IN THE MATTER OF THE APPLICATION TO REGISTER LAND AT STOKE LODGE PARKLAND AS A TOWN OR VILLAGE GREEN UNDER SECTION 15 OF THE COMMONS ACT 2006		
	STATEMENT OF CASE –BRISTOL CITY COUNCIL Dated 3rd May 2016	**RESPONSE BY THE APPLICANT** Dated 6TH June 2016
	Introduction	
1	The hearing before Mr. Philip Petchey, sitting as a non-statutory inspector, is for the purpose of finding facts and advising the Council (as Registration Authority) whether it should register the land, being part of Stoke Lodge as a Town or Village Green, pursuant to section 15(2) Commons Act 2006.	Agreed
2	The statutory test that the Applicants must satisfy provides that: "(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."	This is true for the matters relating to the Commons Act 2006 section 15(2). However, relating to the part of the objection based on Statutory Incompatibility, which for the avoidance of doubt we reject, it is for the objector(s) to prove their case.

	The burden of proving each element of this test lies on the Applicant, and each element must be satisfied to the civil standard of proof.	
3	It is not uncommon (and understandable) for nearby open land to be used by some locals for informal recreation, and in particular dog-walking. What is particularly significant with the present application is that it relates to land that has at all material times been held by Bristol City Council (and its predecessor authorities) for educational purposes. As such, it has been laid out and used as a sports ground, and contains (amongst other structures) sports pavilions and sports pitches.	Importantly the Land included within the TVG Application does not include any permanent buildings, structures, or vital infrastructure. Furthermore the pitches represent 34% of the grassed area and 38% of the Application Land i.e. there is always 66% available to the Community should all the pitches be in use simultaneously which returns to 100% at the end of individual games. [see File 8, Response #7, dated 16th December2013, tab 3, section 4, pages 204 to 206 and pages 213 and 214]
4	From the Council's point of view there are two broad consequences that arise from this particular use. The first is that the particular function relating as it does to the care and education of children requires the Council, or the body carrying out the education function, to have a very high degree of control over the land. This	This Parkland is remote from Cotham Academy and does not include any *"Premises, such as education blocks or (school) playgrounds.* Neither does it resemble such an environment. The pitches (i.e. the land included within the 125 year lease) are contained within a larger area comprising a wooded area,

	is not simply a matter of 'give and take' where the landowner's use co-exists with that of the public in a manner that each compromises their absolute wishes in favour of the other, which would be the normal consequences of the existence of a TVG over land (see per Lord Hoffmann in Oxfordshire County Council v. Oxford City Council [2006] 2 AC 674 at [51]). The Council has to be able to control who is on the land, in the same way as it must control who is on other school premises, such as education blocks or playgrounds.	Children's Play Facilities and a finite number of grass pitches. Importantly Cotham's own Safeguarding Policy and Health and Safety Policy do not raise such concerns and the Council's Briefing Note dated 22nd April 2010 at appendix E & F set out how continued shared use should be managed. This principal of shared use "*as of right*" is confirmed by the BCC Cabinet Executive Member for Children and Young People in the minutes of the Neighbourhood Partnership dated 15th September 2010 as per ***Redcar***. Since 1947 the Community have used the Land for lawful sports and pastimes "*as of right*" and entry to the land is described in the above Briefing Note as "unfettered access".
5	More specifically, where a significant use to which the public puts the land is dog-walking, the Council needs to be able to control (and prohibit) dog-walking on sporting land used by children. It is not really a sensible or sufficient response to this to state that most members of the public are sensible people, or that most dog-walkers are responsible and their animals well-trained. That is undoubtedly so. No doubt any problems that have been or may be caused will not have been caused by the Applicants, or their	Dog walking is confirmed as a "lawful sports and pastime". Furthermore there are numerous examples of sports fields within Bristol (and outside Bristol) where pitches used by children are located on Land with free public access (including some schools). We accept that fouling by dog faeces is unpleasant but it must be considered in the context with the extent of the problem

	supporters. However the right if confirmed is not restricted to responsible or well-intentioned members of the public, and the Council cannot assume that everything in the garden will in future be coming up roses.	which we maintain is minimal and easily managed as evidenced by the Formal Sports users that are more than happy to continue to use Stoke Lodge Parkland and rate it as one of the cleanest in Bristol and surrounding areas.
6	The second consequence is that educational requirements change to reflect changing techniques of education and changing local needs. They may change in a small way, such as by requiring a more modern or more extensive pavilion to be constructed on the land. They may change in a more significant way, by requiring a school to be built on the land. Historically the land was at one time required for the construction of a grammar school; subsequently for a secondary school; more recently as an academy sports field. No one can know with certainty what the future might require at any particular time.	For our TVG Application the qualifying criteria set down by the Commons Act (2006) do not allow Future Development (imagined or real) to be used as a reason to prevent registration. Land to accommodate a new pavilion is excluded from the Land included in our TVG Application. Within the ***Newhaven*** Judgement, future development was not considered when reaching their judgement [paragraph 96] and at paragraph [101] it states 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 in itself sufficient to create a statutory incompatibility…."*
7	The difficulty with registration of land as a TVG is that the legal consequence of registration is that development of the land in its	We submit that a more complete, and more helpful, description of permitted works on a registered TVG was handed down by

	broadest sense – that is, any alteration to the soil of the land which is subject to TVG registration, or any alteration of use that conflicts with the public's rights of recreation – is prohibited, whatever the future educational need of the local community. The point is clearly illustrated by the decision of the Applicants to define the scope of the TVG application so as to exclude some land adjacent to the current pavilion, for the apparent purpose of permitting redevelopment of the pavilion, and allowing a children's play area to be created. The Applicants appreciate, rightly, that it would be unreasonable to prevent such a redevelopment. But if that is so, it does give rise to the question why is it reasonable to prevent any further development on the land, if and when that is necessary or appropriate for the education of local children?	the House of Lords in ***Oxfordshire County Council v Oxford City Council & Robinson [2006] 2 AC 674***; - *"….that registered greens do benefit from the protection conferred by section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876. The result is that the only works allowed on a green will be those which are done with a view to the better enjoyment of the green, and do not injure the land or interrupt the use or enjoyment of the land as a place for exercise or recreation. Otherwise, an exchange of land will be necessary."* Our Application is predicated on the premise that we wish to retain the status quo, maintaining the existing facilities, of shared use between the School, the Formal Sports users and importantly the Community as they have done "as of right" for the past 69 years (Cotham came in 2003 i.e. 8 years as at the date of the Application). It is important to note that the TVG registration at ***Redcar*** does not prevent the Golf Club from maintaining the course for the enjoyment of the golfers whilst not denying shared access to the community including dog walkers.

		If Cotham wish to make use of more sophisticated facilities there is no imperative or requirement that they must be provided at Stoke Lodge Parkland. Which "local children"? We point out that Cotham Academy does not admit "local children" from our Community. Our children and grandchildren are equally deserving of the opportunity to enjoy the natural environment at Stoke Lodge Parkland during their school holidays, at weekends and evenings.
8	The Council does not raise these matters to show that non-registration of the land as TVG would be a 'good' or generally beneficial result, although it does consider that it would be. This is because the legal test does not make provision for the relative benefit or dis-benefit of registration to be considered by the Authority. The Council makes these points so that it can be seen, first, why they are opposed to this application, notwithstanding the genuine strength of feeling of the Applicants and their supporters, and their natural view that recreation by members of the community is generally a good thing; secondly to explain in practical terms why it is that the various legal issues that have to be considered in this application – relating to statutory incompatibility,	We submit that to present a sustainable Statutory Incompatibility argument the objector must: - a. Demonstrate that Land held for education *"per se"* can support a claim of Statutory Purpose in the same way as the Port and Harbour at ***Newhaven*** together with the river Ouse can demonstrate a Statutory Purpose. b. **If** such a Statutory Purpose does exist then demonstrate that it **must** be discharged at Stoke Lodge Parkland and that no alternative site can be used or considered. c. Demonstrate that school sport is a Statutory Purpose given that it is described as an "unenforceable aspiration" d. Demonstrate, without reference to future development

	contentiousness of use, implied permission, nuisance – arise, and thirdly .to set in context the quality of the use that has taken place over the relevant period, which is important when considering the evidence.	(imagined or real), any current Statutory Incompatibility (that cannot be resolved by any means and as a consequence will lead directly to business failure i.e. in this case the whole education function within the Local authority would fail leading to the failure of the Local Authority.) e. Or demonstrate, without reference to future development (imagined or real), any future Statutory Incompatibility (that cannot be resolved by any means and as a consequence will lead directly to business failure) that would be created by registration of the Land as a TVG.
	Statutory Incompatibility	
9	The Council's case is that the recent decision of the Supreme Court in R v. East Sussex County Council oao Newhaven Port and Property Company [2015] UKSC 7 ('Newhaven') recognises that where land is held by a statutory body under a statutory power for a specific statutory purpose, then a TVG should not be registered over that land if the effect of registration would be inconsistent with that statutory purpose.	Agreed But we maintain that the conditions and circumstances are very different at Stoke Lodge Parkland.

10	Where land is held for educational purposes, as here, the need for control of the land, and for potential future development of the land means that the imposition of a TVG status would be inconsistent with and prevent the proper use of the land under that statutory power. The Council's legal argument was set out at length in its submission to the inspector dated 28th. April 2015 and will be developed at the inquiry.	See paragraph 6 above Additionally, we have previously responded to the arguments contained in the objector's submission dated 28th April 2015 in our response dated 15th June 2015. [see File 9, tab e, pages 64 to 98]
11	One point should be stressed however: that it is not material for these purposes that the statutory purpose and TVG status and use can co-exist *now*. The question is whether TVG status is inconsistent with the statutory purpose itself, properly considered. But unlike Newhaven (where there appears to have been no conflict in fact) in the present case there has been conflict.	We submit that from 1947 i.e. when the Land was purchased by Bristol City up until the date of the Application in March 2011 there is no evidence of conflict.
12	The Inspector has advised that it is possible for land that is held by a local authority to be subject to the Newhaven principle; the issue is – to which statutory purposes does it apply, and when? The answer to that derives from a close consideration of the statutory	Stoke Lodge Parkland is not a school or a school building. It is open Parkland and part of the Land is leased to Cotham to provide a finite number of grass pitches and therefore analogies with school buildings is misleading and erroneous.

	purpose. School premises are not intended to be public facilities *as of right,* although they may be public facilities *by permission*. It is reasonable to contemplate different facilities – whether pavilions, all-weather surfaces, drainage to existing pitches, fencing, new pitches and many other developments – taking up more or less of the land, and its use being inconsistent with a public right of recreation.	The Parkland also includes a wooded area and a children's play facility (both excluded from the Cotham lease). Land for the redevelopment of the pavilion has been set aside outside the Land included in the Application. With regard to the future development of different facilities there is no imperative or requirement that they must be provided at Stoke Lodge Parkland. Importantly the Briefing Note to the BCC Cabinet dated 22nd April 2010 confirms that the community enjoy unfettered access to the Land and should BCC wish to frustrate a future TVG Application they must either fence the Land to prevent Community access or "*pass or publish a formal resolution to the effect that the open access would represent the granting of a revocable permission*" neither of which was done prior to the TVG Application.
	Contentiousness of use	

13	In order for use to be 'as of right' it must be without force, secrecy or permission. Where use is contentious, it will usually be treated as being by force – Newnham v. Willison (1988) 56 P&CR 8..	
14	Recreational use of Stoke Lodge by the public was subject to control through signs. The Council's case is that there were two historic signs erected by Avon County Council at the West Dene and Parrys Lane entrances at all material times, and two that have been removed. . These stated: "Members of the public are warned not to trespass on this field In particular the exercising of dogs and horses flying of model aircraft parking vehicles or the use of motorcycles and the carrying on of any other activity which causes or permits nuisance or annoyance to the persons lawfully using the playing field will render the offender liable tp 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" Other signs existed historically but are no longer present.	We maintain that the two Avon signs are not effective and additionally are not determinative in this case. We dispute that any additional Avon signs have been removed or ever existed.
15	There was also a sign erected at the entrance to the Stoke Lodge by Bristol City Council in about 2008. This said: "Private Grounds	We maintain that this single sign located adjacent to the Adult Learning Centre is also not effective. We confirm that there are three signs in total that may or may

	These grounds are private property and there is no public right of access.. Legal action will be taken against any trespassers. 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."	not relate to the Parkland. However we point out that there are in excess of 20 public access points, together with 13 private access points.
16	The signs have to be read with common sense (see the comments of Foskett J in R v. Royal Borough of Windsor oao Burrows [2014] EWHC 389 (Admin). at [22]). They plainly prohibit unauthorised (by the landowner) use and indeed threaten prosecution.	The BCC Briefing Note to Cabinet dated 22nd April 2010 clearly acknowledges that any signs on the Land have been ineffective. As evidenced by their confirmation that there is unfettered access and their suggestions to frustrate a future TVG Application requiring either a fence to exclude public access or imposing revocable permission. Neither of these was done. Importantly the signs (such as they are) have never been enforced and there have never been any prosecutions and the Inspector concluded in his report dated 22nd May 2013, paragraph 70, that: - *"It seems to me that the present case is a classic one of acquiescence…."* Please refer also to the supporting evidence contained in our bundle of documents.
17	Council employees in past years from time to time challenged members of the public who were on the land for recreational	Is this true, or merely apocryphal, if so please provide evidence to support the assertion?

	purposes without permission, although this stopped after a particularly aggressive response from a challenged dog-walker.	A similar claim was mentioned by Cotham Academy when they attended the Stoke Bishop Neighbourhood Partnership Open Forum on 7th October 2014. The Police, who regularly attend these meetings, consider such matters important, and visited the School the next day to offer help and support and an offer to conduct an investigation only to be told by the school not to bother. The Police have also confirmed that there are no records (complaints) of any dog attacks on Stoke Lodge Parkland.
18	The effect of both of the signs, and the challenges taken together or separately, was that the Council took reasonable steps to enforce, or render contentious, the use of the land by the unauthorised public, during part of the relevant 20 year period. On that basis the claim must fail.	The existence of the two Avon signs is not disputed. However, it is disputed that they were effective or enforced or that challenges were made prior to the Application date. Please refer to our many statements and the Inspectors Report dated 22nd May 2013.
	Implied Permission	It is somewhat perverse that the objectors are arguing concurrently that Community use is both not "*without force*" and not "*without permission"* which are mutually self defeating. How do the objectors rationalise this internal conflict in their arguments.

19	The use of the land as a sports ground provides for both use by school teams (under the lease to Cotham School) and other teams (University, clubs and other third parties – by license). The license to such users is an exclusive license; it is implicit that whilst pitches are in use by licensees or indeed by the school, the public are forbidden from using that area of land, and they do not. This is not a matter of mere politeness (as was the case in R v. Redcar & Cleveland BC ex p Lewis [2010] 2 All ER 613). The use of sports pitches for the duration of a match is evidently exclusive.	We submit that the situation at Stoke Lodge Parkland mirrors the case at ***Redcar*** and the Land at Stoke Lodge Parkland is used on a shared basis as confirmed by the Bristol City Council Cabinet Executive Member for Children and Young People, Councillor Clare Campion-Smith in the minutes of the Neighbourhood Partnership meeting dated 15th September 2010.
20	Given that Stoke Lodge is a sports ground, and during the relevant period has been set out as such, it would be apparent to the public that the landowner has the right to prevent the public from using such parts of it as he chooses, when he chooses. It is therefore implicit that when the public use parts of the land that is not in use, it does so (to the extent that it is not contentious) by the implied permission from the owner. R v. Somerset County Council oao Mann.[2012] EWHC 1934 (Admin)	Stoke Lodge Parkland is more than a sports ground it is very special green space including a wooded area with many specimen trees that has been enjoyed by the Community engaged in lawful sports and pastimes as of right for over 69 years. The pitches actually only amount to 34% of the total land with intermittent use. School use has been minimal with a total of 3 pitches used per week and not necessarily all at the same time importantly 3 full size pitches represents 13.3 % of the total area for a very short period i.e. 86.7% reverting to 100%. All as set out in the Inspectors Report dated 22nd May 2013 [see File

		10, tab 3, page 15] and scheduled in the Analysis of Land marked out as Pitches [see File 8, response # 7, tab 3, section 4, pages 204 -206 and page 213] With regard to ***Mann*** we have responded previously at: - [File 8, response #3, tab 2, sections 25 – 31, pages 17 – 25] and [File 8, response #4, tab 2, section14, page 53]. Where, we submit that, we have shown that the circumstances in the ***Mann*** case are not relevant to this case.
	Nuisance	
21	The statutory requirement is that the use of the land must be lawful. The legal consequences of nuisances or disturbances on school premises (and note that the topic this deals with is wider than the existence of a nuisance which would itself preclude the existence of a prescriptive right (see the comments of Lord Scott in Brandwood v. Bakewell Management [2004] 2 AC 569 at [41-2])).	Stoke Lodge Parkland is not school premises in the accepted use of the terminology. Cotham enjoy a lease on a portion of the Parkland to use the grass pitches. The community have enjoyed unfettered access for lawful sports and pastimes as of right for over 69 years. No nuisance has been shown to exist and no prosecutions have taken place during the whole of the qualifying period. Furthermore in the "Open Spaces Society - Guide to Getting Greens Registered", with regard to "as of right" at paragraphs

		20,21 & 22 it confirms that: - *"20.'As of right' has a particular legal meaning. For use to be as of right, three conditions must be satisfied: the use must be without force, without secrecy and without permission. (Sometimes these requirements are expressed in their Latin form, nec vi, nec clam, nec precario.)* *21. Over many years the courts, in a series of decisions by a long succession of judges, had held, without a shred of logic or valid authority, that for an activity to be undertaken as of right it was necessary to show that the users had undertaken the activity in the belief that they had a right to do so. Finally, in R v Oxfordshire County Council ex parte Sunningwell Parish Council the House of Lords held that no such requirement existed.* *22. The activities on the land that form the basis for the claim must be exercised "in the same manner as if" the people who indulged in them had the legal right to do so. This is the key to understanding what is meant by the requirement that the use must have been "as of right". The phrase does not mean that the use of the land must have been by virtue of some pre-existing legal right: on the contrary, the phrase requires the opposite, namely that the*

		users must technically have been trespassing throughout the qualifying period even though they may not have realised that they were doing so." We submit that the evidence provided on behalf of the Applicant fully satisfies this requirement. With regard to ***Brandwood v Bakewell Management*** this case relates to a request for prescriptive rights to be used to grant vehicular access across a registered common. However tenuous the link to this case we submit that it is actually helpful for the Applicant in this case because vehicular access was granted hence supporting our Application.
22	Use of land held for educational purposes is subject to the provisions of section 40 Local Government Miscellaneous Provisions) Act 1982 and its subsequent re-enactment: "40. Nuisance and disturbance on educational premises (1) Any person who without lawful authority is present on premises to which this section applies and causes or permits nuisance or disturbance to the annoyance of persons who	Ditto

	lawfully use those premises (whether or not any such persons are present at the time) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [level 2 on the standard scale]."	
23	It follows that any person who interfered with any activity carried out by a school on the ground would be committing a criminal offence as (1) by their very claim the Applicants assert they are trespassers and (2) interfering with the lawful activity of the landowner would be a 'nuisance or annoyance'; that would include any fouling of sports grounds when the participants are not present as well as conduct inconsistent with the use of the land by children.	Ditto
	<u>Other grounds</u>	
24	It is a matter for the Applicants to prove the entirety of their claim. The inspector will wish to consider whether the public recreational use of the land is sufficient vis-à-vis the locality or neighbourhood relied on by the Applicant so as to be a 'significant number' of the inhabitants.	We maintain that our Application dated 4th March 2011 supported by the contents of our bundle issued on the 3rd May 2016 satisfy the qualifying criteria set down in the Commons Act 2006 15(2) required by the civil standard of proof. We maintain that the various arguments which are now being

		proffered by the objectors with regard to: - a. "Locality" b. "Neighbourhood" c. "Significant numbers" d. "Cohesiveness" e. "Quantity of use" f. "Quality of use" Have all been answered in the TVG Application and the evidence contained in our bundle of documents dated 3rd May 2016 and were fully considered by the Inspector when preparing his Report dated 22nd May 2013 where he recommended registration of the Application Land as a Town or Village Green. In summary of all the evidence submitted: - a. Locality: The courts have defined a "locality" as being an area capable of being defined by reference to some division of the country know to the law, for example a parish or other local government unit. We have used the "local government" Polling District plans (i.e. Ward plans) in accordance with this requirement. Lord Hoffmann has stated in the ***Trap Grounds*** case that; - *''Any neighbourhood within a locality is obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant*

		boundaries. I should say at this point that I cannot agree with Sullivan J in R (Cheltenham Builders Limited v. South Gloucestershire District Council [2004] JPL 975 that the neighbourhood must be wholly within a single locality. That would introduce the kind of technicality which the amendment was clearly intended to abolish. The fact that the word "locality" when it first appears in section (1A) must mean a single locality is no reason why the context of "neighbourhood within a locality" should not lead to the conclusion that it means "within a locality or localities". Stoke Lodge Parkland is located at the northern edge of the Stoke Bishop Polling District (1 location) and therefore to include the area from which the vast majority of the users emanate we have included also the Polling Districts of Westbury on Trym and Kingsweston (2 further locations). (We should point out that the area of Sea Mills passed out of Kingsweston and into Stoke Bishop following the Boundary review in 2014 meaning that we now need only to rely on two localities i.e. Stoke Bishop and Westbury-on-Trym.). b. Neighbourhood The neighbourhood is defined as the area inhabited by the people on whose evidence you are relying for your application. You need to define this area on a map which

		you submit with your application. Within the Application [File 3, tab 19] there is a survey of use conducted in August 2011. This survey included 373 interviews over a 6 day period and shows that when extrapolated this presents a projected annual use comprising between 22,000 and 37,000 uses by the Community. Based on the interviews conducted: - i. Use by residents from Stoke Bishop, Westbury on Trym and Sea Mills (an area within Kingsweston included within the neighbourhood) represented 86% of total users ii. With 85% walking from home to the Parkland iii. With 65% exercising without a dog iv. With 35% exercising with a dog (better description than simple dog walking) Additionally the description of use is varied and wide. Within the Application [File 4] there are 31 witness statements each including a 6 page questionnaire which identifies the address of the witness (all within the defined neighbourhood) and importantly also speaks to the issue of quality of use as well as quantity. Within the Application [File 5] there are 23 witness statements each including a 6 page questionnaire which identifies the address of the witness (all within the defined

		neighbourhood) and importantly also speaks to the issue of quality of use as well as quantity. Within the Bundle of Documents [File 1, tabs 5 – 30] there are 26 witness statements each including a 6 page questionnaire which identifies the address of the witness (all within the defined neighbourhood) and importantly also speaks to the issue of quality of use as well as quantity. Within our response #1 [File 6, tab 8] there are 81 witness statements of use, which identifies the address of the witness (all within the defined neighbourhood) and importantly also speaks to the issue of quality of use as well as quantity. Within our Rebuttal [File 11] there are **200+** witness statements of use, which identify the address of the witness (all within the defined neighbourhood) and importantly also speak to the issue of quality of use as well as quantity. Within the Application [File 3, tab 22] there is a petition with 737 names. The petition was undertaken by the Spar general store located in the heart of Stoke Bishop i.e. located within the defined neighbourhood submitted by the Applicant.

		c. Significant numbers We submit that we have more than satisfied this criterion as evidenced above. d. Cohesiveness This is difficult to define but must not be just a meaningless line on a map. We maintain that the defined neighbourhood is a built up area in North West Bristol encompassed by hard and recognisable features i.e. the river Avon on the south west, the Downs on the south east and busy arterial roadways on the north west and south east. The area contains: - Churches of various faiths Shops (local and national) Pubs and restaurants Doctors and dentists Primary schools Youth groups Choirs and community groups etc With Stoke Lodge Parkland located at its centre and within walking distance for all (able bodied) residents. e. Quantity of use We maintain that we have more than satisfied this

		criterion as evidenced above. f. Quality of use We maintain that we have more than satisfied this criterion as evidenced above. For guidance on the law regarding Locality and Neighbourhood we referred to the paper included at tab 9 in this File [11] to gain a better understanding of the path that the issue of Locality and Neighbourhood has taken. We accept that case law has continued to develop since this paper was written. However, we find the words of Lord Bach [paragraph 46] when introducing the "*neighbourhood amendment*" to the House of Lords in November 2005 particularly compelling and pertinent, setting down the clear and precise intent and meaning of the ammendment: - *"The phrase "local inhabitants" has a clear everyday meaning and we do not attempt to define it in the Bill.* *What we are seeking to do with these two amendments is to make the position clearer and simpler for all concerned. The current term "locality" that was used in the 1965 Act has been much debated. It has proved too restrictive, because it is taken to refer to a recognised administrative locality, such as a parish. Adding the "neighbourhood" formula in 2000 has not resolved this difficulty. In urban areas in particular, it has proved problematic to show that the use that took*

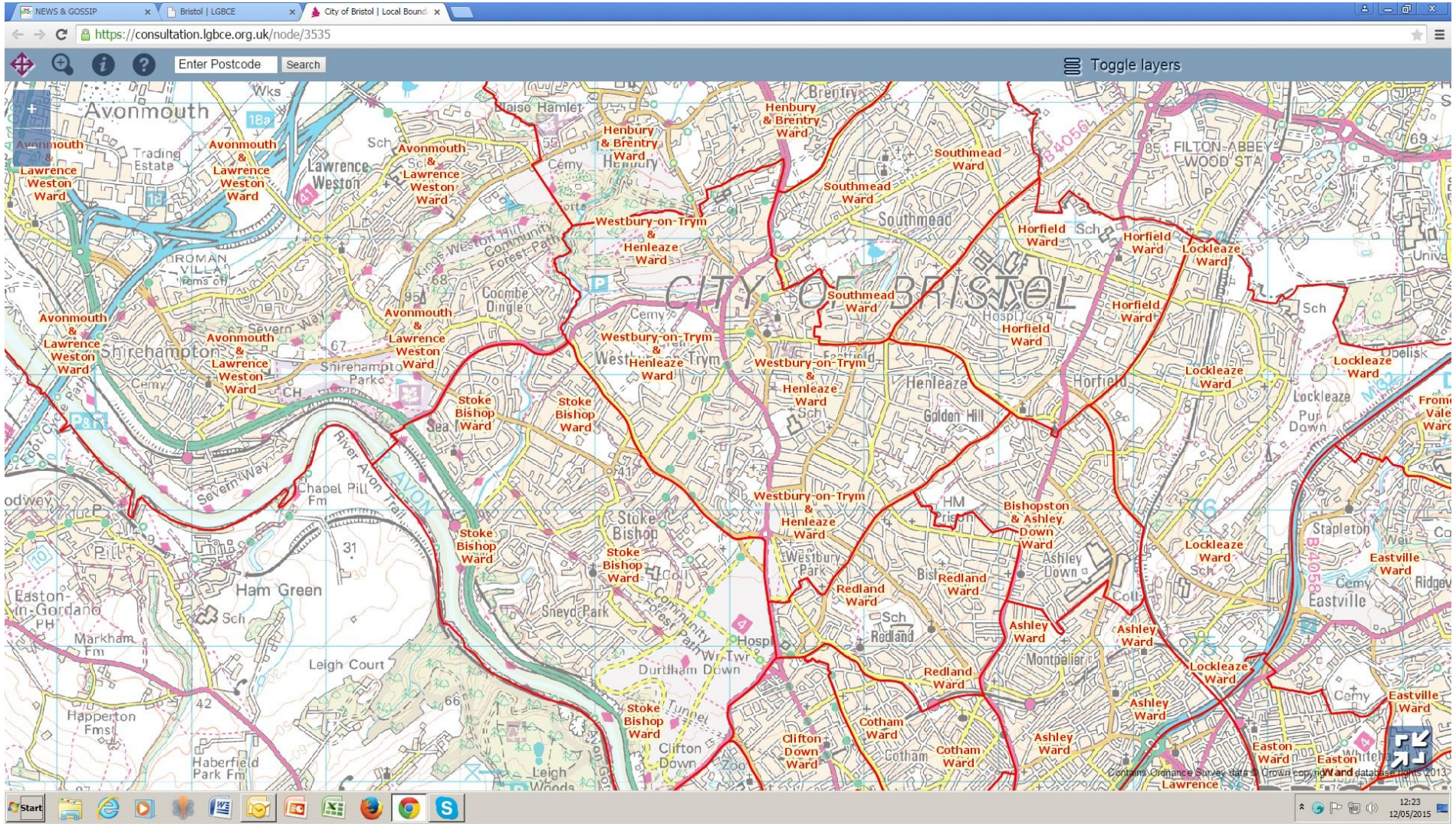
		place emanated from the right kind of area. The noble Lord, Lord Greaves, spoke of this problem in Grand Committee, and this amendment is the result. *Essentially, the convoluted formula used on this front to date has failed to convey the crucial point, which is that whatever type of place people live in – urban, rural, large, small – their recreational use of a local area of land should be capable of justifying its registration as a green, so long as three critical conditions are met. First, that their recreational use takes place as of right – I have already summarised what that means; secondly, that it takes place for at least 20 years; and thirdly, that a significant number of people are involved in the recreational use."*
25	The following points are pertinent	
	(1) In any dispute where parties become entrenched of the righteousness of their view, such as the present, it is easy for witnesses to unconsciously exaggerate their evidence.	This is a matter for the Inspector to interpret.
	(2) Witness evidence is most often fallible where it relates to timing – how often and when did events occur. Documentary evidence is essential to resolve any disputes here.	Presumably this applies to all parties, as for example the contradictory e-mails about the timing of the sign in the Adult Learning Centre.
	(3) There is a natural human tendency to assume that what is	Where is the proof that access to Stoke Lodge was far more

	always has been or should be[1]. Historically access to Stoke Lodge was far more limited than it is today, with the consequence that users would see the signs erected and reasonably assume that they applied to them; and that use would be less convenient, and thus reduced compared to the present..	limited than it is today? This is certainly not supported by the evidence and we maintain that the number of access points has not increased during the qualifying period.
	(4) Use involving passage between two points is likely to be attributable to passage as a (potential) right of way than recreational use and will not count towards establishing a TVG (see Oxford City Council v. Oxfordshire County Council [2004] EWHC 12 Ch at [96-105] (Lightman J).	There are no public rights of way on the Application Land. There is a well maintained public right of way adjacent to the Parkland along the length of Ebenezer Lane. We maintain that it is not prejudicial to our Application should a member of the community enters at one access point, engages in lawful sports and pastimes and exits via a second access point.
	(5) Use that amounts either to a nuisance or a criminal act does not count towards establishment of a TVG as it is not a 'lawful' sport or pastime.	We dispute that any nuisance or criminal act has been included in our Application and therefore is not capable of being discounted.
26	The Registration Authority should be advised to reject the application.	We reject the objector's assertion and urge the Inspector to reconfirm his recommendation dated 22ndMay 2013 based on

		the evidence contained in our bundle of documents issued on 3rd May 2016 and the evidence heard at the Public Inquiry scheduled for June 2016.
27		To frame the whole objection into its rightful context we must point out that throughout North and North west Bristol within the areas listed below, there is not a single Secondary School under Local Authority control. They are all self governing. Avonmouth Shirehampton Lawrence Weston Coombe Dingle Blaise Hamlet Henbury Brentry Southmead Horfield WoT & Henleaze Bishopston & Ashley Down Redland Cotham Clifton Down Stoke Bishop This illustrates what actual influence Bristol City Council has with regard to Secondary Education. We attach at the end of this document Appendix 1 a map of Ward Boundaries across Bristol

		Appendix 2 a schedule of Secondary Schools in the area listed
	3rd May 2016	6th June 2016
	Leslie Blohm Q.C. St. John's Chambers, 101 Victoria Street, Bristol, BS1 6PU	**David Mayer** On behalf of Save Stoke Lodge Parkland
		Please see Appendix 1 and 2 attached below

Bristol City Council Ward Boundaries



Secondary Schools in the area listed

· Bristol Free School	Free School	BS10 6NJ
· Colston's Girls' School	multi-academy trust	BS6 5RD
· Cotham School	Academy	BS6 6DT
· Fairfield High School	Excalibur ***Academies*** Trust	BS7 9NL
· Henbury School	Academy	BS10 7QH
· Oasis Academy Brightstowe	Academy	BS11 0EB
· Orchard School, Bristol	Academy	BS7 OXZ
· Redland Green School	Academy	BS6 7EH
· St Bede's Catholic College	Academy	BS11 0SU