R (Beresford) v Sunderland City Council*, where the House of Lords rejected the argument that there was implied licence which made the use not *as of right*. (I do accept that in that case, however, there was only a cricket pitch – not a football pitch or pitches – and there was not evidence of it having been let out). In the present case the land has functioned very much like a park – it having apparently limited use by the school in the week and more intensive use by clubs at the weekends[46] and members of the public may very well have thought that it **was** a park. **If** it had been, there use of it would have been *by right* and not *as of right*. But this does not mean that it use of it was by implied consent – this was an argument rejected in *R (Beresford) v Sunderland City Council.*

65. Finally on this point, I think that I should emphasise that it should not be assumed that it flows from the view that I take in this case that **other** school playing fields – abeit fully used by the school and their licensees – are at risk of registration as town or village greens in circumstances where there has been some use of them for informal recreation by local people. In times gone by, school playing fields were often looked after by a resident caretaker, who chased off any children who might be so bold as to play a game of informal football or cricket out of school hours; nowadays there are fewer resident caretakers and, in my experience, use out of hours does happen. So one may see that there may be very real concerns about the position of school playing fields.

66. Every case will need to be looked at on its own facts. Sometimes the use is not as of right because access is through a broken down fence which is from time to time repaired. Sometimes children and others are chased off. Sometimes there is only limited use of a large field by a few houses adjoining it and the use is not significant. Sometimes there are effective notices. It is possible to postulate a case – although I have not come across one – where there is unrestricted "out of hours" use (ie at evenings and weekend) but not during school hours so that – at least in theory – the school authorities might not know about the out of hours use. I think that it might be that the playing field would not be registrable in these circumstances because the use is not sufficient. But the case is not likely to be a typical one because the reason why local people would not use a school playing field at all during school hours – eg for

---

44 See paragraph 107 of his Report.

45 See *R (Beresford) v Sunderland City Council.* Lord Scott in that case was clear that the use was permitted, but that did not prevent it being *as of right.*

46 One matter that makes it different is the absence of litter bins, but this is not a matter material to my considerations.

walking their dogs around the perimeter - is because they know they are not allowed to; and any who try to do so are warned off. So in school playing field cases there is often evidence of "warnings off" which although limited in number (because not many people try to use the field during school hours) are sufficient to demonstrate that the use of the land is contentious. The present is however is not a case of this kind. The facts that I have had to consider are that the use by local people co-existed with use by the schools and use by the schools' licencees on a give and take basis which, in my judgment, is not essentially different from the way the use by local people and the use by golf club co-existed in *R (Lewis) v Redcar and Cleveland Borough Council.*

Statutory incompatibility

67. Relying on the judgment of Ouseley J in *R (Newhaven Port and Properties Limited) v East Sussex County Council*, the City Council argue that registration of the application site as a town or village green would be incompatible with future development of the land which was reasonably foreseeable in accordance with the educational purposes for which it was held. Ouseley J's judgment in this respect was reversed on appeal and the Court of Appeal refused permission to appeal. Permission is now being sought to appeal to the Supreme Court on this point[47]. As the law stands there is obviously no basis for the City Council's argument based on the incompatibility of registration with the exercise of its statutory powers. I think that it is appropriate to add that this would appear to be a difficult argument on the facts of this case in the light of the assurances that have been given to local people by the Council that the land will remain available for their use in future.[48]

Signs

68. None of the objectors seek to rely on the signs as rendering the use contentious and thus not *as of right.*

69. It appears that the Avon County Council signs were put up in the late 1980s[49]. Thus they predate the relevant 20 year period although not by much. The wording is perhaps a little odd – not *Do not trespass on this Playing Field* but *Members of the Public are warned not to trespass on this Playing Field.* Nonetheless I think that the

---

47 As well as on other points.

48 I do recognise that this may be viewed as a policy change and that, accordingly, at an earlier period it might be argued that there had been development proposals that were reasonably foreseeable.

49 See paragraph 1.7 of a Statement by RV Hoskins dated 31 August 2011. Mr Hoskins is a former employee of Avon County Council.

more restrained form would still be effective to render use contentious[50]. As far as I know, there were only two of these signs to cover the whole of the site and in particular there was not a sign at the Cheyne Road entrance. Some users would not have seen any sign; and the question of the extent of knowledge of the signs is not a matter which has been explored in oral evidence[51]. There is thus an outstanding issue as to whether the landowner put up sufficient signs[52]. The Bristol City sign is more recent but I would judge that most users of the site would not have seen it, not entering the application via the Learning Centre. There is, in any event, a factual dispute about that sign.

70. In my judgment the signs have to be seen in context. I think that it is difficult to argue that the use of the application site has been contentious when, apart from the signs, no other steps have been taken to render the use contentious. It seems to me that the present case is a classic one of acquiescence. If local people were not supposed to be on the land, then when it was being used by the schools or school's licensees, local people could have been so told. It would have been possible for local people to have been turned away on one day of the year, as envisaged by Lord Bingham.

71. Mr Mayer argues that it would be inconsistent for the City Council to argue that the use by local people is by permission – by reference to the Local Plan and to *R (Mann) v Somerset County Council* – and also contentious – by reference to the signs. This is correct. I should however note that is perfectly possible to argue, in the alternative, for two inconsistent positions, albeit that one argument may undermine the other (or both tend to undermine each other). It seems to me that in the present case the fact that the City Council feels able to argue that the use has been permissive points up the fact that it has not in practice been contentious. Nonetheless there would be nothing inconsistent with arguing that the use was permitted or acquiesced in until the late 1980s when the signs were put up; that the use became contentious at that point and remained contentious into the relevant period; and at some point thereafter was subsequently permitted or acquiesced in. The narrow answer to this approach would be to say that the use, if it ever did become contentious, did not continue to be contentious much after the erection of the signs – so that the signs were not effective in the relevant 20 year period, and I think that this is indeed the position. However I think that in trying to make an assessment of any effect the signs may have had it is important, as I have noted to have regard to context. It seems unlikely that in the late

---

50 There is a "disconnection" between the indication that trespass is forbidden and the reference to section 40 of the Act of 1982 which might suggest that it is only some sorts of trespass that the sign is aimed at. I would not regard this as negating the general message of the sign, giving the sign its ordinary meaning; but it can be argued that since no action was taken in respect of trespassers who did not cause a nuisance, context in fact gives it a narrower meaning. I do not think that, viewed objectively, it would have had this narrower meaning when it was put up. Section 40 was repealed by the Education Act 2002, but I do not think that this has any bearing on the matters on which I have to advise since it was in force for a considerable of the relevant 20 years which I am considering.

51 I need to recognise that it is not clear that oral evidence would have helped on this matter.

52 That he may not do so is a possibility which is confirmed by the judgment of Patten LJ in *Taylor v Betterment Properties (Weymouth) Limited* [2012] 2 P & CR 3.

1980s local people would have in fact thought that there was a change of approach towards their use of the land, which they continued using as before. If they **had** thought about the matter, they would reasonably have considered that their use was acquiesced in once no further steps having taken to prevent them using the land or to reinforce the message that their use was contentious. This is not an easy area. It is clear that a notice may render use *vi* – by force: *It was enough if the person concerned had done something he was not entitled to do after the owner had told him not to do it*[53]. If a sign were to be regarded as a "proxy" for a fence – that is, having the same effect as a fence – it would continue to be effective so long as it was in place. I do not believe this to be the correct position, and I derive support for this view from what Lord Hoffmann said in *R (Godmanchester Town Council) v Secretary of State for the Environment*[54]. In that case he observed that if members of the public walked past a notice which said *No right of way. Trespassers will be prosecuted* their use would be *as of right,* even though their use could not give rise to a public right of way because the landowner had demonstrated that he had no intention to dedicate it[55]. I think that Lord Walker was making the same point in *R (Beresford) v Sunderland City Council* when he observed:

> *It has often been pointed out that "as of right" does not mean "of right". It has sometimes been suggested that its meaning is closer to "as if of right" (see for instance Lord Cowie in* Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd 1992 SLT 1035, *1043, approving counsel's formulation). This leads at once to the paradox that a trespasser (so long as he acts peaceably and openly) is in a position to acquire rights by prescription, whereas a licensee, who enters the land with the owner's permission, is unlikely to acquire such rights. Conversely a landowner who puts up a notice stating "Private Land—Keep Out" is in a less strong position, if his notice is ignored by the public, than a landowner whose notice is in friendlier terms: "The public have permission to enter this land on foot for recreation, but this permission may be withdrawn at any time."*[56]

72. One may have some sympathy with the City Council in that after 2003 (i.e. the judgment of Sullivan J in *R (Laing Homes Limited) v Buckinghamshire County Council*) it might have taken the view that the land was not registrable because use by local people deferred to that of the schools and their licencees. The papers before me disclose that they did seek the advice of leading counsel in December 2009 and received advice to this effect (although I have not seen that advice, and the summary of it is not entirely clear). But however this may be, the decision of the Supreme Court is to be taken as having always represented the law; and of course deference was a

---

53 See paragraph 88 of the speech of Lord Rodger of Earlsferry JSC in *R (Lewis) v Redcar and Cleveland Borough Council* (No 2).

54 [2008] 1 AC 221.

55 An assertion of a public right of way may be defeated on the basis that the landowner had no intention to dedicate it.

56 See paragraph 72 of his speech.

different basis with which to defeat a potential claim to a town or village green than that the use had been contentious.

Neighbourhood within a locality or localities

73. In *Oxfordshire County Council v Oxford City Council and Robinson*, Lord Hoffmann said that there could be reliance upon a neighbourhood within two localities[57]. In the present case the application site is within the Stoke Bishop Polling District, but use comes not just from that polling district but the Westbury-on-Trym Polling District and Kingsweston Polling District. In *R (Mann) v Somerset County Council*, HH Judge Robert Owen QC held that two polling districts were capable of being localities for the purpose of section 15. In his application Mr Meyer identified with a red line an area within the three polling districts which he said identified where the great majority of users lived; he described this area as the locality on which he relied. It seems to me that in fact it represents the **neighbourhood** within the three identified localities on which he relies. As such, in *R (Cheltenham Builders) v South Gloucestershire Council*[58], Sullivan J said that to be a neighbourhood an area had to have a *sufficient degree of cohesiveness*[59]. It is not suggested by the objectors that the neighbourhood identified by Mr Mayer lacks that necessary degree of cohesiveness and the objectors do not contest Mr Mayer's application on this basis or of any failure to demonstrate a relevant locality or neighbourhood within a locality. I do not think that it is necessary for the registration authority – or for me on its behalf - to be astute to take any point on whether use has been by the inhabitants of a qualifying locality. The area identified by Mr Mayer evidently has some geographical coherence being drawn in relation to main roads and other natural boundaries and the fact that it might not be easy to determine the precise boundary of the neighbourhood would not be an objection to it[60]. It is worth observing that when points are taken by objectors on the basis of locality or neighbourhood within a locality[61], it rarely proves possible to sustain them.

Objections by Bristol University, Rocklease Rangers Football Club and Cotham School

74. These objectors express their concern about the consequences of registration of the land as a town or village green but essentially do not raise any substantive grounds of objection separate to those of Bristol City Council. I do however note that the University take the point that there has been some access over the low wall fronting Shirehampton Road. This is a matter confirmed by the material submitted by Mr

---

57 See paragraph 27 of his speech.

58 [2004] JPL 975.

59 See paragraph 85 of his judgment.

60 See *Leeds Group PLC v Leeds City Council* [2011] Ch 363 (CA).

61 See eg *R (Laing Homes Limited) v Buckinghamshire County Council* [2004] 1 P & CR 36 at p573; *R (Oxfordshire and Buckinghamshire Mental Health Foundation NHS Trust) v Oxfordshire County Council* [2010] 2 EGLR 171 (High Court).

Mayer. It seems to me that there is not evidence of extensive access in this way; further, it is one thing to take access over a low wall in circumstances where it will be apparent that the landowner is contesting your use (e.g. when there is no other entrance apart from gates which are kept locked), it is another when there are other entrances available which are freely accessible. In this latter situation it seems to me that someone is taking a short cut to which he may reasonably feel that the landowner has no objection: that his stepping over the wall in these circumstances is not contentious.

Conclusion

75. For the reasons set out above, I consider that use of the land by local people has been as of right. The objection based on statutory incompatibility has fallen away in the light of the decision of the Court of Appeal in *R (Newhaven Port and Properties Limited) v East Sussex County Council.* I consider that the application site is properly registrable as a town or village green and I recommend that the City Council in its capacity as registration authority should so register it. The precise boundary may need sorting out because the red line on the application site may include areas which plainly will not have been available for use[62]. I imagine that this could be sorted out by agreement, although I would give specific advice on this if required.

76. In my view it will be appropriate for the City Council in its capacity as landowner and for the other objectors to be given the opportunity to comment on this Report and I would comment on their comments before the matter is taken to Committee. This may sound cumbersome but it enables any mistakes to be eliminated and reduces the risk of judicial review. In a case which does raise issues which are not entirely straightforward, my Report enables the parties to focus on what I view as the determinative issues in way that they may not necessarily have done before. Thus although I do not think that it would be unfair or otherwise inappropriate to take my Report directly to Committee, in my view best practice would be represented by giving the parties the opportunity to comment.

PHILIP PETCHEY
22 May 2013

[62] At the moment the changing rooms are included in the application site, which I do not think is appropriate.

ANNEX

List of submissions

1 7 March 2011 Application and supporting documents

2 10 November 2011 Objection by University of Bristol

3 14 November 2011 Objection by Rocklease Rangers Football Club

4 18 November 2011 Objection by Bristol City Council in its capacity as landowner

5 29 November 2011 Objection by Cotham School

6 30 January 2012 Response by Mr Mayer to 2 – 5 above

7 [Undated] Response by University of Bristol

8 March 2012 Response by Rocklease Rangers Football Club

9 31 March 2012 Response by Mr Mayer to 7 – 8 above

10 12 September 2012 City Council's Response to Inspector's August Directions

11 17 September 2012 Mr Mayer's Response to Inspector's August Directions

12 5 October 2012 Further Responses by Objectors

13 8 December 2012 Mr Mayer's Response to Inspector's 27 November Directions

14 21 December 2012 City Council Response to Inspector's 27 November Directions

15 31 January 2012 Mr Mayer's Further Submissions