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 FOR COTHAM SCHOOL Dated 3rd May 2016	**RESPONSE BY THE APPLICANT** Dated 6TH June 2016
1	**INTRODUCTION AND SUMMARY**	
1.1	This objection statement is made on behalf of Cotham School.	We submit that this objector is prevented from objecting to this TVG Application because of: - a. Clause 4 of their Articles of Association b. Clause 2.1 of their 125 year lease to use a portion of the Land included in the TVG Application c. Clause 7 of the above lease d. The fact that they voluntarily entered into the above lease after the date of this Application in full knowledge that an Application for TVG status had been made e. The Land included in the above lease is not the only land available to them to conduct sport [see File 1 tab 3, paragraphs 40 – 61, pages 30 - 36]
1.2	Lord Bingham made it clear in ***Beresford*** that all ingredients of the definition should be met before land is registered. He agreed with Pill LJ that it is no trivial matter for a landowner to have land	We confirm that we consider that we have met all the qualifying criteria set down in the Commons Act 2006 section 15(2).

	registered as a village green. The burden is clearly on the applicant to prove all elements of the definition.	Importantly ***Barkas*** did challenge parts of ***Beresford*** as being no longer good law and should not be relied upon in totality. Additionally we submit that the objectors have not demonstrated that Statutory Purpose can be applied at Stoke Lodge Parkland and consequently cannot be used as an excuse to support a Statutory Incompatibility argument to frustrate this TVG Application.
	- See paragraph 2 of ***R (Beresford) v Sunderland City Council HL***[2004] 1 AC 889 [para 2]	Not disputed, subject to common sense and reasonable interpretation.
	- The Registration authority as Lord Hoffmann said in the ***Trap Grounds***[1] case: *"..has no investigative duty which requires it to find evidence or reformulate the applicant's case. It is entitled to deal with the application and the evidence as presented by the parties"*	Not disputed, subject to common sense and reasonable interpretation.
1.3	In this case the Applicant has not discharged the statutory test under Section 15 of the Common Act 2006 for the following reasons.	We contend that we have discharged the statutory test under Section 15 of the Common Act 2006 as evidenced by the Inspector's report dated 22nd May 2013 recommending registration.
	i) Firstly registration would be statutorily incompatible with the duties on the academy and the Council to use this land for the purposes of playing fields.	For there to be a sustainable argument based on statutory incompatibility the objector must first demonstrate that there is a site specific statutory purpose applicable at Stoke Lodge Parkland, as evidenced in the ***Newhaven*** case at paragraphs 2 – 11 of the Supreme Court Judgement.

		We submit that the objector has not satisfied that condition. We also submit that there is no statutory incompatibility currently and none would be created by registration as a TVG. Importantly this land is not part of the main school site and it is not a requirement that Stoke Lodge Parkland should and must provide every sporting or commercial development wish proffered by the objector, especially where alternatives are available. Additionally we have shown that sport is not a statutory purpose and is in fact an "unenforceable aspiration". [see File 2, tab 9, page 115] This is unlike the circumstances at ***Newhaven*** where every aspect of the sustainability of the Port and Harbour must be provided on that river and at that site by Act of Parliament. We maintain that the circumstances at Stoke Lodge Parkland closely mirror the circumstances at ***Redcar*** where shared use confirmed as "as of right" has not created any incompatibility or frustrated the maintenance of the Golf Course.
	ii) There was at the very least a period of time when the use was made contentious by the presence of signs which prohibited the use of the land.	The inspector commented on the issue of signs (or lack of) and their bearing, notably their non determinative effect, on the matter of use "*as of right"* in his Report dated 22nd April 2013. [see File 10, tab 3, paragraphs 6 and 68 – 72, pages 12 to 34] Please see also our arguments contained in our bundle of documents [see File 1, tab 3, paragraphs 88 – 94 pages 47 to

		61]
	iii) From at least 26 July 2005 qualifying use of the land was rendered permissive by express communication to the "Friends of Stoke Lodge".	This assertion presumably emanates from the contents of the evidence proffered by this objector at tab 17, para13, of their bundle of documents exchanged on 3rd May 2016. (no pagination page number provided in their document) relating to a meeting held on 26th July 2005. We submit that it is absurd and preposterous to try and make a point on the "off the cuff" remark and personal view of a BCC officer with no strategic responsibility or authority to make such a decision and then try to link that remark to a point of law. In support of our comments we also point out that: - a. This assertion is contradicted by the contents of the Briefing Note to BCC Cabinet dated 22nd April 2010. If permission had been granted why was there any need for the Briefing Note, especially as Michael Branaghan author of Briefing Note was also in attendance at the informal meeting held on 26th July 2005. b. This assertion is also contradicted by minutes of the Neighbourhood Partnership Meeting dated 15th September 2010. c. Permission was never sought and never granted (with the possible exception of one resident which was never advertised or made public at the time).

		d. This is supported by the considerable evidence provided by Residents via statements in various formats confirming that they never sought permission or saw any evidence that it had been granted. e. Continued shared use, as per ***Redcar***, and retention of the status quo was the stated position of the community attendees at the meeting dated 26th July 2005. (refer to paragraphs 19 and 20 of the meeting minutes contained in the objector's bundle at tab 17). f. If permission was granted, when was this decision made, by whom, and when and where was it advertised and made public knowledge? g. The Inspector's report dated 22nd May 2013 at paragraph 70 states that: - *"It seems to me that the present case is a classic one of acquiescence."* i.e. not permissive. h. The University (supported by BCC) were arguing for change of use to a sports Hub changing the whole basis of the status quo and hence taking it out of education and into sports and leisure. It is also important to clarify that Friends of Stoke Lodge: - a. Are not a properly constituted group

<table>
<tr><td></td><td></td><td>b. They do not have a constitution
c. The group has only held one public meeting ever (which the Applicant chaired)
d. The group publishes no accounts
e. They have never held any elections
f. They do not qualify as stakeholder group capable of speaking on behalf of the Community
g. We refer you to paragraphs 3, 4 & 5 of the minutes of the meeting held on 26th July 2005 where it is made clear that the meeting and the attendees had no authority to make decisions and that Friends of Stoke Lodge would <u>not</u> be given the status of stakeholder

In summary this assertion by the objector is analogous to the Monty Python sketch where a Tyrannosaurus rex (carnivore) dies. 50 million years later a palaeontologist discovers a tiny fragment of bone from the T. rex and set about to recreate the whole skeleton based solely on the tiny fragment of bone. His final offering is that of a Brachiosaurus i.e. a long necked herbivore.</td></tr>
<tr><td></td><td>iv) The neighbourhood claimed does not satisfy the requirements.</td><td>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”</td></tr>
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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) to define our total Locality. (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 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 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.

c. Significant numbers
We submit that we have more than satisfied this criterion as evidenced above.

We also submit that there was a more than adequate “general impression of community use by the landowner” as evidenced by: -

i. the Briefing Note to the Bristol City Council Cabinet dated 22nd April 2010 [see File 3, tab 10, pages 46 - 69 and tab 12, page 74]

ii. The minutes of the Neighbourhood Partnership meeting dated 15th September 2010 [see File 3, tab14, pages 78 - 83]

iii. The contents of the **350+** witness statements submitted by the Applicant and listed 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."*
	v) There has not been use by a 'significant number' of the inhabitants of the locality/neighbourhood for the whole of the 20 year period. Even on the applicant's case much of the use claimed should be ignored because it is manifestly not 'lawful sports and pastimes' being footpath type walking of circular routes around the perimeter. In addition the forceful user should be stripped out.	Please refer to section 1.3.iv) above, pages 6 -12 of this document for full rebuttal. Furthermore we contend that walking is an exercise, and is recommended for medical reasons, and is a lawful sports and pastime, and additionally dog walking is confirmed as lawful sports and pastime in ***Sunningwell*** which was a House of Lords decision. Additionally in the ***Trap Grounds*** case it makes the point that each case must be taken on a case by case basis. We maintain that the signs are not effective and therefore cannot be used to support a with force argument.

		Additionally we submit that we have shown in section iv above that the quality of use extends well beyond perimeter walking, which we maintain is lawful sports and pastimes, and in section vi below that there is no case to be made on the grounds of exclusion.
	vi) There have been repeated interruptions of the use for LSP by the use of the playing fields by users with permissions and for other events.	As per ***Redcar,*** and as an act of courtesy, when individual pitches are in use the community use the available land excluding pitches in use, on a shared basis as per ***Redcar.*** It is important to record that the land included in the TVG Application is 113,100 sq yds. The area of <u>all</u> the pitches included in the Application Land is 42,520 sq yds i.e. 37.6% which equates to 62.4% that is not used as a pitch at any times and is always available to the community. If three pitches were used consecutively that would equate to 13.3% in use and 86.7% free and available for shared use by the Community, returning to 100% at the end of the matches. It is also important to record that Cotham's use is restricted to term time (191days) for periods of up to 1 hr and never at weekends. For a fuller submission and a detailed calculation and spreadsheet analysis of the land occupied by pitches: - [see File 8, Response #7, dated 16th December 2013, tab 3, section 4 pages 204 to 206 and pages 213 and 214]

		We must point out that the Land included in the TVG Application has never been "closed" to the public in order to host an "event" throughout the whole 69 years that the Community have engaged in lawful sports and pastimes on a shared basis. We must also clarify the use of the word "interruptions": - a. If this relates to alleged interruptions to use by the community engaged in lawful sports and pastimes then we confirm that use of the Land (in totality) by the Community has never been interrupted (i.e. the site closed) since the Land was purchased by BCC in 1946/7. Where individual pitches are in use the Community avoid interrupting the Formal Sports users as an act of courtesy as per ***Redcar,*** with Community use for Lawful Sports and pastimes continuing unabated utilising the vast majority of the Land until the match is finished when it returns to 100%. b. If this relates to alleged interruptions to use by the School or Formal Sports users who have bought and paid to use a pitch then we confirm that we have no evidence of this. When the school raised the issue of potential dog attacks on the Parkland at the Stoke Bishop Forum on 7th October 2014 the police who were in attendance visited the school the next day to offer to conduct an investigation they were dismissed and told not to bother.

		We can also confirm that the Police have no reports of any dog attacks or related issues on record. Furthermore at one of the joint meetings at Cotham school when the then Headmaster raised the issue of disruption we asked if any such events had been reported and entered in the H&S incident log and he confirmed that there was not. We therefore submit that there is no evidence to support any such assertion by the objector(s).
	vii) This objection will take each of the above grounds for refusal in turn after some short observations on the legal test the applicant needs to discharge and the application generally.	
2	**THE APPLICATION AND LEGAL TEST**	
2.1	This application would effectively deprive the School of the use of its much needed pitches for educational purposes.	This statement is inflammatory, a gross hyperbole, predicated on a false premise and cannot be substantiated.
2.2	As said above there are two principles that are significant:	
	i) That the burden lies on the Applicant.	We accept that the burden of proof, with regard to the Commons Act 2006, lies with the Applicant to demonstrate that the qualifying criteria are satisfied. However, the standard of proof is the civil one – that is *"on the balance of probabilities",* or put simply, that it is more likely than not.

		With regard to the objection predicated on Statutory Incompatibility it is for the objector to prove their case.
	ii) that the Registration authority does not have an investigative duty and is entitled to treat the applicant's case on the basis it is put.	Not disputed with regard to the Commons Act 2006 qualifying criteria, subject to common sense and reasonableness.
2.3	The test for the quality of the user has been set out recently by the Supreme Court in ***R (on the application of Lewis) v Redcar and Cleveland Borough Council*** [2010] 2 WLR 653 as whether: *"the user was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right (see R (Beresford) v Sunderland City Council [2004] 1 AC 889, paras 6 and 77), the owner will be taken to have acquiesced in it – ."*[2]	With regard to the Commons Act 2006 we submit that we have met this test as supported by the Inspectors report dated 22nd May 2013 recommending registration.
2.4	The applicant must show that the user was of such an amount and in such a manner as should be regarded as the assertion of a public right. The correct way to look at that is from the point of view of the reasonable landowner[3]. In particular the applicant will have to show that the user was not for footpath use but for lawful sports and pastimes. They have to show that there were not gaps in the use. They have failed to show user of such an amount and such a manner as should be regarded as an assertion of a public right.	Please refer to section 1.3. iv) v) & vi) above, pages 6 – 16 of this document.

2.5	They will also have to show that the use for lawful sports and pastimes is by a significant number	Please refer to section 1.3. iv) v) & vi) above, pages 6 – 16 of this document.
2.6	Sullivan J in ***R v Staffordshire CC ex parte Alfred McAlpine Homes Ltd*** [2002] 2 PLR 1 set out some helpful guidance: *"In my judgment, the correct answer is provided by Mr Mynors, on behalf of the council, when he submits that what matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers."*[4]	Please refer to section 1.3. iv) v) & vi) above, pages 6 – 16 of this document.
2.7	Only if the quantity and quality of the use meets the ***Lewis*** threshold is the tri-partite test to be applied see: ***Powell v Secretary of State for the Environment, Food and Rural Affairs*** [2014] EWHC 4009 (Admin.) per Dove J at [31].	Please refer to section 1.3. iv) v) & vi) above, pages 6 – 16 of this document. The case cited opposite relates to a dispute regarding a public right of way. It was argued in that case that before the tri-partite test for "as of right" can be undertaken a preliminary question must be satisfied: *"was the quality of the use such that a reasonable landowner could be expected to resist it?"* We submit that **<u>if</u>** this is a relevant question in this case, which we dispute, particularly as in the above case Mr Justice Dove emphatically rejected the landowner's submission under this head and said at [32] that; - *"I have no hesitation in concluding that it is absolutely clear from [the*

		authorities] that there is no additional test over and above the tripartite test………….” We submit that the amount of ongoing shared Community use as evidenced by the 350+ witness statements submitted by the Applicant would have undoubtedly imparted to the landowner the *"general impression of use by the Community".* As evidenced by the Briefing Note to BCC Cabinet dated 22nd April 2010 [see File 3, tabs 10 & 12, pages 46 – 69 & 74] It is a matter of fact that the landowner did nothing to challenge the use of the Land by the Community for the 64 years prior to the Application date despite being fully aware of ongoing shared use by the Community. This was classified as acquiescence by the Inspector in his Report dated 22nd May 2013, but we submit that this cannot now be used to support a credible argument that they did nothing because they were unaware of the considerable Community use for over 69 years conducted without force, without permission and importantly without secrecy.
3	**STATUTORY INCOMPATIBILITY**	
3.1	In summary the principle of Statutory incompatibility set out in ***Newhaven***[4] applies to this case and this means that the village green application should be refused.	We submit that the principle of Statutory Incompatibility does not apply to this Application for the reasons set out in our bundle of documents. [see File 9 (in totality) and File 1, tab 3, paragraphs 8 & 9 page 18 and paragraphs 16 to 87, pages 20 to 47]
	Principal	

3.2	In ***Newhaven*** the principle of statutory incompatibility was set out in this way. *93 The question of incompatibility is one of statutory construction. It does not depend on the legal theory that underpins the rules of acquisitive prescription. The question is: “does section 15 of the 2006 Act apply to land which has been acquired by a statutory undertaker (whether by voluntary agreement or by powers of compulsory purchase) and which is held for statutory purposes that are inconsistent with its registration as a town or village green?” In our view it does not. Where Parliament has conferred on a statutory undertaker powers to acquire land compulsorily and to hold and use that land for defined statutory purposes, the 2006 Act does not enable the public to acquire by user rights which are incompatible with the continuing use of the land for those statutory purposes. Where there is a conflict between two statutory regimes, some assistance may be obtained from the rule that a general provision does not derogate from a special one (generalia specialibus non derogant), which is set out in section 88 of the code in Bennion, Statutory Interpretation , 6th ed (2013), p 281:* *“Where the literal meaning of a general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. Accordingly the earlier specific provision is not treated as impliedly repealed.”*	The situation and specific conditions at ***Newhaven*** regarding Statutory Purpose and Statutory Incompatibility are very clear and we submit are helpful to our Application: - a. At Newhaven there is an Act of Parliament dated 1847 requiring there to be an operating Port and Harbour on the river Ouse at Newhaven (“the 1847 Newhaven Act”). [see File 9, tab1, paragraphs 2 – 11, pages 99 to 103] b. Hence the Statutory Purpose in the ***Newhaven*** case refers specifically to the site identified in the Act of Parliament for this sole purpose and no other Port or Harbour of convenience or choice or use to which the Land may be put. Indeed it can be argued that the use of the land can only be changed by a subsequent Act of Parliament. c. At paragraphs 94 – 97 of the ***Newhaven*** Judgement it confirms the reasons why *registration* would introduce a Statutory Incompatibility in that case. d. Put simply registration would conflict with critical existing infrastructure requiring ongoing maintenance that would cause the business to fail. In breach of the Act of Parliament. e. At paragraph 96 the Judgement clearly states that future development plans were not considered in reaching their decision.

f. At 96 the Judgement also reconfirms that the judgement is based on incompatibility with the existing infrastructure which is vital to the ongoing sustainability of the operation of a working harbour.

g. At paragraphs 98 to 100 the Judgement lists three examples of where Local Authority Land, including some held for education use, had been granted TVG registration and where the Lord Justices and Justices of the Supreme Court confirmed that their registration did not pose a Statutory Incompatibility.

h. Most importantly at paragraph 101 the Judgement states:

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

i. The important section within paragraph 93 with regard to our Application states: -

> *" …..the 2006 Act does not enable the public to acquire by user rights which are incompatible with the continuing use of the land for those statutory purposes…."* (emphasis added by the Applicant)

j. Clearly the Supreme Court were satisfied that in the three

		cases cited above, involving local authority land, no such incompatibility was shown to exist. k. Otherwise all LA land held for education would be preclude from registration which is contrary to 101 (and 98, 99 & 100). l. Hence this paragraph, quoted by the objector opposite, is in itself not a killer blow and must be considered in conjunction with paragraphs 94 to 101 from the ***Newhaven*** Judgement. m. We submit that the objector(s) have failed to demonstrate that: - i. Statutory Purpose applies to all education land and all education land is required to undertake an essential site specific statutory purpose that cannot be provided elsewhere (as per ***Newhaven***). ii. A site specific Statutory Purpose is applicable to Stoke Lodge Parkland (as per ***Newhaven***). iii. School Sport is Statutory Purpose iv. There is any Statutory Incompatibility currently v. A Statutory Incompatibility would be created if the Land is registered as a Town or Village Green

		n. And most importantly of all the objector has failed to identify any critically important factor strategically essential for the sustainability of any (yet to be identified) Statutory Purpose at Stoke Lodge Parkland which we submit was the essential plank to the Newhaven arguments regarding Statutory Incompatibility. Hence their arguments pertaining to Statutory Purpose in this case have no foundation whatsoever. o. We submit that the Inspector has repeatedly requested this information but it has never been provided by the objector(s).
3.3	Lord Neuberger drew support from the historical position that both in English Law and Scots law the passage of time would not result in prescriptive acquisition against a public authority which acquired land for a specified purpose. He said the following. *"It is, none the less, significant in our view that historically in both English law and Scots law, albeit for different reasons, the passage of time would not give rise to prescriptive acquisition against a public authority, which had acquired land for specified statutory purposes and continued to carry out those purposes, where the user founded on would be incompatible with those purposes. That approach is also consistent with the Irish case, McEvoy v Great Northern Railway Co [1900] 2 IR 325 (Palles CB at pp 334–336), which proceeded on the basis that the acquisition of an easement by*	The important passage from the quotation opposite states: - *the passage of time would not give rise to prescriptive acquisition against a public authority, which had acquired land for specified statutory purposes and continued to carry out those purposes, where the user founded on would be incompatible with those purposes.* (Emphasis added by the Applicant) and the important phrase is underlined. We submit that for this quotation to have any relevance to this case it must satisfy the same tests as set out in the paragraph above.

	prescription did not require a presumption of grant but that the incapacity of the owner of the servient tenement to grant excluded prescription.”	
	Application to this case	
3.4	Applying this test to the facts of this case there are essentially 2 stages to consider.	
	i) Firstly whether the land was acquired for a specified statutory purpose.	Some of the land was acquired for the housing land bank and some for the education land bank. However this does not impart a vital site specific statutory purpose critical to housing or education *per se.*
	ii) Secondly whether that purpose is incompatible with registration for a town or village green (“TVG”).	We submit that there cannot be a universal answer to this question as it depends on the circumstances. Please refer to the ***Newhaven*** Judgement paragraphs 101, 98, 99 & 100 and the Inspector’s Further Directions dated 5th November 2015. [see File 10, tab 8, pages 47 to 52, paragraphs 23 to 25] where he states at the end of paragraph 25: - *“I am confident that this nuanced view (as opposed to the “extreme” positions articulated in paragraphs 23 and 24 above) is the correct one”.*
3.5	The answer to the first question is that all of the land was either acquired or appropriated for the purpose of education. This is set out comprehensively in the first Report of Philip Petchey of 22 May 2013.[paragraphs 15-18 all the land is thereby covered]	We accept that the land in question was acquired or appropriated for the purpose of education. However we do not accept that the Local Authority acting as a statutory undertaker automatically grants the status of Statutory Purpose on all education Land in the way that Statutory Purpose

		was imposed on the Land at the Newhaven Port and Harbour by virtue of the 1847 Newhaven Act. The Land at Newhaven has a direct and critical function that cannot be provided by an alternative site. Put simply if the Land at Newhaven fails then the Business fails, there is a direct and certain correlation. That is not the situation with education land which is traded as a commodity or re-appropriated by BCC as evidenced in [File 2, tabs 6 and 8, pages 29 to 39 and 101 to 114]. We also refer to the Wellington Hill case where Bristol City Council land held for education was registered as a TVG. [see File 2, tab 7, pages 40 to 100] We also refer to the ***Moorside Fields case*** where the Inspector recommended registration of education Land as a TVG [see File 2, tab 13, pages 127 to 153] Additionally, with regard to Statutory Incompatibility, which we submit must be built on the back of an incontrovertible Statutory Purpose, merely identifying that land is held for education does not in itself address the issues of whether: - a. Any Statutory Incompatibility exists at present b. Registration would introduce any Statutory Incompatibility c. A future wish list could be used to introduce a Statutory Incompatibility d. Stoke Lodge is required to provide any future wish list (imagined or real) We submit that Paragraph 93 from the ***Newhaven*** Judgement cannot be used to frustrate all TVG Applications. It merely points out that if there is a genuine Statutory Incompatibility that threatens the Statutory Purpose in a strategic way (e.g.

		Newhaven) then it mitigates against registration. Furthermore Cotham Academy is a private trust that took on the 125 year lease after the TVG Application was submitted and is prevented from objecting to the TVG Application by their Articles of Association and the terms of their Lease both entered into after the TVG Application was submitted.
3.6	It is also clear that it has been used for educational purposes from these detailed paragraphs of the May 22 Report.	We accept that it is used as playing fields providing Cotham with a finite number of grass pitches whilst additionally providing Land with unfettered access to the Community to engage in lawful sports and pastimes as of right for in excess of twenty years on a shared basis with the School and Formal Sports users. We should also point out that the Cotham lease does not extend to all the grassland areas of the Parkland. All as contained in the Inspector's Report dated 22nd May 2013.
3.7	The Academy was set up pursuant to a statute regime, akin to a statutory undertaker, and is obliged by a variety of means to use its assets for educational and ancillary purposes. Any reversion on the expiry or other termination of the lease would be back to the Council who would revert to holding it for the same statutory purpose of education.	Should Cotham operate the termination clause in their lease the Land would be returned to the Local Authority. However there can be no certainty on how they would use the land or indeed if they would retain it as it is clearly surplus to their requirements. Otherwise how could they have offered the lease in the first place?
3.8	Thus there can be no doubt that the land has been held for the statutory purpose of education.	We maintain that education is statutory function of the Local Authority not a Statutory Purpose. Additionally BCC have appropriated parts of the land previously

		and there can be no certainty that it will not be appropriated for some other role at a future date.
	Incompatibility between statutory purpose of education / TVG Registration	
3.9	Lord Neuberger in ***Newhaven*** pithily summarised the effect of the Victorian Statutes which would take effect in the event of TVG registration. *95 The registration of the Beach as a town or village green would make it a criminal offence to damage the green or interrupt its use and enjoyment as a place for exercise and recreation— section 12 of the Inclosure Act 1857 (20 & 21 Vict c 31)—or to encroach on or interfere with the green— section 29 of the Commons Act 1876 (39 & 40 Vict c 56). See the Oxfordshire case [2006] 2 AC 674 , per Lord Hoffmann, at para 56.*	Agreed
3.10	Lord Neuberger then said that it was not necessary for the parties to lead evidence of future plans because it was a working harbour. Registration of the beach could impede use of the quay for vessels, prevent dredging the Harbour in a way that affected the Beach and may restrict the Port to alter the breakwater.[5] Thus future potential requirements of the Port would have been incompatible with TVG registration which prevented registration.	This Judgement (re Statutory Incompatibility) was based on the fact that the maintenance of vital existing infrastructure would be impeded and as a consequence the whole business might fail and the company would be in default of their Statutory Purpose enshrined in the Act of Parliament known as "*the 1847 Newhaven Act".* We submit that the circumstances at Stoke Lodge Parkland bear no resemblance to the circumstances at Newhaven and that registration would not prevent either Cotham or Bristol City Council from meeting their Statutory obligations (not purpose)

		either including ongoing activities utilising the grass pitches as per the status quo or not; given the opportunity for both to seek additional alternatives available to both should they wish to. This is amplified by the provision of a break clause in the 125 year lease. We must however point out that we would not want to see the School or the Formal Sports users not use the grass pitches in perpetuity.
3.11	It was not an answer to this point that the Harbour and beach had operated successfully together in the past and so could post registration. The Supreme Court expressly distinguished ***R (Lewis) v Redcar and Cleveland Borough Council*** (No 2 [2010] 2AC 70 because in that case there was no suggestion of statutory incompatibility and it was not asserted that the council had acquired and held the land for any specific statutory purpose. Lord Neuberger said at paragraph 100 the following. *"100 Thirdly, the County Council referred to R (Lewis) v Redcar and Cleveland Borough Council (No 2) [2010] 2 AC 70 , which concerned land at Redcar owned by a local authority which had formerly been leased to the Cleveland golf club as part of a links course but which local residents also used for informal recreation. The council proposed to redevelop the land in partnership with a house-building company as part of a coastal regeneration project involving a residential and leisure development. Again, there was no question of any statutory incompatibility. It was not asserted that the council had acquired and held the land for a specific statutory purpose which would be likely to be impeded if the land*	We maintain our position that: - a. No Statutory Incompatibility exists at present b. No Statutory Incompatibility will be generated should the Land be registered We accept that the Land held by the Local Authority at ***Redcar*** was not held for education at the time of the Application. We still maintain that ***Redcar*** remains the authoritative case on "as of right" and "shared use" and mirrors the circumstances in Stoke Lodge Parkland Application. Whilst ***Redcar*** was not held for education, at paragraph 98 ***New Windsor Corporation v Mellor*** some of the land was held for education.

	were to be registered as a town or village green."	
3.12	That could not be more different from this case where it has been accepted that the land was acquired and held for educational purposes. In a case where land is acquired and held for a particular statutory purpose the question is whether the statutory purpose is impeded.	We maintain that the objector(s) must firstly demonstrate that the land has a Site Specific Statutory Purpose and then demonstrate if a genuine Statutory Incompatibility would be created that would impede any Statutory Purpose in a meaningful way.
3.13	On the facts of this case the education purposes of the application site would clearly be impeded in a comparable way to ***Newhaven***. [see paragraph 96 Lord Neuberger.] The educational purpose would be impeded for example in the following ways.	We maintain that in ***Newhaven*** the Statutory Incompatibility would have had the direct effect of causing the whole business to fail putting them in default of their Statutory Purpose. There was no action that the Company could take that would ensure the sustainability of the business at that location if the Land was registered. We maintain that the scale and nature of the circumstances at Stoke Lodge Parkland are not comparable to the circumstances at Newhaven and that Cotham and BCC can continue to use the grass pitches as they have done to date, together with the Formal Sports users i.e. maintain the status quo.
3.14	TVG registration would prevent the school from stopping people coming on to the site when children's sport was occurring even if that was necessary for educational safeguarding reasons. Thus it would clearly impede the use of the sports facilities for educational purposes.	We maintain that: - a. School Sport is not a Statutory Purpose it is an "*unenforceable aspiration*" b. H & S is not a Statutory Purpose it is a management obligation c. Cotham's own Safeguarding policy does not require Community exclusion d. The Briefing Note dated 22nd April 2010 at appendix E &

		F sets out the procedures to ensure compliance with H & S legislation
3.15	TVG registration would prevent drainage and levelling works that would be beneficial for educational purposes but could interrupt its use for exercise and recreation. For example the creation of a fenced synthetic surface may well be highly beneficial for educational use but the creation of this would interfere with use and enjoyment as a place for exercise and recreation. Thus TVG registration would impede the specific educational purpose for which the land has been acquired and held. Similarly drainage works may well interrupt use for informal recreation but could well be necessary for formal games but not for informal dog walking.	We maintain that: - a. Registration would not prevent pitch maintenance as evidenced at Redcar where the Golf Course including fairways, greens and bunkers is properly maintained b. There is no imperative or requirement that specialist facilities (to replace grass pitches) must be provided at Stoke Lodge Parkland c. There is no impediment preventing additional specialist facilities being sourced elsewhere d. Stoke Lodge is only part of the estate available to Cotham. e. Future development provision not considered by the 2006 Act f. Future development provision under Statutory Purpose banner not automatic see Newhaven 101 g. Should Cotham decide that they do not wish to stay at Stoke Lodge there is provision in their lease to have it terminated at clause 7
3.16	There may be educational benefits of having a building on the TVG application site for the purposes education which would be prevented by TVG registration. The siting of the current building may be able to be improved and the TVG application would prevent that happening even if all the educational experts and planning authority and landowners were in favour. The TVG registration would certainly impede the Academy/Council from	Ditto Additionally, as requested by the Inspector, we have set out in our submission dated 6th May 2016 the tests that we consider should be applied to justify future development to be considered under the Statutory Purpose banner. [see File 1, tab 4, pages 74 to 90, paragraphs 48 to 62.]

	pursuing such projects for educational benefit on the land.	
3.17	Expectations and demands for educational sport and recreation for the School change over time and Registration would impede the pursuit of this purpose for which the land has been acquired and held. All this is apparent for these school playing fields without leading further evidence. It is not necessary for evidence to be led for this purpose just as it was not in ***Newhaven***. [para 96 of ***Newhaven***]. However there is now evidence from the Headteacher which makes it plain that if village green registration is made it would prevent the use for the academy because of safeguarding issues that would understandably arise.	The Statutory Purpose at Newhaven does not change over time and it can be argued can only be changed by a subsequent Act of Parliament. We maintain that "educational sport and recreation" is not a Statutory Purpose. Cotham's own Safeguarding policy and H&S policy does not require Community exclusion from Stoke Lodge Parkland as evidenced by Cotham's use of Coombe Dingle Sports Centre which we have shown previously is no better protected than Stoke Lodge Parkland. The BCC Briefing note dated 22nd April 2010 at appendix E& F sets down how Cotham can manage shared use in accordance with H&S legislation on a shared basis.
3.18	There is a clear statutory requirement on the Academy to use this land for playing fields until authorised not to. Registration of this land would be contrary to this regime.	We maintain that: - a. School Sport is not a statutory purpose. [see File 2, tab 9, page 115] b. As a self governing Academy Cotham are free to conduct sport wherever they please as evidenced by where they conduct school sport now including Coombe Dingle Sports Centre.

		c. The fact that they have a lease at Stoke Lodge Parkland does not create a *"clear statutory requirement on the Academy to use this land for playing fields until authorised not to."* d. Registration would maintain the status quo and Cotham would be free to use the grass pitches in accordance with their lease.
	Conclusion	
3.19	Thus there would be clear statutory incompatibility in registering this as a TVG which would impede the educational function that this land was acquired and held for. Accordingly the Registration Authority can and should refuse this application now without the need for an Inquiry.	We submit that there is no evidence to substantiate the objector's assertion.
4	**SIGNS AND CONTENTIOUS USE**	
4.1	There was a period of time when there were signs at all the main entrances of the fields. These are the Avon signs which the Inspector has already looked at the wording of and reached the unsurprising conclusion that they are effective to make the user contentious.[6]	We contend that there have only ever been two Avon signs compared with over 20 access points. Careful inspection of the Inspector's report confirms that the objector has misquoted the inspector. What he actually said was: - *"…….Nonetheless I think that the more restrained form would still be effective to render use contentious. As far as I know, there were only two signs to cover the whole of the site and in particular there was not a sign at the Cheyne Road entrance*

		…………… In my judgement 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………" [See File 10 tab 3 pages 30 & 31, paragraphs 68 to 71]
4.2	The law on contentious user has been set out recently in ***Winterburn v Bennett*** [2015] UKUT 0059 (TCC). It is not necessary to have any further conduct to make a use contentious if there are signs.	This case relates to a small car park in Keighley, West Yorkshire. Ultimately, HHJ Purle QC found that the signs at that particular site were effective and hence could be enforced. We submit that it is not the existence of signs but the effectiveness of any signs that led to the decision in the above case. We maintain that the signs in this case are not effective and hence not determinative in this Application. This position is supported by the Inspector in his Report dated 22nd May 2013 [see File 10, tab 3, paragraphs 6 and 68 – 72, pages 13 and 30 – 32]
4.3	Thus the Applicant has not shown that for the whole 20 year period the user was not contentious.	The Community have shown by use "as of right" for "lawful sports and pastimes" on a shared basis with the School and the Formal Sports Clubs, as evidenced in the 350+ witness statements submitted, that it would have been inescapable for the landowner not to have gained a "general impression of use"

		by the Community. During the qualifying period there is no evidence of any challenge or prosecution of a member of the Community, indeed the Inspector describes the situation at Stoke Lodge Parkland as *" a classic case of acquiescence".* This position is underlined by: - a. the Briefing Note to Bristol City Council Cabinet dated 22nd April 2010 confirming "unfettered access" i.e. not contentious. [see File 3, tabs 10 & 12, pages 46 – 69 and 74] b. The minutes of the Neighbourhood Partnership meeting dated 15th September 2010. [see File 3, tab 14, pages 78 – 83] Furthermore, if Cotham were concerned about ongoing shared Community use why did they do nothing to express this view until after the date of the Application? Clearly at Kellaway Avenue (the site they left in 2003) they do have effective signs [see File 2, tab 19, pages 213 – 215]
5	**PERMISIVE USE**	
5.1	From at least 26 July 2005 qualifying use of the land, provided it did not interfere with the sports or damage the facilities, was by permission. That permission was communicated expressly to	Please see 1.3 iii) above for a full rebuttal of this assertion

	the 'Friends of Stoke Lodge' at a meeting on 26 July 2005 attended by the Applicant and others.	
6	**THE NEIGHBOURHOOD CLAIMED DOES NOT SATISFY THE REQUIREMENTS**	
6.1	There is not any evidence that the line on the map has any degree of cohesiveness other than being a line on a map. Thus it does not meet the requirements for a neighbourhood.	Please refer to section 1.3. iv) v) & vi) above, pages 6 – 16 of this document.
6.2	Thus there is no evidence that the application has a qualifying locality or neighbourhood and the advice of Lord Hoffmann should be followed where he said *"..has no investigative duty which requires it to find evidence or reformulate the applicant's case. It is entitled to deal with the application and the evidence as presented by the parties"*[7]	Please refer to section 1.3. iv) v) & vi) above, pages 6 – 16 of this document.
7	**NOT SIGNIFICANT NUMBER OR SUFFICIENT USE**	
7.1	The test for the quality of the user has been set out recently by the Supreme Court in ***R (on the application of Lewis) v Redcar and Cleveland Borough Council*** [2010] 2 WLR 653 as whether: *"the user was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right (see R (Beresford) v Sunderland City Council [2004] 1 AC 889, paras 6 and 77), the owner will be taken to have acquiesced in it –*	Please refer to section 1.3. iv) v) & vi) above, pages 6 – 16 of this document. We maintain that the ***Redcar*** case is actually helpful to our Application and we submit that we too have demonstrated that: - *"the user was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right".*

	’”7	
7.2	When all the non-qualifying user is stripped out such as the contentious use and the footpath type use for circular walks then the user is insufficient to pass the statutory test.	Please refer to section 1.3. iv) v) & vi) above, pages 6 – 16 of this document. The objector has not provided any evidence to support this assertion and furthermore, taking exercise by walking either across or around the Parkland is an example of lawful sports and pastimes. Which when taken together with the multitude and variety of other lawful sports and pastimes enjoyed by the Community as of right.
8	**INTERUPTION OF USE**	
8.1	There were repeated interruptions of use for the playing fields and more widely for other events.	Please refer to section 1.3. iv) v) & vi) above, pages 6 – 16 of this document for full rebuttal of this assertion. We submit that Stoke Lodge Parkland has never been closed to the Community and the pitches represent such a small percentage of the overall area that avoiding pitches in use as a courtesy and on the very limited temporary basis experienced during the qualifying period has never prevented the Community from using the Parkland in all the manners and variety described in the survey of use and the 350+ statements submitted by the Applicant.
8.2	During each of these events and uses there was complete interruption of any LSP use. It is distinguishable completely from the Redcar deference situation.	Please refer to section 1.3. iv) v) & vi) above, pages 6 – 16 of this document and section 8.1 above.

8.3	This as a matter of fact and degree amounted to interruption of the user.	Please refer to section 1.3. iv) v) & vi) above, pages 6 – 16 of this document and section 8.1 above.
8.4	The editors of Gadsden thought that a regularly used playing field could not be registered for this use.[8] Here the surrounds of the pitches are not registrable because when the pitches were used it was only used for perimeter walking. It would in any event not be correct as a matter of law to register the surrounds of the pitches which would be a wholly unworkable area.	We submit that section 14 – 20 in Gadsden can be best described as opinion, not precedent, and importantly is not held in any way in the same regard as, for instance, Supreme court decisions. We submit that the pitches (assuming that all were in use at the same time on the same day) would only represent 34% of the total area i.e. 66%, as an absolute minimum, would be available to the Community for shared use i.e. 18 of the 27.5 acres available at all times and for the vast majority of the time 100%. [see File 8 response #7, tab 3, section 8, pages 204 – 206 and 213] NB school use is for a maximum of 131 days out of 365. Hence the assertion by the objector that the surrounds of the pitches can only support perimeter walking is a gross and misleading hyperbole devoid of any reasonable rationale. Importantly the pitch use by Cotham during the qualifying period is well documented in the Inspector's Report dated 22nd May 2013 [see File 10, tab 3, paragraph 14, page 15] i. e. 3 pitches. If we are charitable and assume that they are used concurrently, which we dispute, that would result in pitch use of 13.3%, leaving 86.7% available to the community until the game ends i.e. 24 acres out of 27.5 acres in total.

		Additionally if a grass pitch is used it requires time to recover and as a consequence it is rare if not never the case that a single pitch is used more than once in a day and most likely a maximum of three times a week (usually twice). Unlike a golf course where the fairways are in constant use from dawn until dusk seven days a week. This matter was also a consideration in the ***Moorside Fields*** Inspector's Report dated 22nd September 2015 where registration was recommended. [see File 2, tab 13, pages 127 – 153] Please refer also to section 1.3. iv) v) & vi) above, pages 6 – 16 of this document. With particular reference to "quality of use".
	Richard Ground QC **Ashley Bowes** May 2016	**David Mayer** **On behalf of** **Save Stoke Lodge Parkland**
	Cornerstone Barristers 2-3 Gray's Inn Square London WC1R 5JH	**6th June 2016**